

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

**Substantive Order Review Meeting
Wednesday, 23 October 2024**

Virtual Meeting

Name of Registrant: Julie Fay

NMC PIN: 07H3091E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 15 December 2007

Relevant Location: Westmorland and Furness

Type of case: Misconduct

Panel members: Susan Thomas (Chair, lay member)
Esther Craddock (Registrant member)
Lorraine Wilkinson (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Eidvile Banionyte

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: Order to lapse upon expiry, namely 5 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 Miss Fay's registered email address by secure email on 20 September 2024.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held on or after 21 October 2024 and inviting Miss Fay to provide any written evidence seven days before this date. The panel noted that no response was received from Miss Fay.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Fay 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 take no further action and allow the current suspension order to lapse upon its expiry on 5 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 9 months by a Fitness to Practise Committee panel on 8 August 2023. This was then reviewed on 1 May 2024 when the panel then decided to impose a suspension order that came into effect on 5 June 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:

- ‘5. On 10 August 2019 in relation to Patient F failed to;*
(a) Record a time in the controlled drugs book that the medication was dispensed by accident and destroyed.
- 11. On 19 August 2019 failed to record on Lorenzo that you had administered 15mg of Codeine to Patient G at 12.30.*
- 12. On 20 August 2019 failed to record on Lorenzo that you had administered 15mg of Codeine to Patient G at 12.40.*
- 13. On 21 August 2019 incorrectly entered in the controlled drugs book that you had administered 15mg of Codeine to Patient G when Patient G had been discharged on 20 August 2019.’*

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

‘The panel has considered carefully whether Miss Fay’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. 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 Miss Fay’s fitness to practise remains impaired.

The panel noted that the original panel found that Miss Fay had not demonstrated any insight, remorse or provided any evidence of steps taken to strengthen her practice.

At this meeting the panel noted that Miss Fay has not engaged with the NMC since the substantive order was imposed on 8 August 2023, nor has she provided any evidence of insight or remorse. The panel took into account that Miss Fay has not demonstrated an understanding of how her actions put patients at a risk of harm nor of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession.

The panel took into account that Miss Fay has not provided any evidence of steps that she has undertaken to strengthen her practice. She has not provided any evidence of reflection, or any evidence of relevant training undertaken.

The original panel determined that Miss Fay was liable to repeat matters of the kind found proved. Today's panel has received no new information to suggest that there has been a reduction in risk. The panel has no evidence of any insight, remorse, reflection or strengthening of practice. In light of this the panel determined that Miss Fay is still 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 Miss Fay's fitness to practise remains impaired on the grounds of both public protection and public interest.'

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

'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 Miss Fay'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 Miss Fay'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 conditions of practice order on Miss Fay'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 took into account that Miss Fay in an email dated November 2022 stated:

'Hi I have contacted the NMC before that I will not be attending or responding to any hearings etc etc.. I have said that I want to remove myself from the register as I will not be nursing again. ...'

The panel noted that during the substantive hearing which took place between 1 August 2023 – 8 August 2023 the original panel was informed that ‘Miss Fay has not practised as a nurse since she was suspended from working at the Trust on 17 October 2019.’

The panel took into account that Miss Fay has not engaged with the NMC since the imposition of the conditions of practice order on 8 August 2024 or provided any evidence or inclination that she intends to return to practice. Further the panel noted that there is no information before it to conclude that Miss Fay is willing to comply with any conditions imposed upon her practice. Therefore, the panel did not feel imposing conditions of practice would effect any meaningful change.

On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of 6 months. This would provide Miss Fay with an opportunity to engage with the NMC, to provide evidence that she intends to return to practice, that she has reflected on her conduct, and that she has undertaken steps to strengthen her practice. It considered this to be the most appropriate and proportionate sanction available.

The panel determined that a striking-off order would be disproportionate at this time. The panel was of the view that Miss Fey should be given the further opportunity to reflect both on her intentions to rejoin the nursing profession and upon her misconduct identified in this case.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 5 June 2024 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Fay'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, having regard to whether the nurse can 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. The panel 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 Miss Fay's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Fay had not demonstrated any insight, remorse or provided any evidence of steps taken to strengthen her practice.

This panel noted that Miss Fay last engaged with the NMC in an email correspondence dated 2 November 2022 which stated:

'Hi I have contacted the NMC before that I will not be attending or responding to any hearings etc etc.. [PRIVATE].

[PRIVATE].'

The panel further noted that Miss Fay had not practised as a registered nurse since October 2019.

The panel took into account that Miss Fay has not provided any evidence of any steps that she has undertaken to strengthen her practice. She has not provided any evidence of reflection, or any evidence of relevant training undertaken.

The last reviewing panel determined that Miss Fay was liable to repeat matters of the kind found proved. Today's panel has received no new information to suggest that there has been a reduction in risk. The panel has no evidence of any insight, remorse, reflection or strengthening of practice. In light of this the panel determined that Miss Fay is still 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 uphold 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 Miss Fay's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Fay'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 and that while any sanction imposed may have a punitive effect, it should nevertheless be proportionate.

The panel had regard to its previous findings on impairment in coming to this decision.

It bore in mind that its primary purpose was to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

The panel noted that Miss Fay has not practised for some five years now and has expressed her wish to be removed from the register two years ago, with no intention to practise in the future. [PRIVATE]. The panel was mindful that Miss Fay had only been kept on the register by a virtue of these proceedings and noted her lack of engagement and her express wish to be removed from the register.

The panel had regard to the NMC guidance on '*Removal from the register when there is a substantive order in place*' (REV-3h) and noted:

2. Lapse with impairment Where the professional would no longer be on the register but for the order in place, a reviewing panel can allow the order to expire or, at an early review, revoke the order.

Professionals in these circumstances will automatically be removed from the register, or lapse, upon expiry or revocation of the order. The panel will record that the professional remains impaired.

A panel will allow a professional to lapse with impairment where:

- *the professional would no longer be on the register but for the order in place;*
- *the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;*
- *a striking off order isn't appropriate.*

In the light of this guidance and having regard to the history and circumstances of this case, the panel considered it appropriate to take no further action.

The substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 5 December 2024 in accordance with Article 30(1).

This will be confirmed to Miss Fay in writing.

That concludes this determination.