

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

**Substantive Order Review Meeting  
Monday, 11 November 2024**

Virtual Meeting

**Name of Registrant:** Robert Smith

**NMC PIN:** 12G2617E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Mental Health Nursing – (September 2012)

**Relevant Location:** Hampshire

**Type of case:** Misconduct and Lack of competence

**Panel members:** Sue Heads (Chair, Lay member)  
Margaret Marshall (Registrant member)  
John Penhale (Lay member)

**Legal Assessor:** Suzanne Palmer

**Hearings Coordinator:** Amira Ahmed

**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 23 December 2024 in accordance with Article 30 (1)**

## **Decision and reasons on service of Notice of Meeting**

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mr Smith's registered email address by secure email on 2 October 2024.

The panel noted that the Notice of Meeting was also sent to Mr Smith's representative at the Royal College of Nursing (RCN) on 2 October 2024.

The panel took into account that the Notice of Meeting provided details of the review including that the review meeting would be held no sooner than 11 November 2024 and it invited Mr Smith to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Smith has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

## **Decision and reasons on review of the current order**

The panel decided to impose a varied conditions of practice order for a period of 12 months.

This order will come into effect at the end of 23 December 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 24 months by a Fitness to Practise Committee panel on 24 November 2021. This was reviewed on 12 November 2023 and the panel imposed a conditions of practice order for a period of 12 months.

The current order is due to expire at the end of 23 December 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:*

1. *On 7 January 2019, while employed at Nelson House Hospital, administered an excessive amount of Haloperidol to Patient E*
2. *On 21 January 2019, while employed at Nelson House Hospital, administered 1mg of Clonazepam to Patient G, contrary to Patient G's prescription*
3. *...*

*Between 9 February 2019 and 26 March 2019 whilst employed at Nelson House Hospital and subject to a Performance Improvement Plan, you*

4. *On 11 February 2019, in relation to Patient F, were unable to recall how much Sodium Valproate and/or Clozapine you had administered to Patient F*
5. *On 19 February 2019, did not know the MAR Chart endorsement codes applicable when medication was not administered to patients*
6. *On 19 February 2019, omitted to administer Depakote to Patient I*
7. *On 19 February 2019, mistook Patient I's medication chart for Patient E's medication chart*
8. *On 19 February 2019, omitted to record on Patient I's medication chart that Patient I had refused medication*
9. *On 19 February 2019, omitted to administer Amisulpride to Patient P*

10. *On 21 February 2019, administered one Vitamin B tablet to Patient J, contrary to Patient J's prescription*
11. *On 21 February 2019, omitted to administer Diazepam to Patient K*
12. *On 21 February 2019, omitted to administer Lamotrigine to Patient K*
13. *On 21 February 2019, signed off MAR Charts for individual patients retrospectively at the end of the medication round*
14. *On 26 February 2019, attempted to administer 3mg of Diazepam to Patient K, contrary to Patient K's prescription*
15. *On 9 March 2019, calculated an incorrect dose of Clozapine for Patient E*
16. *On 9 March 2019, attempted to dispense Depakote instead of Sodium Valproate to Patient N, contrary to Patient N's prescription*
17. *On 12 March 2019, calculated a dose of Sodium Valproate for Patient N that was contrary to Patient N's prescription*
18. *On 12 March 2019, attempted to administer 7.5 mg of Senna tablets to Patient J contrary to Patient J's prescription*
19. *On 12 March 2019, were unable to locate prescription details on Patient O's MAR Chart*
20. *On 16 March 2019,*
  - a. *omitted to offer medication to Patient Q; and*
  - b. *recorded a refusal on Patient Q's medication chart.*
- 21....

22. *On 16 March 2019 were unable to calculate what form of Clozapine to administer in respect of Patient I*

23. *On 16 March 2019, were unable to calculate the correct amount of Co-Amoxicillin to be administered to Patient I*

*In or around April 2019, while employed at Beechcroft Manor Residential Home, you*

*24....*

*25....*

*26. failed to carry out regular clinical observations of Patient D and/or failed to record regular clinical observations of Patient D*

*27....*

*AND in light of the above, your fitness to practise is impaired by reason of your lack of competence in respect of charges 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20a, 20b, 22 and 23 and by your misconduct in respect of charges ..., 13, 20b, ..., 26 ...'*

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

*'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 Smith's fitness to practise remains impaired.*

*The panel noted that the original panel found that Mr Smith had developing insight. At this hearing, the panel was not satisfied that Mr Smith's insight had developed sufficiently. It noted that Mr Smith's 2023*

*reflection provided some insight but it made very limited references to his learning from the training courses. However, the panel considered that he had not provided any substantive reflection on the impact of his learning on his individual practice, or what he has done or would do to prevent such instances from taking place in the future.*

*In its consideration of whether Mr Smith has taken steps to strengthen his practice, the panel took into account the additional relevant training Mr Smith has undertaken in various areas of practice, including medicines management. However, it noted that he has not been able to practise as a registered nurse under the conditions of practice order since its imposition in November 2021.*

*The original panel determined that Mr Smith was liable to repeat matters of the kind found proved. Today's panel had received training certificates and an updated reflection. However, it was not satisfied that Mr Smith's insight has developed sufficiently, nor has he been able to strengthen his practice in the areas of concern. The panel had no information before it to suggest that the risk of repetition had decreased. In light of this, this panel determined that there remains a risk of repetition and it was not satisfied that Mr Smith can currently practise kindly, safely and professionally. 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 Smith's fitness to practise remains impaired.'*

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

*'Having found Mr Smith'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 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 Mr Smith'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 Mr Smith'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 extending the current conditions of practice on Mr Smith'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 the conditions of practice as currently formulated continue to address the failings highlighted in this case. The panel accepted that Mr Smith has been unable to comply with conditions of practice order due to his inability to secure a nursing role, but he is engaging with the NMC and is willing to comply with any conditions imposed.*

*The panel was of the view that extending the current conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and no deep seated attitudinal problems. In this case, there are conditions which would protect patients during the period they are in force. The panel was satisfied that a further period with conditions would provide Mr Smith the opportunity to secure employment, comply with the conditions and address the concerns with his practice.*

*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 Mr Smith's case because his failings are remediable and he has demonstrated a willingness to return to safe, kind and professional practice without restriction. The panel determined a suspension order would be unduly punitive and would not allow Mr Smith the opportunity to secure employment and strengthen his practice.*

*Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the current 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 23 December 2023. It decided that the following conditions remained 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 directly supervised by another registered nurse at any time you are managing, administering or recording medication.*
2. *You must ensure that you are working on the same shift as, but not necessarily directly observed by, another registered nurse at all times.*
3. *You will send your case officer evidence that you have successfully completed 20 supervised medicine rounds of which a minimum of five must have been supervised by a nurse of band 6 or above.*
4. *You must work with your line manager to create a personal development plan (PDP). Your PDP must address the concerns about medication management in terms of the 'Seven Rs' identified in your reflective statement (right patient, right medication, right dose, right route, right time, right reason and right documentation). You must:*
  - *Send your case officer a copy of your PDP within six weeks of starting employment as a registered nurse*
  - *Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.*
  - *Send your case officer a report from line manager before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.*
5. *You must keep the NMC 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.*
6. *You must keep the NMC 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.*
7. *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*
8. *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.*

9. *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.*

*This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 23 December 2023 in accordance with Article 30(1).*

*Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Smith has complied with the order. At the review hearing the panel may allow the order to lapse upon expiry, it may further extend the order or it may replace the order for another order.*

*Any future panel reviewing this case would be assisted by:*

- *Evidence of any formal structured training in regard to medicines management, administration and record keeping*
- *An updated reflective piece which addresses the areas of concern identified within Mr Smith's PDP, and addresses how he would strengthen his practice and prevent any future occurrences in relation to the highlighted areas of concern*
- *Testimonials and references from any employer, but particularly in a care setting*
- *Mr Smith's continued engagement with the NMC, including his attendance at the next review hearing'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Mr Smith'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. The panel took account of the NMC guidance on impairment (DMA-1, 27 March 2023), including the following question as detailed in the guidance:

*'Can the nurse, midwife or nursing associate 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 emails from Mr Smith to his NMC case officer.

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 Smith's fitness to practise remains impaired.

The panel noted the email from Mr Smith to his NMC case officer on 31 October 2024 stating:

*"I am in receipt of your email dated 2nd October regarding the NMC meeting that will take place on my behalf on:  
Wed 13th November.*

*Please find attached further evidence of a recent attempt at securing a band 5 post.*

*I am anxious to know what my options are as I would very much value the opportunity to still return to Nursing and to that end still wish to retain my PIN.*

*I have just successfully completed a level 2 counselling course and still hold a certificate in level 3 medications management and administration which will only ever be proven through the opportunity to put this into practice.*

*The General Manager of the home I work at, as a carer, has informed me she is going to speak to some other homes on my behalf to see if they can accommodate supporting me in meeting the NMC, conditions. I believe there are still opportunities, and I would very much value the panels' consideration.”*

The panel took into account that Mr Smith is currently working as a carer in a care home but had also attempted to obtain employment as a registered nurse. The panel determined that Mr Smith has not had the opportunity to demonstrate that he can practise safely, kindly and professionally as he has not been able to work as a registered nurse since 2019 and therefore has not been able to comply with the current conditions of practice order.

The panel noted that Mr Smith does have an understanding of the impact of his actions and has shown a willingness to return to safe nursing practice.

The panel had no information before it to suggest that the risk of repetition had decreased. In light of this, this panel determined that there remains a risk of repetition, and it was not satisfied that Mr Smith can currently practise kindly, safely and professionally. 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 Smith's fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found Mr Smith'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 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 Mr Smith'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 Mr Smith'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 imposing a varied conditions of practice order on Mr Smith'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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Mr Smith has attempted to obtain employment as a registered nurse but has not been successful. It noted the evidence he provided from his current line manager for his role as a carer which stated:

*“At this time, as St Cross Grange is a newly commissioned home there are currently no openings or support mechanisms in place to give the whole commitment that Robert would require to be successful in meeting the conditions of the NMC.”*

The panel noted that Mr Smith is engaging with the NMC and is willing to comply with any conditions imposed. The panel noted that the current conditions of practice order appears to be preventing Mr Smith from finding nursing employment and considered that varying them would make them more achievable without compromising patient safety.

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 original panel did that there was no evidence of general incompetence and no deep-seated attitudinal problem. In this case, there are conditions could be formulated which would protect patients 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 Mr Smith’s case because his failings are remediable and he has demonstrated a willingness to return to safe, kind and professional practice without restriction.

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 23 December 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 working on the same shift as, but not necessarily directly observed by, another registered nurse at all times.

2. You must ensure that you are directly supervised by another registered nurse at any time you are managing, administering or recording medication. This is until such time that you are signed off as competent by your line manager or supervisor who must be a registered nurse.
  
3. You must work with your line manager to create a personal development plan (PDP), which must address the concerns about your medication management. You must:
  - Send your case officer a copy of your PDP within six weeks of starting employment as a registered nurse
  - Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.
  - Send your case officer a report from line manager before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.
  
4. You must keep the NMC 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.
  
5. You must keep the NMC 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.
  
6. 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
7. 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.
8. 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. If Mr Smith is unable to obtain employment working under these conditions, it would be open to him to request a hearing on the next occasion to address a panel.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 23 December 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Smith has complied with the order. At the review hearing 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.

Any future panel reviewing this case would be assisted by:

- Evidence of any formal structured training in regard to medicines management, administration and record keeping
- Testimonials and references from any employer, but particularly in a care setting
- Mr Smith's continued engagement with the NMC.

This will be confirmed to Mr Smith in writing.

That concludes this determination.