

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

**Substantive Hearing
20-25 January 2021**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant: Arthur Poma

NMC PIN: 03E0558O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – May 2003

Area of registered address: Oxfordshire

Type of case: Misconduct/Conviction

Panel members: Dale Simon (Chair, Lay member)
Janine Ellul (Registrant member)
Patience McNay (Registrant member)

Legal Assessor: Michael Bell

Panel Secretary: Amira Ahmed

Nursing and Midwifery Council: Represented by Amy Woolfson, Case Presenter

Mr Poma: Present and not represented

Facts proved by admission: 1 and 2

Facts proved: 3

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

- 1) On 16 January 1998 were convicted of an offence of Sexual Assault in the Third Degree by a court in the State of Hawaii, U.S.A.
- 2) On or around 14 March 2017 provided a form known as a “Declaration Form A” dated 14 March 2017 to NHS Professionals in which you stated that you had no previous convictions.
- 3) Your conduct in Charge 2 above was dishonest in that you knew that you had been convicted of the offence referred to in Charge 1 above and, by that conduct, you intended to conceal the existence of your conviction from NHS Professionals in order to obtain paid work.

AND in light of the above, your fitness to practise is impaired by reason of your conviction in relation to Charge 1 and/or misconduct in relation to Charges 2 to 3 above.

Decision and reasons on application to admit documentary evidence

The panel heard an application made by Ms Woolfson under Rule 31 to allow the flexible worker registration document signed by you in March 2017 from NHS Professionals into evidence. Ms Woolfson submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations.

You did not oppose this application.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to admitting documentary evidence serious consideration. The panel noted that this document had been exhibited to the NMC by Ms 1 and was relevant to the charges. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the document from NHS Professionals but would give it appropriate weight once the panel had heard and evaluated all the evidence before it.

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

During the hearing, Ms Woolfson made a request that this case be held partly in private on the basis that the proper exploration of your case involves your health and personal circumstances. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference to your health or personal circumstances should be heard in private.

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.

The panel determined to rule on whether or not to go into private session in connection with your health and personal circumstance as and when such issues are raised.

Background

On 16 January 1998 you were allegedly convicted of an offence of Sexual Assault in the Third Degree by a court in the State of Hawaii, U.S.A. You allegedly received five years of probation. In May 2003 you became a registered nurse in the UK.

In March 2017 you started working for NHS Professionals. It is alleged that on or around 14 March 2017 you provided a form known as a "Declaration Form A" dated 14 March 2017 to NHS Professionals in which you stated that you had no previous convictions.

It is alleged that you were dishonest in that you knew that you had been convicted of an offence but intended to conceal the existence of your conviction from NHS Professionals in order to obtain paid work.

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you made admissions to charges 1 and 2.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of your admissions.

In reaching its decision on charge 3, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Woolfson on behalf of the NMC.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witness called on behalf of the NMC:

- Ms 1: Senior HR advisor at NHS Professionals

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and yourself.

The panel considered the evidence of the witnesses and made the following conclusions:

The panel found Ms 1 to be a credible witness, her evidence was clear and she admitted when she was unable to answer a question. However the panel noted that Ms 1 had not been directly involved in the provision of the documentation to you in 2017 and as such her evidence was of limited assistance.

The panel found that you were open when answering questions put to you and that you often went beyond what was asked. However the panel did not accept your account of your state of mind when completing the “Declaration Form A” in March 2017 as you contradicted your initial evidence on this during cross examination. The panel therefore did not find your evidence in regard to charge 3 credible.

The panel then considered charge 3 and made the following findings.

Charge 3

- 3) Your conduct in Charge 2 above was dishonest in that you knew that you had been convicted of the offence referred to in Charge 1 above and, by that conduct, you intended to conceal the existence of your conviction from NHS Professionals in order to obtain paid work.

This charge is found proved.

In reaching this decision, the panel took into account the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67.

It noted that you supported your family in the UK and had this in mind when completing the “Declaration Form A” in March 2017.

The panel also noted that your initial position was that you hadn’t sought to conceal the conviction but that you misunderstood what the declaration form was asking from you. The panel further noted your explanation that you had made minimal enquiries of the

Rehabilitation of Offenders Act 1974 before completing the declaration form and that your understanding of this Act as a 'normal' person led you to believe that your conviction was spent and that you did not need to declare it in "Declaration Form A".

However, the panel was not satisfied that this was a reasonably held belief in light of documentary evidence and your comments during cross examination. It noted that you had stated that the conviction happened before your nursing career and so you wanted to leave it behind. The panel also noted that you had never disclosed your conviction to any one during the 16 years you have worked in the UK as a registered nurse. The panel also noted your acceptance during cross examination that you never had any intention to disclose the existence of your conviction to anyone.

On the documentary evidence and during cross examination you explained that your conviction hadn't 'followed' you to the Philippines or the UK and as such hadn't prevented you from training or registering as a nurse. The panel determined that you had made an on-going conscious effort to conceal your conviction to maintain this situation.

The panel therefore determined that in March 2017 you deliberately stated on "Declaration Form A" that you had no previous convictions with the intention of concealing your 1998 conviction from NHS Professionals to obtain paid work. The panel further determined that by the standards of ordinary decent people that acting in this manner was dishonest

The panel therefore determined that your conduct in charge 2 was dishonest and was an attempt to conceal your conviction from NHS Professionals in order to obtain work.

The panel therefore found charge 3 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Woolfson invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Woolfson identified the specific, relevant standards where your actions amounted to misconduct. She also submitted that your dishonesty went to the heart of nursing practice as it enabled you to gain employment and that your actions prevented your employer from being able to make proper enquiries as to your suitability to practice.

You submitted that you have fallen short of being honest but that you have years of being a nurse and have not done any wrong doing in that time. You explained that having a conviction before being a nurse was not what you ever had in mind and that you will accept whatever decision the panel makes.

You also submitted that you have never taken your work for granted and have worked really hard on your nursing career. You told the panel that you also have your family which you look after.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times,

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your dishonesty in charge 2 was an attempt to conceal your conviction from NHS Professionals in order to obtain work

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Submissions on impairment

Ms Woolfson moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Woolfson submitted that your fitness to practice is impaired both by reason of your conviction in relation to charge 1, and by your misconduct in relation to charges 2 and 3. In relation to your conviction she submitted that the equivalent offence in England in Wales, at the time would have been either gross indecency with a child contrary to s.1 Indecency with Children Act 1960 or indecent assault on a woman contrary to s.14 Sexual Offences Act 1956. Both are serious offences, punishable with imprisonment. She further submitted that you have not shown any insight into how a conviction of this nature is damaging to the public confidence in the profession and the regulator.

In relation to charge 2 and 3 and dishonesty, Ms Woolfson submitted that limbs b, c, and d are engaged by charges 2 and 3. She also submitted that you have shown remorse for this. For example, in your response statement of 11 October 2019 you explained:

“I stated in my letter to the ICIO that I did not disclose my conviction in my application at that time because I thought that it was already a spent conviction and because it was a spent conviction, I did not need to disclose it. I was stupid and that it was a dumb decision to tick the wrong box and I take full responsibility for it. If I was dishonest, then please allow me to take this opportunity to say I’m very sorry and that It would not happen again in the future. I paid the heavy price of losing my job and got my family in financial hardship, and no one to blame but me. I mentioned in my first letter to the ICIO how I wish that I could turn back time, I would go back in a heartbeat to put things right”.

Ms Woolfson submitted that it was a matter for the panel to decide how much of that remorse is for the harm done to your family as opposed to remorse for misconduct. She submitted that whilst there has been remorse there has not been any meaningful insight. She submitted that you have not demonstrated any understanding of how your failure to fill the form in accurately could have affected colleagues, the wider profession and the public perception of nursing.

You told the panel that you thought your conviction at the moment is ‘spent’ and that you now understand that you should still declare your previous conviction. You explained that you have worked as an adult nurse and made this choice particularly because of the nature of your conviction to avoid any issues arising. You submitted that you have been a good nurse without any clinical complaints about your practice. You submitted that you had apologised to the victim and you also provided the panel with your account of the actions for which you were convicted apparently seeking to explain and in some way justify them.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct in charge 2 and 3, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel determined that your dishonest conduct has engaged limbs b, c and d.

The panel finds that your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that your failure to demonstrate any insight into the true nature and extent of your dishonest actions that gave rise to the charges is serious. The panel is of the view that there is a risk of repetition based on your lack of understanding of the effect of your dishonesty to vulnerable patients and the integrity of the nursing profession. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded 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 panel next went on to decide if as a result of your conviction, your fitness to practise is currently impaired.

The panel determined that your conviction has engaged limbs a, b, c and d.

The panel finds that your conviction has breached the fundamental tenets of the nursing profession that are found in the Grant test and therefore brought the reputation into disrepute.

The panel considered your failure to demonstrate any insight into the true nature and extent of your conviction and the fact that you have never disclosed the conviction to anyone. The panel were concerned that you have not demonstrated any remediation of your actions and did not mention in your submissions the impact of your conviction on the victim and the victim's family.

The panel was further concerned that in your evidence, whilst you accepted that your actions which gave rise to your conviction were wrong, you also sought to give an excuse for why you acted as you did, apparently seeking to justify your actions. The panel noted that over 20 years has passed since your conviction and that there was no evidence of you having acted in a similar manner. However, the panel considered that your continuing attempts to provide excuses for your actions and apparently justify them demonstrated an on-going lack of insight. The panel determined that there was a consequent risk of repetition of similar actions, giving rise to a risk of harm in relation to your interacting with vulnerable patients in a clinical setting. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded 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.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired by your conviction and your dishonesty.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Woolfson that the NMC were seeking the imposition of a striking-off order. She submitted a number of aggravating and mitigating factors for the panel to consider in this case. She also submitted that this was a serious case and referred the panel to the NMC's guidance on seriousness. Specifically to the section on, 'serious concerns which are more difficult to put right'. She explained that sexual assault was one of these concerns.

Ms Woolfson submitted that in relation to dishonesty, the NMC guidance explains that the most serious dishonesty is when a nurse, midwife or nursing associate deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone's care. She stated that your actions were analogous to the circumstances covered by this section of the guidance.

You made no submissions on sanction.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be

punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Dishonesty to obtain work and for personal financial gain;
- Your actions prevented your employer from making proper enquiries about your safety to practice;
- Exposed employer to risk of reputational harm;
- Lack of insight, either into the offence or the dishonesty;
- Clear intention to maintain your deception – it was only because of the whistleblower that this came to light.

The panel also took into account the following mitigating features:

- No concerns about your practice raised between the date of you joining the profession in the UK (May 2003) and your conviction coming to light (June 2018). But that has to be tempered against the fact that you would have been unlikely to be allowed on to the register and find work if you had been open about your conviction;
- No evidence of any further criminal behaviour;
- Some remorse in respect to your dishonesty.

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 panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious involving dishonesty on the higher spectrum and a conviction relating to a sexual offence. Therefore it determined to allow you to continue practising as a nurse would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to you in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Woolfson. She submitted that an 18 months interim suspension order would be appropriate in this case and would be in line with other findings made by the panel.

You made no submissions in regards to an interim order.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.