

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

**Substantive Order Review Hearing
Friday, 29 November 2024**

Virtual Hearing

Name of Registrant: Gavin Paul Sandy

NMC PIN: 17A0111E

Part(s) of the register: Registered Nurse – Sub Part 1
Children’s Nursing – 21 March 2017

Relevant Location: Hampshire

Type of case: Misconduct

Panel members: Tracy Stephenson (Chair, Lay member)
Allwin Jay Mercer (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Nicholas Levisieur

Hearings Coordinator: Emily Mae Christie

Nursing and Midwifery Council: Represented by Emma Richards, Case Presenter

Mr Sandy: Not present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry with impairment in accordance with Article 30 (1), namely 8 January 2025**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Sandy was not in attendance and that the Notice of Hearing had been sent to Mr Sandy's registered email address by secure email on 21 October 2024.

Ms Richards, 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 Sandy'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 Sandy 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 Sandy

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

Ms Richards submitted that there had been no engagement at all by Mr Sandy with the NMC in relation to these proceedings since December 2022, 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 Sandy. In reaching this decision, the panel has considered the submissions of Ms Richards, 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 Sandy;
- Mr Sandy has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- Mr Sandy has not provided the NMC with details of how he may be contacted other than his registered addresses;
- 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 Sandy.

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse with impairment on expiry.

This order will lapse at the end of 8 January 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 8 December 2023. This was reviewed on 29 May 2024 where the panel extended the order for a further 6 months.

The current order is due to expire at the end of 8 January 2025.

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:

- 1) On 1 December 2018 in relation to Patient C:
 - a) Failed to Ensure there was a prescription signed by a doctor;*
 - b) Wrote or completed a prescription without authority;**

- 2) On 23 to 24 May 2019, in relation to Patient O behaved inappropriately in that;
 - a) You informed the parent of Patient O that she was not to stay on the ward or words to that affect.*
 - b) You informed the parent of Patient O that she should stop breast feeding due to the age of her infant or words to that affect.*
 - c) Made a hand gesture in or to the face of parent of Patient O.**

- 3) On 15 August 2019 in relation to Patient F:*

- a) *Failed to any action to de-escalate Patient F's concerns regarding a blood test;*
 - b) *Grabbed and/or held Patient F's arm;*
 - c) *Behaved inappropriately towards Patient F in that you:*
 - i. *Raised your voice and/or shouted at Patient F;*
 - ii. *Told patient F to "get on with it" or used a gist of words that were similar in relation to a blood test;*
 - iii. *Informed patient F that Patient F's behaviour was unacceptable.*
- 4) *On 22 or 23 September 2019 in relation to Patient G behaved inappropriately towards Patient G in that you:*
- a) *Spoke in an abrupt manner:*
 - b) *...*
 - c) *...*
- 5) *On 22 or 23 September 2019 in relation to Patient H behaved inappropriately in that you:*
- a) *Stated that Patient H's scar looked like a cigarette burn.*
 - b) *...*
- 6) *On 25 October 2019, in relation to Patient J, failed to administer medications, namely:*
- a) *Clonazepam at 16:00hrs;*
 - b) *Phenobarbital at 18:00hrs.*
- 7) *In the alterative to charge (6) above, in relation to Patient J, on 25 October 2019, failed to record and/or sign:*
- a) *The Controlled Drug Book in regard to:*
 - i) *...*
 - ii) *Clonazepam.*
 - b) *Patient J's prescription chart namely for:*
 - i) *Phenobarbital;*
 - ii) *Clonazepam.*

- 8) *On 25 October 2019 and/or 29 October 2019, in relation to Patient J, purported to have administered the medications, namely, a dose of:*
- a) *Clonazepam at 16:00 hrs;*
 - b) *Phenobarbital at 18:00 hrs.*
- 9) *On 29 October 2019, in relation to Patient J, purported to have entered the wrong times in records on 25 October 2019, namely:*
- a) *Clonazepam;*
 - b) *Phenobarbital.*
- 10) *On 29/30 October 2019, in relation to Patient I, failed to:*
- a) *Provide the correct feed, namely Infatrini Peptisorb;*
 - b) *Take any or any adequate action when Patient I's relative queried the type of feed provided.*
 - c) *Sign Patient I's prescription chart.*
- 11) *On an unknown date in relation to Patient I purported that:*
- a) *...*
 - b) *A pharmacist had stated that "Infatrini was the same as Infatrini Peptisorb" or words to that affect.*
- 12)...
- 13) *On 13/14 November 2019 in relation to Patient K:*
- a) *...*
 - b) *Stated that:*
 - i) *"he wouldn't be walking like that if he was in pain" or used similar words;*
 - ii) *"you just aren't getting it are you" or used similar words.*
- 14) *On or around 14 November 2019 in relation to Patient P failed to:*
- a) *Notice Patient P's condition had deteriorated;*
 - b) *Take any or any adequate action in response to Patient P's monitor alarm being activated;*

c) ...

15) On 24 May 2020 in relation to Patient M:

- a) Failed to adhere to the supportive plan, namely not to care for mental health patients;
- b) Behaved inappropriately in that you:
 - i) ...
 - ii) ...
- c) ...
- d) Became confrontational, namely by raising your voice;
- e) ...

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

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

“The panel considered whether Mr Sandy’s fitness to practise remains impaired. It noted that the misconduct found proved was serious and repeated, relating to his behaviour and professionalism whilst caring for young and vulnerable patients. Significantly, actual patient harm occurred on one occasion as a result of Mr Sandy’s misconduct. The panel did not have any new information before it to suggest that Mr Sandy has demonstrated any insight into his misconduct. Further, there was no information before the panel to show that he had taken steps to strengthen his practice and remediate the concerns found proved, despite being provided with an opportunity to do so and the suggestions made by the substantive panel. To the contrary, Mr Sandy has not meaningfully engaged with the NMC since December 2022. In the absence of any new information before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. The panel therefore determined that the finding of impairment was 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. To do otherwise would seriously undermine the public's confidence in the profession and the NMC as a regulator.

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

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

"The panel next considered whether a conditions of practice order on Mr Sandy'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 evidence of an attitudinal problem and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest, particularly in light of Mr Sandy's non-engagement with the NMC.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Sandy further time to reengage with the NMC, his regulator. It would also allow Mr Sandy an opportunity to fully reflect on his previous failings and/or demonstrate steps undertaken by him to strengthen his practice and remediate the concerns found proved. The panel concluded that a further six-month suspension order would be the appropriate and proportionate sanction which would continue to both protect the public and satisfy the wider public interest.

The panel considered whether to impose a striking off order but concluded that this would be disproportionate at this juncture.

Accordingly, the panel determined to impose a suspension order for the period of six months. This suspension order will take effect upon the expiry of the current suspension order, namely the end of 8 July 2024 in accordance with Article 30(1)."

Decision and reasons on current impairment

The panel has considered carefully whether Mr Sandy's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has described fitness to practise as a registrant's ability to practise kindly, safely, and professionally. 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, and the NMC's attempts to contact Mr Sandy. It has taken account of the submissions made by Ms Richards on behalf of the NMC. She submitted that the registrant has not been engaging with the NMC, and there is no new evidence to suggest his impairment had changed. Furthermore, she submitted that it was a matter for the panel to determine the appropriate sanction.

Ms Richards pointed the panel to the determination of the previous panel which stated what a future panel may be assisted by:

"If Mr Sandy does not intend to return to nursing then a simple communication to the NMC will enable a future reviewing panel to conclude, if it deems appropriate, that it is sure that Mr Sandy no longer wants to practice as a nurse and may then consider letting the order expire."

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 Sandy's fitness to practise remains impaired. It noted that the misconduct found proved was serious and repeated, and there has been no further information before it to suggest that Mr Sandy has demonstrated any additional insight into his misconduct.

Further, there was no information before the panel to show that Mr Sandy had taken steps to strengthen his practice and remediate the concerns found proved, despite being provided with an opportunity to do so by the substantive panel, and the previous reviewing panel.

Mr Sandy has not engaged with the NMC since December 2022. In the absence of any new information before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. The panel therefore determined that the finding of impairment was 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 Sandy's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Sandy'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 or make a caution order 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 or impose a caution order.

The panel next considered whether a conditions of practice on Mr Sandy'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 was not able to formulate conditions of practice that would adequately address all of the concerns relating to Mr Sandy's misconduct.

The panel noted that:

- Mr Sandy's registration is only active because of the substantive order being in place;
- He has not practiced as a registered nurse since 2020;
- Mr Sandy indicated in December 2022 that he no longer wanted to return to nursing.

The panel concluded that there is no likely prospect of Mr Sandy returning to safe unrestricted practice within a reasonable period of time. This is due to his lack of engagement and his email of December 2022 where he stated his intention was to no longer practice. It therefore considered that imposing a further period of suspension would serve no purpose.

The panel also noted the mitigating factors identified at the substantive hearing and determined that a striking off order would be inappropriate in the circumstances.

The panel decided that having found Mr Sandy currently impaired, the most appropriate course would be to allow the current suspension order to lapse with impairment upon its expiry. In reaching this decision, the panel took into account parts of the NMC Guidance [REV-3h] *'Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place'*. The guidance states:

'In most circumstances nurses, midwives or nursing associates who are subject to a substantive suspension or conditions of practice order, but no longer wish to continue practising, should be allowed to be removed from the register.'

The panel noted that the public will be protected because it has made a clear finding that Mr Sandy's Fitness to Practise is currently impaired. This will be evident to the Registrar should they be required to consider any future application made by Mr Sandy to re-join the Register.

The substantive suspension order will therefore lapse with impairment at the end of the current period, namely the 8 January 2025 in accordance with Article 30(1).

This will be confirmed to Mr Sandy in writing.

That concludes this determination.