

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

**Substantive Order Review Hearing
Tuesday 5 November 2024**

Virtual Hearing

Name of Registrant:	Mark Edwin Round
NMC PIN	04C0402W
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Wales
Type of case:	Misconduct
Panel members:	Dale Simon (Chair, Lay member) Dorothy Keates (Registrant member) Anne Phillimore (Lay member)
Legal Assessor:	Angus Macpherson
Hearings Coordinator:	Rose Hernon-Lynch
Nursing and Midwifery Council:	Represented by Alex Granville, Case Presenter
Mr Round:	Not present and unrepresented
Order being reviewed:	Suspension order (3 months)
Fitness to practise:	Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30 (1), namely 7 December 2024

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Round was not in attendance and that the Notice of Hearing had been sent to Mr Round's registered email address by secure email on 3 October 2024.

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

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

The panel next considered whether it should proceed in the absence of Mr Round. The panel had regard to Rule 21 and heard the submissions of Mr Granville who invited the panel to continue in the absence of Mr Round. He submitted that Mr Round had voluntarily absented himself.

Mr Granville submitted that there had been no engagement at all by Mr Round with the NMC in relation to today's proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Round. In reaching this decision, the panel has considered the submissions of Mr Granville and the advice of the legal assessor. It has had particular regard to any 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 Round;
- Mr Round has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- Mr Round has voluntarily absented himself from the hearing;
- There is no useful purpose in adjourning;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- The current order expires on 7th December 2024; 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 Round.

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse upon its expiry, namely at the end of 7 December 2024, in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the ninth review of a substantive conditions of practice order originally imposed for a period of six months by a Fitness to Practise Committee panel on 7 August 2020. This was reviewed on 28 January 2021 and a suspension order was imposed for six months. The following further reviews also took place:

- On 27 July 2021 a panel of the Fitness to Practise Committee made Mr Round the subject of a suspension order for a period of 6 months
- On 28 January 2022 a panel of the Fitness to Practise Committee made Mr Round the subject of a conditions of practise order for a period of 6 months

- On 29 July 2022 a panel of the Fitness to Practise Committee made Mr Round the subject of a conditions of practise order for a period of 6 months
- On 20 January 2023 a panel of the Fitness to Practise Committee extended the conditions of practise order for a period of 6 months
- On 4 September 2023 a panel of the Fitness to Practise Committee extended and varied the conditions of practise order for a period of 6 months
- On 5 February 2024 a panel of the Fitness to Practise Committee made Mr Round the subject of a suspension order for a period of 6 months
- On 29 July 2024 a panel of the Fitness to Practise Committee made Mr Round the subject of a suspension order for a period of 3 months

The current order is due to expire at the end of 7 December 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 16 October 2017, whilst working a shift at Rhiwlas Care Home

1. In respect of Resident A,

1.1 attempted to remove a suprapubic catheter by pulling at it and re-inserting it several times

1.2 attempted to reinsert a new catheter which had become unsterile during the process.’

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

‘The panel considered whether Mr Round’s fitness to practise remains impaired. Today’s panel noted that the last reviewing panel found that Mr

Round had not demonstrated an understanding of how his actions put patients at a risk of harm, nor an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. It also noted that the last reviewing panel received no new information which addresses the concerns in Mr Round's insight nor any evidence of his strengthened practice

Similarly, today's panel noted that at this hearing it had no further information regarding Mr Round's insight of the areas of concern and it concluded that he has not acknowledged the misconduct in his practice which was found at the substantive hearing.

In its consideration of whether Mr Round has taken steps to strengthen his practice, today's panel considered that it had no new information regarding any training he has completed, or efforts made to keep up to date related to the charges found proved or any fundamental nursing skills. It noted that it has been six years since Mr Round last practised as a nurse and that he has stated that he is now retired.

The last reviewing panel determined that Mr Round was liable to repeat matters of the kind found proved. Today's panel has received no new information which addresses the 189 concerns in Mr Round's insight nor any evidence of his strengthened practice. In light of this, this panel determined that Mr Round 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 Mr Round's fitness to practise remains impaired.'

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

'The panel next considered whether a conditions of practice order on Mr Round'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 has received brief information that Mr Round is now retired. However, it does not have information regarding the length of time that Mr Round has now been retired, nor whether he intends to return to practise as a nurse. In these circumstances, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Round further time to fully reflect on his previous failings. It was also of the view that a further period of suspension would allow the NMC ample time to contact Mr Round as to whether he wishes to remain on the NMC register since he has stated that he is now retired. The panel concluded that a further 3 month suspension order would be the appropriate and proportionate response and would afford Mr Round adequate time to further develop his insight and take steps to strengthen their practice. It would also give Mr Round an opportunity to approach past and current health professionals to attest to his current practice in his workplace assignments since the substantive hearing. Alternatively, the further 3 months will afford Mr Round an opportunity to respond to the NMC if he wishes to remain retired from the profession. He can express a settled intention, if he so wishes, that he has

retired from the nursing profession and that he is inviting the next panel to let the substantive suspension order expire in order to allow removal from the Register. Mr Round, if he wishes to take this course, will need to consider the NMC guidance 'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place' (Reference REV-3h). The next panel will have the power of strike-off.

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 impose a suspension order for the period of 3 months would provide Mr Round with an opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Round'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, an NMC call log detailing attempted calls to Mr Round (Exhibit 1), and guidance REV-3h. It has taken account of the submissions made by Mr Granville on behalf of the NMC.

Mr Granville referred the panel to the NMC guidance on allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place (REV-3h) and he submitted that the panel should consider the second process for removal, namely allowing the order to lapse following a finding of impairment.

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 Round's fitness to practise remains impaired.

The panel noted that the last reviewing panel found they '*had no further information regarding Mr Round's insight of the areas of concern and it concluded that he had not acknowledged the misconduct in his practice which was found*'. At this hearing the panel found that there has been no change in circumstances.

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 current impairment on public interest grounds is also required.

The panel had regard to the persuasive burden as outlined in *Abrahaem v GMC [2008] EWHC 183 (Admin)* at [23] which states:

'In practical terms, there is a persuasive burden, so it is a persuasive burden on the practitioner. At a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight application, education, supervision, or other achievement sufficiently addressed the past impairments.'

The panel determined that Mr Round had not provided any evidence to suggest that he has addressed the concerns of the previous panel, and concluded that he therefore remains impaired on public protection and public interest grounds.

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

Decision and reasons on sanction

Having found Mr Round'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 also noted the NMC guidance on allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place (REV-3h).

The panel had regard to its 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.

Having considered its findings on impairment, the panel was satisfied that the most appropriate disposal of this case is to allow the current Suspension Order to lapse. The panel determined that all three limbs as set out in the NMC's guidance (REV-3h) are engaged. The panel considered Mr Round's communication dated 28 July 2024 in which he stated: "...*im retired now*". The panel also noted that Mr Round remains on the NMC register only by virtue of these proceedings against him. The panel concluded that in the light of Mr Round's communications, he is unlikely to return to safe, unrestricted practice within a reasonable period of time. The panel concluded that an imposition of a Striking Off Order would be inappropriate and would not properly take into account Mr Round's retirement status. The findings of the original hearing are not incompatible with being on the register. Further, in the light of that status and taking into account that Mr Round has been subject to some nine sanctions in the last four years, it considered that the time has passed by which the panel should attempt to rehabilitate him into practice by imposing any sanction.

The panel concluded that allowing the current Suspension Order to lapse balances both Mr Round's retirement from the profession and the need to protect the public and maintain the reputation of the profession. The panel noted that, if Mr Round were to decide that he

wanted to return to nursing, the Registrar would consider this finding of impairment. This will adequately protect the public as well as maintain public confidence in the NMC.

The Suspension Order will be allowed to lapse at the end of the current period of imposition, namely the end of 7 December 2024 in accordance with Article 30(1).

This will be confirmed to Mr Round in writing.

That concludes this determination.