

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

**Substantive Order Review Hearing
Tuesday, 7 May 2024**

Virtual Hearing

Name of Registrant: Christina Marie Sullivan

NMC PIN 20A0086C

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health – Level 1
30 January 2020

Relevant Location: Neath Port Talbot County and Swansea

Type of case: Misconduct

Panel members: Clive Chalk (Chair, lay member)
Elisabeth Fairbairn (Registrant member)
Robert Cawley (Lay member)

Legal Assessor: Gerard Coll

Hearings Coordinator: Khatra Ibrahim

Nursing and Midwifery Council: Represented by Benjamin D’Alton, Case Presenter

Ms O’Sullivan: Not Present and represented by Zahra Ahmed, instructed by Royal College of Nursing (RCN)

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 11 June 2024**

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

At the outset of the hearing, Ms Ahmed on behalf of Ms O'Sullivan, made a request that this case be held partly in private on the basis that proper exploration of Ms O'Sullivan's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr D'Alton on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the application to the extent that any reference to Ms O'Sullivan's [PRIVATE] should be heard in private.

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.

Having heard that there will be reference to [PRIVATE], the panel determined to hold the hearing partly in private in order to protect her privacy.

Decision and reasons on review of the substantive order

The panel decided to allow the substantive order to expire in order to allow Ms O'Sullivan to be removed from the register in accordance with NMC guidance REV-3h, updated on 24 April 2023.

This current suspension order will therefore lapse at the end of 11 June 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

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 10 November 2023.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse:

- 1. On 7 November 2020 administered 14mg of Espranor to Patient A when Patient A was prescribed 6mg of Espranor.*
- 2. On 9 January 2021 administered 30mg of Morphine Sulphate to Patient B when Patient B was prescribed 10mg of Morphine Sulphate.*
- 3. On 29 October 2021 attempted to administer Hyoscine to Resident C without having checked Resident C's medication chart.*
- 4. On 30 October 2021 administered 400 micrograms of Hyoscine to Resident C notwithstanding that Resident C had already had their maximum dose of Hyoscine for that 24 hour period.*
- 5. On an unknown date in 2020, when applying for the position of Mental Health Nurse at HMP Swansea, failed to disclose:*
 - a) Your previous employment at Ashgrove Care Home;*
 - b) That your employment at Ashgrove Care Home had ended by your failure to complete your probationary period.*
- 6. Your actions in charge 5 above were dishonest in that you were attempting to deceive a potential employer by concealing relevant information about your previous practise.*

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 then went on to consider whether Ms O'Sullivan's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Ms O'Sullivan, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel first considered whether Ms O'Sullivan's actions amounted to misconduct.

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Ms O'Sullivan's actions fell short of the standards expected of a registered nurse, and it considered them to amount to several breaches of the Code.

In respect of misconduct, the panel considered whether Ms O'Sullivan's conduct, as set out in the charges admitted, are serious enough to amount to misconduct. It noted that she had made repeated similar errors in relation to the incorrect administration of medication over a period of time and with different employers. It took into account that Ms O'Sullivan had not been candid about her employment history whilst applying to other organisations.

The panel agreed with the NMC that Ms O'Sullivan's misconduct was a serious departure from the standards expected of a registered nurse. In this respect, the panel endorsed paragraphs 16 to 22 of the provisional CPD agreement in respect of misconduct.

The panel determined that Ms O'Sullivan's conduct breached some of the fundamental tenets of the Nursing profession and therefore brought its reputation into disrepute.

Based on all of the above, the panel therefore determined that Ms O'Sullivan's conduct fell short of the standards expected of a registered nurse and is sufficiently serious to amount to misconduct.

The panel then considered whether Ms O’Sullivan’s fitness to practise is currently impaired by reason of her misconduct.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

‘The question that will help decide whether a professional’s fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”

If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

In its consideration of impairment, the panel had regard to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J stated that the test for impairment was 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 in its assessment, determined that the four limbs of the Grant test are engaged to this case, both in terms of past actions and potential future ramifications.

The panel determined that Ms O'Sullivan's repeated errors in medication administrations put patients at an unwarranted risk of harm. The panel was of the view that the role of a registered nurse inherently carries a certain degree of pressure and responsibility. Therefore, the panel was not satisfied with the explanation that Ms O'Sullivan's provided regarding the medication errors that these errors solely occurred due to her being under pressure in the working environment.

The panel was satisfied that confidence in the nursing profession would be undermined if it did not find charges relating to dishonesty extremely serious. The panel has determined that Ms O'Sullivan's failure to disclose about her employment history when applying for a new position constitutes a dishonest action contravening the NMC's professional standards and guidelines on honesty, openness, and integrity. The panel noted this dishonesty could have led to harm being caused to patients as her failure to complete her probationary period with her previous employer suggested that there may have been concerns about her general nursing competency including in relation to medication administration.

The panel determined that Ms O'Sullivan's misconduct had breached some of the fundamental tenets of the nursing profession and that Ms O'Sullivan's actions brought the reputation of the profession into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel then considered the factors set out in the case of Cohen v GMC [2007] EWHC 581 (Admin). It determined that whilst some aspects of clinical

competence in this case are remediable Ms O'Sullivan must show that she recognises the gravity of the misconduct findings made against her and develop and demonstrate sufficient level of appropriate insight.

The panel went on to consider whether Ms O'Sullivan remained liable to act in a way that would put residents at risk of harm, would bring the profession into disrepute, breach the fundamental tenets of the profession and act dishonestly in the future. In doing so, the panel considered whether there was sufficient evidence of insight and remediation.

Regarding insight, the panel determined that Ms O'Sullivan has limited insight into her failures. The panel considered your reflection statements in the signed CPD document. The panel acknowledged that you have demonstrated some insight into your wrongdoing. However, it is undermined by the fact that there is no detailed account about what you have learnt from your past actions and behaviour, why they occurred, what insight you have gained as to the impact on the wider members of the profession and the public, and why these actions were unacceptable.

The panel was of the view that Ms O'Sullivan's insight remained limited as there was insufficient understanding of the impact on patients and the wider public interest. In the panel's judgement, Ms O'Sullivan appeared to be more inclined to explain some of her actions by deflecting blame onto others rather than accepting responsibilities for her failings.

In relation to dishonesty the panel had specific regard to your reflection statement and your explanation for not disclosing your employment at Ashgrove:

'I did not want to be affiliated with the Home and its sub standards. Furthermore, by omitting reference to Asgrove Nursing Home on my CV, I ensured no questions were asked in regard to me not completing my probationary period.'

The panel considered that this explanation similarly demonstrated an attempt to deflect the reason for your dishonesty onto the Home.

In relation to the risk of future acts of dishonesty the panel noted your comments in your reflective statement:

‘...I have done a lot of reflection on these implications, and I will strive to maintain honesty and truthfulness in all aspects of my practice, if I am allowed to continue as a registered nurse.’

The panel considered your reference to ‘striving’ to maintain honesty demonstrated that further remediation was required to ensure that you were confident that you are able to act with honesty and integrity at all times.

In terms of strengthening of practice the panel acknowledged from the CPD document that you have undertaken some training. However, the panel noted that the reflective statement did not demonstrate how this training had been successfully implemented.

In relation to context the panel noted your comments that the difficult and/or chaotic working environments at HMP Swansea and Ashgrove Care home adversely affected Ms O’Sullivan’s ability to practise safely and contributed to the errors which are detailed in the charges. The panel noted that Ms O’Sullivan had been supported by a Band 6 colleague whilst employed at HMP Swansea to improve her competency in medication administration and were unable to sustain consistent safe practise. The panel also noted in the CPD, reference to medication errors continuing whilst Ms O’Sullivan was employed at PCC and there is no suggestion or evidence provided that this was a difficult or chaotic working environment.

Given Ms O’Sullivan’s limited insight into the charges and limited remediation, the panel decided that there is a risk of repetition and 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.

In this regard, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore also finds Ms O’Sullivan’s fitness to practise impaired on public interest grounds.

Having regard to all of the above, the panel was satisfied that Ms O’Sullivan’s fitness to practise is currently impaired.’

The original panel determined the following with regard to sanction:

‘Having found Ms O’Sullivan’s fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- *Repeated medication errors despite having been provided with support and advice during her employment.*
- *Real risk of patient harm*
- *Concealment of Ms O’Sullivan’s failure to pass her probationary period could have led to patient harm.*
- *Limited insight into failings*

The panel also took into account the following mitigating features mentioned in the CPD in paragraph 54.

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 O'Sullivan'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 O'Sullivan'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 placing conditions of practice on Ms O'Sullivan'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;*
- Potential and willingness to respond positively to retraining;*
- The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*

- *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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the totality of the charges in this case. Whilst the misconduct relating to the clinical errors identified could be addressed through retraining, the panel was of the view that there were no conditions that would sufficiently protect the public from the risk of harm caused by your dishonesty.

The panel determined that whilst it may be possible to formulate conditions of practice to address some of the concerns about Ms O'Sullivan's practice, it would not be possible to formulate workable and effective conditions that marked the public interest in this case. Therefore, the panel determined that a conditions of practice order would be insufficient to mark the public interest in this case and therefore neither appropriate nor proportionate.

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:

- *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 or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*

- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel bore in mind Ms O'Sullivan's admissions, developing insight and initial steps to strengthen her professional practice. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, 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 Ms O'Sullivan's case to impose a striking-off order.

Balancing all of these factors the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms O'Sullivan'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, submissions from Mr D'Alton and representations made by Ms Ahmed, on Ms O'Sullivan's behalf. It has taken account of the submissions made by Mr D'Alton on behalf of the NMC. He took the panel through a brief background of the case and submitted that Ms O'Sullivan had made full admissions to all charges and current impairment on 1 August 2023. He submitted that Ms O'Sullivan accepted that her actions had the potential to place patients at serious risk of harm, and that this was addressed in her reflective piece, which was

available to the previous panel at her substantive hearing. He submitted that she admitted that her dishonesty undermined the core values of professional integrity and the trustworthiness at the NMC.

Mr D'Alton submitted that Ms O'Sullivan has stated she no longer wishes to return to nursing practice and requested today's panel to consider allowing the current order to lapse upon expiry. He submitted that Ms O'Sullivan remains impaired, and so allowing the order to lapse would be the most appropriate and proportionate action in all the circumstances.

Mr D'Alton submitted that there has been no new information addressing the charges found proved and given there has been no new documentation related to insight or remediation, Ms O'Sullivan remains impaired. He directed the panel to a declaration dated 3 May 2024 where Ms O'Sullivan has stated that she does not intend to return to nursing practice and submitted that the NMC's position is to allow the order to lapse upon expiry.

Mr D'Alton submitted that the charges found proved remain an issue, and that at this time, Ms O'Sullivan remains impaired. He submitted that given Ms O'Sullivan's registration expired on 31 January 2023, the most proportionate measure would be to allow Ms O'Sullivan to leave the register by making no order and allowing the suspension to lapse on 11 June 2024. He also submitted that if the current order was allowed to lapse, the public would be sufficiently protected, and the public interest would not be served by the continuation of any order. He submitted that a striking off order would be most disproportionate in all the circumstances.

The panel also had regard to submissions from Ms Ahmed, made on behalf of Ms O'Sullivan. Ms Ahmed submitted that Ms O'Sullivan's practice remains impaired and has signed a declaration stating that she does not intend to return to nursing practice. She submitted that allowing the current order to lapse would sufficiently protect the public and address concerns regarding Ms O'Sullivan's practice. She submitted that due to this, the risk of repetition and harm has decreased significantly, and would address the public interest in this case.

Ms Ahmed submitted that Ms O'Sullivan has engaged with the NMC's procedures and has accepted her conduct was unacceptable, both to the NMC and the public. She submitted that a striking off order would be disproportionate and unnecessary, as all parties are in agreement for Ms O'Sullivan to remove herself from the register by way of allowing the order to lapse.

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 your fitness to practise remains impaired.

Ms O'Sullivan's submissions contained no insight, training certificates, or testimonials and emphasised the fact that she no longer wishes to be a nurse and accepted she is currently impaired. The panel therefore had no new information before it today to suggest that the areas of concerns identified have been addressed, particularly the concerns related to dishonesty. The panel would need to see comprehensive insight to address the dishonesty in this case, as it relates to the fundamental tenets of nursing practice. The previous panel determined that Ms O'Sullivan's insight was insufficient, and there was no evidence of any development of her insight before the panel today, other than the intention of not returning to nursing practice. The panel determined, therefore, that there remains a risk of repetition.

The documentary evidence provided to this panel demonstrated that Ms O'Sullivan had been offered comprehensive support and training by her employers to address the issues related to Ms O'Sullivan's repeated incorrect drug administration. However, there is nothing before today's panel to say that the clinical concerns have been addressed or her practice strengthened in this regard. Therefore, the panel determined that Ms O'Sullivan was 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 Ms O'Sullivan's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms O'Sullivan'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 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 profession and the NMC as its regulator. In this case, there remains concerns regarding Ms O'Sullivan's clinical practice and dishonesty. However, as she does not intend to return to nursing practice, public protection would be maintained as she would be removed from the register with a finding of impairment.

The panel held in mind that it must approach the issue of sanctions in a proportionate manner.

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.'* In this case, the charges are serious and a caution order would not sufficiently protect the public.

The panel next considered a conditions of practice order. It bore in mind that there was no evidence of Ms O'Sullivan strengthening her practice or developing insight. The panel recognised no workable conditions can be formulated in respect of Ms O'Sullivan's dishonesty.

The panel considered that imposing a further period of suspension would not have any effect other than to maintain the current position. In the circumstances of Ms O'Sullivan's decision not to return to the profession, that would have the effect of requiring a further review of this order in six months without any real prospect of a potential return to practice by her. Such an order would therefore serve no real purpose.

The panel next considered a striking off order. That is the ultimate sanction and could be justified based on Ms O'Sullivan's continuing lack of evidence of her strengthening her practice. Her decision to leave the profession indicated to the panel that this is unlikely to change in the future. However, the panel recognised that an alternative order would have the same practical effect while achieving public protection in the most proportionate way.

Ms O'Sullivan only remains on the register due to the order currently in place and her registration would have otherwise expired on 31 January 2023. The panel determined that the public are sufficiently protected as Ms O'Sullivan will not be returning to nursing and the public interest of upholding the NMC's standards has been appropriately marked.

The panel arrived at the conclusion that the public would be fully protected, and the public interests served by allowing the current suspension order to lapse with no further action being taken. That would have the same effect as a striking off order and would support the public's trust and confidence that, in allowing Ms O'Sullivan to be removed from the register administratively, the public are fully protected.

The substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 11 June 2024 in accordance with Article 30(1).

This will be confirmed to Ms O'Sullivan in writing.

That concludes this determination.