

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

**Substantive Order Review Meeting
Wednesday, 1 May 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: Richard Weydert-Jacquard (Chair, Registrant member)
Richard Curtin (Registrant member)
Dr Tim Ward (Lay member)

Legal Assessor: Sean Hammond

Hearings Coordinator: Eleanor Wills

Order being reviewed: Conditions of practice order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 5 June 2024**

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 19 March 2024.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 22 April 2024 and invited Miss Fay 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 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 impose a suspension order for a period of 6 months. This order will come into effect at the end of 5 June 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first 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.

The current order is due to expire at the end of 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 original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Miss Fay's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel finds that patients were put at risk of harm as a result of Miss Fay's misconduct in respect of charges 11 and 12 but noted that no harm to patients had been reported. Miss Fay's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel had regard to the question of whether Miss Fay could "practise kindly, safely and professionally?"

It first considered Miss Fay's insight and that she had not demonstrated an understanding of how her actions put patients at a risk of harm and has not demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. She has not

apologised for her failings or demonstrated how she would handle the situation differently in the future. The panel noted that Miss Fay, during the Trust's investigation, sought to blame the Trust for her failings. The panel determined that Miss Fay had no insight.

The panel bore in mind that it had no evidence before it that Miss Fay has taken any steps to strengthen her practice. It noted that it has no evidence of any training or learning since these incidents took place and it bore in mind that Miss Fay has stated in email correspondence to the NMC that she no longer wishes to work as a nurse.

However, the panel considered that there is a risk of repetition as Miss Fay has not demonstrated any insight or strengthened practice in respect of her misconduct. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case and it therefore also finds Miss Fay's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Fay's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Miss Fay'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 found that the following factors listed in the SG applied in this case:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

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 had regard to the fact that these incidents happened in 2019 and the panel determined that it was in the public interest that, with appropriate safeguards, Miss Fay should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

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 Miss Fay's case because the failings identified are remediable and the concerns identified can be addressed through the imposition of a conditions of practice order.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions 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 will send the NMC a report seven days in advance of the next NMC hearing or meeting from either:
 - your line manager or
 - your mentor or supervisor.*
- 2. You must not administer medication unless supervised by another nurse until such time that you have been signed off as competent by your line manager, mentor or supervisor (who must be a registered nurse).*
- 3. You will send your case officer 7 days before any review hearing evidence that you have successfully completed a medications administration course.*
- 4. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP). Your PDP must address the concerns about medication administration. You must:
 - Send your case officer a copy of your PDP 7 days before any review hearing.
 - Send your case officer a report from line manager, mentor or supervisor 7 days 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 9 months. The panel determined that this was the minimum time necessary for Miss Fay to find a nursing job and demonstrate adherence to the conditions outlined above.

Before the order expires, a panel will hold a review hearing to see how well Miss Fay 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:

- *Miss Fay's attendance at any future hearing.*
- *An indication of Miss Fay's future intentions in relation to her nursing career.*
- *A reflective statement which addresses the failings found proved in this hearing relating to medication administration.*
- *Evidence of any courses completed in relation to medication administration.'*

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. 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 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).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Miss Fay's engagement with the NMC and attendance at any hearing
- A statement of intent to return to nursing practice
- Evidence of any work paid or unpaid, undertaken to evidence strengthening of practice
- Work testimonials attesting to Miss Fay's character
- Evidence of any relevant training or education undertaken, specifically in relation to medication administration.
- An in-depth reflective statement which demonstrates an understanding of the impact of the misconduct on patients, colleagues, profession and the wider public
- Evidence of any remedial steps undertaken

This will be confirmed to Miss Fay in writing.