

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

**Substantive Order Review Hearing
Monday, 29 July 2024**

Virtual Hearing

Name of Registrant: Mark Edwin Round

NMC PIN 04C0402W

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – (level 1) April 2007

Relevant Location: Flint

Type of case: Misconduct

Panel members: Tracy Stephenson (Chair, Lay member)
Jane Lewry (Registrant member)
David Boyd (Lay member)

Legal Assessor: Paul Hester

Hearings Coordinator: Zahra Khan

Nursing and Midwifery Council: Represented by Uzma Khan, Case Presenter

Mr Round: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (3 months) to come into effect at the end of 7 September 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 Round was not in attendance and that the Notice of Hearing had been sent to Mr Round's registered email address by secure email on 24 June 2024.

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

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

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

Ms Khan referred the panel to an email from Mr Round to the NMC, dated 28 July 2024, stating:

'Sorry but i wont be attending im retired now'

The panel accepted the advice of the legal assessor.

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

- Mr Round has informed the NMC by email that he will not be attending today's hearing;
- No application for an adjournment has been made by Mr Round;
- There is no reason to suppose that adjourning the hearing 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 decided that it is fair to proceed in the absence of Mr Round.

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order for a period of 3 months.

This order will come into effect at the end of 7 September 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the eighth review of a substantive conditions of practice order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 7 August 2020. This order was reviewed on 28 January 2021 where it was changed to a 6 month suspension order, and then on 27 July 2021 where it was confirmed. This order was further reviewed on 28 January 2022 where it was changed to a 6 month conditions of practice order, and then on 29 July 2022 where it was confirmed. The order was reviewed on 23 January 2023 when the panel decided to confirm the conditions of practice order. The order was then reviewed on 4 September 2023 when the panel decided to vary the conditions of practice order for a period of 6 months. The order was last reviewed on 5 February 2024 when the panel decided to replace the conditions of practice order with a suspension order for a period of 6 months.

The current order is due to expire at the end of 7 September 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,

On 16 October 2017, whilst working a shift at Rhiwlas Care Home

1. In respect of Resident A,

1.1. attempted to remove a suprapubic catheter by pulling at it and re-inserting it several times.

1.2. attempted to reinsert a new catheter which had become unsterile during the process.'

The last panel determined the following with regard to impairment:

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

Today's panel noted that the last reviewing panel found that Mr Round had not demonstrated an understanding of how his actions put patients at a risk of harm, nor an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, the last reviewing panel determined that Mr Round had not demonstrated how he would handle the situation differently in the future. At this hearing, today's panel took into consideration that Mr Round last provided a reflective statement on 5 October 2021, before the third substantive review order hearing, in which he demonstrated some limited insight. However, the panel bore in mind that the reflective statement did not address insight in respect of his failings and the impact on patient health and welfare, and the wider impact on public confidence in the nursing profession. The

panel noted that at this hearing it had no further information regarding Mr Round's insight of the areas of concern and it concluded that he has not acknowledged the misconduct in his practice which was found at the substantive hearing.

In its consideration of whether Mr Round has taken steps to strengthen his practice, the panel considered that it had no new information regarding any training he has completed or efforts made to keep up to date related to the charges found proved or any fundamental nursing skills. The panel noted that it has been six years since he last practised as a nurse.

Today's panel has received no new information which addresses the concerns in Mr Round's insight nor any evidence of his strengthened practice. In light of this, this panel determined that Mr Round remains liable to repeat matters of the kind found proved. 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 was of the view that an informed member of the public would be concerned to learn about Mr Round's lack of meaningful engagement with the NMC, his lack of strengthened nursing practice by way of addressing the concerns through training, his failure to acknowledge his mistakes, or present an understanding of why his failings were an example of poor practice. The panel was of the view that these all presented reasons which would undermine the confidence in the nursing profession. 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 Round's fitness to practise remains impaired'.

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

'The panel next considered the continuation of the current conditions of practice order. It bore in mind that Mr Round has not meaningfully engaged with the NMC since the imposition of the conditions of practice order on 29 January 2022. It noted he has not demonstrated any improved insight or acknowledgement of the misconduct found at the substantive hearing. The panel bore in mind Mr Round's unchanging position and lack of accountability in relation to the seriousness of the facts found proved at the substantive hearing. The panel determined there is no information before it to conclude that Mr Round is currently willing to comply with any conditions imposed upon his practice.

On this basis, the panel concluded that a conditions of practice order is no longer practicable or the appropriate order in this case. Although, the panel concluded that workable conditions of practice could be formulated which would protect the public they concluded that these would not satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of 6 months would provide Mr Round with an opportunity to engage with the NMC, provide any evidence of learning in relation to the failings found proved at the substantive hearing and evidence of his insight as to how his failings have impacted patients and public confidence in the nursing profession. It considered this to be the most appropriate and proportionate sanction available.

The panel took into consideration that it could impose a striking-off order. It considered that Mr Round has not meaningfully engaged with the NMC nor demonstrated any further insight or strengthened practice since the last hearing. The panel bore in mind that Mr Round has previously engaged with the NMC and has not expressed an intention to leave the nursing profession. In light of this it decided provide Mr Round with a further opportunity to demonstrate insight, provide a reflective piece and provide

evidence of strengthened practice. It took into account that any future reviewing panel may consider the imposition of a striking off order.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 7 March 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:

- *Your attendance at any future hearing.*
- *A reflective statement which demonstrates how your failings could affect and impact:*
 - a) *patient's health and welfare.*
 - b) *public confidence in the nursing profession.*
- *Testimonials from either paid or unpaid work.*
- *Mr Round's intentions for his future nursing career'.*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Round'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 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 had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Khan on behalf of the NMC.

Ms Khan provided the panel with a background of the case which included a summary of the decisions made by past reviewing panels. She referred today's panel to the relevant pages in the NMC bundle.

Ms Khan invited the panel to impose a further suspension order.

Ms Khan submitted that Mr Round has not attended today's hearing, nor has he provided any evidence or insight which suggests that he is no longer impaired. She submitted that there is very limited information before the panel today to suggest that there has been a material change since the last hearing.

Ms Khan submitted that there has been no evidence before the panel to suggest that Mr Round engaged with previous conditions when they were in place. She also submitted that Mr Round has not provided a reflective piece since October 2021.

Ms Khan referred to Mr Round's email dated 28 July 2024 whereby he stated that he has now retired. She submitted that Mr Round's email suggests that he has no desire to remain practising as a nurse. However, she submitted that Mr Round has previously indicated, on more than one occasion, a desire to continue to practise nursing. As such, she submitted that Mr Round is quite volatile and seems to contradict himself.

In these circumstances, Ms Khan submitted that the panel may feel that a further extension of a suspension order would allow the NMC to engage with Mr Round in the background to confirm his intentions regarding his nursing career. Ms Khan also informed the panel that Mr Round has not paid his NMC fee in four years.

Ms Khan submitted that an informed member of the public would be concerned to find that Mr Round's fitness to practise was not impaired.

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 Round's fitness to practise remains impaired.

Today's panel noted that the last reviewing panel found that Mr Round had not demonstrated an understanding of how his actions put patients at a risk of harm, nor an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. It also noted that the last reviewing panel received no new information which addresses the concerns in Mr Round's insight nor any evidence of his strengthened practice

Similarly, today's panel noted that at this hearing it had no further information regarding Mr Round's insight of the areas of concern and it concluded that he has not acknowledged the misconduct in his practice which was found at the substantive hearing.

In its consideration of whether Mr Round has taken steps to strengthen his practice, today's panel considered that it had no new information regarding any training he has completed, or efforts made to keep up to date related to the charges found proved or any fundamental nursing skills. It noted that it has been six years since Mr Round last practised as a nurse and that he has stated that he is now retired.

The last reviewing panel determined that Mr Round was liable to repeat matters of the kind found proved. Today's panel has received no new information which addresses the concerns in Mr Round's insight nor any evidence of his strengthened practice. In light of this, this panel determined that Mr Round remains liable to repeat matters of the kind found proved. 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.

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

Decision and reasons on sanction

Having found Mr Round'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.

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 Mr Round'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 Round'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 Round'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 a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel has received brief information that Mr Round is now retired. However, it does not have information regarding the length of time that Mr Round has now been retired, nor whether he intends to return to practise as a nurse. In these circumstances, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Round further time to fully reflect on his previous failings. It was also of the view that a further period of suspension would allow the NMC ample time to contact Mr Round as to whether he wishes to remain on the NMC register since he has stated that he is now retired. The panel concluded that a further 3 month suspension order would be the appropriate and proportionate response and would afford Mr Round adequate time to further develop his insight and take steps to strengthen their practice. It would also give Mr Round an opportunity to approach past and current health professionals to attest to his current practice in his workplace assignments since the substantive hearing. Alternatively, the further 3 months will afford Mr Round an opportunity to respond to the NMC if he wishes to remain retired from the profession. He can express a settled intention, if he so wishes, that he has retired from the nursing profession and that he is inviting the next panel to let the substantive suspension order expire in order to allow removal from the Register. Mr Round, if he wishes to take this course, will need to consider the NMC guidance *'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place'* (Reference REV-3h). The next panel will have the power of strike-off.

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 3 months would provide Mr Round with an opportunity to engage with the NMC. 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 7 September 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 clear indication of Mr Round's intention regarding his future nursing career.
- If Mr Round does wish to remain practising as a nurse, evidence of the following:
 - Mr Round's attendance.
 - A reflective statement from Mr Round which demonstrates how his failings could affect and impact patient's health and welfare and the public confidence in the nursing profession.
 - Testimonials from either paid or unpaid work.
- If Mr Round wishes to remain retired from the nursing profession, a settled intention in writing that this is the case and that he invites the next panel to let the substantive order expire in order to allow removal from the Register.

This will be confirmed to Mr Round in writing.

That concludes this determination.