

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

**Substantive Order Review Meeting
Tuesday 11 June 2024**

Virtual Meeting

Name of Registrant: David Keith Woodall

NMC PIN 01D0143E

Part(s) of the register: Registered Nurse
Mental Health Nursing (Level 1) – September 2004

Relevant Location: Essex

Type of case: Misconduct

Panel members: Gregory Hammond (Chair, Lay member)
Alison Thomson (Registrant member)
Karen Naya (Lay member)

Legal Assessor: Christopher Mckay

Hearings Coordinator: Sophie Cubillo-Barsi

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 23 July 2024 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 Mr Woodall's registered email address by secure email on 7 March 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 10 June 2024 and invited Mr Woodall 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 Mr Woodall 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 current conditions of practice order with a suspension order. This order will come into effect at the end of 23 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 18 months by a Fitness to Practise Committee panel on 21 December 2022.

The current order is due to expire at the end of 23 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 21 October 2018,*
- a. *Administered patient medication from the second half of the MAR chart instead of starting from the top down, resulting in medication being omitted*
 - b. *Began to prepare medication for a patient who had not yet arrived*
2. *On 28 October 2018, did not respond to an alarm*
3. *On 29 October 2018, did not handover information from the earlier shift*
4. *...*
5. *On 23 June 2019, did not know how to correctly dispense the required volume of liquid medication until prompted*
6. *On 28 June 2019, wanted to administer lorazepam to a patient without attempting verbal de-escalation*
7. *On a date unknown, left a razor on the stable door shelf where patients could have accessed it*

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:

'The panel next went on to decide if as a result of the serious misconduct, Mr Woodall's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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) ...*

The panel finds that patients were put at risk of physical harm as a result of Mr Woodall's misconduct. Mr Woodall's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel therefore found that the first three parts of the test outlined above were met in this case.

The panel considered that Mr Woodall has shown limited insight into the matters based on his responses to the charges and the live testimonies. The panel considered there was a thread in the evidence that suggested that Mr Woodall on occasions blamed others, did not take on board advice from his supervisors and declined further training.

The panel has not received any information or evidence from Mr Woodall to demonstrate any steps he has taken to address the concerns and strengthen his practice since the allegations were referred to the NMC. It also noted that Mr Woodall is currently not working in a nursing capacity.

In light of this, the panel is of the view that there is a risk of the proved misconduct being repeated. 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, thereby enabling Mr Woodall to practise unrestricted. The panel therefore also finds Mr Woodall's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'The panel took into account the following aggravating features:

- *Lack of insight into failings*
- *A pattern of misconduct over a period of time*
- *Conduct which put patients at risk of suffering harm*
- *His apparent refusal to accept all the support that was offered*

The panel also took into account the following mitigating features:

- *Early admissions to some of the charges*
- *Some developing insight and steps taken by Mr Woodall to address the concerns*
- *Was engaging with preceptorship and did show some signs of improvement*
- *Having recently completed a return to practice programme and returned to work, Mr Woodall was working with challenging patients in a low secure forensic unit*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the risk of repetition. 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, the risk of repetition and the public protection issues identified, an order that does not restrict Mr Woodall'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 some of Mr Woodall's misconduct was at the lower end of the spectrum, but the risk of repetition made a caution order 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 placing conditions of practice on Mr Woodall'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;*
- No evidence of general incompetence;*
- 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 accepted that Mr Woodall would potentially be willing to comply with conditions of practice.

The panel was of the view that it was in the public interest that, with appropriate safeguards in place and with training and assessments to ensure he was competent, Mr Woodall 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 circumstances of Mr Woodall's case because as the concerns are not so serious to require removal from the NMC register at this stage.

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 only work for a substantive employer which must not be an agency or on a self employed or private basis.*
- 2. You must ensure that you are supervised by a registered nurse of a more senior band to you, any time you are working. Your supervision must consist of:*
 - Working at all times on the same shift as, but not always directly observed by, a registered nurse of a more senior band to you.*
 - Monthly meetings with your line manager to discuss your performance in the role.*
- 3. You must be directly supervised by a registered nurse of a more senior band to you when preparing, dispensing and administering medication until you have been assessed and deemed fully competent by your supervisor.*
- 4. You must work with your line manager to create a personal development plan (PDP). Your PDP must demonstrate how you will improve your practice to address the concerns in the charges found proved, particularly, medicines management and risk assessment of patients. You must:*

- a) *Send your case officer a copy of your PDP at least one month before your next review hearing.*
 - b) *Meet with your line manager at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a report from your line manager before your next review hearing. This report must show your progress towards achieving the aims set out in your PDP.*
5. *You must keep us 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.*
6. *You must keep us 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.*
7. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any employers you apply to for work (at the time of application).*
 - c) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
8. *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.*

9. *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 a period of 18 months, with a review.

The panel was of the opinion that the 12-month period sought by the NMC, would not be sufficient period time for Mr Woodall to secure a nursing position and show tangible improvement. Therefore, the public protection issues and the wider public interest concerns were best served by an 18-month condition of practice order.

Before the order expires, a panel will hold a review hearing to see how well Mr Woodall 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:

- *A reflective piece using a recognised model, addressing the charges found proved and the steps taken to strengthen your practice*
- *Evidence of professional development, including Continued Professional Development (CPD) completed, including certificates and any courses addressing medicines management*
- *Testimonials from your supervisors, colleagues and any voluntary work you complete'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Woodall'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 an email from Mr Woodall to the NMC, dated 12 January 2024.

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 Woodall's fitness to practise remains impaired.

It noted that the original panel determined that Mr Woodall had demonstrated only limited insight into his misconduct. Today's panel did not have any new information before it to determine that Mr Woodall's insight had developed, other than a recognition from Mr Woodall that he may be 'struck off'.

In relation to remediation, the panel acknowledged Mr Woodall's communication with the NMC stating that he has been unable to find employment as a nurse and that he has not practised as a registered nurse since 2019. However, the panel noted the recommendations made by the previous panel and it did not have before it any suggestion that Mr Woodall had attempted to comply with those recommendations. The panel determined that a reflective piece could have been produced during Mr Woodall's free time and that training is readily available, particularly online, which could have assisted Mr Woodall in his continued professional development. To the contrary, the panel had no information before it to evidence that Mr Woodall had taken any steps to strengthen his

practice. In light of this the panel determined that Mr Woodall 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. It concluded that a fully informed member of the public, aware of the misconduct found proved and Mr Woodall's lack of insight and remediation, would expect his 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.

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

Decision and reasons on sanction

Having found Mr Woodall'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 or allow the order to lapse but concluded that neither option would be appropriate 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 or to allow the order to lapse.

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 Woodall's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered the continuation of the current conditions of practice order. It noted that despite the conditions of practice order being in place for 18 months, Mr Woodall has not yet engaged with the order despite having ample opportunity to do so. Further, Mr Woodall has not demonstrated a willingness to comply with the order and that Mr Woodall last communicated with the NMC in January 2024. On this basis, the panel determined that a conditions of practice order is no longer the appropriate order in this case. 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 seriously considered imposing a striking off order given Mr Woodall's lack of insight, remediation and non-engagement with any of the recommendations made by the previous panel.

However, the panel determined that Mr Woodall should be provided with a final opportunity to return to a nursing career by re-engaging with these proceedings and the NMC as his 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. Accordingly, it determined to impose a suspension order for the period of six months, which would provide Mr Woodall with an opportunity to re-engage with the regulatory proceedings and comply with the suggestions made by today's panel in order to assist the next reviewing panel. The panel 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 23 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, including a striking off order.

Any future panel reviewing this case would be assisted by:

- Mr Woodall's re-engagement with the NMC;

- Information from Mr Woodall detailing his future intentions with regards to his nursing career;
- A reflective piece as described by the previous panel and quoted earlier in this determination;
- Evidence of any professional development and/or training; and
- A testimonial from his current employer.

This will be confirmed to Mr Woodall in writing.