

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

Substantive Order Review Meeting

Tuesday, 2 January 2024

Virtual Meeting

Name of Registrant: Jillian Marie Burchell

NMC PIN 07E2954E

Part(s) of the register: RNMH, Registered Nurse – Mental Health – 27
September 2007

Relevant Location: Surrey

Type of case: Lack of competence

Panel members: Peter Wrench (Chair, Lay member)
Rachel Jokhi (Registrant member)
Mary Scattergood (Registrant member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Yewande Oluwalana

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Extension of the conditions of practice order (18 months) to come into effect on 18 January 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Burchell's registered email address by secure email on 7 December 2023.

Further, the panel noted that the Notice of Meeting was also sent to Miss Burchell's representative at the Royal College of Nursing (RCN) on 7 December 2023.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 27 December 2023 and inviting Miss Burchell to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel noted that the RCN on behalf of Miss Burchell in their email dated 7 December 2023, waived the notice period for this review meeting and were happy for the review meeting to go ahead. The panel were therefore satisfied that Miss Burchell has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to extend the current conditions of practice order for a further period of 18 months. This order will come into effect at the end of 18 January 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first effective review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 20 June 2022. This was scheduled to be reviewed on 4 December 2023 but the panel on that occasion adjourned proceedings.

The current order is due to expire at the end of 18 January 2024.

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, registered nurse:

Between March 2018 and February 2019 failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a Band 5 nurse, in that you:

- 1. On 2 March 2018, administered Pregabalin to Patient A when it was prescribed to be administered from 3 March 2018;*
- 2. On 4 March 2018, administered Tramadol to Patient B without a prescription;*
- 3. On 25 July 2018, administered medication to Patient C without a supervisor present, when you knew you were not permitted to administer medication on your own;*
- 4. On 14 November 2018, upon completing a Nurse Dispensing assessment, you were instructed to undertake the assessment again due to gaps in your knowledge;*
- 5. Whilst subject to a capability plan, between 20 August 2018 and 13 February 2019, failed to demonstrate you were competent in the following areas:*
 - a. medicines management;*
 - b. acting as shift leader.*

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

The original panel determined the following with regard to impairment:

'The panel then considered whether Miss Burchell's fitness to practise is currently impaired by reason of lack of competence. The panel determined that Miss Burchell's fitness to practise is currently impaired on public protection and public interest grounds. The panel noted that due to the long period of interim suspension, Miss Burchell has not had a recent opportunity to address the concerns in practice as a registered nurse. The panel considered that the shortcomings found proved are capable of remediation. In this respect the panel endorsed paragraphs 35 to 57 of the provisional CPD agreement.'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Miss Burchell'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 took into account the SG, in particular:

- *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;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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 acknowledged that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The

panel accepted that Miss Burchell would be willing to comply with conditions of practice.

The panel considered that the conditions of practice as set out within the agreed CPD are workable, proportionate, and suitably address the medication administration concerns as well as the leadership elements of the charges. The panel was satisfied that a conditions of practice order would provide Miss Burchell with an opportunity to address her actions, strengthen her practice and evidence a period of safe and effective practice in the workplace. The panel agreed that the conditions of practice set out in the CPD are sufficient to protect the public and address the public interest in this case.

The panel had regard to the fact that Miss Burchell has been working effectively as a Healthcare Assistant (HCA) during the period of suspension. It was of the view that it was in the public interest that, with appropriate safeguards, Miss Burchell should be able to return to practise as a nurse.

Balancing all of these factors, the panel agreed with the CPD 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 in the circumstances of Miss Burchell's case. A suspension order would not give Miss Burchell the opportunity to address the concerns and further strengthen her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will 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.

The panel agreed with the CPD that the following conditions are appropriate and proportionate in this case:

- 1) You must not work or otherwise providing nursing services:*

- a) *as the sole nurse on duty;*
 - b) *through an agency or as a bank nurse.*
- 2) *At any time that you are employed or otherwise providing nursing services, to place yourself and remain under the supervision of a workplace line manager or supervisor nominated by your employer. Such supervision must consist of*
- a) *working at all times on the same shift as, but not necessarily under the direct observation of a registered nurse;*
 - b) *to complete medication rounds only when under the direct supervision of another registered nurse until such time that you are deemed competent by a nurse of Band 6 or above, to undertake them independently;*
- 3) *You must keep a personal development log every time you undertake medication administration and management. The log must:*
- a) *Contain the dates that you carried out medication administration and management;*
 - b) *Be signed by the nurse who directly supervised you each time;*
 - c) *Contain feedback from the nurse who directly supervised you each time;*
- 4) *Within 14 days of being deemed competent, you will provide to the NMC evidence that your medication competency has been achieved by:*
- a) *sending a report from your line manager or supervisor setting out the standard of your supervised medication rounds;*
 - b) *Send a copy of the personal development log;*
- 5) *Within 14 days of commencing your employment, to work with your line manager or supervisor (or their nominated deputy) to create a personal development plan ('PDP') designed to address the concerns relating to medicines management in the following areas of your practice:*
- a) *Medication administration;*
 - b) *Acting as shift leader.*
- 6) *To forward to the NMC a copy of your PDP within 14 days from the date on which your PDP is created.*

- 7) *To meet every month of your employment with your workplace line manager or supervisor to discuss your performance and progress towards your PDP;*
- 8) *To send an overall report from your line manager or supervisor setting out the standard of your performance and your progress towards achieving the aims set out in your PDP:*
 - a) *every six months;*
 - b) *14 days before any review hearing.*
- 9) *To write a reflective statement commenting on each charge, including its impact on patients, colleagues, the public and the profession, outlining what about your conduct was exactly wrong and what you would do differently in the future. You must provide a copy of this reflection to the NMC 14 days prior to any review hearing.*
- 10) *Keeping us informed about where you are working by:*
 - a) *telling us within seven days of accepting any nursing appointments and providing us with contact details of the employer.*
 - b) *telling us within seven days when you leave or stop working for an employer.*
 - c) *giving us the name and contact details of the individual or organisation offering the post, employment or course of study within seven days of accepting any post or employment requiring registration with us, or any course of study connected with nursing or midwifery.*
 - d) *giving us the name and contact details of the individual or organisation within seven days of entering into any arrangements required by these conditions.*
- 11) *Immediately telling the following parties that you have agreed to these conditions under the NMC fitness to practise procedures, and disclosing the conditions to them:*
 - a) *any organisation or person employing, contracting with, or using you to undertake nursing work;*

- b) any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services;*
- c) any prospective employer (at the time of application) where you are applying for any nursing appointment;*
- d) any educational establishment where you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

12) Telling us about any clinical incidents you are involved in, any investigations started against you and/or any disciplinary proceedings taken against you within seven days of you being made aware of them.

13) Allowing us to share, as necessary, information about the standard of your performance, your compliance with and progress towards completing these conditions with any employer, prospective employer, any educational establishment and any other person who is or will be involved in your retraining and supervision.

The period of this order is for 18 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Burchell has 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:

- Evidence of compliance with the conditions of practice;*
- Miss Burchell's attendance at and participation in the review hearing; and*
- Relevant references and testimonials.*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Burchell's 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 written responses from the RCN which included:

- Written submissions dated 4 December 2023
- [PRIVATE]
- [PRIVATE]

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 Miss Burchell's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Burchell had developing insight and a willingness to remediate concerns. At this meeting the panel found that there had been no material change in the circumstances and that Miss Burchell's insight is still developing.

[PRIVATE] The panel noted in the RCN's submission dated 4 December 2023, it was stated,

'[PRIVATE] Given this, we invite the Panel to continue the current substantive order as the Registrant has not been given the opportunity to demonstrate compliance with its conditions.' [sic]

The original panel determined that Miss Burchell was liable to repeat matters of the kind found proved. Today's panel has received no new information to undermine the findings of the original panel. In light of this the panel determined that there remains a risk of repetition by Miss Burchell of the conduct that was 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 Miss Burchell's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Burchell'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 Miss Burchell'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...'* The panel considered that Miss Burchell's lack of competence was not in this category 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 further or varied conditions of practice order on Miss Burchell'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 it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Miss Burchell has been unable to comply with the conditions of practice [PRIVATE] but is engaging with the NMC and is willing to comply with any conditions imposed. [PRIVATE]

The panel was of the view that a conditions of practice order continues to be sufficient to protect patients and the wider public interest, noting that Miss Burchell would like to return to nursing and should be afforded the opportunity to do so. The panel was satisfied that the current conditions of practice order is sufficient to protect the public and address the wider public interest 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 Miss Burchell's case [PRIVATE] she is engaging with the NMC and has a desire to return to nursing in the future.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend 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 18 January 2024. It decided to confirm the current 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 not work or otherwise providing nursing services:*
 - a) *as the sole nurse on duty;*
 - b) *through an agency or as a bank nurse.*

- 2) *At any time that you are employed or otherwise providing nursing services, to place yourself and remain under the supervision of a workplace line manager or supervisor nominated by your employer. Such supervision must consist of*
 - a) *working at all times on the same shift as, but not necessarily under the direct observation of a registered nurse;*
 - b) *to complete medication rounds only when under the direct supervision of another registered nurse until such time that you are deemed competent by a nurse of Band 6 or above, to undertake them independently;*

- 3) *You must keep a personal development log every time you undertake medication administration and management. The log must:*
 - a) *Contain the dates that you carried out medication administration and management;*
 - b) *Be signed by the nurse who directly supervised you each time;*
 - c) *Contain feedback from the nurse who directly supervised you each time;*

- 4) *Within 14 days of being deemed competent, you will provide to the NMC evidence that your medication competency has been achieved by:*
 - a) *sending a report from your line manager or supervisor setting out the standard of your supervised medication rounds;*
 - b) *Send a copy of the personal development log;*

- 5) *Within 14 days of commencing your employment, to work with your line manager or supervisor (or their nominated deputy) to*

create a personal development plan ('PDP') designed to address the concerns relating to medicines management in the following areas of your practice:

a) Medication administration;

b) Acting as shift leader.

- 6) To forward to the NMC a copy of your PDP within 14 days from the date on which your PDP is created.*
- 7) To meet every month of your employment with your workplace line manager or supervisor to discuss your performance and progress towards your PDP;*
- 8) To send an overall report from your line manager or supervisor setting out the standard of your performance and your progress towards achieving the aims set out in your PDP:
 - a) every six months;*
 - b) 14 days before any review hearing.**
- 9) To write a reflective statement commenting on each charge, including its impact on patients, colleagues, the public and the profession, outlining what about your conduct was exactly wrong and what you would do differently in the future. You must provide a copy of this reflection to the NMC 14 days prior to any review hearing.*
- 10) Keeping us informed about where you are working by:
 - a) telling us within seven days of accepting any nursing appointments and providing us with contact details of the employer.*
 - b) telling us within seven days when you leave or stop working for an employer.*
 - c) giving us the name and contact details of the individual or organisation offering the post, employment or course of study within seven days of accepting any post or employment requiring**

registration with us, or any course of study connected with nursing or midwifery.

d) giving us the name and contact details of the individual or organisation within seven days of entering into any arrangements required by these conditions.

11) Immediately telling the following parties that you have agreed to these conditions under the NMC fitness to practise procedures, and disclosing the conditions to them:

a) any organisation or person employing, contracting with, or using you to undertake nursing work;

b) any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services;

c) any prospective employer (at the time of application) where you are applying for any nursing appointment;

d) any educational establishment where you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).

12) Telling us about any clinical incidents you are involved in, any investigations started against you and/or any disciplinary proceedings taken against you within seven days of you being made aware of them.

13) Allowing us to share, as necessary, information about the standard of your performance, your compliance with and progress towards completing these conditions with any employer, prospective employer, any educational establishment and any other person who is or will be involved in your retraining and supervision.

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Burchell has 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:

- Evidence of compliance with the conditions of practice;
- Miss Burchell's attendance at and participation in the review hearing; and
- Relevant references and testimonials.

This will be confirmed to Miss Burchell in writing.

That concludes this determination.