

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

**Substantive Order Review Hearing
Wednesday, 9 October 2024**

Virtual Hearing

Name of Registrant:	Kirstie-Marie Smith
NMC PIN	11B0400E
Part(s) of the register:	Registered Nurse- Sub Part 1 Adult Nursing- September 2011
Relevant Location:	Kent
Type of case:	Misconduct
Panel members:	Mary Idowu (Chair, lay member) Mitchell Parker (Lay member) Purushotham Kamath (Registrant member)
Legal Assessor:	Fiona Moore
Hearings Coordinator:	Shazmeen Uddin
Nursing and Midwifery Council:	Represented by Mark Robinson, Case Presenter
Miss Smith:	Not present and unrepresented
Order being reviewed:	Conditions of practice order (18 months)
Fitness to practise:	Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30 (1), namely 10 November 2024

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Smith was not in attendance and that the Notice of Hearing had been sent to Ms Smith's registered email address by secure email on 10 September 2024.

Mr Robinson 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). He referred to email correspondence received by the NMC on 27 September 2024 where Ms Smith stated:

'...unable to join a virtual video hearing, so I will send you all that I wish to be accessible for that meeting as I believe I will have a few bits to send you. As I said I am happy for the virtual meeting to go ahead without me as I do not wish for it to be delayed any longer.'

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 Ms Smith's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Smith 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 Ms Smith

The panel next considered whether it should proceed in the absence of Ms Smith. The panel had regard to Rule 21(2) which allows the panel to direct that the allegation be heard and determined, notwithstanding the absence of the registrant, where service has been effected in accordance of the rules. The panel heard the submissions of Mr Robinson who

invited the panel to continue in the absence of Ms Smith. He submitted that Ms Smith had voluntarily absented herself.

Mr Robinson referred the panel to the correspondence between Ms Smith and NMC case officer on 27 September 2024 where Ms Smith:

- Confirmed '*... I am happy for the virtual meeting to go ahead without me as I do not wish for it to be delayed any longer.*'
- Advised written submissions will be sent for the hearing '*...so I will send you all that I wish to be accessible for that meeting as I believe I will have a few bits to send you...*'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Smith. In reaching this decision, the panel has considered the submissions of Mr Robinson, the representations from Ms Smith, 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:

- Ms Smith confirmed with the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- Ms Smith has provided the panel with written submissions.
- No application for an adjournment has been made by Ms Smith;
- There is no reason to suppose that adjourning would secure her 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 Ms Smith.

Decision and reasons on review of the substantive order

The panel found that Ms Smith's Fitness to Practise is currently impaired and determined to allow the current conditions of practice order to lapse upon expiry on 10 November 2024.

This order will come into effect at the end of 10 November 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive suspension order originally imposed for a period of eight months by a Fitness to Practise Committee panel on 12 August 2019. This was reviewed on 1 April 2020 where the panel decided to impose a conditions of practice order for a period of 18 months. This was reviewed on 4 October 2024 where a further 18 month conditions of practice was put in place. This was again reviewed on 30 March 2023, whether the conditions of practice order was extended for a further 18 months.

The current order is due to expire at the end of 10 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,

1. On 21 November 2016, did not sign for the administration of Paracetamol and Codeine at 18.00 on patient D's drug chart

2. On 28 November 2016,

a. Did not record in patient F's notes that you had been notified by the laboratory that 2 units of blood were ready for collection,

b. Did not arrange for the 2 units of blood for patient F to be collected,

c. Did not start patient F's blood transfusion,

d. Did not handover to the night nurse that patient F required 2 units of blood,

e. Did not handover to the night nurse that 2 units of blood had not been administered to patient F.

3. *On 28 and 29 November 2016,*
 - a. *Did not sign for the administration of Perindopril at 18.00 on patient A's drug chart*
 - b. *Did not sign for the administration of Mirtazapine at 18.00 on patient B's drug chart*

4. *On 29 November 2016, did not sign for the administration of Candesartan at 18.00 on patient C's drug chart*

5. *On 3 December 2016, did not sign for the administration of Nitrofurantoin at 13.00 on patient E's drug chart*

6. *On 20 December 2016,*
 - a. *Did not record the date, time or your signature for the administration of blood on patient G's drug chart,*
 - b. *Checked the blood for patient G with a HCA who was not competent to be a second checker*

7. *On 20 December 2016, whilst changing a patient's wound dressing, you*
 - a. *Put your hand inside the wound,*
 - b. *Were not wearing sterile gloves,*
 - c. *Did not use a dressing trolley,*
 - d. *Placed clean dressings on the patient's bed.*

8. *On 21 December 2016, you retrospectively recorded the date and your signature for the administration of blood on patient G's drug chart, without indicating that this was a retrospective entry*

9. *On 21 December 2016,*
 - a. *Did not conduct 4 hourly observations for patient G as required,*
 - b. *Altered the observation timings on Vital Pac for patient G,*
 - c. *Sent a blood sample for patient G incorrectly labelled with 2*

*blood request forms, one for patient G and one for patient H.
And, in light of the above, your fitness to practise is impaired by
reason of your misconduct.'*

The third 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 your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had good insight which was demonstrated through your written reflective piece; however, noted that it did not address what steps, if any, you had taken towards securing employment in a nursing or health care setting.

The panel further noted that there was no evidence to demonstrate that you had undertaken and completed any relevant training courses to strengthen your practice.

At this hearing the panel determined that you presented some level of insight and remorse, however, you have not provided evidence of improvement of your clinical practice improvement. Some examples of this are as follows:

- You accept the charges and failings against you*
- You demonstrated an understanding of how your actions put the patient at a risk of harm*
- You listed the courses you intend to begin, such as Hygiene Techniques, Aseptic Technique and Patient Note Taking*

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account that you have subscribed to the RCN and that you have researched the available courses. However, the panel considered the fact that you

have not attempted to work within the healthcare environment, nor have you undertaken any medicines-management courses to strengthen your practice.

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 the allegations against you are wide-ranging and could have caused harm to patients and that you have presented a lack of effort in improving your practice and there remains a risk of repetition.

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 third reviewing panel determined the following with regard to sanction:

'The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did, that the misconduct was remediable as it related to clinical failings. In this case, there are conditions that can 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 your case because you have not yet returned to the nursing practice, however, have confirmed you intend to do so.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to confirm the current conditions of practice order and extend it for a period of 18 months which will come into effect on the expiry of the current order, namely at the end of 10 May 2023. 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 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.*
- Weekly meetings to discuss your clinical caseload.*

2. You must work with your line manager to create a personal development plan (PDP). Your PDP must address the concerns about:

- management of wound care,*
- medication management,*
- infection control and,*
- record keeping.*

You must:

- a. Send your case officer a copy of your PDP before your next review.*
- b. Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.*
- c. Send your case officer a report from your line manager every three months. This report must show your progress towards achieving the aims set out in your PDP.*

3. You must provide evidence of on-going clinical reflections relating to the areas identified in your PDP and share these with your line manager at your regular meetings. You must send your case officer a copy of these reflections every three months.

4. 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.

5. 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.

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 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely on 10 May 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 you have 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, including a striking-off order. The panel recognise that although you have made some efforts to research courses, this process is not indefinite.

Any future panel reviewing this case would be assisted by:

- *Evidence of any training of relevant online training modules which would prepare you for the Return to Practice Course*
- *Evidence that you have applied for and been accepted onto the Return to Practice Course*
- *Evidence of your success within this course*
- *Evidence of any paid or voluntary work in a health and social care setting which you have undertaken during this 18-month period*
- *Testimonials from any employers or voluntary role employers'*

Decision and reasons on current impairment

The panel has considered carefully whether Ms 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. In considering this case, the panel has carried out a comprehensive review of all the evidence before it. 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 submissions by Ms Smith. It has taken account of the submissions made by Mr Robinson on behalf of the NMC. He submitted that the NMC are at a neutral position and that it is entirely at the panels discretion as to whether Ms Smith is still currently impaired.

He asked the panel to consider:

- Is there any evidence of training modules?
- Is there any evidence of return to practice courses?
- Is there any evidence of success in any courses?
- Is there any evidence of voluntary work in Health and Social Care?
- Have the NMC been provided with any testimonials or training certificates?

The panel has had regard to all of the documentation before it, including the NMC bundle and the correspondence between Ms Smith and the NMC Case Officer on 10 September 2024, 27 September 2024 and 7 October 2024.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision on impairment, 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 noted that the last reviewing panel found that Ms Smith had insufficient insight. At this hearing the panel determined that Ms Smith currently remains impaired on both grounds of public protection and public interest. The panel was of the view that there is no new evidence before it, which suggests that any further remediation has been made.

There was no new evidence to suggest compliance with the current conditions of practice order, however, the panel recognised that Ms Smith has not been in employment as a registered nurse since the incidents which led to the making of the substantive order. There is also a lack of insight as the submission by Ms Smith did not reflect on the impact of her actions on patients, potential harm and/or colleagues and the wider profession. Therefore, the panel were of the view that Ms Smith's insight has not developed sufficiently; her practice has not been strengthened and she is not able to practise safely, kindly and professionally.

In its consideration of whether Ms Smith has taken steps to strengthen her practice, the panel bore in mind that there was:

- No evidence of completed training courses which includes management of wound care, medicines management, infection control and record keeping.
- No evidence of any paid or voluntary work in a health and social care setting which you have undertaken during this 18-month period.
- No testimonials.
- No evidence to show that Ms Smith has been accepted on Return to Practise course.

The last reviewing panel determined that Ms Smith was liable to repeat matters of the kind found proved. Today's panel has received no verifiable information to suggest that she is no longer impaired. In light of this, this panel determined that Ms Smith is still likely 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 an informed member of the public would be extremely concerned if a nurse who has been unable to demonstrate strengthened practice over a five-year period was allowed to practise without restriction. In this case, a finding of continuing impairment on public interest grounds is required.

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

Decision and reasons on sanction

Having found Ms 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 acknowledged Ms Smith has been subject to conditions of practice orders for the past four years. It was of the view that, as these proceedings have been ongoing for five years and there has been insufficient evidence of progress, it is unlikely that she will be able to return to safe and effective practice within a reasonable period.

The panel took into account the NMC's guidance 'Removal from the register when there is a substantive order in place' (Reference: REV-3h), which was last updated on 30 August 2024. This guidance assists substantive order review panels in deciding what action to take where:

'Panels and professionals should bear in mind that:

- 1. It is not in the public interest or a professional's interests to remain on the register indefinitely when they are not fit to practise;*
- 2. public confidence in the professions is more important than the fortunes of any individual member ;*
- 3. there are advantages to all parties in setting time limits to conditions; those time limits are set for a reason and should be respected;*
- 4. professionals who leave the register can apply for readmission if they feel they are no longer impaired – for example, their health or language skills have demonstrably improved. A professional who has been struck off an only apply for restoration after five years.*

In any application for readmission the decision maker will be aware of the concerns that led to the original substantive finding of impairment, and that the professional left the register while impaired.'

The panel is satisfied that there is no reasonable prospect of Ms Smith returning to safe and effective practice within a reasonable period and is of the view that the appropriate cause is to allow the order to lapse upon its expiry with a finding of continuing impairment.

The panel determined that this would be the most appropriate and proportionate outcome as it would allow Ms Smith the opportunity to reflect and focus on her future. It would also offer her the opportunity to undertake further training courses and complete a return to

practise course within her own time frame, should she in the future wish to apply for readmission to the register. Any decision on such an application would be for the assistant registrar to determine.

The conditions of practice order will be allowed to lapse at the end of the current period of imposition, namely 10 November 2024 in accordance with Article 30(1) of the Order. Ms Smith's Fitness to Practice will be marked as impaired, she will be removed from the register, and unable to practice as a registered nurse. Should Ms Smith seek readmission to the register, she will be required to demonstrate she is no longer impaired.

This decision will be confirmed to Ms Smith in writing.

That concludes this determination.