

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

**Substantive Order Review Meeting
Monday 17 June 2024**

Virtual meeting

Name of registrant: Marie Catherine Mortley

NMC PIN: 02B13700

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 30 January 2001

Area of registered address: East Sussex

Type of case: Misconduct

Panel members: Alan Greenwood (Chair, Lay member)
Dorothy Keates (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Gillian Hawken

Hearings Coordinator: Jumu Ahmed

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 31 July 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Ms Mortley's registered email address by secure email on 15 May 2024.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 17 June 2024 and inviting Ms Mortley to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Mortley has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to replace the conditions of practice order with a suspension order. This order will come into effect at the end of 31 July 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 30 June 2023.

The current order is due to expire at the end of 31 July 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:

1) *On 08 November 2020, failed to administer one, or more, items of medication to Patient A which were intended to be administered at 22:00, including:*

- a) *Quetiapine 150mg;*
- b) *Lamotrigine 100mg;*
- c) *Senna 15mg;*
- d) *Lithium Carbonate 800mg;*
- e) *Mirtazapine 30mg;*

2) *On 09 November 2020, incorrectly administered one, or more, items of medication to Patient A at, or around, 06:00, including:*

- a) *Quetiapine 150mg;*
- b) *Lamotrigine 100mg;*
- c) *Senna 15mg;*
- d) *Lithium Carbonate 800mg;*
- e) *Mirtazapine 30mg;*

3) *Inaccurately recorded that you had administered one, or more, items of medication to Patient A as set out in charges 1 and/or 2 above at 22:00;*

4) *Your conduct at any, and/or all, of charge 3 above was dishonest in that you:*

a) *Knew that you had not administered any and/or all of the items of medication referred to at 22:00;*

b) *...;*

c) *...;*

5) *...;*

6) *...;*

7):

8):

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:

'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 determined that the four limbs were engaged in this case. It found that Ms Mortley's misconduct had breached the fundamental tenets of the nursing profession by recording that she had administered medications at a time when she had not. It noted that Ms Mortley did not comply with a system of regulation designed to promote public confidence in nursing and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Ms Mortley made admissions to some of the concerns raised and has shown some level of insight and remorse. However, in the absence of a reflective piece, it was of the view that her insight is currently limited.

The panel was satisfied that the misconduct in this case is capable of being addressed. It carefully considered the evidence before it and determined that it had no evidence that Ms Mortley had taken steps to strengthen her practice. It noted that she has not evidenced an understanding of how her actions could potentially put patients at a risk of harm, and how she would handle the situation differently in

the future should it arise again. In light of this, the panel is of the view that there is a risk of repetition as there was only evidence of limited insight before it, and no reflective piece has been submitted by Ms Mortley. It, therefore, decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overreaching 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.

The panel determined that a finding of impairment on public interest grounds is not required because Ms Mortley's misconduct is at the lower end of the spectrum because the matter which arose in relation to dishonesty was an isolated incident linked to her lack of competence. It noted that this was a clinical error which can be remediated by undergoing suitable training. It also noted that the doctor informed Witness 1 that there was no harm caused to Patient A as a result of this incident. It therefore concluded that the public interest is not engaged at this stage.

Having regard to all of the above, the panel was satisfied that Ms Mortley's fitness to practise is currently impaired on public protection grounds only.'

The original panel determined the following with regard to sanction:

'The panel took into account the following aggravating features:

- Ms Mortley exposed a vulnerable patient to an unwarranted risk of harm*

In relation to mitigating factors, the panel has considered the following as relevant:

- Ms Mortley's conduct was an isolated incident*
- Ms Mortley made admissions to the regulatory concerns during the local investigation and also expressed remorse for her behaviour.*
- Ms Mortley's lack of competence was known to her employer, but there was no evidence that she had been provided with any additional support or training.*

The panel first considered whether to take no action but concluded that this would be wholly inappropriate in view of the circumstances of the case. The panel decided that it would be inconsistent with its earlier findings at the impairment stage of these proceedings to take no further action. It determined that it would not be appropriate or proportionate to take no further action having regard to the public protection concerns identified.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 decided that it would not be appropriate or proportionate to impose a caution order, taking account of the outstanding public protection concerns.

The panel next considered whether placing a conditions of practice order on Ms Mortley’s nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force;*
and
- Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel considered, having regard to Ms Mortley’s comments at the local disciplinary meeting

and her recent email to the NMC, that she would be willing to comply with conditions of practice.

The panel had regard to the fact that it had no evidence of repetition identified. The panel was of the view that it was in the public interest that, with appropriate safeguards, Ms Mortley should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the particular circumstances of Ms Mortley's case, given that this was a clinical concern that can be addressed through training.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must undertake training in the following areas of practice:
 - a) Medicine administration*
 - b) Management and escalation of any medication error or queries, and*
 - c) Record keeping.**

2. *You must ensure that you are supervised by a registered nurse when administering and recording medication any time you are working as a registered nurse, until such time as you are assessed by another registered nurse as being competent.*
3. *You must send the NMC a report seven days in advance of the next NMC hearing or meeting from either:*
 - *Your line manager.*
 - *Mentor or supervisor*

Containing details of your compliance with these conditions.

4. *You must keep the NMC informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
5. *You must keep the NMC informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
6. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*

- c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*
7. *You must tell your case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*
8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions.*

The period of this order is for 12 months to allow sufficient time for Ms Mortley to secure employment and undertake the required training and reflection.

Before the order expires, a panel will hold a review hearing to see how well Ms Mortley has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Engagement with the NMC and attendance at the review hearing*

- *Evidence of training in the relevant areas*
- *Testimonials from Ms Mortley's employer and work colleagues*
- *A detailed reflective piece covering the impact of her behaviour on patients, colleagues and the wider public.'*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Mortley'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 has had regard to all of the documentation before it, including the NMC bundle.

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 Ms Mortley's fitness to practise remains impaired.

The panel noted that the original panel did not make a finding of impairment on public interest grounds but only on public protection grounds.

The panel noted that the original panel had no evidence before it on whether Ms Mortley had taken steps to strengthen her practice. This panel did not have any evidence as to whether she has taken steps to strengthen her practice or developed any insight. The panel therefore determined that the risk of repetition was likely. In light of this, the panel determined that there remains a significant risk of harm to the public if Ms Mortley was allowed to practise unrestricted. 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. It concluded that a fully informed member of the public, aware of Ms Mortley's conduct and her failure to engage with her regulator to address her shortcomings following the original panel, would expect her practice to be restricted at this time. To do otherwise would undermine the public confidence in the nursing profession and the NMC as a regulator. The panel therefore determined that a finding of impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Ms Mortley'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 Ms Mortley's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Ms Mortley'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 imposing a conditions of practice order on Ms Mortley's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that, despite the conditions of practice order being in place since June 2021, Ms Mortley has not yet engaged with the NMC nor the order. Ms Mortley has not informed the NMC nor provided any information to the panel as to whether or not she is currently practising as a registered nurse. Further, Ms Mortley has not offered any evidence of the steps she has taken to address the concerns nor whether she has any insight. The panel did not have before it any suggestion from Ms Mortley that she is willing and/or able to comply with the order. On this basis, the panel determined that a conditions of practice order is no longer the appropriate order in these circumstances. The panel concluded that conditions of practice are no longer workable in order to sufficiently protect the public or satisfy the wider public interest.

The panel had regard to the NMC's guidance on 'Suspension order' (Reference: SAN-3d). It took into account the following factors:

- *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*
- *the Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*

The panel was mindful of the facts found proved by the original panel. Whilst there was no evidence of deep-seated personality or attitudinal problems during the original substantive hearing, this panel was concerned with the lack of engagement by Ms Mortley. It had no evidence of any insight or remorse demonstrated by Ms Mortley. The panel determined that Ms Mortley should nevertheless be provided with an opportunity to re-engage with these proceedings and the NMC as her regulator. The panel therefore decided that a suspension order is the most appropriate sanction at this time, which would both protect the public and satisfy the wider public interest.

The panel also took into account the NMC's guidance on 'Striking-off order' (Reference: SAN-3e). It was of the view that Ms Mortley's lack of engagement with the NMC as her regulator and her lack of willingness to address her shortfalls raises questions about her professionalism. It was of the view that a continuing review cycle will serve no purpose for a registrant who is not willing to engage. However, it was of the view that a suspension order would give her another opportunity to engage with the NMC and the Fitness to Practise process.

Accordingly, the panel determined to impose a suspension order for the period of 12 months which would provide Ms Mortley with an opportunity to engage with the NMC and to provide evidence of the recommendations provided by the original panel. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 31 July 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:

- Engagement with the NMC and attendance at the next review hearing;
- Evidence of engagement with any training or professional development;
- A statement from Ms Mortley stating her intention as to whether she intends to continue with her nursing practice;
- A detailed reflective piece covering the impact of her behaviour on patients, colleagues and the wider public; and
- Testimonials from her current employer or any voluntary agency.

This will be confirmed to Ms Mortley in writing.