

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

**Substantive Order Review Hearing
Wednesday, 10 July 2024**

Virtual Hearing

Name of Registrant: David Anthony Mott

NMC PIN 00I1102E

Part(s) of the register: Registered Nurse – RNA
Adult Nursing – September 2003

Relevant Location: Redcar and Cleveland

Type of case: Misconduct

Panel members: Alan Greenwood (Chair, Lay member)
Kathryn Smith (Registrant member)
Margaret Wolff (Lay member)

Legal Assessor: Lucia Whittle-Martin

Hearings Coordinator: Amira Ahmed

Nursing and Midwifery Council: Represented by Fiona Williams, Case Presenter

Mr Mott: Not present and not represented

Order being reviewed: Suspension order (4 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect at the end of 19 August 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Mott was not in attendance and that the Notice of Hearing had been sent to Mr Mott's registered email address by secure email on 7 June 2024.

Ms Williams, 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 Mr Mott's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Mott 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 Mr Mott

The panel next considered whether it should proceed in the absence of Mr Mott. The panel had regard to Rule 21 and heard the submissions of Ms Williams who invited the panel to continue in the absence of Mr Mott. She submitted that Mr Mott had voluntarily absented himself.

Ms Williams submitted that there had been no engagement at all by Mr Mott with the NMC in relation to this review hearing and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

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

- No application for an adjournment has been made by Mr Mott;
- Mr Mott has not engaged with the NMC and has not responded to any of the emails sent to him about this review hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Mott.

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for a period of 12 months.

This order will come into effect at the end of 19 July 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 by a Fitness to Practise Committee panel on 20 September 2023. This order was reviewed on 11 March 2024 and a four month suspension order was imposed.

The current order is due to expire at the end of 19 August 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:

- 3) *Did not administer prescribed medication to Resident A, namely:*
 - a) *Amitriptyline*
 - b) *Atorvastatin*
 - c) *Zopiclose*

- 4) *Did not administer prescribed medication to Resident B, namely:*
 - a) *Simvastatin*
 - b) *Hypomellose eye drops*
 - c) *Trimethorpim*
 - d) *Omeprazole*

- 5) *Did not administer prescribed medication to Resident C, namely:*
 - a) *Eye drops*
 - b) *Trimbo inhaler*
 - c) *Trimethoprim*

- 6) *Did not administer prescribed medication to Resident D, namely:*
 - a) *An inhaler*
 - b) *Nitrofurantoin*
 - c) *Apixaban*
 - d) *Atorvastatin*
 - e) *Simvastatin*
 - f) *Donepezil*

- 7) *Did not administer prescribed medication to Resident E, namely:*
 - a) *Simvastatin*
 - b) *Donepezil*

- 8) *Did not administer prescribed medication Baclofen to Resident F.*

- 9) *Did not administer prescribed medication to Resident G, namely:*
 - a) *Two doses of Omeprazole*
 - b) *Amitriptyline*
 - c) *An inhaler*

10) *Did not administer prescribed medication to Resident H, namely:*

- a) *Nitrazepam*
- b) *Quinine*
- c) *Docusate*
- d) *Mitazapine*

11) *Did not administer prescribed medication to Resident I, namely:*

- a) *Cefalexin*
- b) *Hypomellose eye drops*

12) *Did not check the syringe driver for Resident J during the night.*

13) *Did not administer Morphine 10mg sub cut during the night to Resident J.*

15) *Wrote over an audit completed in red ink as a stock check, in black ink.'*

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

'The panel considered whether Mr Mott's fitness to practise remains impaired.

At this hearing there was no new information before the panel of any insight, remediation, remorse or any steps taken by Mr Mott to strengthen his practice. There was an absence of any evidence from him concerning the context in which his failings took place. The panel therefore concluded that there had been no material change of circumstances since the original substantive hearing.

In light of this, the panel considered that patients could be placed at a real risk of significant harm if Mr Mott was permitted to practise unrestricted due to the serious nature of the charges found proven. It was of the view that as there is no information before it to suggest Mr Mott has demonstrated sufficient insight and taken the necessary steps to strengthen his practice therefore, a real risk of repetition remains. Therefore, it determined that a finding of impairment remains 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 Mr Mott'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. The panel had been made aware that taking no action and allowing the order to lapse, would have the effect of Mr Mott ceasing to be on the register as his registration has expired. The panel was however not clear about Mr Mott's intention regarding returning to nursing in the future as he has not indicated any clear plan or intention in correspondence to the NMC. The panel therefore 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 Mr Mott'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 Mr Mott'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 Mr Mott's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The original

panel concluded that the identified failings are remediable. This panel has no information as to whether Mr Mott would comply with any conditions, and he has stated that he is currently not able to seek employment as a registered nurse. 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 be practical in the current circumstances. The panel was not therefore able to formulate conditions of practice that would adequately address the concerns relating to Mr Mott's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Mott further time to fully reflect on his previous failings. It considered that Mr Mott needs to reflect and gain a full understanding of how the failings of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel concluded that a further four months suspension order would be the appropriate and proportionate response and would afford Mr Mott adequate time to further develop his insight and take steps to strengthen his 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 impose a suspension order for the period of four months would provide Mr Mott with an opportunity to engage with the NMC and provide further information regarding his future career intentions. It considered this to be the most appropriate and proportionate sanction available.

The panel discussed imposing a striking off order however it concluded that this was disproportionate in all of the current circumstances.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 19 April 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.

...

The panel was of the view that if Mr Mott decides that he would like to return to practise as a registered nurse a future panel reviewing this case would be assisted by:

- *Mr Mott's engagement with the NMC and participation at any Substantive Order Review Hearing;*
- *A clear indication of Mr Mott's future nursing career intentions*
- *A reflective statement from Mr Mott demonstrating his insight into the misconduct;*
- *Testimonials from any paid or voluntary work; and*
- *Any evidence of up-to-date targeted training particularly in relation to the importance of medicines administration.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Mott'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. The NMC guidance DMA-1 sets out the question that will help decide whether a professional's fitness to practise is impaired which 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 bundle. It has taken account of the submissions made by Ms Williams on behalf of the NMC.

Ms Williams submitted that Mr Mott has not provided any evidence of reflection, appropriate training or steps he has taken to strengthen his practice since the suspension order was first imposed. She explained that Mr Mott has previously said that he does not intend to go back to nursing but has not given this panel any information on whether he has changed his position on this. Ms Williams submitted that the risks to the public have not reduced and there remains a real risk of significant harm to the public and a real risk of repetition.

Ms Williams submitted that that it is a matter for the panel to consider whether Mr Mott's fitness to practise remains impaired today and the appropriate sanction to impose based on the circumstances.

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 Mr Mott's fitness to practise remains impaired.

The panel noted that it has no new information before it today in relation to whether Mr Mott has developed any insight, remediation or remorse, or any steps taken by him to strengthen his practice. The panel also noted that there was an absence of any evidence from Mr Mott concerning the context in which his failings took place. The panel therefore concluded that there had been no material change of circumstances since the original substantive hearing.

In light of this, the panel considered that patients would be placed at risk of significant harm if Mr Mott were to be permitted to practise unrestricted due to the serious nature of the charges found proven and the fact that Mr Mott has not engaged with these proceedings or provided any evidence of remediation or insight. The panel therefore decided that a finding of continuing impairment is 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 in light of the public protection concerns.

For these reasons, the panel finds that Mr Mott fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Mott'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. 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 Mr Mott'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 Mr Mott'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 order on Mr Mott'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 concluded that the identified failings are remediable but could not be confident that Mr Mott would comply with

any conditions the panel might see fit to impose in light of his lack of engagement with these and earlier proceedings, together with his earlier statement that he had not been able to seek employment as a registered nurse. On that basis the panel concluded that a conditions of practice order was not workable.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Mott further time to fully reflect on his previous failings. The panel concluded that a further 12 suspension order would be the appropriate and proportionate response and would afford Mr Mott adequate time to develop his insight and take steps to strengthen his nursing practice if he wishes to do so.

This panel did consider a striking off order, in light of Mr Mott's lack of engagement in these proceedings. However, the panel noted Mr Mott's 20 year career as a nurse without any regulatory concerns before these proceedings and that the charges at the substantive hearing arose from a one night shift. It therefore determined that at this stage a striking off order would be disproportionate.

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 impose a suspension order for the period of 12 months in order to provide Mr Mott with an opportunity to engage with the NMC and provide a future reviewing panel with information regarding his future career intentions. 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 19 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.

The panel was of the view that if Mr Mott decides that he would like to return to practise as a registered nurse a future panel reviewing this case might be assisted by:

- Mr Mott's engagement with the NMC and participation at any Substantive Order Review Hearing;
- A clear indication of Mr Mott's future nursing career intentions
- A reflective statement from Mr Mott demonstrating his insight into the misconduct;
- Testimonials from any paid or voluntary work; and
- Any evidence of up-to-date targeted training particularly in relation to the importance of medicines administration.

This will be confirmed to Mr Mott in writing.

That concludes this determination.