

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

**Substantive Order Review Hearing
Wednesday 8 May 2024**

Virtual Hearing

Name of Registrant: Deborah Jane Owen

NMC PIN 86I0756E

Part(s) of the register: Registered Nurse - Learning Disabilities
RNLD (February 1990)

Relevant Location: Staffordshire

Type of case: Misconduct

Panel members: Judith Webb (Chair, lay member)
Mandy Tyson (Registrant member)
Yousuf Rossi (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Brenda Eze

Nursing and Midwifery Council: Represented by Benjamin D'Alton, Counsel

Miss Owen: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **No further order. Current order to lapse upon expiry in accordance with Article 30 (1), namely on 16 June 2024**

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr D'Alton on behalf of the Nursing and Midwifery Council (NMC), made a request that this hearing be held partly in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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.

The panel determined that the hearing be held in private when reference is made to [PRIVATE]. The panel was satisfied that this course was justified by the need to protect Miss Owen's privacy, and that this consideration outweighed any prejudice to the general principle of public hearings.

Decision and reasons on service of Notice of Hearing

The panel was informed that Miss Owen was not in attendance and that the Notice of Hearing had been sent to Miss Owen's registered email address by secure email on 8 April 2024.

Mr D'Alton submitted that it had complied with the requirements of Rules 11 and 34 of the Rules.

The panel accepted the advice of the legal assessor as to the requirements of due service.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time and date of the hearing and that it would be conducted virtually and, amongst other things, information about Miss Owen's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all the information available, the panel was satisfied that Miss Owen 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 Miss Owen

The panel next considered whether it should proceed in the absence of Miss Owen. The panel had regard to Rule 21 and heard the submissions of Mr D'Alton who invited the panel to continue in the absence of Miss Owen. He submitted that Miss Owen had voluntarily absented herself.

Mr D'Alton referred the panel to the documentation before the panel today which included a telephone note dated 2 May 2024 stating that Miss Owen is happy for the hearing to proceed in her absence.

The panel accepted the advice of the legal assessor as to the approach it should take to its power to proceed in Miss Owen's absence.

The panel decided to proceed in the absence of Miss Owen. In reaching this decision, the panel considered the submissions of Mr D'Alton, the telephone note dated 2 May 2024, and the advice of the legal assessor. It had particular regard to relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Owen;
- Miss Owen has informed the NMC that she has received the Notice of Hearing and confirmed 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;
- The present order must be reviewed before its expiry on 16 June 2024 and there is a strong public interest in the review of the case in accordance with the statutory requirements; and
- In the panel's view, in light of Miss Owen's personal circumstances, it is in her own interests that the review should proceed today.

In these circumstances, the panel decided that it is fair to proceed in the absence of Miss Owen.

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse upon expiry in accordance with Article 30 (1).

This order will come into effect at the end of 16 June 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 16 February 2023. On 8 August 2023, the order was reviewed, and the panel extended it for a further three months. On 7 November 2023, the order was reviewed and the panel extended the order for a further six months.

The current order is due to expire at the end of 16 June 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 or around 5 April 2021:

1. *When Resident A became agitated at around 18:00 said to Resident A:*

- a) *"did your dad abuse you?" or words to that effect; [PROVED]*
- b) *"I've worked in the crazy house before" or words to that effect. [PROVED]*

2. *When Resident A became agitated at sometime after 18:30:*

- a) *did not utilise the interventions recommended in Resident A's care plan; [PROVED]*
 - b) *put Resident A on the floor. [PROVED]*
3. ...
4. *Did not record or ensure it was recorded in Resident A's care notes that Resident A had been put on the floor. [PROVED]*
5. *Your actions in charge 4 were dishonest in that you intended any subsequent reader of the records to be misled about what had happened. [PROVED]*

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

'The panel found that all four limbs [of the principles in the case of Grant] remain engaged.

The panel noted that the last reviewing panel found that Miss Owen had not provided a written reflective piece addressing the impact of her actions on patients, colleagues and the wider public. At this hearing, the panel determined that it has received no further information to demonstrate any development of insight from Miss Owen.

In its consideration of whether Miss Owen has taken steps to strengthen her practice, the panel noted that there has been no engagement at all from Miss Owen in her recent correspondence with the NMC in regard to the concerns raised and therefore no evidence to demonstrate that she has strengthened her practice.

The panel noted that it had no evidence before it that Miss Owen has undertaken any courses to remedy the failings identified at the substantive hearing, or evidence to show how she has kept up to date with her nursing practice since the substantive hearing. The panel considered the telephone note on 7 November 2023 from Miss Owen to the NMC stating that she is struggling to find employment and [PRIVATE].

The panel therefore found that, although remediable, Miss Owen had not remedied the failings, and as such there remains a risk of repetition, and a risk of harm.

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 light of this, this panel determined that Miss Owen 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 Miss Owen fitness to practise remains impaired.'

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

'The panel concluded that a further suspension order would be the appropriate and proportionate response and would afford Miss Owen adequate time to further develop her insight and take steps to strengthen her practice. It would also give Miss Owen an opportunity to approach past and current professional colleagues to attest to her honesty and integrity in her workplace assignments since the substantive hearing. Alternatively, it could give Miss Owen the time which could be needed to reflect further on whether or not she wishes to return to nursing and - if not - to engage with the NMC to agree a way forward.

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. The panel determined to impose a suspension order for the period of six months, this will provide Miss Owen with an opportunity to engage with the NMC with regard

to her future intentions. It considered this to be the most appropriate and proportionate sanction available.'

Decision and reasons on current impairment

The present panel considered carefully whether Miss Owen'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 the documentation before it, including the NMC bundle and the recent communications with Miss Owen. It took account of the submissions made by Mr D'Alton on behalf of the NMC. Mr D'Alton took the panel through the background of the case and previous panels' decisions and submitted that Miss Owen's fitness to practise remains impaired.

Mr D'Alton submitted that there has been no evidence provided by or on behalf of Miss Owen today before the panel since the last review hearing that addresses the concerns in question. He submitted that the charges originally proven are serious and relate to the inappropriate handling of a vulnerable patient and Miss Owen's dishonesty in concealing her actions. Mr D'Alton submitted that the previous panels considered that at the time, Miss Owen did pose a risk of repeating such actions.

Mr D'Alton submitted that there has been no updated evidence of training or work done to address the concerns, and there is no evidence of further remorse or insight.

Mr D'Alton submitted that a finding of impairment was necessary to protect the public and was also in the wider public interest.

The panel heard and accepted the advice of the legal assessor on the approach it should take to the question of impairment.

In reaching its decision, the panel was mindful of the need to protect the public, to maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Owen's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Miss Owen had limited insight. The panel determined that there has been no further development of insight from Miss Owen, no reflective statement or testimonials, no evidence of strengthening of practice or undertaking training to address the impairment. At this hearing the panel noted that there has been no material change to suggest a change in impairment.

The last reviewing panel determined that Miss Owen was liable to repeat matters of the kind found proved. Today's panel has heard no new information to suggest any insight or reflection into Miss Owen's actions and noted that although she initially engaged with the NMC, she has now indicated that she no longer wishes to engage with the proceedings. In light of this, the present panel determined that Miss Owen is liable to repeat matters of the kind found proved and the risk of repetition remains. 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 also to meet 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 Miss Owen's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Owen'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.

Mr D'Alton submitted that the NMC does not advocate a particular order at this review and that all orders are available to the panel today, including a striking off order.

[PRIVATE].

The panel had regard to the email dated 6 November 2023 which stated that she no longer wants to continue with the NMC proceedings or to continue in practice as a registered nurse. The panel also noted that her registration fee ran out on 31 January 2024 and her registration is only active because of the substantive order under consideration.

The panel accepted the advice from the legal assessor on its powers on a substantive review and on the matters it should take into account in determining sanction.

The panel had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing/midwifery profession and the NMC as its regulator. In this case, the panel decided to allow the current order to lapse on its expiry. The panel noted that Miss Owen has stated that she wishes to no longer be on the register or return to practice. The panel further noted that should Miss Owen decide to change her mind in the future, and reapply to the register, the finding of impairment today and the original misconduct will be reconsidered before she is allowed to return to the register, allowing the public and the public interest to be protected.

The panel therefore makes no further order and the substantive suspension order will lapse at the expiry of the current period, namely the end of 16 June 2024, in accordance with Article 30(1).

This will be confirmed to Miss Owen in writing.

That concludes this determination.

