

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

**Substantive Order Review Hearing
Friday 1 September 2023**

Virtual Hearing

Name of registrant:	Ruth Alison Patton
NMC PIN:	11A0091E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing - January 2011
Area of registered address:	Merseyside
Type of case:	Misconduct
Panel members:	Shaun Donnellan (Chair, Lay member) Donna Mary Hart (Registrant member) Clare Taggart (Lay member)
Legal Assessor:	Michael Levy
Hearings Coordinator:	Petra Bernard
Nursing and Midwifery Council:	Represented by Oliver Kelham (of Counsel), Case Presenter
Mrs Patton:	Not present and not represented
Order being reviewed:	Conditions of practice order (18 months)
Fitness to practise:	Impaired
Outcome:	Suspension order (12 months) to come into effect on 12 October 2023, in accordance with Article 30(1)

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Kelham made a request that this case be held wholly in private on the basis that proper exploration of Mrs Patton's case involves [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be significant reference to [PRIVATE], the panel determined to hold the entirety of the hearing in private in order to preserve her right to privacy and confidentiality.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Patton was not in attendance and that the Notice of Hearing had been sent to Mrs Patton's registered email address on 3 August 2023.

Mr Kelham, 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 who referred the panel to the legal authorities of *R v Jones [2002] UKHL 5* and *GMC v Adeogba [2016] EWCA Civ 162*.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mrs Patton's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Patton 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 Mrs Patton

The panel next considered whether it should proceed in the absence of Mrs Patton. The panel had regard to Rule 21 and heard the submissions of Mr Kelham who invited the panel to continue in the absence of Mrs Patton. He submitted that Mrs Patton had voluntarily absented herself.

Mr Kelham referred the panel to the documentation received from Mrs Patton which included an email dated 30 August 2023, which states:

'I will be unable to attend the hearing tomorrow, 1st September 2023, [PRIVATE]

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Patton. In reaching this decision, the panel has considered the submissions of Mr Kelham, the written representations from Mrs Patton, 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 Mrs Patton;
- Given Mrs Patton's written representation to the NMC, she appears to be expecting the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Patton.

If, once the panel has heard submissions from Mr Kelham, the panel alters the order in this case, the matter will be listed for an early review in order that Mrs Patton and/or her representative can attend.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order

This order will come into effect at the end of 12 October 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the eighth review of a substantive conditions of practice order originally imposed for a period of 12 months by a panel of the Conduct and Competence Committee on 9 September 2015. This order was reviewed on 1 September 2016 and extended for a further six months. The order was reviewed again on 28 February 2017 whereupon it was replaced by a 12 month suspension order. On 26 February 2018 the third reviewing panel decided to replace the suspension order with a conditions of practice order for a period of 18 months. On 3 September 2019 the fourth reviewing panel decided to replace the conditions of practice order with a suspension order for a period of 12 months. The fifth reviewing panel on 10 September 2020 decided to extend the suspension order for a further period of 12 months. The sixth reviewing panel on 2 September 2021 decided to extend the suspension order for a further period of 12 months. This case was last reviewed 4 March 2022 when the suspension order was replaced with a conditions of practice order for a period of 18 months

The current order is due to expire at the end of 12 October 2023.

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

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

'That you, whilst employed as a registered nurse at Benham Care Home, Bromborough, The Wirral ('the Home'):

1. *On 14 July 2013:*
 - a) *Administered one Oxycodone MR 10mg tablet to Patient A at 22:00, when the prescribed dose was two Oxycodone MR 10mg tablets (20mg).*
 - b) *Recorded in Patient A's Medication Administration Record that you had administered two Oxycodone MR 10mg tablets at 22:00 when you had administered one.*
2. *On 14 July 2013, gave Patient A Oxycodone at 22:00 despite his previous dose having been administered by Colleague A at 16:45;*
3. *On one or more occasions between 11 July 2013 and 15 July 2013, you administered 7.5mg of Oxynorm liquid to Patient A without recording in Patient A's notes your reasons for doing so;*

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

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

'The panel considered whether your fitness to practise remains impaired and in reaching its decision noted the decision of the last reviewing panel. At this hearing the panel took into account your engagement and attendance at this hearing, as well as your oral evidence under affirmation. The panel was of the view that you had now demonstrated an understanding of why what you did was wrong and that you have taken full responsibility for your failures in the past.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the new information before it, which included your detailed reflective piece, the positive character reference from a past colleague and information on the courses that you have enrolled on and the efforts you have made to maintain your nursing practice. The panel noted that you have clearly demonstrated an ambition to continue with your career in nursing.

The panel noted that you have been out of nursing practice for a significant period of time and would need to undertake a return to practice course, which you have acknowledged and are willing to do. In light of this, 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 previous 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 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 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 considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, there has been evidence produced, as seen in your reflective piece, to show that you have developed very good insight, have demonstrated remorse and have provided evidence of the steps you have taken to strengthen your practice. The panel also considered that as you have not been able to work, you have not been able to demonstrate remediation of your actions. You have indicated that you wish to return to nursing.

The panel was satisfied that it would 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.’

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Patton’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 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 written representations from Mrs Patton. It has taken account of the submissions made by Mr Kelham on behalf of the NMC.

Mr Kelham provided the panel with a background to the case and referred it to the decisions of previous reviewing panels. Mr Kelham referred the panel to the documents before it today. He submitted Mrs Patton appears to have had no opportunity to strengthen her practice or ameliorate the concerns identified. He also submitted that there is nothing before the panel today to show any evidence of insight by Mrs Patton since the order was imposed on 9 September 2015.

Mr Kelham referred the panel to the on-tables provided by Mrs Patton, which includes an email dated 31 August 2023, which states:

'I would like to request that the panel consider extending the current order, as I am aiming to return to practice when things have [PRIVATE] I will be able to focus my attentions on returning to nursing'

Mr Kelham submitted that it is apparent that Mrs Patton has been out of work for a significant period of time and whilst it is her ambition to return to practice as a nurse, she has not been able to demonstrate any remediation. Mr Kelham submitted that there have been repeated hearings switching between suspension orders and conditions of practice orders. He further submitted that there is the matter of [PRIVATE] and, whilst it is not a matter for this panel, if the Order was to lapse, it is not clear what would happen to her Personal Identification Number (PIN) in those circumstances.

Mr Kelham referred the panel again to the email from Mrs Patton dated 31 August 2023.

He submitted that it could be read that there may be acceptance by Mrs Patton or an inference that her fitness to practise continues to be impaired. However, it is a matter for the panel.

Mr Kelham submitted that the panel would consider whether, in order to protect the public and to declare and uphold proper standards of conduct and performance and to maintain public confidence in the profession and in the NMC as its regulator and to uphold proper standards of conduct and behaviour, the order remains necessary and appropriate

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 that since the last review on 4 March 2022, there has been no substantial change of circumstances in terms of remediation and strengthening of practice on Mrs Patton's part. The panel noted that she has indicated a desire to return to nursing and is making enquiries about a return to nursing practice at the University of Chester, however the panel has not seen either an application or any preparation that Mrs Patton has done to assist her to return to nursing practice.

The panel considered that Mrs Patton has made written representation in relation to her and her family's medical conditions which serves to highlight the current difficult situation she finds herself in.

The panel noted in her email of 31 August 2023, she states: '*I am aiming to return to practice when things have [PRIVATE]*', however the panel were concerned that her ambition to be able to return to either a university course or some form of practice could be limited by the issues she has raised in private session with the panel. The panel was of the view that the issues Mrs Patton has are not easily resolved and may result in slippage or disappointment.

The panel considered there was still impairment and the need to protect the public. The panel determined that there is an issue in public confidence as this is the eighth review of a charge that originated in 2013. It determined that there would be a desire from the public for the effective disposal of this case.

The panel considered whether Mrs Patton's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Patton that evidence was produced, as seen in Mrs Patton's reflective piece, to show that she has developed good insight, has demonstrated remorse and has provided evidence of the steps she has taken to strengthen her practice. At this hearing, the panel was of the view that Mrs Patton has not had the opportunity or taken effective steps to demonstrate strengthening of her practice or remediation of her actions, as she has not been able to work. In light of this, 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 Mrs Patton'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 Mrs Patton'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 Mrs Patton'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 imposing a conditions of practice order on Mrs Patton's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel next considered the continuation of the current conditions of practice order. The panel noted that you have indicated that you will be unable to return to work for some time and noted your [PRIVATE] circumstances. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Patton's misconduct.

On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order in this case. It concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel was concerned that for eight of the twelve years that Mrs Patton has been registered she has been subject to restrictions on her practice. Despite repeated assurances that she would address the matters that brought her before the NMC she has not done so. The panel was of the view that Mrs Patton appears to have drifted further from the required standards. The panel noted that it has not seen any information that she has kept up with professional standards. The panel determined that

this is likely to undermine public confidence in the profession and the NMC as its regulator.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months. The panel determined that this removes any risk from the public and also sends out a clear message to the public about the profession and is also the right message to send out in relation to proper standards of conduct and behaviour. The panel considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 12 October 2023 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mrs Patton has asserted that she wishes to return to nursing. A future panel may be assisted by some documentary evidence of her attempting to obtain a place on the return to nursing practice or an NMC approved equivalent.

This will be confirmed to Mrs Patton in writing.

That concludes this determination.

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