

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

**Substantive Order Review Hearing
Monday 13 November 2023**

Virtual Hearing

Name of Registrant: Robert Smith

NMC PIN 12G2617E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing – (September 2012)

Relevant Location: Hampshire

Type of case: Misconduct and Lack of competence

Panel members: Susan Ball (Chair, Registrant member)
Pauline Esson (Registrant member)
Bill Matthews (Lay member)

Legal Assessor: Juliet Gibbon

Hearings Coordinator: Charis Benefo

Nursing and Midwifery Council: Represented by Margaret Morrissey, Case Presenter

Mr Smith: Not present and unrepresented at the hearing

Order being reviewed: Conditions of practice order (24 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order extended by a period of 12 months to come into effect at the end of 23 December 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Smith was not in attendance and that the Notice of Hearing had been sent to Mr Smith's registered email address by secure email on 3 October 2023.

Further, the panel noted that the Notice of Hearing was also sent to Mr Smith's representative at the Royal College of Nursing (RCN) on 3 October 2023.

Ms Morrissey, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually. This included instructions on how to join and, amongst other things, information about Mr Smith's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Smith has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Smith

The panel next considered whether it should proceed in the absence of Mr Smith. The panel had regard to Rule 21 and heard the submissions of Ms Morrissey who invited the panel to continue in the absence of Mr Smith.

Ms Morrissey referred the panel to the email from Mr Smith's representative dated 9 November 2023 which stated:

'We will not be attending the hearing on Monday as there is unfortunately, no argument we can put for the conditions to be downgraded in light of the fact that Mr Smith is not currently working as a nurse...'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Smith. In reaching this decision, the panel has considered the submissions of Ms Morrissey, the representations from Mr Smith's representative on his behalf, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Smith;
- Mr Smith has informed the NMC via his representative that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the substantive order.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Smith.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for a period of 12 months.

This order will come into effect at the end of 23 December 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 24 months by a Fitness to Practise Committee panel on 24 November 2021.

The current order is due to expire at the end of 23 December 2023.

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:

- 1. On 7 January 2019, while employed at Nelson House Hospital, administered an excessive amount of Haloperidol to Patient E*
- 2. On 21 January 2019, while employed at Nelson House Hospital, administered 1mg of Clonazepam to Patient G, contrary to Patient G's prescription*
- 3. ...*

Between 9 February 2019 and 26 March 2019 whilst employed at Nelson House Hospital and subject to a Performance Improvement Plan, you

- 4. On 11 February 2019, in relation to Patient F, were unable to recall how much Sodium Valproate and/or Clozapine you had administered to Patient F*
- 5. On 19 February 2019, did not know the MAR Chart endorsement codes applicable when medication was not administered to patients*
- 6. On 19 February 2019, omitted to administer Depakote to Patient I*
- 7. On 19 February 2019, mistook Patient I's medication chart for Patient E's medication chart*
- 8. On 19 February 2019, omitted to record on Patient I's medication chart that Patient I had refused medication*

9. *On 19 February 2019, omitted to administer Amisulpride to Patient P*
10. *On 21 February 2019, administered one Vitamin B tablet to Patient J, contrary to Patient J's prescription*
11. *On 21 February 2019, omitted to administer Diazepam to Patient K*
12. *On 21 February 2019, omitted to administer Lamotrigine to Patient K*
13. *On 21 February 2019, signed off MAR Charts for individual patients retrospectively at the end of the medication round*
14. *On 26 February 2019, attempted to administer 3mg of Diazepam to Patient K, contrary to Patient K's prescription*
15. *On 9 March 2019, calculated an incorrect dose of Clozapine for Patient E*
16. *On 9 March 2019, attempted to dispense Depakote instead of Sodium Valproate to Patient N, contrary to Patient N's prescription*
17. *On 12 March 2019, calculated a dose of Sodium Valproate for Patient N that was contrary to Patient N's prescription*
18. *On 12 March 2019, attempted to administer 7.5 mg of Senna tablets to Patient J contrary to Patient J's prescription*
19. *On 12 March 2019, were unable to locate prescription details on Patient O's MAR Chart*
20. *On 16 March 2019,*
 - a. *omitted to offer medication to Patient Q; and*
 - b. *recorded a refusal on Patient Q's medication chart.*

21....

22. *On 16 March 2019 were unable to calculate what form of Clozapine to administer in respect of Patient I*

23. *On 16 March 2019, were unable to calculate the correct amount of Co-Amoxicillin to be administered to Patient I*

In or around April 2019, while employed at Beechcroft Manor Residential Home, you

24....

25....

26. *failed to carry out regular clinical observations of Patient D and/or failed to record regular clinical observations of Patient D*

27....

AND in light of the above, your fitness to practise is impaired by reason of your lack of competence in respect of charges 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20a, 20b, 22 and 23 and by your misconduct in respect of charges ..., 13, 20b, ..., 26 ...'

The original panel determined the following with regard to impairment:

'The panel found that as a result of the failings in your practice, patients were put at an unwarranted risk of serious harm. The panel also found that your actions and/or omissions breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel therefore determined that the first three limbs of the Grant test were engaged in this case.

In consideration of whether you have remedied your practice, the panel had regard to Cohen v GMC [2007] in which the Court set out three matters which are determinative of current impairment:

- '(a) Whether the conduct that led to the charge(s) is easily remediable?*
- (b) Whether it has been remedied?*
- (c) Whether it is highly unlikely to be repeated?'*

The panel carefully considered your evidence, your written reflective piece, and your training certificates.

The panel considered that your misconduct and lack of competence are capable of remediation. However, the panel was of the view that you have not fully remedied your practice and that there remains a risk of harm if you were to practise unrestricted. Whilst you have developed some insight, such as that demonstrated through your reflective statement, this is limited in some respects. You accept your lack of competence and have good insight into how your [PRIVATE] and personal circumstances impacted on your practice at the time of the allegations. However, the panel considered that you had not been able to explain fully how you would approach a medication round in the future so as to avoid the type of errors you have previously made. This was partly because the coping mechanisms that you have worked on have never been tested in practice as you have not worked in a nursing or care role since 2019.

The panel therefore determined that there was not sufficient evidence before it to be satisfied that if you were faced with similar circumstances in the future, that you would act differently.

The panel considered your training certificates and agreed that these demonstrate that you have completed some relevant training in areas of your practice that have caused concern. However, the panel was of the view that these were insufficient on their own to demonstrate that you are ready to return to unrestricted practice.

The panel concluded that there remains a risk of repetition and that a finding of impairment is therefore necessary on the grounds of public protection.

The panel determined that a finding of impairment on public interest grounds is also required. It considered that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel bore in mind that any conditions imposed must be relevant, proportionate, workable and measurable. The panel took into account the SG, which sets out a list of factors apparent where a conditions of practice order is appropriate. It decided that the following factors are relevant in this case:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force;*
and
- Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and workable conditions which would address the failings highlighted in this case, as well as sufficiently protect the public. Having regard to the fact that you have already undergone some training and have provided a reflective statement, the panel considered that you would be willing to comply with conditions of practice. Balancing all

of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order would be disproportionate and would not be a reasonable response. The panel noted that this is, for the most part, a lack of competence case, and therefore permitting you to return to practice with restriction would be the most appropriate course of action. The misconduct charge found proved related to a specific area of practice that could also be addressed through a conditions of practice order.

It was the view of the panel that a conditions of practice order would be sufficient to protect the public and satisfy the public interest. It considered that a conditions of practice order would mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

In formulating the below conditions of practice, the panel bore in mind that the conditions should be no more restrictive than necessary to protect the public and uphold confidence in the nursing profession.

The panel determined that the following conditions are appropriate and proportionate:

'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 directly supervised by another registered nurse at any time you are managing, administering or recording medication.*

2. *You must ensure that you are working on the same shift as, but not necessarily directly observed by, another registered nurse at all times.*
3. *You will send your case officer evidence that you have successfully completed 20 supervised medicine rounds of which a minimum of five must have been supervised by a nurse of band 6 or above.*
4. *You must work with your line manager to create a personal development plan (PDP). Your PDP must address the concerns about medication management in terms of the 'Seven Rs' identified in your reflective statement (right patient, right medication, right dose, right route, right time, right reason and right documentation). You must:*
 - *Send your case officer a copy of your PDP within six weeks of starting employment as a registered nurse*
 - *Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.*
 - *Send your case officer a report from line manager before any review hearing. 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 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*
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.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions'.*

Decision and reasons on current impairment

The panel considered carefully whether Mr Smith's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. Whilst it noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel had regard to all of the documentation before it, including the NMC bundle and the documentation from Mr Smith's representative on his behalf.

The panel took into account the submissions made by Ms Morrissey on behalf of the NMC. She provided a background to the case and submitted that Mr Smith has not had an opportunity to demonstrate that he can practise safely, kindly and professionally as he has not been able to work as a registered nurse for the past two years and comply with the conditions of practice.

Ms Morrissey referred the panel to Mr Smith's 2023 reflection and training certificates dated between April and October 2023. She submitted that in fairness to Mr Smith, he has been trying to keep his practice up to date. In relation to Mr Smith's reflection, however, she submitted that most of it amounted to a repetition of his research into the NMC Code and various other nursing practices. She submitted that there was not really any further insight into the situation Mr Smith found himself in at the beginning of the process. Ms Morrissey submitted that given Mr Smith has not remediated his practice to the extent that was envisaged, an extension of the conditions of practice order might be appropriate in these circumstances.

Ms Morrissey submitted that the period of the conditions of practice order would be matter for the panel to determine.

The panel also had regard to the email from Mr Smith's representative at the RCN dated 9 November 2023 which stated:

'I attach a medicines management course certificate that Mr Smith attended this summer. Mr Smith has done his level best to secure work which will allow him to complete the tasks set by the Substantive Order but has not been successful so far. We will not be attending the hearing on Monday as there is unfortunately, no argument we can put for the conditions to be downgraded in light of the fact that Mr Smith is not currently working as a nurse. However, please convey to the panel that Mr Smith is engaged and keen to get back into nursing and prove himself fit to practice...'

The panel had sight of Mr Smith's documentation, comprising of:

- A TQUK Level 2 Certificate in Understanding Children and Young People's Mental Health (RQF) dated 21 April 2023, and a corresponding Unit Transcript
- A CPD Certified Certificate of Completion for '*Safeguarding in Education*' dated 21 May 2023
- An NCFE Cache Level 2 Certificate in Understanding Dignity and Safeguarding in Adult Health and Social Care dated 10 October 2023, and a corresponding Credit and Unit Summary
- A CPD Certified Certificate of Completion for '*Medicines Management for Nurses and AHPs - Level 3*' dated 21 July 2023
- Mr Smith's 2023 reflection

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 Mr Smith's fitness to practise remains impaired.

The panel noted that the original panel found that Mr Smith had developing insight. At this hearing, the panel was not satisfied that Mr Smith's insight had developed sufficiently. It noted that Mr Smith's 2023 reflection provided some insight but it made very limited references to his learning from the training courses. However, the panel considered that

he had not provided any substantive reflection on the impact of his learning on his individual practice, or what he has done or would do to prevent such instances from taking place in the future.

In its consideration of whether Mr Smith has taken steps to strengthen his practice, the panel took into account the additional relevant training Mr Smith has undertaken in various areas of practice, including medicines management. However, it noted that he has not been able to practise as a registered nurse under the conditions of practice order since its imposition in November 2021.

The original panel determined that Mr Smith was liable to repeat matters of the kind found proved. Today's panel had received training certificates and an updated reflection. However, it was not satisfied that Mr Smith's insight has developed sufficiently, nor has he been able to strengthen his practice in the areas of concern. The panel had no information before it to suggest that the risk of repetition had decreased. In light of this, this panel determined that there remains a risk of repetition and it was not satisfied that Mr Smith can currently practise kindly, safely and professionally. The panel therefore 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 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 Mr Smith's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Smith's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Smith'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 Smith's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether extending the current conditions of practice on Mr Smith's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that the conditions of practice as currently formulated continue to address the failings highlighted in this case. The panel accepted that Mr Smith has been unable to comply with conditions of practice order due to his inability to secure a nursing role, but he is engaging with the NMC and is willing to comply with any conditions imposed.

The panel was of the view that extending the current conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and no deep seated attitudinal problems. In this case, there are conditions which would protect patients during the period they are in force. The panel was satisfied that a further period with conditions would provide Mr Smith the opportunity to secure employment, comply with the conditions and address the concerns with his practice.

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 Mr Smith's case because his failings are remediable and he has demonstrated a willingness to return to safe, kind and professional practice without restriction. The panel determined a suspension order would be unduly punitive and would not allow Mr Smith the opportunity to secure employment and strengthen his practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the current conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 23 December 2023. It decided that the following conditions remained appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must ensure that you are directly supervised by another registered nurse at any time you are managing, administering or recording medication.
2. You must ensure that you are working on the same shift as, but not necessarily directly observed by, another registered nurse at all times.
3. You will send your case officer evidence that you have successfully completed 20 supervised medicine rounds of which a minimum of five must have been supervised by a nurse of band 6 or above.
4. You must work with your line manager to create a personal development plan (PDP). Your PDP must address the concerns about medication management in terms of the 'Seven Rs' identified in your reflective statement (right patient, right medication, right dose, right route, right time, right reason and right documentation). You must:

- Send your case officer a copy of your PDP within six weeks of starting employment as a registered nurse
 - Meet with your line manager at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.
 - Send your case officer a report from line manager before any review hearing. 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 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

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

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 23 December 2023 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 Mr Smith has complied with the order. At the review hearing the panel may allow the order to lapse upon expiry, it may further extend the order or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Evidence of any formal structured training in regard to medicines management, administration and record keeping
- An updated reflective piece which addresses the areas of concern identified within Mr Smith's PDP, and addresses how he would strengthen his practice and prevent any future occurrences in relation to the highlighted areas of concern

- Testimonials and references from any employer, but particularly in a care setting
- Mr Smith's continued engagement with the NMC, including his attendance at the next review hearing

This will be confirmed to Mr Smith in writing.

That concludes this determination.