

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

**Substantive Order Review Hearing
Monday, 2 October 2023**

Virtual Hearing

Name of Registrant: Michael Anthony Caffrey

NMC PIN: 87A0376E

Part(s) of the register: Registered Mental Health Nurse
RN4: April 1991,
RN3: January 199

Relevant Location: Trafford

Type of case: Misconduct/Lack of competence

Panel members: Rachel Ellis (Chair, Lay member)
Richard Lyne (Registrant member)
Marcia Smikle (Registrant member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Hamizah Sukiman

Nursing and Midwifery Council: Represented by Louisa Simpson, Case Presenter

Mr Caffrey: Present and represented by Chris Hamlet, instructed by
Thompsons Solicitors

Order being reviewed: Conditions of practice order (9 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect at the end of 7 November 2023 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 7 November 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 9 months by a Fitness to Practise Committee panel on 12 October 2022. This was reviewed on 8 February 2023 and the panel decided to extend and vary the substantive conditions of practice order by 9 months.

The current order is due to expire at the end of 7 November 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 at Deepdene Care Home between April 2019 and July 2019:

1. *Failed to manage and / or administer resident medications safely in that you;*
 - a) *Administered medication to Resident A without checking the EMAR (Electronic Medication Administration Record) to ensure the correct dose and / or that the medication continued to be prescribed;*
 - b) *Failed to administer medications at the time prescribed to one or more of the residents at Schedule 1, despite clear instruction to do so;*
 - i. *Schedule 1:*
 1. *Resident A*
 2. *Resident B*
 3. *Resident C*

4. Resident D
5. Resident E
6. Resident F
7. Resident G
8. Resident H

c) *Conducted secondary dispensing of medication in the absence of Resident A leaving the dispensed medication in a cupboard with the potential to put Resident A at risk.*

2. *Failed to follow reasonable management instructions;*

- a) *Failed to update and evaluate resident care plans despite express instruction to do so during supervision;*
- b) *Failed to conduct supervision of allocated key workers;*
- c) *Failed to take up mandatory and other training when expressly told to do so;*
- d) *Failed to achieve a satisfactory level of competence in the safe administration and management of medications despite more than one attempt;*
- e) *Failed to take a nursing handover despite being the only registered nurse coming on duty leaving the facility without a qualified nurse and reducing the staffing compliment during your absence;*
- f) *Failed to give a sufficient level of detail when giving handover to staff and thereafter on the completed handover sheet, in particular, failing to notify of the potential risk posed by Resident I arising from his behaviours with the potential to put residents and/or staff at risk.*

3. *Knowingly administered medications to residents when you were expressly restricted from doing so independently until assessed safe to do so.*

And, in light of the above your fitness to practise is impaired by reason of your misconduct at charges 1, 2 and 3 above and/or by reason of your lack of competence at charge 2d above.'

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

'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.

The panel noted that at this hearing you still admit to the allegations made and have evidently complied with some of the conditions of practice that are in place as you have notified the NMC about your changes to employment. However, the panel noted that you have not placed any evidence before this panel to demonstrate progress with regards to insight surrounding your misconduct, strengthening of your practice or competence.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account that you have not provided the NMC any additional relevant training that you may have undertaken, nor have you provided evidence of a Personal Development Plan. Whilst accepting that this is an early review and accepting that you have had limited time to provide these, it is nevertheless the case that the panel had no evidence to show that the areas of concern are being addressed. The original panel determined that you were liable to repeat matters of the kind found proved. In light of this, this panel determined that you remain liable to repeat matters of the kind found proved. 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 your fitness to practise remains impaired.'

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

'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 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 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 imposing a varied conditions of practice order on your 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 it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted the submission from Ms Wisniewska and Mr Hamlet regarding the workability of some of the conditions. It determined that you have been unable to comply with the conditions of practice due to your current employment status but have noted that you are engaging with the NMC and are willing to comply with any conditions imposed.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest and that 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 because you have not yet had a fair opportunity to comply with the conditions of practice order in order to show that you are strengthening your practise.'

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, as well as submissions made by Ms Simpson on behalf of the NMC and Mr Hamlet on your behalf.

Ms Simpson first outlined the background of the matter and drew the panel's attention to your limited insight shown at the last review, and that the last panel recommended that a future panel would be assisted by a reflective piece demonstrating insight and remediation. She submitted that you have not submitted this or any other evidence to show that you have addressed the concerns. She submitted that the circumstances have not changed from the last review.

Mr Hamlet first outlined new information surrounding your circumstances since the last hearing. He submitted that you have not been able to secure any work. He submitted that you described a repeated pattern of approaching prospective employers, disclosing the conditions of practice imposed upon you, and being told, in effect, that the prospective employer is unable to work with the requirements imposed. Mr Hamlet submitted that this was particularly with regard to the requirement of direct supervision.

Mr Hamlet further submitted that there has been no new suggestion which would imply that your fitness to practise was not impaired. He drew the panel's attention to the concerns being over four years old and being isolated errors in an otherwise unblemished

25-year career. He further submitted that the concerns emerged over a three to four month period within specific circumstances at your workplace. He submitted that you are unable, rather than unwilling, to address the areas of concern.

Mr Hamlet further submitted that you have not produced a reflective piece as you are feeling dejected in the scenario you find yourself in. He accepted that you could have produced a reflective piece but submitted that it would be difficult to produce a piece which can only focus on your inability to progress in the areas of concern.

Mr Hamlet further submitted that you are willing and enthusiastic to address the concerns. However, he submitted that you are unable to address them unless you obtain employment, which you are unable to do as a result of the conditions imposed upon you. He invited the panel to allow for this order to lapse. He submitted that the best case for this matter is for you to start again and apply for a readmission onto the NMC register after this order lapses. He submitted that this would subject you to the necessary return to work training and requirements, which would sufficiently protect the public.

In response to questions asked by the panel regarding the mechanism being available for registrants who do not wish to continue practising, Mr Hamlet also submitted that the guidance surrounding this mechanism could apply in circumstances whereby the registrants cannot comply with the conditions, such as this matter.

Mr Hamlet submitted that, if the panel were not minded to do this, then a variation of the current conditions of practice order would be the most appropriate sanction. He invited the panel to impose an indirect supervision requirement as opposed to a direct supervision requirement. He submitted that the direct supervision requirement has, thus far, been off-putting to prospective employers, and this variation may assist you in gaining employment.

The panel invited Ms Simpson to reply. She submitted that you accept that your fitness to practise remains impaired, and there is no evidence to suggest that your fitness to practise is not impaired. She further submitted that the proposal to allow the order to lapse in order for you to return to nursing through readmission is not appropriate for this case. She submitted that the NMC guidelines indicate that the outcome is only appropriate when the registrant has indicated they do not wish to return to nursing, which you have not done.

She submitted that this forum is the appropriate means of considering the issues surrounding your practice. She also submitted that it is arguably more difficult for you to be readmitted onto the NMC register after a finding of impairment as you would need to demonstrate a strengthening of practice. She submitted that, without your PIN, you would not be able to work as a registered nurse and would find it difficult to prove this.

Ms Simpson further submitted that the allegation that condition 3 is too onerous and preventing you from working is not supported by evidence. She submitted that the panel cannot be sure if this was the given reason by prospective employers, or if it is assumed to be the reason. She also submitted that the panel does not have information as to how many jobs you applied for, and what the exact difficulties surrounding securing those jobs are.

Ms Simpson also submitted that you could have provided the panel with evidence of insight and strengthening of your practice irrespective of your current unemployment. She submitted that there is no evidence as to whether you have been working in a non-registered healthcare setting, or whether you have done any retraining. She submitted that it is insufficient for Mr Hamlet, on your behalf, to submit that one condition is too onerous but also not submit any documentation asked of you from the last review.

Ms Simpson also submitted that the age of the concerns does not negate its risks, given the lack of evidence of insight or strengthening practice. She further submitted that the repeated issues in relation to multiple patients despite clear instructions, supervision and other support from your employer demonstrates a necessity to have the condition for direct supervision in order to sufficiently address the public protection concern. She submitted that, given you are engaging with the NMC, a conditions of practice order remains the most appropriate sanction. She further submitted that, if the panel believes this condition to be unworkable but simultaneously believe that the public are not suitably protected by a lesser supervision requirement, it can consider a suspension order.

Mr Hamlet submitted that if conditions of practice, in principle, remain appropriate in the panel's judgment and are workable as a whole, it would not be appropriate to upgrade purely because one condition has proven difficult. He further submitted that if the direct

supervision requirement cannot be relaxed, then the proper step would be to not amend the conditions of practice order rather than replace it with a suspension order.

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.

The panel noted that the last reviewing panel found that you showed some insight as you still admitted to the allegations made and have complied with the conditions of practice that were in place by informing the NMC about changes to your employment. However, the last reviewing panel also noted that, when questioned during the course of that hearing about how you would handle the situation differently in the future, you were not able to provide sufficiently detailed answers.

The last reviewing panel determined that you remained liable to repeat matters of the kind found proved. Today's panel determined they have not received any new information which demonstrates insight or remediation from you. The panel accepted that a Personal Development Plan (PDP) would prove difficult to produce given your lack of employment. The panel considered that you have not provided a reflective piece detailing any insight or contextual information surrounding the regulatory concerns. The panel also determined that you have not shown any evidence of strengthening your practice which you could have undertaken despite your lack of employment, such as retraining.

In light of this, this panel determined that you remain liable to repeat matters of the kind found proved. The panel concluded that the concerns remain and are heightened given the time you have been out of nursing practice for. 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 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 Mr Hamlet's submission to allow this order to lapse, in accordance with Article 30(1) with a finding of impairment. The panel accepted the advice of the legal assessor on this point and determined that this mechanism is applicable to circumstances in which a registrant expresses a desire to not return to practice. The panel concluded that the mechanism of allowing an order to lapse is not appropriate in this matter, given your expressed desire to return to practice.

The panel then 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 as well as public interest concerns 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 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 imposing a varied conditions of practice order on your 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 it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel noted Mr Hamlet's submission that some conditions in your current conditions of practice order may have prevented you from obtaining employment as a registered nurse. The panel varied the conditions of practice order based on the limited information before it. The panel also considered your continued engagement with the NMC, as well as your desire to return to your nursing practice.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting as the previous panels noted that there was no evidence of no deep-seated attitudinal problems. The panel concluded there are conditions which could be formulated which would address the concerns 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 as you continue to engage with the NMC and have expressed a desire to return to your nursing practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the 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 7 November 2023.

It decided to vary and extend 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 ensure that you are supervised by another 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 registered nurse.
2. You must not administer medication unless directly supervised by another registered nurse (except in life threatening emergencies) until you are deemed competent to do so by your supervisor.
3. You must work with your line manager, mentor, or supervisor (or their nominated deputy) to create a Personal Development Plan designed to address the concerns about the following areas of your practice:
 - a) Timeliness of medication administration.
 - b) Handovers to ensure relevant risks are shared appropriately with other members of staff.
 - c) Evaluation and maintenance of up-to-date care plans.
4. You must meet with your line manager, mentor, or supervisor (or their nominated deputy) monthly to discuss your clinical case load, the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan.
5. You must send a copy of your Personal Development Plan and a report from your line manager, mentor, or supervisor (or their nominated deputy) setting out the standard of your performance before any NMC review hearing or meeting with particular reference to:
 - a) Timeliness of medication administration.
 - b) Handovers to ensure relevant risks are shared appropriately with other members of staff.

- c) Evaluation and maintenance of up-to-date care plans.
6. You must keep us 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.
7. You must keep us 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.
8. 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.
9. 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.

10. 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. The panel was of the view that this would give you sufficient time to find a nursing role and demonstrate that you have strengthened your practice in the areas of concern.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 7 November 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 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:

- A reflective piece detailing your insight into the concerns identified by this panel, what you would do differently if the issues arose again and your coping strategies in relation to dealing with any future feelings of lack of support or isolation.
- If you fail to secure employment, this reflective piece should also detail information regarding efforts made by you in relation to obtaining employment as a registered nurse.
- Testimonials from colleagues that detail your current work practices in a healthcare setting.

This will be confirmed to you in writing.

That concludes this determination.