

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Order Review Hearing
Monday 8 January 2024**

Virtual Hearing

Name of Registrant: Kimberley Emma Gordon

NMC PIN 10A0050W

Part(s) of the register: Nurses part of the register
Sub part 1 RNA
Adult nurse, level 1 (23 February 2010)

Type of case: Misconduct

Panel members: Anne Ng (Chair, Lay member)
Lorna Taylor (Registrant member)
Robert Fish (Lay member)

Legal Assessor: Michael Bell

Hearings Coordinator: Sophie Cubillo-Barsi

Nursing and Midwifery Council: Represented by Lucy Chapman, Case Presenter

Kimberley Emma Gordon: Not present and not represented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 9 February 2024**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Gordon was not in attendance and that the Notice of Hearing had been sent to Mrs Gordon's registered email address by secure email on 8 December 2023.

Ms Chapman, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Gordon's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Gordon has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Gordon

The panel next considered whether it should proceed in the absence of Mrs Gordon. It had sight of an email and a telephone note detailing attempts made by the NMC to contact Mrs Gordon today, both of which received no response. The panel had regard to Rule 21 and heard the submissions of Ms Chapman who invited the panel to find that Mrs Gordon had voluntarily absented herself from today's hearing. Ms Chapman referred the panel to communications received by the NMC from Mrs Gordon in which she states that she no longer wishes to pursue her nursing career. Ms Chapman submitted that attempts to contact Mrs Gordon have been unsuccessful and that there is no reason to suggest that adjourning today's hearing would secure her attendance at a future date.

Ms Chapman reminded the panel that today's hearing is a mandatory review and that there would be an imminent risk to the public should this case not proceed today. She submitted that it would be fair, and in the interests of justice, to proceed in Mrs Gordon's absence.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mrs Gordon. In reaching this decision, the panel considered the submissions of Ms Chapman, the representations from Mrs Gordon, and the advice of the legal assessor. It had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No meaningful engagement has been made by Mrs Gordon regarding today's hearing;
- No application for an adjournment has been made by Mrs Gordon;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- It is in Mrs Gordon's own interest to proceed with the case today; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel decided that it is fair to proceed in the absence of Mrs Gordon.

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse upon its expiry.

This order will come into effect at the end of 9 February 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months on 11 July 2022. On 3 January 2023 the suspension was extended for a further 12 months.

The current order is due to expire at the end of 9 February 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

‘That you, a registered nurse, whilst employed at the Cardiff and Vale University Health Board:

- 1) In or around January/February 2015;*
 - a) Whilst undertaking a medication round left a medication trolley unattended*
 - b) Inaccurately completed a pre-operative checklist stating a patient had signed a consent form.*

- 2) On 19 July 2017;*
 - a) Administered/recorded an incorrect dose of 400mcg intravenous Naloxone to Patient A at 14:40.*
 - b) Did not immediately administer intravenous Naloxone to Patient A at 14:15 after recording;*
 - i) A National Early Warning Score (“NEWS”) of 9*
 - ii) A respiratory rate of 7 breaths per minute 6*
 - c)...*
 - d)...*
 - e) Incorrectly informed Colleague A that Patient A had been inserted with a Spinal Cord Stimulator*
 - f)...*

- 3)...*

- 4) In relation to Patient B;*
 - a)...*
 - b)...*

c) *Following the administration of Naloxone to Patient B at 08:40, you did not dispose of the glass ampoules appropriately.*

d)...

e)...

f) *On 14 June 2017 at or around 09:45/09:50 incorrectly administered 100mcg Naloxone to Patient B after recording a respiratory rate of 11 or 12 breaths per minute.*

g) *On one or more occasion on 14 June 2017 did not contact the on call doctor prior to administering Naloxone to Patient B.*

h) *On 14 June 2017*

i) *At 09:00 inaccurately altered Patient B's NEWS score from 3 to 6*

ii)...

iii)...

i) *Following a review of Patient B's NEWS score at 09:00, you did not ensure that an oxygen observation level machine was attached to Patient B.*

5)...

6)...

7) *In or around July/August 2017 you submitted a post on Facebook using words to the effect that your colleague/off duty was "shit."*

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.'

The first reviewing panel determined the following with regard to impairment:

'The panel considered whether Ms Gordon's fitness to practise remains impaired. The panel determined that there had been no new information provided before it today since the order was made. The panel concluded therefore, that there is no further evidence to demonstrate that Ms Gordon has remediated the previously highlighted concerns. The panel could not therefore exclude the possibility of similar

misconduct being repeated in the future. The panel therefore determined that the finding of impairment was necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Ms Gordon's fitness to practise remains impaired.'

The first reviewing panel determined the following with regard to sanction:

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Gordon's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Ms Gordon's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Ms Gordon's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that whilst a conditions of practice order could adequately protect

the public and satisfy the public interest, in practice it would not be workable given that Ms Gordon has not engaged with this hearing and is understood to not currently be working as a nurse and has previously indicated that she does not intend to do so. The panel had no information before it that Ms Gordon would engage with any conditions of practice order.

The panel considered the imposition of a further period of suspension. The panel concluded that a further suspension order would be the appropriate and proportionate response and would afford Ms Gordon adequate time to further develop her insight and take steps to strengthen their practice and to adequately address the concerns highlighted by the previous panel.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined that imposing a suspension order for the period of 12 months would provide Ms Gordon with an opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

The panel considered the circumstances of this case and the option of a striking off order, and having had regard for the sanctions guidance, determined that a striking off order would be disproportionate and beyond what was necessary to protect the public.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 09 February 2023 in accordance with Article 30(1)

Before the end of the period of suspension, another panel will review the order, or a review can be requested by the registrant at any time should their circumstances change. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- *Ms Gordon's engagement with the NMC*
- *Ms Gordon's attendance and/or her confirmation of her intentions regarding her future nursing career.'*

Decision and reasons on current impairment

The panel considered carefully whether Mrs Gordon's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. Whilst it noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Chapman on behalf of the NMC.

Ms Chapman provided the panel with a background to Mrs Gordon's case. She reminded the panel that it is Mrs Gordon's intention that she no longer wishes to practice as a registered nurse. Ms Chapman submitted that the panel does not have information before it to demonstrate that Mrs Gordon has developed her insight and/or remediated the misconduct found proved. In light of this, Ms Chapman invited the panel to find that Mrs Gordon remains impaired. Ms Chapman submitted that it is open to the panel to impose a striking off order. She also referred the panel to the NMC's guidance on 'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place', specifically the following paragraph:

'In most circumstances nurses, midwives or nursing associates who are subject to a substantive suspension or conditions of practice order, but no longer wish to continue practising, should be allowed to be removed from the register. Our Order and Rules state that professionals cannot be removed from the register while a substantive suspension or conditions of practice order is in place...'

Ms Chapman submitted that allowing the order to lapse would provide the necessary level of public protection in that should Mrs Gordon change her mind with regards to her

intention to practice as a registered nurse, she would need to reapply to the NMC's register and that application would be subjected to the rules and judgement of the Registrar. Ms Chapman further submitted that allowing the order to lapse would be in Mrs Gordon's own interest and in the interest of the public by removing the need for the order to be reviewed, subsequently saving time and money. Ms Chapman submitted that anything less than a 12-month suspension order would be inappropriate at this time.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Mrs Gordon's fitness to practise remains impaired. It noted that the misconduct found proved related to wide-ranging clinical failings and also to unprofessional behaviour. The panel did not have any new information before it to suggest that Mrs Gordon has demonstrated any insight into her misconduct. Further, there was no information before the panel to show that she had taken steps to strengthen her practice and remediate the concerns found proved, despite being provided with ample opportunity to do so. To the contrary, Ms Gordon has not meaningfully engaged with the NMC since May 2021. In the absence of any new information before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. The panel therefore determined that the finding of impairment was necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Gordon's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Gordon's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. It decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Gordon's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Gordon's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Ms Gordon's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that whilst a conditions of practice order could adequately protect the public and satisfy the public interest, in practice it would not be workable given that Ms Gordon has not engaged with this hearing and is understood to not currently be working as a nurse and has previously indicated that she does not intend to do so. The panel had no information before it that Ms Gordon would engage with any conditions of practice order.

The panel has received information that Mrs Gordon does not intend to return to practise as a nurse. In her limited communication with the NMC, on 15 August 2023, she states:

'Please see a written response from myself explaining again to the NMC that I wish to surrender my pin and leave the nursing profession. I hope that this will be accepted and bring this 6 year ordeal to an end finally.'

Ms Gordon further states:

'Thank you for your email. I have previously advised the NMC that I have no intention of returning to nursing after this and applied to surrender my pin and bring this all to an end previously. However, I had written communication to state that the NMC would not consider this as an option. I would like to stress to the hearing board that I no longer have an interest in pursuing a career in nursing and will not be partitioning to retain my pin. Please take this as written confirmation that I wish to surrender my pin and will not be returning to nursing.'

The panel had regard to the NMC's guidance in relation to 'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place'. The panel was assured by Ms Gordon's communication that she does not intend to return to nursing practice. The panel noted that Ms Gordon remains on the register by way of these proceedings and that her registration has lapsed. In this regard, the panel noted the NMC's guidance which states:

'If nurses, midwives and nursing associates don't pay their fee or complete revalidation, their registration will usually lapse. However, if a nurse, midwife or nursing associate is on a conditions of practice order, or a suspension order, their registration cannot lapse because of the existence of the order. If the panel decide to lift the order or allow the order to expire, the nurse, midwife or nursing associate who has not paid their fee or completed revalidation will no longer be registered with us and will not be able to practise.'

In allowing the order to lapse, the panel was of the view that should Ms Gordon's repeated intentions not to return to the nursing profession change, the public would be adequately protected by its finding of impairment, which would have to be carefully considered by the NMC's Registrar before Mrs Gordon could be reinstated onto the register.

The panel determined that imposing a further suspension order would serve no useful purpose. It further determined that allowing the order to lapse rather than imposing a striking off order, would be the most proportionate way of dealing with Mrs Gordon's case given her clear and consistent intentions to no longer practice as a nurse. Allowing the order to lapse would be in Mrs Gordon's own interest. The panel further determined that any public interest concerns in Mrs Gordon's case have now been met by the regulatory process resulting in a period of 18 months suspension and this panel's finding of current impairment.

The panel therefore concluded to allow the order to lapse.

The suspension order will lapse at the end of 9 February 2024, in accordance with Article 30(1).

This decision will be confirmed to Mrs Gordon in writing.

That concludes this determination.