

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

**Substantive Meeting
Monday 17 August 2020**

Virtual Meeting

Name of registrant:	Craig Stephenson
NMC PIN:	91A1912E
Part(s) of the register:	RNMH: Registered Nurse – Sub part 1 Mental Health – Level 1 17 January 1994
Area of registered address:	Newcastle upon Tyne
Type of case:	Misconduct
Panel members:	Paul Powici (Chair, lay member) Amy Lovell (Registrant member) Dave Evans (Lay member)
Legal Assessor:	Mark Sullivan
Panel Secretary:	Catherine Acevedo
Facts proved:	Charges 1, 2
Facts not proved:	None
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 Mr Stephenson was not in attendance and that the Notice of Meeting had been sent to Mr Stephenson's email address on the register on 16 July 2020.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Stephenson 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

That you, a registered nurse:

1. Between May and June 2018:

1.1. Took Codeine Phosphate medication on one or more occasions for your own personal use;

1.2. Signed out Codeine Phosphate medication against the name of one or more patients' when it was not prescribed to them and/or when it was not clinically justified to do so;

1.3. Signed out that Codeine Phosphate medication was on loan to another ward when it was not;

2. Your actions at charges 1.2 and 1.3 above were dishonest in that you:

2.1. Knew that the Codeine Phosphate medication would not be administered to patients;

2.2. Knew that the Codeine Phosphate medication was not loaned to another ward;

2.3. Did this with the intention to conceal that you had taken the Codeine Phosphate medication for your own personal use;

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

Background

Mr Stephenson qualified as a nurse on 17 January 1994 and appears on the NMC register as RNMH, Registered Nurse – Mental Health.

At the relevant time the Registrant was employed as a Band 5 Staff Nurse by the Northumberland Tyne and Wear NHS Foundation Trust (the Trust). He worked on Castleside Ward which is an inpatient unit providing assessment, treatment and

rehabilitation for elderly people with mental health problems arising from organic disorders such as dementia. The Registrant had been employed at the Trust since 28 September 1998

On 12 June 2018, during a routine stock check of medication, the Trust identified that 11 tablets of 15mg Codeine and 35 tablets of 30mg Codeine were missing.

It was identified that the missing medication had been dispensed via the Trust's electronic dispensing system, outside of the times of usual medication rounds on the Ward. Unusual activity on the medication system had taken place on 24 May 2018.

Because of the anomalies highlighted by the stock check, a full medication audit was carried out. The audit revealed that Mr Stephenson, over a period of time, had signed out 144 Codeine Phosphate tablets to a number of patients on the Ward on 24 May, 30 May, 31 May, 4 June, 11 June and 12 June 2018. Six of these patients had not been prescribed this medication. On the 24 May 2018 Mr Stephenson recorded in the records that the medication had been loaned out to another unit however there was no record that the other ward requested the medication or that any patients on that ward were prescribed Codeine Phosphate on that day.

When these concerns were investigated by the Trust, Mr Stephenson admitted on 13 July and 28 August 2018 that he had taken the medication for personal use and had done so knowing that he would be dismissed and would be able to claim benefits.

The matter was reported to Northumbria Police, who closed the case because "*the informant no longer wished to support a prosecution.*"

Mr Stephenson has not engaged with the NMC investigation. There is no evidence that he had any substance misuse issues at the time.

Decision and reasons on facts

In reaching this decision, the panel took into account the witness statement of Mr 2. Mr 2 carried out the medication audit at the Trust after finding discrepancies. This is supported by the various documents exhibited in his statement. The panel also took into account Mr Stephenson's admissions to the charges in his interviews with Ms 1. The panel found no reason to doubt either of the witness statements and was satisfied that charge 1 in its entirety is found proved.

Charge 2

Your actions at charges 1.2 and 1.3 above were dishonest in that you:

2.1.Knew that the Codeine Phosphate medication would not be administered to patients;

2.2.Knew that the Codeine Phosphate medication was not loaned to another ward;

2.3.Did this with the intention to conceal that you had taken the Codeine Phosphate medication for your own personal use;

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Ms 1 the minutes of the meeting with Mr Stephenson on 29 August 2018. The panel took account of Mr Stephenson's admissions that he made during the course of this meeting together with the investigation by Mr 2. The panel was satisfied that Mr Stephenson's actions were dishonest and found charge 2 proved in its entirety.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Stephenson'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 suitability to remain on the register unrestricted.

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.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Stephenson's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Mr Stephenson's actions amounted to misconduct. The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Stephenson's fitness to practise impaired on the grounds of public protection. Although there is no evidence of direct harm to any patients, there was a risk of serious harm to patients as Mr Stephenson's conduct gave a misleading view of the medication that seven patients had received, which could have impacted on the care that was provided to them. Theft of medication raises fundamental questions about Mr Stephenson's trustworthiness as a professional and as a result public confidence in the profession and its regulator would be undermined if no action were taken. Mr Stephenson's actions are therefore so serious that a finding of current

impairment is required to maintain public confidence in the professions and to uphold proper professional standards.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mr Stephenson's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Stephenson's actions amounted to a breach of the Code. Specifically:

Practise effectively

10 Keep clear and accurate records relevant to your practice

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

Preserve safety

18 ... administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

Promote professionalism and trust

... You should be a model of integrity ... for others to aspire to...

20 Uphold the reputation of your profession at all times

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 ...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Stephenson's actions can be

properly characterised as multiple, serious dishonest acts within a clinical setting and represent a significant departure from the principles of good medication management. The panel considered that theft of medication and concealment of his actions were premeditated and continued over a period of time, and he abused his position as a registered nurse. The panel was of the view Mr Stephenson's misconduct was serious and raises serious concerns about his honesty, trustworthiness, professionalism and attitude.

The panel found that Mr Stephenson's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Stephenson'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. 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* 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that all four limbs in the test of Grant are engaged. The panel finds that although there is no evidence of direct harm to any patients, there was a risk of serious harm to patients as Mr Stephenson's conduct gave a misleading view of the medication that seven patients had received, which could have impacted on the care that was provided to them. For these reasons a finding of impairment on public protection grounds was required.

Mr Stephenson's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. The panel considered that honesty and integrity are fundamental tenets of the nursing profession and a breach of those tenets will always be considered serious, especially where the dishonesty is related to a nurse or midwife's professional practice, which it does in this case. It was of the view that stealing medication and then attempting to conceal his actions is of itself dishonest and by repeating it on

multiple occasions Mr Stephenson has brought the reputation of the profession into disrepute and breached fundamental tenets of the nursing profession.

The panel considered that dishonesty is a concern that is more difficult to remediate as it suggests some form of attitudinal issue. The concern therefore is not easily remediable. Mr Stephenson has not engaged with the NMC and has therefore not provided any evidence of insight, remorse or remediation. Taking this into account, the panel determined that there is a risk of repetition of the misconduct.

The panel was of the view that theft of medication raises fundamental questions about Mr Stephenson's trustworthiness as a professional and as a result public confidence in the profession and its regulator would be undermined if no action were taken.

The panel bore in mind that 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 also 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 Mr Stephenson's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Stephenson'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 Mr Stephenson off the register. The effect of this order is that the NMC register will show that Mr Stephenson 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 NMC submits that to take no further action, impose a caution order, impose a conditions of practice or a suspension order would not address the significant public interest of maintaining public confidence in the profession and upholding proper professional conduct. Furthermore, the concerns raised relate to Mr Stephenson's attitude and behaviour and therefore conditions could not be properly formed to address this. The NMC therefore considered that a striking off order is the only order that would maintain public confidence in the profession by marking Mr Stephenson's behaviour as unacceptable.

Decision and reasons on sanction

Having found Mr Stephenson'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:

- Mr Stephenson's conduct put vulnerable patients at risk of harm.
- Mr Stephenson's lack of insight into his failings and failure to engage with the NMC.
- Mr Stephenson's pattern of misconduct over a period of time

The panel considered that there were no mitigating features in this case

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 and public interest issues identified, an order that does not restrict Mr Stephenson'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 Mr Stephenson'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 Mr Stephenson'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 facts found proved in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Stephenson'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;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Mr Stephenson's misconduct was not a single incident. The panel has no evidence of insight or remorse and consequently, there is a risk of repetition of his behaviour.

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?*

Mr Stephenson'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 Mr Stephenson's actions were serious and to allow him to continue practising would not protect the public and would undermine public confidence in the profession and in the NMC as a regulatory body. The panel bore in mind the observations of the High Court in *NMC v Parkinson*, Mr Stephenson has failed to participate in these proceedings and has offered no explanation for his action to his regulator or given any indication of remorse or that he would not repeat the misconduct.

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 Mr Stephenson's actions in putting patients at risk of harm as well as 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, protecting the public 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 Mr Stephenson's 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 Mr Stephenson's own interest 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 order of 18 months is necessary to cover any possible appeal period. An interim suspension order is appropriate as this would be consistent with the sanction imposed by the panel and would address public protection and public interest concerns already identified in this document.

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.

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

That concludes this determination.