

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

**Substantive Order Review Hearing
Monday, 24 June 2024**

Virtual Hearing

Name of Registrant: Ragiv Kamal Kumar Jugdharree

NMC PIN: 90J1843E

Part(s) of the register: Registered Nurse - Sub part 1
Mental Health Nurse, level 1 (27 September 1993)

Relevant Location: Kent

Type of case: Misconduct

Panel members: Adrian Ward (Chair, Lay member)
Alison Beilby (Registrant member)
David Hull (Lay member)

Legal Assessor: Juliet Gibbon

Hearings Coordinator: Eyram Anka

Nursing and Midwifery Council: Represented by Robert Benzynie, Case Presenter

Mr Jugdharree: Present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 2 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, you made a request that this case be held partly in private on the basis that proper exploration of your case involves some reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Benzynie indicated that he supported the application.

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.

Having heard that there will be reference to your health and private life, the panel decided to hear any such matters in private in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to further extend the current suspension order.

This order will come into effect at the end of 2 August 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 12 months by a Fitness to Practise Committee panel on 5 January 2023. This was reviewed on 20 December 2023 and the suspension order was extended for a period of 6 months.

The current order is due to expire at the end of 2 August 2024.

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

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

'That you, a nurse and the registered manager at Garlinge Lodge Residential Home ("the Home"):

1. *Failed to preserve patient safety in that you failed to ensure:*
 - a. *fire equipment was checked every six months;*
 - b. *fire doors were functional and/or in place;*
 - c. *fire and/or smoke alarms were in all rooms;*
 - d. *the lift was serviced every six months;*
 - e. *PRN protocols were in place for resident medication;*
 - f. *An up to date legionella risk assessment was completed by a competent person;*
 - g. *records of accidents, incidents and risk assessments were maintained;*
 - h. *staff training and/or supervision was up to date;*
 - i. *training records were maintained;*
 - j. *safe staffing levels were maintained;*
2. *On 6 - 7 May 2019 failed to ensure Resident A received emergency medical attention for an 8 hour period when they presented with stroke symptoms;*
3. *Provided inaccurate information to the CQC inspector during the inspection on 11-17 June 2019 in relation to:*
 - a. *the frequency of fire safety checks;*
 - b. *the frequency of lift service checks;*
 - c. *staff rotas which indicated staff were working when they were not;*
4. *Your actions in charge 3 above were dishonest, in that you intended to stall and/or disrupt the CQC investigation;*

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 noted that the original panel found that Mr Jugdharree had some insight. This panel had sight of his reflective statement and was of the view that Mr Jugdharree's insight was insufficient. Mr Jugdharree was the registered manager of the Home and had failed in his responsibility of preserving the safety of residents in his care for a sustained period. In his reflective statement, he states, 'I understand the gravity of the situation and assure you that I have taken concrete steps to address the issues that led to the suspension.' The panel was of the view that this did not provide any detail about the steps Mr Jugdharree had taken to show the impact of his misconduct on the patients in his care at the time, nor the impact on the profession as a whole, nor address the concerns around his honesty and integrity. His reflective statement also states that he has remained up to date with all relevant training requirements necessary for his current job, but no evidence has been provided to demonstrate this.

In its consideration of whether Mr Jugdharree has taken steps to strengthen his practice. The panel noted that since 1 September 2020, Mr Jugdharree has worked as a support worker. His manager has provided a testimonial stating that there are no concerns with his practice and that he has been open and honest about the NMC proceedings.

However, the panel determined that, Mr Jugdharree has not demonstrated an understanding of how his actions put the patients at a risk of harm. He has failed to demonstrate an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession and the NMC. He has not explained how he would handle the situation differently in the future.

The panel determined that there was no material change in the circumstances of this case since the last hearing and in the level of risk previously identified. In the absence of any evidence of remediation and insufficient insight from Mr Jugdharree,

the panel is of the view that he remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of 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, the NMC as regulator, 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 Jugdharree's fitness to practise remains impaired.'

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

'...The panel next considered whether a conditions of practice on Mr Jugdharree'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 meeting and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Jugdharree misconduct, in particular, the dishonesty.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Jugdharree further time to fully reflect on his previous dishonesty. It considered that he needs to gain full understanding of how the dishonesty of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. More time will also enable him to fully engage with the recommendations made by the previous panel. The panel concluded that a further six months of the suspension order would be the appropriate and proportionate response and would afford Mr Jugdharree adequate time to further develop his insight and take steps to strengthen their practice. It would also give Mr Jugdharree an opportunity to

approach past and current health professionals to attest to his honesty and integrity in his workplace assignments since the substantive hearing.

The panel considered whether a striking-off order would be proportionate given the seriousness of the misconduct in this case and in light of the findings of the previous panel. However, it determined that the misconduct in Mr Jugdharree's case was not fundamentally incompatible with remaining on the register. Although dishonesty is difficult to remediate it is not impossible, he has been given another opportunity to show developed insight into the regulatory concerns and the panel encourage his attendance at the next review hearing.

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 six months which would provide Mr Jugdharree with an opportunity to engage with the NMC and to provide evidence of developed insight into the concerns. 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 2 February 2024 in accordance with Article 30(1).'

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 has defined fitness to practise as a registrant's ability to 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 had regard to all of the documentation before it. It has taken account of your submissions and submissions made by Mr Benzynie on behalf of the NMC.

Mr Benzynie gave a summary of the background with reference to previous panel decisions. He told today's panel that the previous panel set out recommendations that would assist this panel in making its decision. Mr Benzynie said that it is accepted that you have fulfilled two of the recommendations by attending this hearing and demonstrating further insight through your reflective statement dated 16 June 2024. However, he said that the reference you provided to this panel dated 7 December 2023, is the same reference that was provided to the previous panel. Therefore, the information is not up to date.

Mr Benzynie referred to your reflective statement in which you stated that you have been '*seeking guidance*'. He said that you have not provided any information regarding support or guidance. Further, he referred to the paragraph in your reflective statement in which you state that you will seek further education and training. It was his submission that you only stated things that you want to do in the future but did not provide any evidence of recent relevant training as recommended by the previous panel.

In the light of this, Mr Benzynie invited the panel to extend the current suspension order for a further 6 months.

You gave evidence under affirmation.

You told the panel that you have worked in the nursing profession for over 30 years and had worked for the NHS for nearly 15 years. You said that prior to these proceedings, you have never had a disciplinary hearing.

You said that you had a good Care Quality Commission (CQC) rating for over 12 years. You told the panel that when the CQC inspector came to the Home, there were only eight residents left and you were at the point of closing the Home down because the business was not viable. You said that you were under a lot of stress at that time which adversely affected your health. However, you understand that when the inspector came to the Home, things were not up to par. You apologised for your wrongdoings and referred the panel to your reflective statement in which you acknowledged your past dishonesty. You told the panel that you love being a nurse and are willing to do what you can to remedy your misconduct.

Since the previous review in December 2023, you stated that you were working as a support worker in a care home. You said that you did a lot training and submitted those certificates to the NMC. You told the panel that due to your health issues you were not working for a while. However, you have not worked for the past four or five months because you received a letter in January 2024 from the Disclosure and Barring Service (DBS) barring you from working because of the same misconduct that led to the NMC referral. You appealed the decision and received a response last week informing you that your case will go to the upper tribunal. Given the DBS' decision, you told the panel that you have kept busy by working on your professional development, through research and reading.

In response to questions from Mr Benzynie you said that you are not sure whether any of the training certificates you referred to are dated after 20 December 2023. You told the panel that you accept that you have not provided the NMC with any documentary evidence of recent training.

In response to questions from Mr Benzynie you said that you sent a letter of appeal two or three weeks ago in response to the letter the DBS sent informing you that you had been barred. You received a reply from the DBS sometime last week. Mr Benzynie referred to your reflective statement dated 16 June 2024 and asked why you did not mention the DBS decision or the fact that you have not been working since January 2024. You said that you wanted to disclose these things to the panel verbally, at this hearing.

In response to questions from the panel, you said that you have not undertaken any work, paid or voluntary since you were barred by the DBS. Since the imposition of the substantive suspension order in January 2023, you have not undertaken any relevant training partly because of your health. You informed the panel that you have been struggling with [PRIVATE]. Additionally, you have had a lack of motivation because it has been five years since the Home closed and you are getting to the end of your nursing career. However, you told the panel that your health has improved because of your family's support and the good weather. You said that you have [PRIVATE] because you [PRIVATE] by doing yoga. You informed the panel that you previously received counselling [PRIAVTE], who is a registered counsellor.

In response to questions from the panel regarding specific reading that you have done that is relevant to the concerns raised in your case, you said that you keep yourself up to date with materials relating to mental health, but you could not recall any specific articles or research.

In response to questions from the panel regarding what you would do differently if you were in the same circumstances, you explained that you were under a lot of stress at that time but now you would be much calmer in that situation and be more transparent. You told the panel that you would not allow yourself to be under any kind of pressure now because it would not be good for your health.

You asked the panel to consider restoring you to the register as you believe that you have more to offer to the nursing profession. You left the decision up to the panel as to whether your restoration to the register should be unrestricted or subject to a conditions of practice order.

In his closing submissions, Mr Benzynie submitted that an extension of the current suspension order for a further 6 months is necessary because your fitness to practise remains impaired. It was his submission that a suspension order is necessary on the grounds of public protection and is otherwise in the public interest. He told the panel that a further 6-month suspension would also allow the NMC to obtain further information regarding the DBS' decision and your appeal.

Mr Benzynie said that in someways two of the recommendations of the previous reviewing panel have been met, namely your attendance at this hearing and your reflective statement. He submitted that there has not been any further training and the panel may accept that there are reasons for that. He asked the panel to consider whether it is any further forward than the previous panel was last year.

Additionally, Mr Benzynie submitted that the panel may consider that the DBS decision and the appeal are important points that should have been made available to the NMC and the panel prior to this hearing. Mr Benzynie did acknowledge that you have been open and answered all the relevant questions in today's hearing.

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.

This panel took the view that since the last review hearing in December 2023, there has been no material change in your circumstances except for the decision of the DBS barring you from working as a nurse. The panel acknowledged that you attended this hearing and had regard to the evidence that you gave under affirmation. It also noted that you provided a reflective statement. However, the panel was of the view that your reflective statement demonstrated limited insight and understanding of your dishonesty and misconduct.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your evidence regarding the DBS barring you from working as a nurse. However, in terms of relevant training certificates or evidence of recent training, the panel considered that your answers to those questions were vague and non-specific. The panel determined that your misconduct is remediable, but you have not yet provided sufficient evidence of remediation. It noted that there was no evidence put before it to suggest strengthened practice through relevant training.

Further, the panel considered that you could not provide any specifics about relevant articles or research pieces that you had read. The panel questioned whether your reading into mental health was relevant to the findings of multifaceted and premeditated dishonesty. The panel was concerned that this demonstrated a further lack of insight into the seriousness of your misconduct.

It was of a particular concern to the panel that you were barred by the DBS and did not disclose this to the NMC prior to this hearing. The panel noted that you did not provide any documentary evidence regarding the DBS decision. It was alarming to the panel that it was made aware of this issue during this hearing even though you had been aware of this

since January 2024. Considering the previous finding of dishonesty, this raised some concern for the panel.

The panel was not convinced that matters of the kind found proved would not be repeated in the future should you be placed in similar circumstances. 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 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 let the current suspension order lapse upon expiry but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would neither protect the public nor would it be in the public interest to do so.

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 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 a 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. Since you informed the panel that you have been barred by the DBS, 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 further extension to the current order would allow you further time to fully reflect on your previous misconduct. It considered that you need to gain a full understanding of how the dishonesty 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 extension for a period of 6 months 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 further extension to the suspension order is the appropriate order which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel decided to further extend the suspension order for the period of 6 months. It considered this to be the most appropriate and proportionate order available.

This further extension to the suspension order will take effect upon the expiry of the current suspension order, namely the end of 2 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:

- Your attendance at any future hearing.
- Refer to a recognised model of reflection such as Gibbs to guide you in writing a reflective statement addressing the regulatory concerns, in particular your dishonesty; the impact of your actions on the safety of residents and the wider nursing profession and how you would manage any stress that arises in your role as a nurse in the future.
- Up-to-date work and/or personal testimonials.
- Documentary evidence of any relevant and up-to-date training.

This will be confirmed to you in writing.

That concludes this determination.