

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

**Substantive Order Review Hearing
Friday 22 July 2022**

Name of registrant: Mr David John Martyn

NMC PIN: 08I2147E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – October 2008

Relevant Location: Preston

Type of case: Misconduct/Lack of competence

Panel members: Adrian Smith (Chair, lay member)
Allwin Mercer (Registrant member)
Christine Moody (Lay member)

Legal Assessor: Trevor Jones

Hearings Coordinator: Shela Begum

Nursing and Midwifery Council: Represented by Matthew Kewley, Case Presenter

Mr Martyn: Not present and unrepresented at the hearing

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

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to
come into effect on 31 August in accordance
with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Martyn was not in attendance and that the Notice of Hearing had been sent to Mr Martyn's registered email address by secure encrypted delivery on 8 June 2022.

Further, the panel noted that the Notice of Hearing was also sent to Mr Martyn's representative at Thompsons Solicitors on 8 June 2022. The panel had regard to an email from Thompsons Solicitors dated 8 June 2022 which informed the NMC that they are no longer instructed to represent Mr Martyn.

Mr Kewley, 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.

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 Mr Martyn's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Martyn 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 Mr Martyn

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

Mr Kewley referred the panel to the email from Mr Martyn to his NMC case officer dated 27 June 2022 in which he stated:

“I won’t be available for the review. Please accept my apologies.”

Mr Kewley referred the panel to a further email from Mr Martyn to the hearing coordinator dated 22 July 2022 in which he further indicated he will not be attending this hearing. He stated *“Apologies. I can’t make it”*.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Martyn. In reaching this decision, the panel has considered the submissions of Mr Kewley, the responses from Mr Martyn and the advice of the legal assessor. It has had particular regard to the 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 Mr Martyn;
- Mr Martyn has indicated to the NMC that he has received the Notice of Hearing and that he will not be in attendance at the hearing today;
- There is no reason to suppose that adjourning would secure his 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 Mr Martyn.

Decision and reasons on review of the substantive order

The panel decided to confirm and extend the current conditions of practice order.

This order will come into effect at the end of 31 August 2022 in accordance with Article 30(1) of the ‘Nursing and Midwifery Order 2001’ (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 9 months by a Fitness to Practise Committee panel on 29 October 2021.

The current order is due to expire at the end of 31 August 2022.

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, between July 2018 and December 2018, failed to demonstrate the standards of knowledge, skills and judgment required to practise without supervision as a band 5 nurse in that you:

1. *Failed to pass the Intravenous Medication Mathematical Assessment taken on:*
 - a. *1 November 2018; [PROVED BY ADMISSION]*
 - b. *30 November 2018; [PROVED BY ADMISSION]*
2. *Failed the Venepuncture & Cannulation Simulated Assessment on 28 November 2018; [PROVED BY ADMISSION]*
3. ...
4. *While subject to a Preceptorship Programme from around September 2018:*
 - a. ...
 - b. *Calculated an Early Warning Score (EWS) incorrectly; [PROVED BY ADMISSION]*
 - c. ...
 - d. ...
 - e. ...
 - i. ...
 - ii. ...
 - f. ...

g. ...

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

That you, a registered nurse:

5. *During an Electrocardiogram (ECG) group training session on 2 November 2018 said:*

- a. *'Do you two want to get a room?' or words to that effect; **[FOUND PROVED]***
- b. *'Bloody women what are they going on about' or words to that effect; **[FOUND PROVED]***

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

The original panel determined that charges 5a and 5b did not amount to misconduct. Therefore, impairment was considered on the grounds of lack of competence only.

The original panel determined the following with regard to impairment:

'The panel determined that a finding of impairment on public protection grounds is required because your lack of competence has the potential to put patients at risk of harm.

The panel noted that there are certificates indicating that you have endeavoured to strengthen your practice, these related to courses in medication awareness and another one titled 'Medication Advanced'. However, there are no details about what they are and what was included. There was no indication of any training being undertaken in respect of medication mathematical skills and knowledge. The panel found no evidence of additional training on ANTT or EWS calculations, although it was mindful that you have not been employed as a nurse since December 2018.

The panel reminded itself that Ms McCullough said you have shown insight but the panel is of the view that you have only shown partial insight into your lack of competence. The panel determined that there is a risk of repetition. The panel noted that there was no actual patient harm but your lack of competence could put patients at risk of harm in several categories. It concluded that not being able to carry out some fundamental nursing duties can bring the profession into disrepute as they relate to fundamental tenets of the profession.

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 reason of your lack of competence.'

The original panel determined the following with regard to sanction:

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of concerns identified in your clinical practice. The panel decided that to take no further action would not protect the public from the concerns identified in this case. It would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that an order which does not address the concerns identified in your clinical practice would not be appropriate. The panel determined that it would be neither appropriate nor in the public interest to impose a caution order, and it would not protect the public.

The panel next considered whether placing conditions of practice on your 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:

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *Potential and willingness to respond positively to retraining;*
- *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 determined that it would be possible to formulate appropriate and practical conditions which would address the concerns in your clinical practice highlighted in this case. Further, the panel accepted that you would be willing to comply with conditions of practice. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to practise as a registered nurse.

Balancing all of these factors, the panel determined 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 wholly disproportionate and would not be a reasonable response in the circumstances of your case because it did not find any aggravating factors and there was no patient harm. The panel took into account your efforts to remediate the concerns, your admission to the charges and your continuous engagement with the process. The panel also bore in mind the mitigating factors it identified and acknowledged your potential and willingness to respond positively to supervision and training. In these circumstances, the panel determined that a suspension order is not necessary to protect the public or address the public interest.

Having regard to the matters it had identified, the panel has concluded that a conditions of practice order will protect the public, 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 determined that the following conditions are appropriate, measurable and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must ensure that you are supervised by another registered nurse any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.*
- 2. You must not administer medication unless supervised by a competent nurse. This supervision must consist of being directly supervised at all times whilst administering medication until you have completed a calculations competency test appropriate to the clinical setting in which you are working and you have been assessed as competent over a period of a minimum of two observed drug administration rounds.*
- 3. You must work with a mentor, appointed by your line manager, to create a personal development plan (PDP). Your PDP must address the concerns about medication calculations and early warning score calculations and aseptic non touch technique (ANTT) You must:*
 - Send your case officer a copy of your PDP within one month of it commencing.*
 - Meet with your line manager at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 - Send your case officer a report from your line manager prior to any NMC review hearing. This report must show your progress towards achieving the aims set out in your PDP.*

4. *You must keep the NMC informed about anywhere you are working by:*
 - a. *Telling your case officer within seven days of accepting or leaving any employment.*
 - b. *Giving your case officer your employer's contact details.*

5. *You must keep the NMC informed about anywhere you are studying by:*
 - a. *Telling your case officer within seven days of accepting any course of study.*
 - b. *Giving your case officer the name and contact details of the organisation offering that course of study.*

6. *You must immediately give a copy of these conditions to:*
 - a. *Any organisation or person you work for.*
 - b. *Any agency you apply to or are registered with for work.*
 - c. *Any employers you apply to for work (at the time of application).*
 - d. *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e. *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

7. *You must tell your case officer, within seven days of your becoming aware of:*
 - a. *Any clinical incident you are involved in.*
 - b. *Any investigation started against you.*
 - c. *Any disciplinary proceedings taken against you.*

8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

- a. Any current or future employer.*
- b. Any educational establishment.*
- c. Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for nine months.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Evidence of completed competencies as described at condition 2 above.*
- References from your current employer.*
- Testimonials relating to current employment.*
- A reflective piece evidencing further insight into the concerns found proved.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Martyn'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 responses from Mr Martyn. It has taken account of the submissions made by Mr Kewley on behalf of the NMC.

Mr Kewley began by providing the background of the case. He referred the panel to the charges which related to a lack of competence and misconduct. He informed the panel that Mr Martyn made admissions to some charges relating to a lack of competence and those which were disputed were not found proved. He further informed the panel that the charges concerning misconduct were found proved although disputed. He referred the panel to the findings of the original panel in relation to insight, risk of harm and risk of repetition.

Mr Kewley referred the panel to the substantive conditions of practice order which was imposed by the original panel as a result of its findings. He informed the panel that at the time of the imposition of this order, Mr Martyn had two other referrals to the NMC which were live and as a result he was subject to an interim suspension order. He submitted that the consequence of the interim suspension order is that Mr Martyn has not been able to comply with the substantive conditions of practice order. Mr Kewley informed the panel that two referrals that are separate to this case should not concern the panel today in its review of the current substantive conditions of practice order.

Mr Kewley informed the panel that a substantive hearing for the other referrals has been scheduled to take place in August 2022. He told the panel that the reason he brings the other referrals to the panel's attention is in fairness to Mr Martyn as it provides an explanation as to why Mr Martyn has not had an opportunity to comply with the conditions of practice and demonstrate safe nursing practice.

Mr Kewley submitted that knowledge of the other referrals should not affect the panel's approach to considering this case and the current conditions of practice order. He submitted that so long as the clinical competencies have not been remedied, the risk of

harm and risk of repetition identified by the original panel continues to be present. He submitted that on this basis, there continues to be current impairment in this case.

Mr Kewley submitted that a further period of conditions of practice would be the least restrictive order which is appropriate for this case. He submitted that a further 12 months would continue to address and manage the risks identified by the original panel and also provide time for the substantive hearing of the two other referrals to take place.

The panel also had regard to the email from Mr Martyn to his NMC case officer dated 8 June 2022 in which he stated "*I have retired from nursing*".

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 Mr Martyn's fitness to practise remains impaired.

The panel noted that the original panel found that Mr Martyn had demonstrated partial insight into his lack of competence. At this hearing the panel did not have any new information which demonstrates that Mr Martyn's insight into the charges found proved and the associated consequences has developed. The panel noted that Mr Martyn made admissions to some of the charges at the original hearing, however it has had no new information to demonstrate that Mr Martyn has advanced his understanding into the implications of his failures on patient safety and the reputation of the nursing profession.

In its consideration of whether Mr Martyn has taken steps to strengthen his practice, the panel took into account that Mr Martyn is currently subject to an interim suspension order in relation to other matters being considered by the NMC. The panel therefore acknowledged that Mr Martyn has not had the opportunity to demonstrate compliance with the conditions of practice or that he is able to return to safe nursing practice. The panel did not have any evidence of relevant training Mr Martyn may have undertaken to demonstrate steps he has taken to strengthen his nursing practice.

The original panel determined that Mr Martyn was liable to repeat matters of the kind found proved. Today's panel has not heard or received any information to undermine this. In light of this, this panel determined that Mr Martyn is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mr Martyn's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Martyn'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 Mr Martyn'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 Mr Martyn'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 further conditions of practice order on Mr Martyn'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 Mr Martyn has not been able to demonstrate compliance with the current conditions of practice order as his registration is subject to an interim suspension order in relation to two other NMC referrals. The panel was clear however, that for the purposes of the matters being addressed at today's hearing, a conditions of practice order remains the appropriate sanction.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there were no deep-seated attitudinal problems. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Martyn's case as he has not yet had an opportunity to demonstrate compliance with the conditions of practice order.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 31 August 2022. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. *You must ensure that you are supervised by another registered nurse any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.*
2. *You must not administer medication unless supervised by a competent nurse. This supervision must consist of being directly supervised at all times whilst administering medication until you have completed a calculations competency test appropriate to the clinical setting in which you are working and you have been assessed as competent over a period of a minimum of two observed drug administration rounds.*
3. *You must work with a mentor, appointed by your line manager, to create a personal development plan (PDP). Your PDP must address the concerns about medication calculations and early warning score calculations and aseptic non touch technique (ANTT) You must:*
 - *Send your case officer a copy of your PDP within one month of it commencing.*
 - *Meet with your line manager at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 - *Send your case officer a report from your line manager prior to any NMC review hearing. This report must show your progress towards achieving the aims set out in your PDP.*
4. *You must keep the NMC informed about anywhere you are working by:*
 - a. *Telling your case officer within seven days of accepting or leaving any employment.*
 - b. *Giving your case officer your employer's contact details.*
5. *You must keep the NMC informed about anywhere you are studying by:*
 - a. *Telling your case officer within seven days of accepting any course of study.*
 - b. *Giving your case officer the name and contact details of the organisation offering that course of study.*

6. *You must immediately give a copy of these conditions to:*
 - a. *Any organisation or person you work for.*
 - b. *Any agency you apply to or are registered with for work.*
 - c. *Any employers you apply to for work (at the time of application).*
 - d. *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e. *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

7. *You must tell your case officer, within seven days of your becoming aware of:*
 - a. *Any clinical incident you are involved in.*
 - b. *Any investigation started against you.*
 - c. *Any disciplinary proceedings taken against you.*

8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
 - a. *Any current or future employer.*
 - b. *Any educational establishment.*
 - c. *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 31 August 2022 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Martyn 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 completed competencies as described at condition 2 above.
- References from your current employer.
- Testimonials relating to current employment.
- A reflective piece evidencing further insight into the concerns found proved.

This will be confirmed to Mr Martyn in writing.

That concludes this determination.