

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

**Substantive Order Review Hearing
Friday, 24 May 2024**

Virtual Hearing

Name of Registrant: Catherine Anne Rose

NMC PIN 08F0562E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing – October 2008

Relevant Location: Norfolk

Type of case: Misconduct

Panel members: Mary Idowu (Chair, lay member)
Simone Thorn Heathcock (Registrant member)
Isobel Leaviss (Lay member)

Legal Assessor: Hala Helmi

Hearings Coordinator: Jack Dickens

Nursing and Midwifery Council: Represented by Scott Clair, Case Presenter

Miss Rose: Not present and not represented at this hearing

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect after expiry of current order on 28 May 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Rose was not in attendance and that the Notice of Hearing had been sent to Miss Rose's registered email address by secure email on 23 April 2024.

Further, the panel noted that the Notice of Hearing was also sent to Miss Rose's representative at the Royal College of Nursing ('RCN') on 23 April 2024.

Mr Clair, 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, including instructions on how to join and, amongst other things, information about Miss Rose'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 of the information available, the panel was satisfied that Miss Rose has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34 of the Rules.

Decision and reasons on proceeding in the absence of Miss Rose

The panel next considered whether it should proceed in the absence of Miss Rose and had regard to Rule 21 of the Rules. It heard the submissions of Mr Clair who invited the panel to continue in the absence of Miss Rose, whom he says has voluntarily absented herself. He said the panel should proceed in the absence of Miss Rose for four reasons: notice has been properly served, there has been an indication from Miss Rose that she is willing for the hearing to proceed in her absence, no application for an adjournment has been made and there is no reason to suppose that an adjournment would secure Miss

Rose's attendance, and there is a strong public interest in the expeditious review of this order.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Rose. In reaching this decision, the panel has considered the submissions of Mr Clair, the written representations made on Miss Rose's behalf by the RCN in an email dated 22 April 2024, and the advice of the legal assessor. It has had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Miss Rose has legal representation and appears to have voluntarily absented herself.
- Miss Rose 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. The panel was satisfied of this in light of the email sent on Miss Rose's behalf by the RCN dated 22 April 2024 which stated:

'We are happy with this date as Ms Rose will not not be attending the review hearing, nor will she be represented. No disrespect is intended by her non-attendance. I confirm that we will be relying on the same submissions sent to you ahead of the original hearing listed on 17 April 2024. I have re-attached these to this email for ease.' (sic)

- No application for an adjournment has been made by Miss Rose.
- There is no reason to suppose that adjourning would secure her attendance at some future date.
- There is a strong public interest in the expeditious review of the case as the current order is due to expire on 28 May 2024.
- It is also in Miss Rose's own interest to proceed with today's hearing.

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

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

The RCN, on Miss Rose's behalf, made an application in its letter dated 11 April 2024, that:

'This is a case that falls under Rule 19(3) of the Nursing and Midwifery Council (FTP) Rules 2004. In accordance with this rule, hearings may be held, wholly or partly, in private if the Committee is satisfied that this is justified and outweighs any prejudice by the interests of any party or of any third party or by the public interest.

We submit that any public interest in this case or any third-party interest would not outweigh the need to protect the privacy and confidentiality of the registrant and therefore the hearing should remain in private.'

The application was made pursuant to Rule 19 of the Rules.

Mr Clair stated he does not intend to go into any private matters during his submissions but does not oppose 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.

The panel determined to go into private session when matters of Miss Rose's private life are raised in order to protect the interests of Miss Rose and any third party.

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for a period of 12 months.

This order will take effect upon the expiry of the current suspension order on Tuesday, 28 May 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 ('the Order').

The panel is reviewing the order pursuant to Article 30(1) of 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 29 July 2022. This was reviewed on 18 July 2023, where a Fitness to Practice Committee determined that Miss Rose remained impaired and imposed a further period of suspension for nine months.

The charges that were found proved in Miss Rose's case are:

'That you, a registered nurse;

1. *On the 5 July 2018 you failed to ensure that hourly observations of Patient A were taken for:*

- 1.1. *Respiration rate; [PROVED BY ADMISSION]*
- 1.2. *Respiratory distress; [PROVED BY ADMISSION]*
- 1.3. *Oxygen saturation; [PROVED BY ADMISSION]*
- 1.4. *Blood pressure; [PROVED BY ADMISSION]*
- 1.5. *Heart rate; [PROVED BY ADMISSION]*
- 1.6. *Consciousness; [PROVED BY ADMISSION]*
- 1.7. *Temperature. [PROVED BY ADMISSION]*

2. *During the nightshift of 4-5 July 2018 you failed to complete a Rapid Tranquilisation Monitoring Form for Patient A. [PROVED BY ADMISSION]*

3. *At a time and date after 2300 hrs on 5 July 2018 you printed off a Rapid Tranquilisation Monitoring Form for Patient A and completed entries for;*

- 3.1. *5 July 2018 at 0015 hrs; [PROVED BY ADMISSION]*
- 3.2. *5 July 2018 at 0415 hrs. [PROVED BY ADMISSION]*

4. *Your actions in charge 3) were dishonest in that;*

- 4.1. *You deliberately sought to represent that you had taken observations described in charge 3) when you knew that you had not; or in the alternative **[FOUND PROVED]***
 - 4.2. *You deliberately sought to conceal that the entries were made retrospectively. **[PROVED BY ADMISSION]***
5. *On 9 July 2018 you told Colleague A;*
- 5.1. *That you had printed off Patient A's Rapid Tranquilisation Monitoring Form at around 0200 hrs on the 5 July 2018 or words to that effect; **[PROVED BY ADMISSION]***
 - 5.2. *That you had completed Patient A's Rapid Tranquilisation Monitoring Form during the night shift of 4-5 July 2018 or words to that effect; **[PROVED BY ADMISSION]***
 - 5.3. *That you had taken Patient A's respiration rate using the clock on the wall or words to that effect; **[PROVED BY ADMISSION]***
 - 5.4. *That you had taken Patient A's respiration rates using his watch or words to that effect. **[PROVED BY ADMISSION]***
6. *Your actions in charge 5)a) and or 5)b) were dishonest in that you;*
- 6.1. *You deliberately sought to represent that you had taken observations described in charge 3) when you knew that you had not; or in the alternative **[FOUND PROVED]***
 - 6.2. *You deliberately sought to conceal the facts of charge 2). **[PROVED BY ADMISSION]***
7. *Your actions in charge 5)c) and or 5)d) were dishonest in that you deliberately sought to conceal the fact that you had not taken hourly observations. **[PROVED BY ADMISSION]***

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

The previous reviewing panel, on 18 July 2023, found the following in relation to impairment:

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

The panel noted that the original panel found that Miss Rose had made early admissions to these regulatory concerns. The original panel also found that Miss Rose had demonstrated an understanding of the importance of monitoring patients as well as the duty of candour. However, the original panel found that Miss Rose had deflected blame and that her insight was limited. It gave her the opportunity to develop her insight and remediate her dishonesty.

At this hearing, the panel noted that Miss Rose has been unable to prepare for this review hearing due to [PRIVATE]. Therefore, the panel have not seen any new evidence of remediation or further insight.

The original panel determined that Miss Rose was liable to repeat matters of the kind found proved. Today's panel has received no new information. In light of this, this panel determined that Miss Rose is still 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 Rose's fitness to practise remains impaired.'

The previous reviewing panel, on 18 July 2023, found the following in relation to sanction:

'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 Miss Rose's practice would not be appropriate in the circumstances. The SG [Sanctions Guidance] 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 Miss Rose'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 a conditions of practice order on Miss Rose'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 hearing, including findings of dishonesty, 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 Miss Rose's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Rose further time to fully reflect on her previous failings. It considered that Miss Rose also needs 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 suspension order would be the appropriate and proportionate response and would afford Miss Rose adequate time to further develop her insight and take steps to strengthen her practice. It would also give Miss Rose an opportunity to approach past and current colleagues to attest to her honesty and integrity in the workplace.

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 extend the current suspension order for a

further period of nine months. It was of the view that this time frame would provide Miss Rose with an opportunity to engage with the NMC and demonstrate full insight and remediation, as well as [PRIVATE]. 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 28 August 2023 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:

- Miss Rose's attendance at the next review hearing*
- Testimonials and references from any employer (both paid and unpaid) with specific reference to Miss Rose's honesty in the workplace*
- Certificates of learning on duty of candour and honesty, observations and contemporaneous record-keeping*
- A further reflective piece which demonstrates Miss Rose's current insight into her dishonesty'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Rose'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, Mr Clair's submissions, written responses and representations from the RCN on Miss Rose's behalf, including a letter dated 11 April 2024, and the advice of the legal assessor.

Mr Clair submitted that Miss Rose's fitness to practise remains impaired. He said there is nothing before the panel to indicate anything has changed since the previous review. Mr Clair submitted that Miss Rose has not discharged the burden placed on a registrant at substantive order review hearings to show to the panel that she is no longer impaired. He said the reflective piece provided by Miss Rose is undated, scant and lacking in detail, and outlines her personal circumstances rather than providing any evidence of actual insight into the concerns.

Mr Clair submitted that a finding of impairment is necessary to protect the public and would be otherwise in the public interest, as previous panels have determined. If the panel were to determine that Miss Rose's fitness to practise remains impaired, he submitted that a further 12 months suspension order should be imposed. He highlighted that the RCN had indicated in its letter dated 11 April 2024, that it requested the same order. He said this would be the appropriate order to impose in light of the seriousness of this case and would provide Miss Rose with time to reflect fully on the previous failings.

In its letter dated 11 April 2024, the RCN submitted the following on Miss Rose's behalf:

[PRIVATE]

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 Miss Rose's fitness to practise remains impaired and noted that the persuasive burden is on Miss Rose to show this is no longer the case.

The panel considered that there was no change in the risk since the previous review and therefore Miss Rose's fitness to practise does remain impaired. The panel were of the view that the written statement provided by Miss Rose was not, nor was it intended to be, a reflective piece. Although the piece did contain limited reflection, it considered that the statement does not provide sufficient insight or reflection into her actions, her clinical failings, her dishonesty and the seriousness of her misconduct, or the charges that were

found proved. Therefore, it considered that there remains a real risk of repetition and should the misconduct be repeated, it could lead to significant harm, which it considers Miss Rose has not persuaded the panel that she fully understands. The panel concluded that a finding of impairment is therefore necessary for the protection of the public due to the seriousness of the charges and misconduct, and the likelihood of repetition that could result in significant harm.

The panel further considered that a finding of impairment is in the public interest. It bore in mind that its primary function is to protect the public, which includes maintaining confidence in the nursing profession. The panel determined that a well-informed member of the public would be shocked if a nurse with such findings of misconduct and insufficient evidence of remediation was allowed to practise without restriction.

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

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 Miss Rose'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 Miss Rose'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 a conditions of practice on Miss Rose'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 hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public

interest. The panel determined that it would not be able to formulate a conditions of practice order that would adequately address the concerns relating to Miss Rose's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would be appropriate and proportionate to protect the public from the ongoing real risk of harm to patients and meet the public interest. In addition, it was of the view that a suspension order would allow Miss Rose further time to fully reflect on her previous dishonesty and misconduct. It considered that Miss Rose needs to demonstrate a deeper understanding of how the clinical failings and dishonesty of one nurse can put patients at risk, adversely impact colleagues, and undermine trust in the nursing profession. The panel concluded that a further 12-month suspension order would be the appropriate and proportionate response and would afford Miss Rose adequate time to further develop her insight and take steps to strengthen her practice. It would also give Miss Rose an opportunity to acquire testimonials attesting to her honesty and integrity in the workplace.

The panel considered that a striking-off order would be disproportionate as the misconduct could be remediable with the appropriate self-reflection, training and evidence. It also noted whilst Miss Rose has not attended she has continued to engage with proceedings and expressed a desire to return to nursing.

This suspension order will take effect upon the expiry of the current suspension order on Tuesday, 28 May 2024 in accordance with Article 30(1) of the Order.

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:

- Miss Rose's attendance at the next review hearing.
- Testimonials and references from any employer (this can be paid or unpaid) with specific reference to Miss Rose's honesty in the workplace.

- Certificates of learning on duty of candour and honesty, observations and contemporaneous record-keeping.
- A further reflective piece which demonstrates a deeper understanding of how her clinical failings and dishonesty may have:
 - put patients at risk,
 - adversely impacted colleagues, and
 - undermined trust in the nursing profession.

The reflective piece could include how she has learnt from the incidents and how she may mitigate any future risk.

This will be confirmed to Miss Rose in writing.

That concludes this determination.