

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

**Substantive Meeting
Thursday, 11 April 2024**

Virtual Meeting

Name of Registrant: Mirko Dionisi

NMC PIN 16I0110C

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse (level 1) – 16 September 2016

Relevant Location: Bedfordshire

Type of case: Caution

Panel members: Deborah Jones (Chair, lay member)
Linda Holloway (Registrant member)
Emma Moir (Lay member)

Legal Assessor: Nigel Mitchell

Hearings Coordinator: Catherine Blake

Facts proved: Charge 1

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to the registrant's registered email address by secure email on 6 March 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this meeting was heard virtually. It noted that the registrant has been offered the option of requesting a hearing but has not done so.

In the light of all of the information available, the panel was satisfied that the registrant 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).

Details of charge

At the outset of the meeting, the panel noted a typographical error in the charge. The date was incorrectly recorded that the registrant received a conditional caution on 22 December 2022. The panel noted evidence that the registrant received this conditional caution on 22 December 2020. The panel determined to correct the typographical error as follows, as no injustice can be caused:

That you, a registered nurse:

1. On 22 December 2020 received a conditional caution for fraud by abuse of position.

AND in light of the above, your fitness to practise is impaired by reason of your caution.

Background

The charges arose whilst the registrant was employed as a registered nurse at a residential care home, Houndswood House (the Home).

In 2020, he befriended one of the residents (Resident A), who had full mental capacity to look after her own finances.

The registrant is alleged to have breached professional boundaries by disclosing to Resident A that he had a gambling addiction. Resident A agreed that the registrant could withdraw some money from her account and gave him her bank card and pin number. She agreed that he could withdraw £1200 over a period of four days as the limit for daily withdrawal was £300.

Resident A's sister-in-law had a Power of Attorney over her financial affairs and noticed significant withdrawals from Resident A's bank account during October 2020. The unusual activity was reported to the police who commenced an investigation.

On 28 October 2020 Resident A completed a police witness statement but later stated that she did not want to support a police prosecution.

On 29 October 2020 the registrant made admissions, under police caution, that he had retained the bank card beyond the period agreed and used the card to debit more monies from Resident A's account without her consent.

On 22 December 2020, the registrant admitted the offence and accepted a police caution for fraud, by abuse of position, contrary to the *Fraud Act 2006*. The caution states the fraud amounted to the sum of £4907.70.

Decision and reasons on facts

At the outset of the meeting, the panel noted the written submissions from the Nursing and Midwifery Council (NMC), which stated that the registrant had admitted to receiving a conditional caution:

On 22 December 2020, Mr Dionisi received a conditional Police Caution, which recorded that he admitted the offence of "Fraud by abuse of position... between 07 October 2020 and 19 October 2020... committed fraud in that, while occupying a position, namely a Registered Nurse, in which you were expected to safeguard, not act against, the financial interests of Resident A, you dishonestly abused that position intending thereby to make a gain, namely £4907.70, for yourself, contrary to sections 1 and 4 of the Fraud Act 2006". As a condition of the caution Mr Dionisi agreed to write a letter of apology and explanation to Resident A, which was to be handed to the police for delivery to Resident A. Mr Dionisi complied with the condition and Resident A received a letter of apology.

The panel also noted following extract from the crime report contained in exhibit LC/2, in which the registrant accepts the conditional caution:

Suspect has made admissions in interview and has admitted to using the victims [sic] card to withdraw £4907.70. He has agreed to accept a conditional caution and write a letter of apology and explanation to the victim.

The panel therefore finds the charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the registrant's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

Decision and reasons on impairment

The NMC invited the panel to find the registrant's fitness to practise impaired on the grounds that the following parts of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code') have been breached:

20. Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1. *keep to and uphold the standards and values set out in the Code.*
- 20.2. *act with honesty and integrity at all times.*
- 20.4. *keep to the laws of the country in which you are practising.*
- 20.5. *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.*
- 20.6. *stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers.*
- 20.8. *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

21. Uphold your position as a registered nurse, midwife or nursing associate.

To achieve this, you must:

- 21.1. *refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment.*

21.2. *never ask for or accept loans from anyone in your care or anyone close to them.*

21.3 *act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care.*

The panel accepted the NMC's submissions and agreed that the registrant has breached these parts of the code.

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. 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* [2011] EWHC 927 (Admin) 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/their fitness to practise is impaired in the sense that S/He/They:

- 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel considered the submissions from the NMC and agreed that the first limb is engaged. The panel determined that the registrant's behaviour was a serious breach of trust and professional boundaries that placed patients at a real risk of financial and psychological harm. The panel noted that there has been no engagement from the registrant in this case and therefore has not seen any information to suggest that he has

developed any insight into the incident or that the risk of him putting patients at unwarranted risk of harm in future has been mitigated.

Regarding the second limb, the panel determined that the public would be concerned to learn that a nurse had accepted money from a vulnerable patient, and also proceeded to use the patient's bank card for subsequent unauthorised withdrawals. The panel agreed with the NMC submissions that the registrant's behaviour has brought the nursing profession into disrepute, and the second limb is engaged.

The panel next considered the third limb and agreed with the NMC that it is engaged. The panel considered that the registrant's caution demonstrates a serious breach of the fundamental tenets of the nursing profession by *'failing to act with honesty and integrity, failing to maintain professional boundaries and safeguarding residents from financial abuse'*. The panel was of the view that it was inappropriate for the registrant to first accept money from a vulnerable patient, and that making additional unauthorised withdrawals exacerbated the seriousness of his conduct.

The panel noted that dishonesty is an inherent component of fraud, and accordingly found the fourth limb engaged.

The panel is therefore of the view that, due to the seriousness of the behaviour that led to the caution and the lack of information from the registrant, there is a risk of repetition, and that a finding of impairment is necessary on the grounds of public protection. Further, the panel had no information before it that the monies had been repaid to Resident A.

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 considered that the dishonesty in this case is serious and pertains to breaches of fundamental tenets of the profession. It also agreed with the NMC's submission that the registrant's *'conduct engages the public interest because of the serious offence which*

resulted in the caution'. The panel therefore determined that a finding of impairment on public interest grounds is required.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds the registrant's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike the registrant off the register. The effect of this order is that the NMC register will show that Mirko Dionisi has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that in the Notice of Meeting, dated 6 March 2024, the NMC had advised the registrant that it would seek the imposition of a striking-off order if it found the registrant's fitness to practise currently impaired.

Decision and reasons on sanction

Having found the registrant's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust, which resulted in personal financial gain
- Lack of insight into failings
- Conduct which put patients at risk of suffering harm
- The dishonesty was premeditated and systematic, and involved a vulnerable victim in the registrant's care

The panel also took into account the following mitigating features:

- That the registrant has accepted his conduct by way of the caution

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 the registrant'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 the registrant's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on the registrant's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The failings identified in this case were not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on the registrant's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

However, the panel considered that, due to the repeated unauthorised withdrawals, the misconduct of this case is not confined to a single incident. The panel noted that there has been no engagement by the registrant with the NMC at any stage of the proceedings, and therefore there is no evidence of insight into his conduct. The panel having previously identified a risk of repetition and the existence of attitudinal problems on the part of the registrant, agreed with submissions from the NMC that *'the behaviour giving rise to the caution is fundamentally incompatible with being a registered professional'*.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by the registrant's actions is fundamentally incompatible with the registrant's remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The registrant's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that the registrant's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of the registrant's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to the registrant in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in the registrant's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order should be imposed to protect the public and meet the public interest until the substantive order takes effect upon expiry of the appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow time for an appeal to be resolved, if applied for.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after the registrant is sent the decision of this hearing in writing.

That concludes this determination.