

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

**Substantive Order Review Hearing
Friday 5 July 2024**

Virtual Hearing

Name of Registrant: Mohammad Nawshad Moosuddee

NMC PIN 91A1321E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 12 June 1994

Relevant Location: London

Type of case: Misconduct

Panel members: Susan Ball (Chair, Registrant member)
Esther Craddock (Registrant member)
Jennifer Portway (Lay member)

Legal Assessor: Fiona Barnett

Hearings Coordinator: Claire Stevenson

Nursing and Midwifery Council: Represented by Giedrius Kabasinskas, Case Presenter

Mr Moosuddee: Present and not represented

Order being reviewed: Suspension order (4 months)

Fitness to practise: Impaired

Outcome: **Suspension order (4 months) to come into effect on 11 August 2024 in accordance with Article 30 (1)**

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Kabasinskas, on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held partially in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

You indicated that you did not mind if members of the public heard about [PRIVATE] however, in an abundance of caution the panel determined that all matters relating to your health should remain private. Therefore, the panel determined to go partially into private session as and when reference is made to [PRIVATE] in order to protect confidentiality and your privacy.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order.

This order will come into effect at the end of 11 August 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive order originally imposed for a period of 4 months by a Fitness to Practise Committee on 14 March 2024.

The current order is due to expire at the end of 11 August 2024.

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

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

'That you, a registered nurse:

1. *On 28 October 2020*

- a. *Stated to colleague A words to the effect that colleague C had asked you to go and see patient X.*
- b. *Stated to colleague B words to the effect that:*
 - i. *You had operated on patient X with colleague C.*
 - ii. *Colleague C said that it was ok for you to see patient X.*
- c. *Stated to colleague D words to the effect that:*
 - i. *.....*
 - ii. *You were with patient X during their surgery.*
- d. *Asked to take a picture with patient X.*
- e. *Removed all or part of your face mask when in patient X's room*
- f. *Made physical contact with patient X's hand with your hand.*
- g. *Took a picture with patient X's surgeon.*
- h. *Visited patient X without clinical justification in that you were not involved in patient X's care.*

2. *Your action at 1a was dishonest because you knew colleague C had not asked you to see patient X.*

3. *Your action at 1bi was dishonest because you knew you had not been involved in the operation on patient X.*

4. *Your action at 1bii was dishonest because you knew colleague C had not asked you to see patient X.*

5. *.....*

6. *Your action at 1cii was dishonest because you knew you had not been with patient X during their surgery.*

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide, if as a result of the misconduct, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether

the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that Patient X was put at unwarranted risk of harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty serious.

Regarding insight, the panel accepted that you made some admissions. However, you did not fully demonstrate an understanding of how your actions put Patient X at

a risk of harm, nor an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, you have not demonstrated full insight into the failings nor demonstrated how you would handle the situation differently in the future.

The panel had regard to the following evidence which demonstrates your limited insight.

In the local investigation interview between you and Witness 5, dated 10 November 2020, you were asked what your understanding of patient privacy and dignity was. You stated:

'Patients have a right to privacy in hospital. You have to be able to be confidential, basically to make the patient feel comfortable...'

However, you also confirmed that the policy and what your obligations are under this policy were not clear to you.

In the same local investigation interview, you were asked whether your behaviour was in line with the NMC code of practice. You responded:

'I think so, I don't think I disrespected the patient's privacy.'

In your reflective account, in respect of the specific concerns that have been raised about you, you stated:

'... I feel it has been over exaggerated and I have been treated unfairly because the patient is a high profile'

In the meeting minutes of the Disciplinary Hearing between you and the Divisional Manager, dated 16 November 2020, you stated:

'On reflection now I understand I shouldn't have gone to see the patient... I am human after all and my emotion took over... I didn't put the patient's health at risk at all I have not put the hospital reputation at risk. In fact, during

my brief visit I did mention that the Cromwell is a good hospital with outstanding reputation, and he will be well looked after....’.

You also stated:

‘On reflection I’ve been extremely naive I should not have gone to see the patient. I didn’t realise the gravity of the situation I am extremely sorry. My intention was never to be disloyal, to deceive, cause any malice or cause any harm. I did not comprehend the celebrity status. I am extremely remorseful and very sorry’.

The panel therefore determined, from the above evidence, that your insight is limited. It had not seen or been presented with any evidence of further developed insight, including an up-to-date reflective statement.

The panel recognises that dishonesty is not easily remediable. However, in this case, it was satisfied that the misconduct is capable of being addressed as the incident was a one-off spontaneous or opportunistic act in an otherwise long and unblemished career. The panel did not have any evidence before it to determine whether you have taken steps to strengthen your practice.

Further, the panel was of the view that there is also a risk of repetition of the other areas of regulatory concern, namely the potential patient harm as you breached COVID protocols and did not maintain infection control, and your breach of Patient X’s right to privacy. It has no evidence before it to demonstrate whether you have undertaken any retraining or fully reflected on these concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.”

The original panel determined the following with regard to sanction:

“Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- *Misuse of position as member of staff.*
- *Patient X was put at risk of harm.*
- *Lack of evidence of full insight.*

The panel also took into account the following mitigating features:

- *One-off and opportunistic incident.*
- *Not financially motivated.*
- *Showed remorse in the local interviews.*
- *Partial admissions.*
- *Unblemished career of 35 years without any regulatory concerns.*

In regard to dishonesty, after reviewing the NMC’s guidance on Considering sanctions on serious cases, the panel found your misconduct, whilst serious, was at the less serious end of the spectrum of dishonesty for the reasons set out in the

aggravating and mitigating features. It also found that you did not deliberately breach a duty of candour.

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

The panel 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 your 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 your 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 placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable.

The panel is of the view that, in respect of the dishonesty and breach of privacy identified, there are no practicable or workable conditions that could be formulated, given the nature of some of the charges in this case. The misconduct identified in this case was not something that can be addressed through a conditions of practice order.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident; and*
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel was satisfied that this was a single instance of opportunistic misconduct and that there was no evidence before it to indicate harmful or deep-seated attitudinal concerns. The panel considered that you had shown some insight in the local investigation interviews, though this was not fully developed. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with your remaining on the register and that a suspension order would therefore be appropriate in your case.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate for the following reasons:

- The panel was of the view that public confidence in nursing can be maintained if you are not removed from the register permanently.*
- A striking-off order is not the only sanction which will be sufficient to protect patients and members of the public, maintain professional standards and uphold the public interest.*

Whilst the panel acknowledges that suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

In making its decision, the panel carefully considered the submissions of Mr Smalley in relation to the sanction that the NMC was seeking in this case. However, the panel considered that the imposition of a striking-off order would be wholly disproportionate in light of its findings.

The panel determined that a suspension order for a period of four months, with a review, was appropriate in this case to mark the seriousness of the misconduct and give you sufficient time to provide reflections and evidence on your strengthening practice and insight.

At the end of the period of suspension, another panel will review the order. 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:

- A detailed reflective account demonstrating developed insight into all three areas of regulatory concern (infection control, breach of privacy and dishonesty). This should also demonstrate the effect that your misconduct had on patients, employees, and the reputation of the profession.*
- Testimonials attesting to your character and your professionalism as a nurse from any or all of the following: a current or past employer; current or previous work colleagues; colleagues in any voluntary work.*

- *Evidence of professional training in infection control.'*

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC states in its guidance reference DMA1, that the question that will help decide whether a professional's fitness to practise is impaired is: "*can the nurse, midwife or nursing associate practise kindly, safely and professionally*".

In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC and on-tables bundle, and responses from you. It has taken account of the submissions made by Mr Kabasinkas and those made by you. It had regard to the [PRIVATE] you submitted to the NMC.

Mr Kabasinkas took the panel through the background of the case and the original panel's decisions and reasons. He stated that the panel found that there was some insight but not full insight. The original panel found that dishonesty is not easily remediated but in this incident it was spontaneous and is capable of being addressed. He told the panel that the original panel suggested that this panel would be assisted by insight into all three areas of the regulatory concerns, namely, infection control, breach of privacy and dishonesty as well as testimonials attesting to your character and professionalism.

Mr Kabasinkas submitted the NMC's position is that none of these documents have been provided by you. However, he submitted there are mitigating features and there are reasons provided. He submitted that the burden pursuant to the case of *Abrahaem v General Medical Council* [2008] EWHC 183 (Admin) is upon the registrant to show that he is no longer impaired. He submitted that as none of these have been provided there is no evidence to suggest the risk of repetition has reduced.

Mr Kabasinskas submitted your fitness to practise remains impaired on the grounds of public protection and the public interest. Further, he submitted that a conditions of practice order would not be appropriate and invited the panel to extend the current suspension order by a further four months in the same terms.

Mr Kabasinskas submitted that a more serious sanction would not be appropriate due to the mitigating factors. He stated you have been very open and honest with the NMC and you admitted [PRIVATE]. He acknowledges you have not been in a position to provide the evidence requested by the previous panel.

The panel also had regard to your submissions. You told the panel that [PRIVATE].

You told the panel that you would very much like to return to nursing practice in the future and asked the panel to extend the current suspension order for fourth months to allow you the time to respond to the previous panel's concerns. You stated that previously you were a crucial member of the team at the hospital and had crucial responsibilities. You told the panel that since you have not been practising you have realised how important being a nurse is to you and you feel you really need to return to work as the experience you have gained over many years would contribute greatly to the health service.

In response to a panel question, you stated you are asking for the extra time so that you may be able to provide the documentation requested from the original panel to show that you have remediated and strengthened your practice.

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 your fitness to practise remains impaired.

The panel noted that the original panel found that you had limited insight. At this hearing the panel acknowledge that you remain engaged in the proceedings and you demonstrate

a willingness to work towards remediation and strengthening your nursing practice with a view to returning to work.

In its consideration of whether you have taken steps to strengthen your practice, the panel acknowledge [PRIVATE] and due to this you have been unable to provide evidence requested by the original panel.

The panel acknowledged that you have been engaging with the NMC process [PRIVATE]. However, the panel concluded that there has been no substantive change in your position.

The panel noted the original panel's findings regarding improper conduct in abusing your position of power and putting the patients at risk by not following infection control procedures during the COVID pandemic. It determined the charges are serious involving dishonesty which is difficult to remediate.

The panel acknowledges [PRIVATE] and accepts that you have been unable to remediate and provide evidence as requested by the previous panel; however, this does not change the position. The panel determined there is no new information to persuade it that your clinical practise, understanding and insight have improved. The panel therefore determined that your fitness to practice remains impaired on public protection grounds.

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 your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be a sufficient and proportionate response, the panel determined that due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your 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 your 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 conditions of practice on your 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 a conditions of practice order would not adequately protect the public or satisfy the public interest. It determined that charges around dishonesty is difficult to remediate. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to your misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would protect the public and meet the public interest while allowing you further time to respond to the recommendations of the previous panel. The panel concluded that an extension of the suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice.

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 to extend the suspension order for a further period of 4 months as this would provide you sufficient time to respond to the recommendations of the original panel without being overly punitive. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 11 August 2024 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. 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:

- A detailed reflective account demonstrating developed insight into all three areas of regulatory concern (infection control, breach of privacy and dishonesty). This should also demonstrate the effect that your misconduct had on patients, employees, and the reputation of the profession.
- Testimonials attesting to your character and your professionalism as a nurse from any or all of the following: a current or past employer; current or previous work colleagues; colleagues in any voluntary work.
- Evidence of professional training in infection control.

This will be confirmed to you in writing.

That concludes this determination.