

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

**Substantive Order Review Hearing
Thursday, 23 January 2025**

Virtual Hearing

Name of Registrant: Lisa Warttig

NMC PIN 13E1629E

Part(s) of the register: Registered Nurse – Adult Nursing (16 September 2013)

Relevant Location: Barnsley

Type of case: Misconduct

Panel members: Peter Fish (Chair, lay member)
Jacqueline Metcalfe (Registrant member)
Kitty Grant (Lay member)

Legal Assessor: Monica Daley

Hearings Coordinator: Abigail Addai

Nursing and Midwifery Council: Represented by Selena Jones, Case Presenter

Miss Warttig: Not present and unrepresented

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months)
to come into effect on 26 February 2025 in
accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Warttig was not in attendance and that the Notice of Hearing had been sent to Miss Warttig's registered email address by secure email on 16 December 2024.

Ms Jones, 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 Miss Warttig'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 Miss Warttig 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 Miss Warttig

The panel next considered whether it should proceed in the absence of Miss Warttig. The panel had regard to Rule 21 and heard the submissions of Ms Jones who invited the panel to continue in the absence of Miss Warttig.

Ms Jones referred the panel to the attendance note where Miss Warttig expressed to the Hearings Coordinator that she will not be attending because nothing has changed since the last hearing and she has no documentation to bring forward to the panel. As a result, Ms Jones submitted Miss Warttig had voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Warttig. In reaching this decision, the panel has considered the submissions of Ms Jones, 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 Miss Warttig
- Miss Warttig has informed the NMC that she has received the Notice of Hearing and was aware it was going ahead but did not wish to attend
- It is clear from the attendance note and other documents that Miss Warttig has chosen not to attend. Therefore adjourning will not necessarily secure her attendance in the future;
- Whilst there may be some prejudice to Miss Warttig from proceeding in her absence, this is limited as Miss Warttig has provided information to the panel about her current position and any prejudice is as a result of her decision not to attend.
- There is a strong public interest in the expeditious review of the order as it will expire on 26 February 2025.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Warttig.

Decision and reasons on review of the substantive order

The panel decided to extend the conditions of practice order for 12 months.

This order will come into effect at the end of 26 February 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 27 January 2023.

This was reviewed on 18 July 2023 and the panel extended the order for 18 months and varied the conditions.

The current order is due to expire at the end of 26 February 2025.

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) Breached an interim conditions of practice order imposed by a panel of the Nursing & Midwifery Council's Investigating Committee on 12 June 2019 stating "You must not at any time be involved in the management or administration of medication unless under the direct supervision of another registered nurse";

a) On 7 December 2019 by:

*i) Requesting a student nurse to countersign for Oramorph without direct supervision of another registered nurse. **[Proved by admission]***

*ii) Administering Oramorph to unknown patient without direct supervision of another registered nurse. **[Proved by admission]***

b) On 10 December 2019 by:

*i) Requesting a student nurse to countersign for Morphine Sulphate and/or Oramorph without direct supervision of another registered nurse. **[Proved by admission]***

*ii) Administering Morphine Sulphate and/or Oramorph to unknown patient without direct supervision of another registered nurse. **[Proved by admission]***

2) ...

3) On 7 December 2019, failed to have controlled drug, 10mg of Oramorph, second checked when it was administered and/or the controlled drug book signed by the second checker. **[Proved]**

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 noted that the original panel found that you had insufficient insight. At this hearing, although you expressed remorse at what had happened, you did not provide any further understanding of why you had not adhered to the interim conditions of practice order as had been recommended by the previous panel. Whilst the panel accepted that the reason you had not provided a written reflection because your circumstances have not changed, because of this, the panel found that your insight had not been fully developed.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your submissions. The panel noted that you had not been practising as a registered nurse, therefore had not been able to demonstrate that you have strengthened your practice or remediated the concerns the previous panel had.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel has heard submissions from you and concluded that there is no evidence that your insight is now fully developed or that you have been able to demonstrate strengthened practice. In light of this, this panel determined that you are 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 your fitness to practise remains impaired.'

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 your 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 your 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 your 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 it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you have been unable to comply with conditions of practice due to your current employment status, but you are engaging with the NMC and are willing to comply with any conditions imposed.

The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no deep-seated attitudinal problems. 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 your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 26 August 2023. It considered an 18-month period to be appropriate to enable you to have sufficient time to apply for and secure a nursing role, and then evidence a period of compliance with the conditions of practice order.

The panel decided to vary the conditions to reflect that the issues raised relate to the administration and management of controlled drugs specifically. Conditions one and two have been amended accordingly, and the previous conditions three and four have been incorporated into the new condition two.

The panel 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 not at any time be involved in the management or administration of controlled drug medication unless under the direct supervision of another registered nurse.*

2. *You must work with your line manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about controlled drug medication administration and management. You must:*
 - *Send your case officer a copy of your PDP before the next review hearing.*
 - *Engage with your line manager, mentor or supervisor monthly to ensure that you are making progress towards aims set in your PDP*
 - *Send the NMC a report seven days in advance on the next NMC hearing or meeting from either your line manager, mentor or supervisor.*

3. *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.*

4. *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.*

5. *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*
6. *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.*
7. *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'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Warttig's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC defines fitness to practise as a registrant's ability to practise safely, kindly 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 attendance note. It has taken account of the submissions made by Ms Jones on behalf of the NMC.

She gave a background of the case and submitted the conditions of practice order was appropriate to give Miss Warttig sufficient time to apply for a nursing role and demonstrate insight and remediation into her failings. Ms Jones submitted since the last hearing, Miss Warttig has not provided evidence to address the seriousness of the allegations, including her subsequent conviction. Therefore, Ms Jones invited the panel to find a continuing impairment under public protection and public interest grounds.

Ms Jones submitted a further 18 months would address the public protection and public interest concerns by giving Miss Warttig the opportunity to provide further evidence of her insight and strengthening of her practice. Additionally, Ms Jones believed this order would be necessary to protect patients and maintain public confidence in nursing profession.

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 Warttig's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Miss Warttig had limited insight. At this hearing, the panel have nothing to suggest her insight has improved. The panel referred to the previous reviewing's panel recommendation of providing up to date reflections. However, it has nothing before it to show Miss Warttig has reflected on her failings and in particular, insight to why complying with the conditions of practice order is important.

In its consideration of whether Miss Warttig has taken steps to strengthen her practice, the panel took into account the attendance note. The panel noted she has not practiced clinically for four years therefore, there is no evidence that she has strengthened her practice.

In the circumstances, given the seriousness of the findings, the lack of insight and the lack of evidence of strengthening of practice, the panel determined that there remained a risk of repetition and that a finding of impairment under public protection grounds is necessary.

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 were aware that Miss Warttig had found it difficult to find clinical work to enable her to demonstrate compliance with the conditions of practice. However, the panel noted that she had not provided evidence of her reflection regarding the importance of complying with the order and evidence of training and learning, as recommended by the previous reviewing panel.

In these circumstances, the panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

Decision and reasons on sanction

Having found Miss Warttig'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 Miss Warttig's practice would not be appropriate in the circumstances.

The NMC's Sanctions Guidance' (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 Warttig'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 further conditions of practice order on Miss Warttig'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 it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted she had been unable to comply with conditions of practice due to her current employment status but is engaging with the NMC. When asked, she did not request any changes to the conditions.

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 there was no deep seated attitudinal problems. 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 disproportionate at this stage and would not be a reasonable response in the circumstances of Miss Warttig's case.

The panel noted that the NMC had proposed an extension of 18 months. The panel decided that a shorter extension of 12 months would sufficiently protect the public while

giving Miss Warttig an opportunity to find employment and explore opportunities for training (such as a Return To Practice Course).

The panel is satisfied that whilst a conditions of practice order is appropriate for the protection of the public and to give the registrant the opportunity to strengthen her practice for the next 12 months, such orders were not meant to be indefinite. A reviewing panel considering this matter at a subsequent review may reflect on whether such an order remains appropriate without some demonstration of further insight and strengthening practice.

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 26 February 2025. 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 not at any time be involved in the management or administration of controlled drug medication unless under the direct supervision of another registered nurse.

2. You must work with your line manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about controlled drug medication administration and management. You must:
 - Send your case officer a copy of your PDP before the next review hearing.

- Engage with your line manager, mentor or supervisor monthly to ensure that you are making progress towards aims set in your PDP
 - Send the NMC a report seven days in advance on the next NMC hearing or meeting from either your line manager, mentor or supervisor.
3. 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.
 4. 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.
 5. 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
 6. 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.
7. 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 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 February 2025 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 Miss Warttig 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:

- Any updated testimonials or references from your current employer and/or colleagues about your conduct and performance (in a healthcare or non-healthcare role);
- An updated reflective piece which demonstrates insight as to why complying with the conditions of practice order is important; and
- Evidence of professional development, such as any updated training you have undertaken.

This will be confirmed to Miss Warttig in writing.

That concludes this determination.