

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

**Substantive Order Review Hearing
Friday, 23 February 2024**

Virtual Hearing

Name of Registrant: **Mustapha Ahmed Nahoor**

NMC PIN 89Y1666E

Part(s) of the register: RN5: Learning Disabilities Nurse (Level 1) - January 1993
RNMH Mental Health Nurse – October 1999

Relevant Location: Buckinghamshire

Type of case: Misconduct

Panel members: Elliott Kenton (Chair, Lay member)
Judith McCann (Registrant member)
Helen Kitchen (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Samara Baboolal

Nursing and Midwifery Council: Represented by Amy Taylor, Case Presenter

Mr Nahoor: Present and represented by Joanne Agbitor, instructed by UNISON

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 2 April 2024**

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Agbitor made a request that this case be held partly in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Taylor indicated that she supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel accepted the advice of the legal assessor.

The panel determined to go into private session in connection with any reference to [PRIVATE] as and when such issues are raised in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to allow the current order will lapse at the end of 2 April 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a substantive suspension order originally imposed for a period of 12 months by a panel of the Conduct and Competence Committee on 1 December 2016. This was reviewed on 21 December 2017 and the panel decided to extend the suspension order for another 12 months. This was reviewed again on 29 November 2018 and the panel decided to extend the suspension order for another nine months. A further review took place on 20 September 2019 and the panel decided to impose a conditions of practice order for a period of 12 months. The substantive order was reviewed on 27 August 2020 and the panel decided to impose a conditions of practice order for a period of 18 months. It was last reviewed on 23

February 2022 where the reviewing panel imposed a conditions of practice order for 2 years.

The current order is due to expire at the end of 2 April 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:

“That you, a registered nurse, whilst working for Oxford Health NHS Foundation Trust at Cotswold House:

1. *On 5 September 2014 when dispensing take-home medication to Patient A:*
 - a. *Incorrectly dispensed from the ward stock. **PROVED [by admission]***
 - b. *...*
 - c. *Failed to get another registered person to check and/or counter sign the dispensing. **PROVED [by admission]***

2. *On one or more occasions in around September 2014, you acted inappropriately in that you:*
 - a. *Physically cornered Colleague A. **PROVED***
 - b. *Made inappropriate comments of a sexual nature about a patient. **PROVED***
 - c. *Obtained Colleague A’s mobile telephone number from the staff contacts book and telephoned her when you were not at work. **PROVED***

3. *On an unknown date in September 2014 in respect of Patient B:*

- a. *Acted contrary to Patient B's care plan by allowing her to be in her room unsupervised following mealtime.*

PROVED

- b. ...

4. *On one or more occasion in respect of Patient C:*

- a. *Incorrectly recorded Patient C's weight. **PROVED***

- b. *Your actions at charge 4a above were dishonest in that you falsified Patient C's weight to make it appear as though she was engaging with her treatment. **PROVED***

c. ...

d. ...

e. ...

f. ...

g. ...

h. ...

- i. *On an unknown date in August 2014 failed to respond appropriately to signs of Patient C's self-harming.*

PROVED

- j. *On an unknown date in August 2014 stated to Patient C that you would incorrectly record her time out sheet.*

PROVED

- k. *On an unknown date in 2014, stated to Patient C that she could leave the unit by using the garden chairs to go over the fence. **PROVED***

- l. *On an unknown date stated to Patient C that you would not tell anyone about the paracetamol you found in her possession. **PROVED***

5. *On one or more occasions breached your professional boundaries by:*

- a. On an unknown date in 2009 or 2010 gave Patient C your personal phone number. **PROVED [by admission]**
- b. On an unknown date, telephoned Patient C when there was no clinical reason to do so. **PROVED [by admission]**
- c. On an unknown date, asked Patient C to meet up with you outside of the unit. **PROVED**
- d. On various dates between approximately 2005 and 2014, engaged in inappropriate conversations with Patient C of a sexual nature. **PROVED**
- e. Said words to the effect of 'you owe me' to Patient C. **PROVED**

And, in light of the above, your fitness to practice is impaired by reason of your misconduct.'

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

'The panel has considered carefully whether your 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, including the NMC bundle, and documents you had submitted ahead of this hearing. It has taken account of the submissions made by Ms Knight on behalf of the NMC and Mr Oestreicher on your behalf.

Ms Knight summarised the background and allegations found proved in this matter. She reminded the panel of the outcome of the last

review and noted you had been unable to secure a nursing role at that time and were unable to demonstrate compliance with the conditions of practice. As such, the panel at the last review determined that you continued to pose a risk to public safety and found impairment on grounds of public protection alone.

Turning to the review task before the panel today and any developments since the last review hearing, Ms Knight submitted that there have been no significant changes in your circumstances. You have not been able to secure a nursing role due to your personal circumstances and the impact of the continued COVID-19 pandemic. Ms Knight acknowledged that your inability to obtain employment as a nurse has been largely due to circumstances outside of your control. She further noted that you have been taking active steps to secure employment now that the COVID-19 pandemic is changing and restrictions are easing.

Ms Knight also noted that you have been taking positive steps to strengthen your practice through training. She referred the panel to a letter dated 9 February 2022 from an employment agency which outlined some of your personal circumstances and your commitment to an online training course, and also referred the panel to your training certificate dated 19 February 2022. Ms Knight further drew the panel's attention to your reading list and detailed reflective piece.

Ms Knight submitted that your fitness to practise remains impaired on grounds of public protection. She noted that there have been no material changes of circumstances since the last hearing and you have not had the opportunity to demonstrate compliance with the conditions of practice as yet. Ms Knight noted that impairment is not disputed in this matter.

Ms Knight submitted that it is a matter for the panel to decide whether you are impaired on public interest grounds. She acknowledged that

the panel is not bound by the decisions of previous panels, but noted that the last panel found that the public interest had already been met by the previous suspension order in this matter.

Ms Knight submitted that the appropriate order in this matter remains the current conditions of practice order, given the absence of any change in circumstances.

The panel also had regard to the submissions of Mr Oestreicher.

Mr Oestreicher submitted that he agrees with the fundamental position of the NMC and agreed that the public interest had been satisfied by the previous suspension order. He further agreed that the issue of impairment of your fitness to practise remains as you are yet to evidence safe and effective nursing practice [PRIVATE]

Mr Oestreicher informed the panel that you have been seeking and will continue to seek health care assistant and nursing roles. He emphasised the efforts you had made in engaging with the NMC, seeking work and undertaking training. He noted that any conditions relating to medication administration will likely only be satisfied by a nursing role. He submitted that conditions of practice may have the effect of discouraging employers and referred the panel to an email dated 22 February 2022 which confirmed that you had not been successful in a recent application. He noted that these are obstacles that you will continue to face.

Mr Oestreicher submitted that other, more restrictive sanctions would not be appropriate in the circumstances of this case. [PRIVATE]

A follow-up question from the panel queried whether Mr Oestreicher was content with the current form of the conditions of practice. Mr Oestreicher stated that the current conditions were a reasonable way forward and acknowledged that you would be able to apply for an

early review if there were any changes in circumstance which necessitated an amendment to the conditions. With regard to duration of the order, he submitted that 18 months may be more realistic and appropriate given the circumstances around the COVID-19 pandemic and its impact on you.

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 your fitness to practise remains impaired.

The panel acknowledged that there has been no material change in your circumstances due to reasons outside of your control, [PRIVATE] the continued COVID-19 pandemic. These circumstances are further substantiated within the documentation. As you have not yet had the opportunity to demonstrate safe and effective practice, the panel determined that your fitness to practise remains impaired on public protection grounds alone.

The panel acknowledged the efforts you have made with regard to seeking employment as a nurse or health care assistant. The panel further noted the positive steps you have taken to strengthen your practice through a training course, reading, and continued engagement with the NMC including attendance at hearings. The panel also acknowledged a character reference dated 15 February 2022 which attests to your caring nature.

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 not required.

The panel concluded that the public interest has been adequately met by the suspension order imposed by the panel at the substantive hearing.

Accordingly, the panel determined that your fitness practise remains impaired solely on public protection grounds.'

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

Having found your 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 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 further 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 the current conditions of practice order continued to be the appropriate order in this case. The panel accepted that you have not yet had the opportunity to demonstrate safe and effective practice due to the COVID-19 pandemic [PRIVATE] The panel is mindful of your circumstances and your reflective statement, in which you state “I therefore appeal to the NMC panel to consider a longer extension of the practice condition to give me ample opportunity to meet the requirement to practice as a nurse.” In recognition of your circumstances, and the impact of COVID-19 which has prevented you from obtaining nursing employment, the panel decided to impose a conditions of practice order for two years. The panel was of the view that this time period would facilitate your return to a nursing role and enable you to demonstrate compliance with the conditions of practice and remediate concerns that were previously identified. The panel further acknowledged that you can apply for an early review hearing if you are able to demonstrate compliance with the conditions of practice. The panel was of the view that would allow the facilitation of your return to nursing practice, in light of your circumstances.

The panel determined that a further conditions of practice order is sufficient to protect patients.

The panel determined that 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 two years, which will come into effect on the expiry of the current order, namely at the end of 2 April 2022. 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 by a Band 5 Nurse or above any time you are working. Your supervision must consist of:
 - a) *Working at all times on the same shift as, but not always directly observed by, a registered nurse of Band 5 or above*
 - b) *Weekly meetings to discuss your clinical caseload.**

2. *You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about:
 - *Care plans*
 - *Administration and dispensing of medicines*
 - *Professional boundaries with patients*
 - *Professional boundaries with colleagues**

Your PDP must also contain evidence of learning, through training and/or study, relevant to the field of practice you are currently working in.

You also must:

- *Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP*
- *You must send a report from your supervisor detailing your progress towards achieving the aims set out in your PDP, to your case officer prior to the next review hearing or meeting*

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 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 your fitness to practise remains impaired.

The panel determined that the persuasive burden regarding impairment is on you, as the registrant. It noted that you accepted that your fitness to practise remains impaired, and that you did not provide evidence to prove otherwise. The panel considered that the charges are serious, with breaches of several fundamental tenets of the profession, and have resulted in risk of harm and actual harm to patients. It noted that you have not had the opportunity to strengthen your practice as you have been unable to work in a band 5 registered nursing role. As a result of this, there is a risk of repetition, and a real risk of harm to the public. The panel determined that your fitness to practise remains impaired on the ground 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 not required because the public interest has been addressed by the suspension orders. The panel also noted the views of the previous panels that you have accepted responsibility for your actions, expressed remorse, and recognised the impact of your actions on patients, their families, and the profession.

For these reasons, the panel finds that your fitness to practise remains impaired on public protection grounds only.

Decision and reasons on sanction

Having found your 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 had regard to its previous findings on impairment in coming to this decision.

It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator. The panel had regard to the advice of the legal assessor, and particular regard to NMC guidance REV-3H.

The panel determined that a risk of harm remains. However, it noted that you have expressed remorse and taken responsibility for your actions. It noted that you have been unable to strengthen your practice given that you have been unable to work in a band 5 nursing role. [PRIVATE]

The panel carefully considered the submissions made by Ms Agbitor and Ms Taylor and noted that you wish for no further action to be taken so that your order may lapse and allow your NMC registration to expire. The panel considered that taking no further action provides suitable protection for the public as if you were to make a future application to the register the panel's decision on impairment could be taken into account in the assessment of whether you are capable of safe and effective practise and meet the requirements for health and character. The panel considered that this is the most appropriate and proportionate order in these circumstances given the timeline of this matter, [PRIVATE]. The panel took into account that the

alternative sanction which would serve a similar effect, a striking-off order, would be unduly punitive to be imposed in your case.

The substantive conditions of practice order will be allowed to expire at the end of the current period of imposition, namely the end of 2 April 2024 in accordance with Article 30(1), thereby allowing your NMC registration to lapse.

This will be confirmed to you in writing.

That concludes this determination.