

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

**Substantive Order Review Hearing
Wednesday 6 November 2024**

Virtual Hearing

Name of Registrant: Michael Anthony Caffrey

NMC PIN: 87A0376E

Part(s) of the register: Registered Nurse - Sub Part 1 & Sub Part 2
RN3 Mental Health Nurse, L1 - January 1998
RN4 Mental Health Nurse, L2 – April 1991

Relevant Location: Greater Manchester

Type of case: Misconduct/Lack of competence

Panel members: Adrian Smith (Chair, Lay member)
Allwin Mercer (Registrant member)
Nicola Strother Smith (Lay member)

Legal Assessor: Megan Ashworth

Hearings Coordinator: Emily Mae Christie

Nursing and Midwifery Council: Represented by Omar Soliman, Case Presenter

Mr Caffrey: Not Present and unrepresented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect at the end of 7 November 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 Mr Caffrey was not in attendance and that the Notice of Hearing had been sent to Mr Caffrey's registered email address by secure email on 4 October 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mr Caffrey's representative at Thompsons Solicitors on 4 October 2024.

Mr Soliman, 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).

Further, Mr Soliman pointed the panel to an email from Mr Caffrey to his Case Officer, dated 4 October 2024 where he consented to waive the service notice period:

"I am happy to waive the notice period if the resisted [sic] date doesn't accommodate the normal amount of notice given for my hearing."

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 Mr Caffrey's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In light of all of the information available, the panel was satisfied that Mr Caffrey 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 Mr Caffrey

The panel next considered whether it should proceed in the absence of Mr Caffrey. The panel had regard to Rule 21 and heard the submissions of Mr Soliman who invited the panel to continue in the absence of Mr Caffrey.

Mr Soliman referred the panel to the email between Mr Caffrey and his Case Officer dated 7 October 2024 where Mr Caffrey states:

“I can confirm that there has been no change in my nursing circumstances in the past past [sic] year, and that I am happy for you to hold a hearing in my absence without legal representation.”

In light of this, Mr Soliman submitted that Mr Caffrey was aware of the hearing and has voluntarily absented himself.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Caffrey. In reaching this decision, the panel has considered the submissions of Mr Soliman and the advice of the legal assessor.

The panel noted the email from Mr Caffrey to his Case Officer dated 4 October 2024, stating the following:

“I am currently working in a non nursing regulated role, for which I work part-time 5 days a week. In order to attend the hearing I would have to neglect my duties working with vulnerable people. I hope you understand my not being able to attend the hearing.”

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:

- No application for an adjournment has been made by Mr Caffrey;
- Mr Caffrey has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

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

Decision and reasons on review of the substantive order

The panel decided to extend the conditions of practice order for a further 12 months.

This order will come into effect at the end of 7 November 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 9 months by a Fitness to Practise Committee panel on 12 October 2022. This was reviewed on 8 February 2023 where the panel decided to vary and extend the conditions of practice order for a further 9 months. A further review was held on 2 October 2023 where the panel decided to vary and extend the current conditions of practice order for a further period of 12 months. A third review was initially scheduled for 2 October 2024, however, was adjourned to 6 November 2024 due to the panel running out of time.

The current order is due to expire at the end of 7 November 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

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 at Deepdene Care Home between April 2019 and July 2019:

1. *Failed to manage and / or administer resident medications safely in that you;*
 - a) *Administered medication to Resident A without checking the EMAR (Electronic Medication Administration Record) to ensure the correct dose and / or that the medication continued to be prescribed;*
 - b) *Failed to administer medications at the time prescribed to one or more of the residents at Schedule 1, despite clear instruction to do so;*

- i. *Schedule 1:*
 - 1. *Resident A*
 - 2. *Resident B*
 - 3. *Resident C*
 - 4. *Resident D*
 - 5. *Resident E*
 - 6. *Resident F*
 - 7. *Resident G*
 - 8. *Resident H*

c) *Conducted secondary dispensing of medication in the absence of Resident A leaving the dispensed medication in a cupboard with the potential to put Resident A at risk.*

2. *Failed to follow reasonable management instructions;*

- a) *Failed to update and evaluate resident care plans despite express instruction to do so during supervision;*
- b) *Failed to conduct supervision of allocated key workers;*
- c) *Failed to take up mandatory and other training when expressly told to do so;*
- d) *Failed to achieve a satisfactory level of competence in the safe administration and management of medications despite more than one attempt;*
- e) *Failed to take a nursing handover despite being the only registered nurse coming on duty leaving the facility without a qualified nurse and reducing the staffing compliment [sic] during your absence;*
- f) *Failed to give a sufficient level of detail when giving handover to staff and thereafter on the completed handover sheet, in particular, failing to notify of the potential risk posed by Resident I arising from his behaviours with the potential to put residents and/or staff at risk.*

3. *Knowingly administered medications to residents when you were expressly restricted from doing so independently until assessed safe to do so.*

And, in light of the above your fitness to practise is impaired by reason of your misconduct at charges 1, 2 and 3 above and/or by reason of your lack of competence at charge 2d above.'

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

"The panel noted that the last reviewing panel found that you showed some insight as you still admitted to the allegations made and have complied with the conditions of practice that were in place by informing the NMC about changes to your employment. However, the last reviewing panel also noted that, when questioned during the course of that hearing about how you would handle the situation differently in the future, you were not able to provide sufficiently detailed answers.

The last reviewing panel determined that you remained liable to repeat matters of the kind found proved. Today's panel determined they have not received any new information which demonstrates insight or remediation from you. The panel accepted that a Personal Development Plan (PDP) would prove difficult to produce given your lack of employment. The panel considered that you have not provided a reflective piece detailing any insight or contextual information surrounding the regulatory concerns. The panel also determined that you have not shown any evidence of strengthening your practice which you could have undertaken despite your lack of employment, such as retraining.

In light of this, this panel determined that you remain liable to repeat matters of the kind found proved. The panel concluded that the concerns remain and are heightened given the time you have been out of nursing practice for. 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 your fitness to practise remains impaired.”

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

“It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection as well as public interest concerns identified, an order that does not restrict your 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 your 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 imposing a varied conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

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 noted Mr Hamlet’s submission that some conditions in your current conditions of practice order may have prevented you from obtaining employment as a registered nurse. The panel varied the conditions of practice order based on the limited information before it. The panel also considered your continued engagement with the NMC, as well as your desire to return to your nursing practice.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting as the previous panels noted that there was no evidence of no deep-seated attitudinal problems. The panel concluded there are conditions which could be formulated which would address the concerns during the period they are in force.

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 your case as you continue to engage with the NMC and have expressed a desire to return to your nursing practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 7 November 2023.

It decided to vary and extend the following conditions which it considered 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 ensure that you are supervised by another registered nurse 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.*
- 2. You must not administer medication unless directly supervised by another registered nurse (except in life threatening emergencies) until you are deemed competent to do so by your supervisor.*
- 3. You must work with your line manager, mentor, or supervisor (or their nominated deputy) to create a Personal Development Plan designed to address the concerns about the following areas of your practice:*

- a) *Timeliness of medication administration.*
 - b) *Handovers to ensure relevant risks are shared appropriately with other members of staff.*
 - c) *Evaluation and maintenance of up-to-date care plans.*
4. *You must meet with your line manager, mentor, or supervisor (or their nominated deputy) monthly to discuss your clinical case load, the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan.*
5. *You must send a copy of your Personal Development Plan and a report from your line manager, mentor, or supervisor (or their nominated deputy) setting out the standard of your performance before any NMC review hearing or meeting with particular reference to:*
- a) *Timeliness of medication administration.*
 - b) *Handovers to ensure relevant risks are shared appropriately with other members of staff.*
 - c) *Evaluation and maintenance of up-to-date care plans.*
6. *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.*
7. *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.*
8. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*
9. *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.*
10. *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 12 months. The panel was of the view that this would give you sufficient time to find a nursing role and demonstrate that you have strengthened your practice in the areas of concern.”

Decision and reasons on current impairment

The panel has considered carefully whether Mr Caffrey’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 conducted 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 correspondence between Mr Caffrey and his Case Officer. It has also taken account of the submissions made by Mr Soliman on behalf of the NMC.

Mr Soliman set out a brief background of the case. He then submitted that there has been no progress since the previous review; Mr Caffrey has not provided any further information in relation to his impairment or strengthening of his practice and is therefore liable to repeat matters. Mr Soliman submitted that the panel should find Mr Caffrey impaired on both grounds of public protection and public interest.

Further, Mr Soliman submitted that if the panel were to find Mr Caffrey impaired, then the panel should extend the current conditions of practice order for a further 12 months. He submitted that no further action or a caution order would be inappropriate. However, a suspension order or a strike off order would be disproportionate and unreasonable in the circumstances.

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 Caffrey's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Caffrey had some insight. At this hearing, the panel determined it was essentially in the same position as the previous panel, as there was no additional information to address Mr Caffrey's insight or strengthening of his practice.

The panel noted there was some limited information about his current employment in the email from Mr Caffrey dated 4 October 2024:

"I am currently working in a non nursing regulated role, for which I work part-time 5 days a week. In order to attend the hearing I would have to neglect my duties working with vulnerable people. I hope you understand my not being able to attend the hearing."

Further, the panel noted the email from Mr Caffrey dated 7 October 2024, in which he stated:

"...I can confirm that there has been no change in my nursing circumstances in the past past [sic] year..."

In light of this, this panel determined that Mr Caffrey remains liable to repeat matters of the kind found proved. It therefore decided that a finding of continuing 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.

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

Decision and reasons on sanction

Having found Mr Caffrey'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 and allow the order to lapse but concluded that this would be inappropriate in view of the seriousness of the case. It 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 Mr Caffrey's practice would not be appropriate in the circumstances.

The panel next considered whether imposing a further conditions of practice order on Mr Caffrey's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable.

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 was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting that there was no evidence of deep-seated attitudinal problems. The panel concluded there are conditions which could be formulated which would address the concerns during the period they are in force. This would allow Mr Caffrey a further opportunity, if he still wishes to return to nursing, to improve his insight and strengthen his practice.

The panel carefully considered the imposition of a suspension order. It was of the view that at this stage, given there has been some engagement from Mr Caffrey, it would be a disproportionate response in the circumstances.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 7 November 2024. It decided to impose the following conditions which it considered 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 ensure that you are supervised by another registered nurse 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.
2. You must not administer medication unless directly supervised by another registered nurse (except in life threatening emergencies) until you are deemed competent to do so by your supervisor.
3. You must work with your line manager, mentor, or supervisor (or their nominated deputy) to create a Personal Development Plan designed to address the concerns about the following areas of your practice:
 - a) Timeliness of medication administration.
 - b) Handovers to ensure relevant risks are shared appropriately with other members of staff.
 - c) Evaluation and maintenance of up-to-date care plans.
4. You must meet with your line manager, mentor, or supervisor (or their nominated deputy) monthly to discuss your clinical case load, the

standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan.

5. You must send a copy of your Personal Development Plan and a report from your line manager, mentor, or supervisor (or their nominated deputy) setting out the standard of your performance before any NMC review hearing or meeting with particular reference to:
 - a) Timeliness of medication administration.
 - b) Handovers to ensure relevant risks are shared appropriately with other members of staff.
 - c) Evaluation and maintenance of up-to-date care plans.

6. 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.

7. 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.

8. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

9. 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.

10. 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 12 months. The panel considered that this term would afford Mr Caffrey sufficient time to gain employment as a registered nurse, develop his insight and strengthen his practice, whilst also protecting the public.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 7 November 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review to see how well Mr Caffrey has complied with the order. At the review 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. All sanctions will remain open to the next reviewing panel.

Any future panel reviewing this case would be assisted by:

- A reflective piece detailing Mr Caffrey's insight into the concerns identified by this panel, what he would do differently if the issues arose again and his coping strategies in relation to dealing with any future feelings of lack of support or isolation;

- Information in the reflective piece regarding efforts made by Mr Caffrey in relation to obtaining employment as a registered nurse, should he have failed to secure employment as a Registered Nurse; and
- Testimonials and/or references from any paid or unpaid work.

This will be confirmed to Mr Caffrey in writing.

That concludes this determination.