

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

**Substantive Meeting
Tuesday, 8 September 2020**

Virtual Meeting

Name of registrant: Eve Jones

NMC PIN: 99D0063W

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nursing – 13 April 2002

Registered Midwife
Midwifery – 27 April 2004

Area of registered address: Wales

Type of case: Misconduct and Caution

Panel members: John Vellacott (Chair, Lay member)
Judith Robbins (Registrant member)
Rachel Childs (Lay member)

Legal Assessor: Angela Hughes

Panel Secretary: Philip Austin

Facts proved: All charges

Fitness to practise: Currently Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel received information from the legal assessor concerning service of the notice of meeting.

The notice of meeting was sent by the Nursing and Midwifery Council's ("NMC") case officer in a secure and encrypted fashion to the email address of Mrs Jones that the NMC had on file on 20 July 2020. The panel noted that the emergency statutory instrument in place allows for electronic service of the notice of meeting to be deemed reasonable in the current circumstances, involving Covid-19.

The panel also noted that as this matter is being considered at a meeting, Mrs Jones would not be able to attend. However, Mrs Jones had been sent all of the evidence relating to this matter, and was informed that this meeting will take place on or after Monday, 24 August 2020. Mrs Jones was also asked to provide comment no later than 18 August 2020 by using the response form attached to the notice of meeting, if she had anything additional that she wanted the panel to take account of in considering this matter. No further response was received from Mrs Jones.

The panel heard and accepted the advice of the legal assessor.

The panel noted that the notice of meeting had been served on 20 July 2020, which was more than 28 days before this meeting. The panel was satisfied that there was good service of the notice of meeting in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) ("the Rules").

Details of charge

That you, a registered nurse, employed by the Betsi Cadwaladr University Health Board:

1. On 4 February 2019, received a conditional caution with the following details of offence - *'Theft by employee 2018/11/08 - On 08/11/2018 at Wrexham Maelor Hospital, stole a quantity of co-codamol tablets and liquid morphine, of a value unknown, belong to Wrexham Maelor Hospital'*.
2. Intended to supply a quantity of the medication referred to in charge 1 to another person.

And, in the light of the above, your fitness to practise is impaired by reason of your caution at charge 1 and misconduct at charge 2.

Background

Mrs Jones was referred to the NMC by North Wales Police on 22 November 2018. At the time of the incidents, Mrs Jones was employed as a Discharge Facilitator for the Rehabilitation Wards at Wrexham Maelor Hospital ("the Hospital").

On 8 November 2018, Mrs Jones stole medications from a unit at the Hospital.

Ms 1, [PRIVATE], had noticed Mrs Jones had gone into the treatment room drugs cupboard of Acton Ward. Ms 1 thought this was unusual because Mrs Jones was not working on Acton Ward on that day. Ms 1 then noticed that there were several empty Co-Codamol boxes in the bin and she alerted the Senior Sister, Ms 2, because Mrs Jones had no reason to be in the drugs cupboard. Ms 2 then alerted the Matron, Ms 3, telling her that there was only one patient who was prescribed Co-Codamol, so the number of empty boxes were concerning. Security were informed, who went on to call the police.

The police attended the unit and searched Mrs Jones and her car. The police allegedly discovered three boxes worth of Co-Codamol, a box of Diazepam, Zopiclone, Lorazepam and a bottle of Oramorph (liquid morphine). These are all prescription only medications.

Mrs Jones was arrested at the unit and was taken away by the police.

Ms 4, Matron Community Hospitals East Area, was appointed to undertake the internal investigation into this matter by Betsi Cadwaldr University Health Board (“the Health Board”).

Ms 4 states in her witness statement that Mrs Jones gave differing accounts as to why she had the medication in her possession.

[PRIVATE].

North Wales Police gives a slightly different account in their referral to the NMC, in that Mrs Jones had told them that she obtained the Co-Codamol for [PRIVATE], took a bottle of Oramorph (which was not locked away) for [PRIVATE]. Mrs Jones admitted the theft, and her intention to supply the medication to others, to the police.

Mrs Jones resigned from her employment at the Hospital before the disciplinary process concluded.

Decision and reasons on facts

Charge 1:

1. On 04 February 2019, received a conditional caution with the following details of offence - *‘Theft by employee 2018/11/08 - On 08/11/2018 at Wrexham Maelor Hospital, stole a quantity of co-codamol tablets and liquid morphine, of a value unknown, belong to Wrexham Maelor Hospital’.*

This charge is found proved.

In respect of charge 1, the panel noted that the concerns relate to Mrs Jones' conditional caution and, after having been provided with a copy of the conditional caution that she received, the panel finds that the facts are found proved.

The panel noted that the conditional caution confirmed the offence as being '*Theft by employee 2018/11/08 - On 08/11/2018 at Wrexham Maelor Hospital, stole a quantity of co-codamol tablets and liquid morphine, of a value unknown, belong to Wrexham Maelor Hospital*' and that this had been signed by Mrs Jones on 4 February 2019. It also noted that the conditional caution confirmed that Mrs Jones had admitted to the theft, and that she had agreed to the requirements of it.

Therefore, the panel found charge 1 proved.

Charge 2:

2. Intended to supply a quantity of the medication referred to in charge 1 to another person.

This charge is found proved.

In reaching this decision, the panel took account of all the documentary evidence in this case, along with the written statement of case prepared by the NMC which had been provided for today's purposes.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged, which is different compared to the criminal standard of proof, namely, beyond reasonable doubt.

In considering charge 2, the panel had regard to the witness statement of Ms 4. In particular, it noted paragraph 14, which states:

The registrant changed her account as to why she had the Co-Codamol. She said she needed the Co-Codamol for [PRIVATE].”[sic].

The panel had regard to the letter dated 10 December 2018 which had been provided to the NMC by Mrs Jones for the purposes of an interim order hearing. In that letter, Mrs Jones admits taking the Oramorph for [PRIVATE]. She states “[PRIVATE]”[sic]. However, this account is in contrast to what Mrs Jones had stated in a recorded police interview, as Mrs Jones did subsequently confirm that she had taken medication from the Hospital with the intention of supplying it to family members.

Due to the conflicting accounts provided by Mrs Jones, the panel could not be satisfied by her explanation that [PRIVATE], especially when she later confessed to North Wales Police that it had been for [PRIVATE].

Therefore, in taking account of all the above, the panel determined that charge 2 was found proved on the balance of probabilities.

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 in charge 2 amount to misconduct (not necessary for caution charges) and, if so, whether Mrs Jones’ fitness to practise is currently impaired by reason of her caution and her misconduct. 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 heard and accepted the advice of the legal assessor.

Decision on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.’

In its statement of case, the NMC had invited the panel to take the view that Mrs Jones’ actions in charge 2 amounted to misconduct, having set out its reasons for this submission. The NMC had stated that Mrs Jones’ actions can be properly characterised as a serious dishonest act and that it occurred in a workplace environment. Further, the NMC stated that Mrs Jones’ actions fell far below the standards expected of a registered nurse.

When determining whether charge 2 amounted 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”).

The panel agreed with the NMC’s statement of case, that the following provisions of the Code apply. Specifically:

“18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations.

18.5 wherever possible, avoid prescribing for yourself or for anyone with whom you have a close personal relationship

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It went on to consider whether charge 2 amounted to misconduct, noting as it did, that it is intrinsically linked to her caution, identified in charge 1.

The panel considered the facts found proved in charge 2 to be serious.

The panel had found that Mrs Jones had the intention of supplying family members the medication that she had stolen from the Hospital which she had dishonestly acquired and which she did not have the requisite permissions to prescribe. It considered Mrs Jones' actions to have the potential to cause the recipients of the medication a real risk of significant harm in this respect.

The panel also considered there to be the potential for serious harm to be caused to patients at the Hospital, as they would have been deprived of the medication that Mrs Jones had stolen.

Mrs Jones had abused her position in attending Acton Ward to obtain access to the medication, having manipulated a junior member of staff into giving her the key to the medication cupboard.

In taking account of the above, the panel was satisfied that charge 2 was sufficiently serious so as to amount to misconduct.

The panel was of the view that Mrs Jones' conduct fell far below the standards expected of a registered nurse, and that other registered professionals would consider her actions to be deplorable.

Therefore, the panel determined that charge 2 amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of Mrs Jones' misconduct and caution, her 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, 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 Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) 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 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 found that all of the limbs in Grant are engaged in this case.

The panel noted that the concerns identified in this case relate to Mrs Jones' professional conduct in the performance of her role as a registered nurse. It noted in particular that Mrs Jones only obtained access to the medication cupboard by influencing a junior member of staff into thinking that she was permitted to be there.

The panel considered honesty, trust and integrity to form parts of the bedrock of the nursing profession. The panel was of the view that in being dishonest, Mrs Jones had breached a fundamental tenet of the nursing profession, and that her actions had serious ramifications for those involved. It considered her to have brought the nursing profession into disrepute by behaving in the way that she did.

In stealing medication from the Hospital, Mrs Jones had exposed patients at the Hospital to a risk of significant harm, as they would have been deprived of the use of the medication she stole, had they needed it to assist them in addressing their health concerns. Mrs Jones had also taken the risk in supplying medication to family members who had not been prescribed the medication, which also had the risk of exposing them to a risk of significant harm.

In assessing Mrs Jones' level of insight, the panel had regard to her letter to the NMC dated 10 December 2018. It noted that Mrs Jones' has sparingly engaged with the NMC process, and this was her most detailed response to the concerns raised. It also had regard to Mrs Jones' responses at the time of the incident, as well as any responses made to North Wales Police.

The panel considered Mrs Jones to have demonstrated very limited insight into her caution and her misconduct. It was of the view that Mrs Jones had focused primarily on how her actions had impacted upon herself. Having previously stated that she wasn't looking to justify her actions, Mrs Jones sought to divert blame on to her employer, who she had stated had failed to support her, and that is why she acted in the way that she did. Mrs Jones did not appear to recognise how her actions have brought the nursing profession into disrepute, or understand how her actions could have had serious ramifications on patients at the Hospital, as well as her own family members.

In taking account of the above, the panel could not be satisfied that Mrs Jones has learnt a salutary lesson as a result of these proceedings, to convince it that she would not act in a similar way in future.

Whilst the panel noted that concerns relating to a registrant's professional conduct are often more difficult to remediate than clinical nursing concerns, it considered Mrs Jones' caution and misconduct to be possibly capable of remediation, albeit the concerns are extremely serious. However, the panel determined that no evidence had been provided to demonstrate that Mrs Jones had remediated any of the concerns identified, or that she was willing to do so.

[PRIVATE].

The panel had also not been provided with any recent testimonials in support of Mrs Jones.

In light of the above, the panel had no evidence before it to allay its concerns in relation to Mrs Jones. In the absence of any evidence to the contrary, the panel considered there to be a real risk of repetition of Mrs Jones' actions, and a consequential risk to patient safety.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 was of the view that a fully informed member of the public would be seriously concerned by Mrs Jones' actions in stealing medication from the Hospital, with the intention of supplying said medication to others. In the panel's judgment, public confidence in the nursing profession and in the NMC as regulator would be significantly undermined if a finding of impairment was not made. Therefore, the panel determined that a finding of impairment on public interest grounds was required.

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

Determination on sanction:

The panel has considered this case carefully and has decided to make a striking-off order. It directs the NMC registrar to strike Mrs Jones' name off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case.

The panel accepted the advice of the legal assessor.

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 Sanctions Guidance ("SG") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the following aggravating factors to be present in this case:

- Mrs Jones abused her position as a registered nurse and her actions were pre-meditated in that she attended a different ward from the one she was working on to obtain the key to the medication cupboard from a more junior colleague.

- Mrs Jones initially denied the allegations when she was arrested, but then she subsequently changed her account.
- Mrs Jones did not engage with the internal investigation into this matter, and she has only engaged with the NMC in a limited capacity.
- Mrs Jones' dishonest conduct was serious, occurred in the workplace, and had the potential to cause significant harm.
- Mrs Jones has only demonstrated limited insight into the concerns, and has not attempted to remediate her nursing practice.

The panel considered the following mitigating factors to be present in this case:

- Mrs Jones stealing the medication appears to be a one-off incident.
- [PRIVATE].

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 action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 was of the view that Mrs Jones' behaviour was not at the lower end of the spectrum of fitness to practise 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 a conditions of practice order on Mrs Jones' nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the caution and misconduct in this case. The panel noted that there were no identifiable areas of concern involving Mrs Jones' clinical nursing

practice which needed to be addressed. Mrs Jones' actions were deplorable, and conditional registration would not adequately reflect the seriousness of this case, having regard to Mrs Jones' misconduct and caution. The panel had serious concerns regarding Mrs Jones' attitude and conduct.

In any event, the panel determined that a conditions of practice order would not sufficiently protect the public, nor address the public interest considerations in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel considered Mrs Jones' caution and misconduct to be extremely serious. It had found her actions to have amounted to a significant departure from the standards expected of a registered nurse.

The panel noted that a registered nurse who has been found to have acted dishonestly always runs a risk of being removed from the NMC register. However, this risk is reduced should a registrant demonstrate a high level of insight, remorse, or remediation into their misconduct. None of these have been demonstrated by Mrs Jones despite ample opportunity to do so. The panel noted that there were serious breaches of multiple standards of the Code, a breach of a fundamental tenet of the nursing profession, and a breach of Mrs Jones' professional duty of candour in this case.

Taking account of the above, the panel determined that Mrs Jones' dishonest actions were not merely serious departures from the standards expected of a registered nurse and serious breaches of the fundamental professional tenets of probity and trustworthiness, they were fundamentally incompatible with Mrs Jones remaining on the NMC register. In the panel's judgment, to allow someone who had behaved in this seriously dishonest way to maintain her NMC registration would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Mrs Jones both professionally and personally, although it noted that there was some suggestion she did not intend to return to nursing at some point in the future.

However, the panel was satisfied that the need to protect the public and satisfy the public interest outweighs the impact on Mrs Jones in this regard.

Considering all of these factors, the panel determined that the appropriate and proportionate sanction is a striking-off order. Having regard to the matters it identified, in particular, the effect of Mrs Jones' actions in damaging public confidence in the nursing profession, the panel has concluded that nothing short of this would be sufficient in this case.

Determination on Interim Order

The panel accepted the advice of the legal assessor.

The panel considered the imposition of an interim order and determined that an interim order is necessary for the protection of the public and it is otherwise in the public interest.

The panel determined that an interim conditions of practice order was inappropriate given its earlier findings.

The panel was satisfied that an interim suspension order is necessary in the circumstances of this case. 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.