

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Meeting

14 July 2020

Virtual Hearing

Name of registrant:	Ms Adelaide Maloane
NMC PIN:	01K2056O
Part of the register:	Registered Nurse – Adult (2001)
Relevant location:	Dorset
Type of case:	Misconduct
Panel members:	Deborah Jones (Chair, lay member) Dorothy Keates (Registrant member) Alison Hayle (Lay member)
Legal Assessor:	Michael Levy
Hearing Coordinator:	Leigham Malcolm
Facts proved:	1, 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 4.1, 4.2, 5, 6 & 7
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Notice of Meeting had been sent to Ms Maloane's registered email address on 18 May 2022.

The panel took into account that the Notice of Meeting provided details of the allegations as well as the time frame during which the meeting would be held.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Maloane's 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).

Details of charge

On the night shift of 22 August 2019:

- 1. Requested that the carers on duty administer medication to the residents.*

- 2. Recorded that you had administered one or more of the following medications to resident PL at 22.00hrs when you knew you had not*
 - 2.1 Risperidone;*

 - 2.2 Olanzapine;*

 - 2.3 Atorvastatin;*

 - 2.4 Zopiclone.*

3. Recorded that you had administered one or more of the following medications to resident JA at 22.00hrs when you knew you had not

3.1 Risperidone

3.2 Mirtazapine

4. Recorded that you had administered one or more of the following medications to resident MJ at 22.00hrs when you knew you had not

4.1 Mirtazapine

4.2 Temazepam

5. Recorded that you had administered zopiclone to resident BC at 22.00hrs when you knew you had not.

6. Recorded that you had administered zopiclone to resident DR at 22.00hrs when you knew you had not.

7. Your actions at charges 1 and/or 2 and/or 3 and/or 4 and/or 5 were dishonest in that you sought to create the impression that you had administered medication as detailed above when you knew you had not and /or sought to conceal the fact that you had asked the carers to administer medication to the residents.

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

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case. 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.

Background

The NMC received a referral from the General Manager of Somerleigh Court Care Home (The Home) on 10 September 2019 in relation to Ms Malone's nursing practice.

The referral alleged that on the night shift of 22 August 2019, Ms Maloane inappropriately delegated the administration of medication to a non-trained Health Care Assistant instead of administering the medication to the residents herself.

The referral also alleged that Ms Maloane then signed multiple residents' MAR charts to say she had physically administered the medication to them herself when she knew she had not done this. As a result of these concerns, Ms Maloane attended an investigation meeting held by the Home on 27 August 2019 at which she admitted that she did not administer 16 medicines to residents and that she signed the MAR charts to the effect that she had, as set out in the charges.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It then considered each of the disputed charges and made the following findings.

Charge 1

1. Requested that the carers on duty administer medication to the residents.

The panel took account of all of the evidence before it. In particular the panel had regard to the record of the investigation meeting held by the Home on 28 August 2019. The record of the investigation meeting showed that Ms Maloane admitted to requesting HCAs to administer medication to residents.

The panel also had particular regard to a letter from Ms Maloane dated 5 September 2019 in which she also admitted that she asked HCAs to 'run' the medicines.

On the basis of the evidence before it, the panel found Charge 1 proved.

This charge is found proved.

Charge 2

2. Recorded that you had administered one or more of the following medications to resident PL at 22.00hrs when you knew you had not

Charge 2.1

2.1 Risperidone;

The panel had before it the record of the investigation meeting showed that Ms Maloane admitted to requesting HCAs to administer medication to residents. It also had resident PL's MAR chart which contained Ms Maloane's signature indicating that she had administered the medication as set out in the charge.

On the basis of this evidence, the panel found 2.1 proved.

This charge is found proved.

Charge 2.2

2.2 Olanzapine;

The panel found this charge proved for the same reasons as set out above.

This charge is found proved.

Charge 2.3

2.3 Atorvastatin;

The panel found this charge proved for the same reasons as set out above.

This charge is found proved.

Charge 2.4

2.4 Zopiclone.

The panel found this charge proved for the same reasons as set out above.

This charge is found proved.

Charge 3

3. Recorded that you had administered one or more of the following medications to resident JA at 22.00hrs when you knew you had not

Charge 3.1

3.1 Risperidone

The panel had before it the record of the investigation meeting showed that Ms Maloane admitted to requesting HCAs to administer medication to residents. It also had resident JA's MAR chart which contained Ms Maloane's signature indicating that she had administered the medication as set out in the charge.

On the basis of this evidence, the panel found 3.1 proved.

This charge is found proved.

Charge 3.2

3.2 Mirtazapine

The panel found this charge proved for the same reasons as set out above.

This charge is found proved.

Charge 4

4. Recorded that you had administered one or more of the following medications to resident MJ at 22.00hrs when you knew you had not

Charge 4.1

4.1 Mirtazapine

The panel had before it the record of the investigation meeting showed that Ms Maloane admitted to requesting HCAs to administer medication to residents. It also had resident MJ's MAR chart which contained Ms Maloane's signature indicating that she had administered the medication as set out in the charge.

On the basis of this evidence, the panel found 4.1 proved.

This charge is found proved.

Charge 4.2

4.2 Temazepam

The panel found this charge proved for the same reasons as set out above.

This charge is found proved.

Charge 5

5. Recorded that you had administered zopiclone to resident BC at 22.00hrs when you knew you had not.

The panel had before it the record of the investigation meeting showed that Ms Maloane admitted to requesting HCAs to administer medication to residents. It also had resident BC's MAR chart which contained Ms Maloane's signature indicating that she had administered the medication as set out in the charge.

On the basis of this evidence, the panel found 5 proved.

This charge is found proved.

Charge 6

6. Recorded that you had administered zopiclone to resident DR at 22.00hrs when you knew you had not.

The panel had before it the record of the investigation meeting showed that Ms Maloane admitted to requesting HCAs to administer medication to residents. It also had resident DR's MAR chart which contained Ms Maloane's signature indicating that she had administered the medication as set out in the charge.

On the basis of this evidence, the panel found 6 proved.

This charge is found proved.

Charge 7

7. Your actions at charges 1 and/or 2 and/or 3 and/or 4 and/or 5 were dishonest in that you sought to create the impression that you had administered medication as detailed above when you knew you had not and /or sought to conceal the fact that you had asked the carers to administer medication to the residents.

The panel bore in mind that Ms Maloane is an experienced nurse, having been on the Register since 2001. Given her experience she should have known that by signing the residents' MAR charts having not administered the medications herself, she would have been making a false representation. In view of Ms Maloane's admission to asking HCA's to administer the medications, the panel considered there to be no other explanation other than that she acted dishonestly intending to create the impression that she had administered the drugs herself. The panel therefore found charge 7 proved in its entirety.

This charge is found proved.

Decision and reasons on misconduct and impairment

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 Ms Maloane's 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, Ms Maloane's fitness to practise is currently impaired as a result of that misconduct.

In coming to its decision, the panel accepted the advice of the legal assessor And had regard to the case of *Roylance v GMC (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.'

When determining whether 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"). The panel was of the view that Ms Maloane's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Maloane's actions amounted to a breach of the Code, specifically:

1.2 make sure you deliver the fundamentals of care effectively

6.2 maintain the knowledge and skills you need for safe and effective practice.

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

11 Be accountable for your decisions to delegate tasks and duties to other people

To achieve this, you must:

11.1 only delegate tasks and duties that are within the other person's scope of competence, making sure that they fully understand your instructions

11.2 make sure that everyone you delegate tasks to is adequately supervised and supported so they can provide safe and compassionate care, and

11.3 confirm that the outcome of any task you have delegated to someone else meets the required standard.

18 ... dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

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...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered medicines management/administration and accurate record keeping to be basic nursing skills and critical aspects of the delivery of effective nursing care. It was of the view that that Ms Maloane's actions, along with her dishonesty, fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel next went on to decide if as a result of the misconduct, Ms Maloane's 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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 finds that patients were put at risk a result of Ms Maloane's misconduct. Ms Maloane's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Ms Maloane has failed to acknowledge the seriousness of her misconduct and dishonesty and the implications of her actions for residents, colleagues and the reputation of the nursing profession. The panel identified little remorse and considered there to be no evidence of insight or remediation beyond her initial admissions during the Home's internal investigation, some of which she has later qualified in her communications with the NMC. There was nothing before the panel to indicate that the issues which relate to basic nursing skills have been addressed.

The panel is of the view that there is a real risk of repetition based on the absence of insight, remorse or remediation. 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.

The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. It therefore determined that a finding of impairment on public interest grounds is also required.

Having regard to all of the above, the panel was satisfied that Ms Maloane's fitness to practise is currently impaired.

Decision and reasons on sanction

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

Having found Ms Maloane's 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 identified the following aggravating features:

- The potential that Ms Maloane's misconduct had for patient harm;
- Ms Maloane's dishonesty.

The panel identified the following mitigating features:

- Ms Maloane initially accepted the concerns;
- The incidents occurred on a single shift.

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 Ms Maloane'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 Ms Maloane's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Ms Maloane's 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 dishonesty present in this case. Further, given Ms Maloane's absence during these proceedings, it could not be assured that she would be willing or able to comply with any conditions imposed. The panel concluded that the placing of conditions on Ms Maloane's 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 SG states that suspension order may be appropriate where some of the following factors are apparent:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

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 Ms Maloane's actions is fundamentally incompatible with her 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?*

Ms Maloane's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that registrant's actions were serious and to allow her to continue practising 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 matters it identified, in particular the effect of Ms Maloane's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, 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 Ms Maloane's in writing.

Decision and reasons on 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 Ms Maloane's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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 due to allow for any potential appeal period.

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

That concludes this determination.