

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

**Substantive Order Review Hearing
Tuesday 8 November 2022**

Virtual Hearing

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| Name of registrant: | Jay Linus Fuentes |
| NMC PIN: | 18A01470 |
| Part(s) of the register: | Registered Nurse – Sub Part 1 Adult Nursing - January 2018 |
| Relevant Location: | Stockton-on-Tees |
| Type of case: | Lack of competence/Misconduct |
| Panel members: | Rachel Onikosi (Chair, lay member) Susan Jones (Registrant member) Janine Green (Lay member) |
| Legal Assessor: | Ben Stephenson |
| Hearings Coordinator: | Rene Aktar |
| Nursing and Midwifery Council: | Represented by Katherine Muir, Case Presenter |
| Mr Fuentes: | Present and unrepresented at the hearing |
| Order being reviewed: | Conditions of practice order (18 months) |
| Fitness to practise: | Impaired |
| Outcome: | Conditions of practice order (18 months) to come into effect on 8 December 2022 in accordance with Article 30 (1) |

Decision and reasons on review of the substantive order

The panel decided to vary the current conditions of practice order. This order will come into effect at the end of 8 December 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 3 months by a Fitness to Practise Committee panel on 8 March 2021. The order expired at the end of 9 June 2021. A conditions of practice order came into effect with accordance with Article 30(1).

The current order is due to expire at the end of 8 December 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse failed to demonstrate the standards of knowledge, skill and experience required to practise safely as a Band 5 nurse

1. *Whilst subject to an Action Plan between 11 April – 14 November 2018 (as updated in June 2018), you failed to demonstrate that you were competent in the following areas: **[PROVED IN ITS ENTIRETY BY ADMISSION]***
 - a. *preparation/ administration of medication*
 - b. *infection control*
 - c. *lack of leadership / ability to supervise*
 - d. *communication skills*
 - e. *patient admissions and discharges*
 - f. *provision of care to patients and treating patients with dignity*
 - g. *record keeping*
 - h. *time management and organisation*

- i. handovers
2. Between approximately February 2018 and November 2018 you failed to complete and/or pass your Preceptorship Programme. **[PROVED BY ADMISSION]**
 3. On 4 June 2018, you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**
 - a. failed to complete the discharge documentation including the Continuing Healthcare (CHC) documentation for Patient D
 - b. manually moved Patient T on your own, when the move required two members of staff to complete the task safely
 - c. inappropriately informed Patient J's family that Patient J would be "up and walking around in no time" or words to that effect, when Patient J was at high risk of falls and was for 'bed to chair transfers' only.
 4. On 6 June 2018, in respect of an unknown patient you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**
 - a. weighed the patient with the incorrect scale settings applied
 - b. failed to repeat the procedure and obtain the correct weight
 - c. asked a new nurse to step on the scales and worked out the difference between the nurse's weight and the patient's weight
 5. On 20 June 2018, when preparing Patient C for discharge, you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**
 - a. failed to ensure Patient C had blood tests
 - b. failed to fill out the nutritional and fluid balance sheet
 - c. failed to take action and/or escalate that Patient C had not passed urine for 6 hours
 - d. failed to administer IV fluids
 6. On 29 June 2018, following an unsuccessful attempt to insert a catheter into an unknown patient, you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**
 - a. attempted to re-insert the catheter a second time, when you ought to have obtained a new catheter

- b. failed to engage or communicate with the patient during the procedure
7. On an unknown date around July 2018, upon being instructed by Nurse HJ to prepare a trolley for an aseptic dressing technique you:
- a. grabbed the first available trolley without disinfecting the trolley
[PROVED]
 - b. upon being instructed to rub down/disinfect the trolley, you took an inordinate length of time to complete the task **[PROVED]**
 - c. required Nurse HJ to explain the process of the aseptic technique of the umbilical dressing **[PROVED BY ADMISSION]**
 - d. had to be reminded to dispose of the gauze after cleaning the wound
[PROVED BY ADMISSION]
 - e. had to be reminded to not repeatedly rub the wound clean. **[PROVED BY ADMISSION]**
8. On 30 August 2018, whilst assisting Patient U to the toilet, you walked in front of Patient U when you ought to have walked to the side of the patient and supported her **[PROVED BY ADMISSION]**
9. In August 2018, you failed to escalate to a doctor or senior nurse that Patient F had not passed urine for 8 hours **[PROVED BY ADMISSION]**
10. On 20 September 2018, whilst caring for an unknown patient whose intravenous cannula line had fallen out you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**
- a. attempted to re-connect the IV line which had become unsterile from contact with the bed
 - b. did not understand why your actions could put the patient at risk of infection
 - c. when questioned about your actions, you stated that you had panicked “because of all the blood” when there was no visible blood present
11. On 15 October 2018, you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**

- a. *prepared to administer Patient M a PRN laxative when her nursing records indicated that the patient was opening her bowels regularly over the last few days.*
 - b. *prepared to administer Patient N Digoxin when it was recorded in the nursing records/ prescription script that the patient's heartrate was within normal range*
 - c. *upon being informed by an unknown healthcare assistant (HCA) that Patient O had raised blood pressure, reduced blood oxygen saturations and a NEWS score of 2 you failed to:*
 - i) *take any action*
 - ii) *ensure the patient had a nasal cannula in situ*
 - d. *failed to wake an unknown patient to provide nursing care*
12. *On 16 October 2018, you lost your handover sheet in the canteen [PROVED BY ADMISSION]*
13. *On a number of unknown dates in 2018 you failed to complete the pre-operative theatre checklist for a number of unknown patients. [PROVED BY ADMISSION]*
14. *On a number of unknown dates in 2018, in respect of one or more unknown patients you: [PROVED IN ITS ENTIRETY BY ADMISSION]*
 - a. *failed to complete various risk assessments (including MUST assessments and SSKins pressure assessments)*
 - b. *failed to carry out observations and/or record NEWS scores*
 - c. *failed to fill out fluid balance charts*
15. *On a number of unknown dates in 2018, you failed to wake patients up to provide nursing care. [PROVED BY ADMISSION]*
16. *On a number of unknown dates in 2018, you inappropriately giggled in front of patients and their families. [PROVED BY ADMISSION]*

17. On a number of unknown dates in 2018, you failed to demonstrate competency in moving and handling patients and used prohibited techniques. **[PROVED BY ADMISSION]**

18. On an unknown shift in 2018: **[PROVED IN ITS ENTIRETY BY ADMISSION]**

- a. upon being informed by Nurse SF to administer medication to an unknown patient you failed to administer the medication
- b. incorrectly informed Nurse SF that you had asked Nurse RW to administer the medication when you had not done so.
- c. your actions as described at Charge 18b were dishonest in that you attempted to cover up that you did not administer medication to the patient.

19. On an unknown date in 2018, upon being informed that Colleague MW had hurt her leg you: **[PROVED IN ITS ENTIRETY BY ADMISSION]**

- a. gave her a commode and got her to sit down and spun her round on the commode in front of patients.

20. Whilst subject to a formal capability plan between August and September 2018 you failed to demonstrate competency in the following areas:

[PROVED IN ITS ENTIRETY BY ADMISSION]

- a. practice autonomously with legal and ethical professional competencies recognise and promote patient safety
- b. complete a medicines management course

AND in light of the above, your fitness to practise is impaired by reason of your lack of competence in respect to charges 1- 18(a), 19 and 20, and your misconduct in respect of charge 18(b) and (c).'

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

'The panel considered whether your fitness to practise remains impaired.

The panel first considered whether your fitness to practise remains impaired by way of your misconduct. The panel noted that you had developed insight into your past failings and notably in relation to your dishonesty. It took into account the testimonial from the lead nurse and your reflective pieces dated 7 June 2021. It noted that you demonstrated an understanding of how your actions put the patient at a risk of harm. Further, the panel noted that you were able to demonstrate an understanding of how your dishonesty impacted not only on your colleagues and patients, but how it impacted negatively on the reputation of the nursing profession.

When questioned about how you would handle the situation differently in the future, you were able to provide sufficient answers and you outlined how you would seek support and guidance from staff and undertake further training. The panel was of the view that you were able to recognise the impact of your dishonesty and it was satisfied that your fitness to practise is no longer impaired by way of your misconduct.

The panel then went on to consider whether your fitness to practise remains impaired as a result of your lack of competence. In its consideration of whether you have remedied your practice, the panel took into account your reflective pieces, your oral evidence and your admission of impairment in that you are not yet confident that you have the skills to practise as a band 5 nurse. The panel noted that you have not been able to practise as a registered nurse and have therefore been unable to address the clinical concerns identified. In light of this, this panel determined that you are still liable to repeat matters of the kind found proved. The panel therefore determined that your fitness to practise remains impaired as a result of your lack of competence and decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is not only to protect patients but also to meet the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel considered that a member of the public would be concerned to learn that a nurse who has not yet been able to address such wide-ranging and serious concerns was permitted to return to practise unrestricted. The

panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.'

The first 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 or to impose a caution order but concluded that this would be inappropriate in view of the seriousness of the case, and the public protection issues identified. As neither of these orders restricts your practice they 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 decided that it would be neither proportionate nor in the public interest to take no further action or to impose a caution order.

The panel considered making a conditions of practice order. Despite the seriousness of your case, there has been evidence produced to show that you have developed insight and provided evidence of remediation into your failings. You have indicated that you wish to return to nursing albeit by your own admission you are not fully confident and would need further support and training.

The panel was satisfied that, since you have remediated your dishonesty, it would now be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

'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 registered nurse any time you are working. Your supervision must consist of:*
 - Working at all times on the same shift as, but not always directly observed by, a more experienced registered nurse.*
 - Meeting with your line manager, mentor or supervisor (or their nominated deputy) fortnightly initially to for the first three months and then thereafter as often as required by your supervisor, but at least monthly, to discuss your clinical practice and performance and your progress towards achieving the aims set out in your PDP.*

- 2. You must work with your line manager, mentor, or supervisor (or their nominated deputy) to create a personal development plan (PDP). Your PDP must address the concerns identified in the substantive hearing as follows:*
 - a) Preparation/ administration of medication*
 - b) infection control*
 - c) lack of leadership / ability to supervise*
 - d) communication skills*
 - e) patient admissions and discharges*
 - f) provision of care to patients and treating patients with dignity*
 - g) record keeping*
 - h) time management and organisation*
 - i) handovers*

you must:

 - Send your case officer a copy of your PDP within three months from the start of this order.*

- *Send your case officer a report from your line manager, mentor or supervisor (or their nominated deputy) every six months during the period of the order and before any NMC review hearing or meeting. This report must show your progress towards achieving the aims set out in your PDP.*
3. *You must keep the NMC informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
 4. *You must keep the NMC informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
 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.*
 - d) *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
 - e) *Any current or future employer.*
 - f) *Any educational establishment.*

g) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 18 months.

The suspension order is reduced in length so that it will expire at the end of 9 June 2021 in accordance with Article 30(2) and (4). This conditions of practice order will come into effect on the expiry of the current suspension order at the end of 9 June 2021 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at the hearing and continued engagement with the NMC.*
- Commencement or completion of your employer's preceptorship programme.*
- Testimonials from a line manager, supervisor or others in relation to your practice.*
- A further reflective piece on your progress to date.*

This will be confirmed to you in writing.

That concludes this determination.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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 the on-table bundle. It has also taken account of the submissions made by you. Ms Muir provided the panel with the background facts of the case and directed the panel to the relevant pages in the NMC bundles.

Ms Muir submitted that you have been engaging with the conditions of practice order in place. She presented to the panel the on-table documents and reflective pieces given by you which demonstrated engagement with the conditions. Ms Muir submitted that the positive feedback in the PDP demonstrates some progress. She submitted that this demonstrates reflection, progress and developing insight into your past failings.

Ms Muir submitted that although there has been progress in your clinical practice, there is still room for you to continue to remediate and address your previous failings. She submitted that whilst you have continued to engage with the NMC and continue working within a healthcare capacity, an order still remains necessary to ensure that you are safe to practise moving forward.

Ms Muir submitted that the charges relate to a lack of competence, and that misconduct no longer applied. Ms Muir submitted that you would be assisted by more training shifts and shadowing work for additional support. Ms Muir submitted that there have been difficulties for you to undertake the training and extending the current order would give further time to complete the necessary training.

Ms Muir suggested that a future panel would be assisted by your attendance, engagement with the NMC, testimonials and a further reflective piece. Ms Muir invited the panel to continue the current conditions of practice order for a further 18 months on the grounds of public protection and the wider public interest.

The panel had regard to your oral evidence. You told the panel that you have shown engagement through your reflective pieces presented in the on-table bundle. You told the panel that you required more training and being under more supervision would be helpful for you to improve your practice.

You said that you agreed with extending the current conditions of practice order and that extending the order would be helpful with your training. You said that your leadership skills would be further improved by engagement with your colleagues and staff. You said that you would aim to engage yourself with the staff by spending more time with them.

You stated that you have been engaging with the order and have completed further online training to further improve. You said that you have learnt from the experiences and agree that there is a lot more to improve in terms of your competency.

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.

In reaching its decision, the panel recognised your engagement with the conditions and it also took into account the steps you have taken in relation to nursing which includes your reflective piece and updated PDP plan.

The panel noted that the last reviewing panel found that you have not sufficiently developed your level of insight. At this hearing the panel noted that you have shown some insight through your reflective pieces, PDP plans and your engagement with the NMC.

However, the panel considered that more reflection is required to demonstrate insight into the competencies, roles and responsibilities expected of a registered nurse.

The panel noted that you still require support to deliver the fundamental skills that are required of a qualified nurse and that you still need to demonstrate further significant progress in developing these skills and becoming an independent practitioner. It noted that your reflective piece focuses mainly on your ability to use an online record system and you have not yet demonstrated full competency in skills as outlined in Condition 2. The panel noted that in your reflective statement, you refer to working as a supernumerary nurse. The panel consider that as a qualified nurse, you should not be supernumerary but should be working as an independent practitioner. This raises further concerns about your insight and understanding of the role of a registered nurse.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

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 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 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 case was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that there has been limited progress in your practice so far and any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to impose varied conditions which would address the failings highlighted in this case.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to vary the conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 8 December 2022. It decided to vary 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 confine yourself to one employer which must not be an agency.
2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:
 - Working at all times in a non-supernumerary capacity on the same shift as your line manager;
 - If you do work in a supernumerary capacity, those tasks carried out in that capacity would not form part of the assessment for your PDP;
 - Meeting with your line manager, mentor or supervisor (or their nominated deputy) at least monthly, to discuss your clinical practice and performance and your progress towards achieving the aims set out in your PDP.
3. You must work with your line manager, mentor, or supervisor (or their nominated deputy) to create a personal development plan (PDP). Your PDP must address the concerns identified in the substantive hearing as follows:
 - a) Preparation/ administration of medication
 - b) Infection prevention and control
 - c) Lack of leadership/ability to supervise
 - d) Communication skills

- e) Patient admissions and discharges
- f) Provision of care to patients and treating patients with dignity
- g) Record keeping
- h) Time management and organisation
- i) Handovers

4. You must:

- Send your case officer a copy of your PDP within three months from the start of this order.
- Send your case officer a report from your line manager, mentor or supervisor (or their nominated deputy) every six months during the period of the order and before any NMC review hearing or meeting. This report must show your progress towards achieving the aims set out in your PDP.

5. You must keep the NMC informed about anywhere you are working by:

- a. Telling your case officer within seven days of accepting or leaving any employment.
- b. Giving your case officer your employer's contact details.

6. You must keep the NMC informed about anywhere you are studying by:

- a. Telling your case officer within seven days of accepting any course of study.
- b. Giving your case officer the name and contact details of the organisation offering that course of study.

7. You must immediately give a copy of these conditions to:

- a. Any organisation or person you work for.
- b. Any employers you apply to for work (at the time of application).
- c. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

8. You must tell your case officer, within seven days of your becoming aware of:

- a. Any clinical incident you are involved in.
- b. Any investigation started against you.
- c. Any disciplinary proceedings taken against you.

9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a. Any current or future employer.
 - b. Any educational establishment.

Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 8 December 2022 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at a future review hearing
- Testimonials from your current employer
- A further reflective piece on your progress to date which references all of the concerns identified in Condition 3.

This will be confirmed to you in writing.

That concludes this determination.