

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

**Substantive Order Review Hearing
Thursday, 6 June 2024**

Virtual Hearing

Name of Registrant: Delia Newman

NMC PIN 86Y2047E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 19 February 1990

Relevant Location: Lincolnshire

Type of case: Misconduct

Panel members: Francesca Keen (Chair, lay member)
Jane Dalton (Lay member)
Jonathan Coombes (Registrant member)

Legal Assessor: Simon Walsh

Hearings Coordinator: Margia Patway

Nursing and Midwifery Council: Represented by Beverley Da Costa, Case Presenter

Mrs Newman: Not present and not represented at the hearing

Order being reviewed: **Suspension order (6 months)**

Fitness to practise: **Impaired**

Outcome: **Order to lapse on expiry, namely 15 July 2024**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Newman was not in attendance and that the Notice of Hearing had been sent to her registered email on 7 May 2024.

Ms Da Costa, 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 and, amongst other things, information about Mrs Newman's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

The panel also noted that Mrs Newman had provided a response to the NMC acknowledging today's hearing in a letter dated 9 May 2024.

In the light of all the information available, the panel was satisfied that Mrs Newman 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 Mrs Newman

The panel next considered whether it should proceed in the absence of Mrs Newman. The panel had regard to Rule 21 and heard the submissions of Ms Da Costa who invited the panel to continue in the absence of Mrs Newman.

Ms Da Costa referred the panel to the email dated 9 May 2024 which Mrs Newman sent to her case officer. Ms Da Costa submitted that Mrs Newman accepts she has not engaged with the NMC and that she had voluntarily absented herself. Ms Da Costa submitted that there is nothing to suggest that an adjournment to secure would secure her attendance at a later date.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Newman. In reaching this decision, the panel has considered the submissions of Ms Da Costa and the advice of the legal assessor. It has had particular regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Newman;
- Mrs Newman has informed the NMC that she has received the Notice of Hearing and it appears that she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- This is a mandatory review of the order.

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

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse upon its expiry at the end of 15 July 2024.

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 15 December 2023.

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:

'Details of charge (as amended)

That you, a registered nurse, while employed at Abbey Nursing Home ("the Home");

- 1. On the night shift of 8-9 July 2020, failed to adequately document the care you gave to Patient A's pressure ulcer ("the Wound") in that you:*
 - a. Did not complete an Incident Report;*
 - b. Did not complete a Wound Care Plan;*
 - c. Did not update Patient A's Skin Integrity Need Care Plan;*
 - d. Did not complete a Waterlow Assessment;*
 - e. Did not adequately complete a Body Map to include any or all of the following information:*
 - i. what changes were observed to Patient A's body;*
 - ii. a description of the Wound;*
 - iii. the reason for the dressing.*
 - f. Did not update Patient A's Daily Notes;*
 - g. [FOUND NOT PROVED]*
 - h. [FOUND NOT PROVED]*
 - i. Did not record the Wound and your observations in the Handover Booklet;*

2. *On the night shift of 9-10 July 2020, failed to adequately document the care you provided to Patient B following a fall (which occurred on or around 23:30 on 9 July 2020 (“the Fall”), in that you:*

- a. *[FOUND NOT PROVED];*
- i. *[FOUND NOT PROVED];*
- ii. *[FOUND NOT PROVED];*
- iii. *[FOUND NOT PROVED];*
- iv. *[FOUND NOT PROVED];*
- v. *[FOUND NOT PROVED];*
- b. *Did not complete a Wound Care Plan;*
- c. *Did not update the Falls Risk Assessment;*
- d. *Did not complete the Actions within the Falls Checklist;*
- e. *Did not update Patient B’s Mobility Care Plan;*
- f. *Did not complete a Body Map;*
- g. *Did not take a picture of any injuries sustained by Patient B as a result of the Fall;*
- h. *Did not record observations consisting of pulse and/or blood pressure and/or the reaction of Patient B’s pupils to light;*
- i. *[FOUND NOT PROVED];*
- j. *Did not conduct a short multi-disciplinary team meeting known as a Safety Huddle;*
- k. *Did not record the Fall and your observations in the Handover Booklet;*

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

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

‘The panel finds that patients were put at risk and were caused physical harm as a result of Mrs Newman’s misconduct. Mrs Newman’s misconduct had breached the Code, and consequently, the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mrs Newman has not demonstrated any insight into the impact of her misconduct on patients, or what she would have

done differently if this were to occur again. The panel considered Mrs Newman's email, dated 21 August 2020, which contested responsibility and assigned blame to the Home, and had no acceptance of her own role in that blame. The panel determined that Mrs Newman has not demonstrated insight or remorse, and is argumentative regarding her role in the greater failures surrounding the care of both Patient A and Patient B. There was no evidence before the panel of any steps taken by Mrs Newman to strengthen her practice.

The panel was satisfied that the misconduct in this case is entirely capable of being addressed and remediated. However, the panel considered that Mrs Newman has not engaged with the regulator since the incident. Consequently, the panel is unable to determine that Mrs Newman has demonstrated steps towards strengthening her practice. The panel also considered that Mrs Newman has demonstrated some attitudinal concerns with regard to her lack of engagement with the regulatory process, which suggests a lack of insight.

The panel considered that there is no evidence that Mrs Newman has previously had any relevant regulatory concern raised against her prior to this and the evidence would suggest she has enjoyed a long, unblemished career in nursing. However, the panel determined the aforementioned lack of insight and strengthening of practice carries a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that 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.

The panel determined that a finding of impairment on public interest grounds is required as a well-informed member of the public would be concerned a finding of impairment were not made in these circumstances. 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 Mrs Newman's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Newman's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'...

The panel next considered whether placing conditions of practice on Mrs Newman'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 took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- Potential and willingness to respond positively to retraining; and*
- Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given Mrs Newman's expressed intention of not returning to nursing, and that she is currently not practicing as a nurse. The panel also considered Mrs Newman's lack of engagement with the NMC process and concluded that it could not accurately assess Mrs Newman's willingness to engage and comply with the conditions, if she were practicing. The panel further considered that no workable conditions could be formed surrounding documentation, as it would be inappropriate to limit Mrs Newman's documentation responsibilities, but infeasible to require she would be supervised in doing so, given the nature of the Home and similar homes in which Mrs Newman would work. The panel considered this would require Mrs Newman to practise in a different environment, which she may

need to retrain for. The panel is unable to conclude if Mrs Newman would be willing to undertake this retraining and change of environment.

Furthermore, the panel concluded that the placing of conditions on Mrs Newman's registration would not adequately address the public interest concerns.

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 some of the following factors are apparent:

- No evidence of harmful deep-seated personality or attitudinal problems; and*
- No evidence of repetition of behaviour since the incident.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register, as it is remediable. The panel considered that a suspension order would allow Mrs Newman time to remediate and reflect, as well as take steps towards returning to nursing, should she choose to. A suspension order also adequately addresses the public protection and public interest concerns. The panel noted Mrs Newman's attitudinal concerns, but concluded it was not deep-seated and consequently not inconsistent with the imposition of a suspension order.

The panel considered whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Newman's case to impose a striking-off order.

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

The panel noted the hardship such an order may cause Mrs Newman. 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.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct, whilst also giving Mrs Newman the time she may need to remediate and strengthen her practice, should she choose to return to nursing.

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:

- *Statement from Mrs Newman indicating her views on returning to nursing practice;*
- *A reflective piece;*
- *Documentation which demonstrates steps Mrs Newman has taken to strengthen her practice; and*
- *Testimonials from a line manager or supervisor that detail Mrs Newman's current nursing practices, if relevant.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Newman'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, and the on-table bundle. It has taken account of the submissions made by Ms Da Costa on behalf of the NMC and Mrs Newman's letter dated 9 May 2024. Ms Da Costa provided the panel with the background facts of the case and directed them to the decision of the panel at the substantive hearing.

Ms Da Costa referred the panel to the letter dated 9 May 2024 in which Mrs Newman indicated she has no intention to return to nursing practise and will not be reapplying to join the register following her 'wonderful career' in nursing. [PRIVATE].

Ms Da Costa submitted that Mrs Newman has also shown a lack of engagement with the NMC.

Ms Da Costa submitted that there is nothing before the panel that demonstrates Mrs Newman has taken steps to remediate her misconduct. She submitted that there is no information to indicate that Mrs Newman wishes to practise as a nurse. She further submitted that given the fact that Mrs Newman has not addressed her previous failures the NMC submitted that she has shown no insight.

Ms Da Costa submitted that Mrs Newman's fitness to practise remains impaired on the same grounds as stated by the previous panel and submitted that the NMC adopted a neutral position in respect of whether the order should be allowed to lapse without further sanction.

The panel heard and accepted the advice of the legal assessor. Mr Walsh referred the panel to the NMC guidance on 'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place'. Reference: REV-3h.

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 Mrs Newman's fitness to practise remains impaired.

The panel was of the view that there was no evidence before it that the ongoing risk to the public has reduced since the original substantive hearing.

In forming this view, the panel had regard to the earlier panel's findings that Mrs Newman had not engaged in the regulatory proceedings and had shown no insight or remorse for her actions or conduct. In considering whether Mrs Newman's insight had developed, the panel noted the contents of her letter dated 9 May 2024, in which she stated that she had *"broke the codes of professional conduct with reference to record keeping when she failed to record her observations in patient records, contributing to unnecessary pain and suffering"*. As a result of the contents of this letter, the panel determined that Mrs Newman had demonstrated only limited insight.

When considering whether Mrs Newman had demonstrated any remorse for her actions, the panel also noted in the same letter that Mrs Newman stated *"I have no wish to endanger the public by continuing to practise as a Nurse, and my remorse was such that I ceased all nursing activities at that time"*. Again, the panel concluded that Mrs Newman's statement, that she had *"remorse"*, was not enough to demonstrate that she had sufficient remorse or insight into the harm her actions had caused to service users.

The panel was also of the view that there was no evidence before it that the ongoing risk to the public has reduced since the original substantive hearing. The previous panel had been clear in its determination what steps Mrs Newman could take before this review. This included providing evidence of steps taken to strengthen her practice and/or providing testimonials or references from her line managers or her employers. Whilst Mrs Newman

had provided neither, the panel recognised that she had not nursed or worked since the previous hearing. Consequently, the panel determined that Mrs Newman has not yet demonstrated that she has remediated the failings in her practice. It concluded that there remains a risk of repetition and a consequent risk of harm to patients. The panel 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.

Decision and reasons on further action

Having found Mrs Newman's fitness to practise currently impaired, the panel then considered the most appropriate and proportionate action to take. The panel noted that its review 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 also had regard to NMC Guidance reference: REV-3h.

The panel noted that Mrs Newman had recently engaged with the NMC and that her registration is only active because of the substantive order in place. Mrs Newman informed the NMC, in her letter dated 9 May 2024, that she will not apply to renew her registration. Furthermore, Mrs Newman had indicated that she had retired from the nursing profession and did not wish to return to practise.

Consequently, the panel were assured that Mrs Newman no longer wanted to practise and it was able to decide to let the order expire.

In the panels view, having regard to the above, it is in both the public interest and Mrs Newman's own interest to allow the order to lapse on expiry. In forming this view, the panel noted that the public are protected if Mrs Newman's name is removed from the register when the order lapses because she will be prevented from practising. Should she then re-apply to be registered with the NMC the panel have made a finding that Mrs Newman's fitness to practise is currently impaired. This finding will remain on Mrs Newman's record and will be considered by the Registrar upon any future application being made to rejoin the NMC register.

Accordingly, the substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 15 July 2024. As a consequence of this Mrs Newman will then cease to be a registered nurse.

This will be confirmed to Mrs Newman in writing.

That concludes this determination.