

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

**Substantive Order Review Hearing
Thursday, 4 April 2024**

Virtual Hearing

Name of Registrant: Lucy Pollard

NMC PIN 17K0608E

Part(s) of the register: Registered Nurse – sub part 1
Learning Disabilities Nursing – level 1

Relevant Location: Essex

Type of case: Lack of competence

Panel members: Phil Lowe (Chair, lay member)
Janet Fitzpatrick (Registrant member)
Alison James (Lay member)

Legal Assessor: John Donnelly

Hearings Coordinator: John Kennedy

Nursing and Midwifery Council: Represented by Ben D’Alton, Mr D’Alton

Miss Pollard: Not present and unrepresented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months)
to come into effect on 7 April 2024 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 Miss Pollard was not in attendance and that the Notice of Hearing had been sent to Miss Pollard's registered email address by secure email on 8 March 2024.

Mr D'Alton, 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Pollard's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Pollard 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 Miss Pollard

The panel next considered whether it should proceed in the absence of Miss Pollard. The panel had regard to Rule 21 and heard the submissions of Mr D'Alton who invited the panel to continue in the absence of Miss Pollard.

Mr D'Alton referred the panel to the email dated 4 April 2024 from Miss Pollard requesting an adjournment of today's proceedings. In the email, Miss Pollard stated:

'Hello

I am really sorry [PRIVATE] I unfortunately won't be appearing today due to this ...

Could I ask for an adjournment to a later date? if not I understand, apologies again for the inconvenience.'

Mr D'Alton submitted that as the order is due to expire at the end of 6 April 2024 there would not be sufficient time to relist this case before the expiry and that it would be in the public interest to rather proceed with the hearing today and note that Miss Pollard has the option to request an early review should the panel impose a further order.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Pollard. In reaching this decision, the panel has considered the submissions of Mr D'Alton, the representations from Miss Pollard, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Miss Pollard has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- Miss Pollard will have the option to request an early review should the panel impose an order;
- The current order is due to expire in two days and therefore there is not sufficient time for a postponement; 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 to proceed in the absence of Miss Pollard.

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

At the outset of the hearing, Mr D'Alton referred the panel to an email from Miss Pollard on 3 April 2024 which made the following request for the hearing to be heard in private:

'Could I please request that my hearing is held in private [PRIVATE]'

The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr D'Alton opposed the application and submitted that Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules), is the applicable rule that guides the conduct of hearings. He submitted that Rule 19 (1) provides the starting point, that hearings shall be conducted in public while 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. He informed the panel that there would be no reference to Miss Pollard's health or private life in the course of today's hearing as it was not necessary for the purpose of the review of the current substantive order imposed on Miss Pollard. He submitted that [PRIVATE]. He submitted that today's hearing should be held in public and if there is any reference to Miss Pollard's health or private life, the hearing could go into a private session at that stage.

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 hold the hearing in public. In reaching this decision, the panel has considered the submissions of Mr D'Alton, the emails from Miss Pollard, and the advice of the legal assessor. It has had particular regard to provisions of Rule 19 and to the overall interests of justice and fairness to all parties. It noted that:

- [PRIVATE]
- [PRIVATE]
- There is no reasonable ground for the hearing to be held in private;
- If there is any reference to Miss Pollard's health or private life, the hearing could go into a private session at such instance; and
- It is in the interest of the public for the hearing to be held in public and the public interest outweighed Miss Pollard's interests.

In these circumstances, the panel has decided to hold the hearing in public.

Decision and reasons on review of the substantive order

The panel decided to vary the current conditions of practice order.

This order will come into effect at the end of 6 April 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive conditions of practice order originally imposed for a period of 9 months by a Fitness to Practise Committee panel on 8 March 2021. The order was reviewed on 23 November 2021 and the conditions of practice order was varied under Article 30(2) and (4) Order and then extended for a further 6 months. The order was further reviewed on 24 June 2022 where the conditions of practice order was extended for a period of 9 months. The order was again reviewed on 24 February 2023 where the conditions of practice order was extended for a period of 12 months.

The current order is due to expire at the end of 6 April 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, a Registered Nurse employed at Cygnet Victoria House

1. On 13 December 2018 signed the medication record to indicate that you had administered the following medication to Patient A when you had not:

- a) *Relvar Ellipta inhaler [Proved by admission]*
- b) *Two 25mg Clozapine tablets [Proved by admission]*

2. On 13 December 2018 signed the medication record to indicate that you had administered to Patient B three 100mg Clozapine tablets, when in fact you had not. **[Proved by admission]**
3. On 13 December 2018 signed the medication record to indicate that you had administered a 50mg Amisulpride tablet to Patient B, when in fact you had not. **[Proved by admission]**
4. On 26 January 2019 documented that Patient E had been compliant in taking his medication when in fact Patient E did not have a prescription for medication. **[Proved by admission]**
5. On 12 February 2019 failed to administer Bictegravir Emtricitabine Tenofovir to Patient C. **[Proved by admission]**
6. On 12 February 2019 signed the medication record to indicate that you had administered 1mg Lorazepam to Patient C when you had not. **[Proved by admission]**
7. On 14 February 2019 you administered to Patient D three 100mg Quetiapine tablets instead of one 300mg Quetiapine XL tablet. **[Proved by admission]**
8. On 14 February 2019 you signed the medication record to indicate that you had administered Oxycodone to Patient D when in fact you had not. **[Proved by admission]**

AND your fitness to practice is impaired by reason of your lack of competence.'

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

'The panel first considered whether Miss Pollard's fitness to practise remains impaired.

The panel noted Miss Pollard's representations in her email dated 22 February 2023, where she stated that she had tried to secure employment as a registered nurse, but it had been difficult for her to gain employment with the current conditions of practice order in place and she is now trained as an aesthetics practitioner. The panel was of the view that Miss Pollard has not yet had the opportunity to strengthen her practice in relation to her failings, which were deficits of basic nursing skills, and has not been able to provide any evidence that she has complied with the current conditions of practice order due to her inability to secure employment as a registered nurse.

The panel took into account that Miss Pollard has shown a degree of remorse with regards to her failings, has expressed her passion in the nursing profession and her readiness to return to nursing practice. However, it was concerned that Miss Pollard has shown minimum insight into the impact of her failings in medication administration on patients under her care and public safety. It considered the testimonial dated 19 November 2021 which attested to Miss Pollard's competence in medication administration in aesthetics practice, however, the panel was of the view that the testimonial does not attest to her competence with relation to the specific failings identified in her nursing practice. The panel therefore determined that Miss Pollard has not yet demonstrated that she has strengthened her practice with regards to the failings in her nursing practice and concluded that there remains a real risk of repetition and a consequent risk of significant harm to patients under her care and to the wider public.

The last reviewing panel determined that Miss Pollard was liable to repeat matters of the kind found proved. Today's panel has not received any new information that the circumstances had changed. In light of this, this panel determined that Miss Pollard is liable to repeat matters of the kind found proved and there remains a risk of harm to the public. 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 Pollard's fitness to practise remains impaired.'

The third reviewing panel determined the following with regard to sanction:

'The panel next considered whether a further extension to the conditions of practice order would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that a conditions of practice order remains appropriate and proportionate and would address the failings highlighted in this case. It accepted that Miss Pollard has been unable to comply with conditions of practice due to her current employment status but is engaging with the NMC and is willing to comply with the current conditions of practice order. The panel was of the view that a further conditions of practice order remains sufficient to protect patients and the wider public interest as there was no evidence of deep-seated attitudinal problems on the part of Miss Pollard.

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 Miss Pollard's case given her interest in returning to nursing practice and to provide her with the opportunity to comply with the current order.

Accordingly, the panel determined, pursuant to Article 30(1)(a) to extend the current 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 6 April 2023. It decided that the following conditions remain 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. *Until you have been signed off by your supervisor (a registered nurse) as competent to administer medication independently, you must not administer medication unless supervised by a registered nurse. This supervision may be direct or indirect supervision, as decided by your supervisor.*
2. *You must have monthly meetings with your supervisor regarding your progress and competence in medicines administration and documentation.*
3. *You must provide a report to the NMC from your supervisor regarding your progress and competence in medicines administration and documentation 14 days in advance of the next review hearing.*
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 or self-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. The panel determined this would be an appropriate length of time to support Miss Pollard in her return to nursing practice and to gather evidence that she has complied with the current conditions of practice order in preparation for the next review hearing.

This extension to the conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 April 2023 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Pollard'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 emails from Miss Pollard. It has taken account of the submissions made by Mr D'Alton.

Mr D'Alton submitted that Miss Pollard's fitness to practice remains impaired and invited the panel to consider a variation of a conditions of practice order. He submitted that Miss Pollard is not currently working in a role as a registered nurse but remains working in her self-employed aesthetics business. While as part of this Miss Pollard will administer some prescribed medication this is not comparable to the volume and type of medication that would be administered if she was working within a care environment as a registered nurse. Therefore, there is a limited amount of strengthening of practice that Miss Pollard has been able to demonstrate that would address the failings identified in some of the basic nursing skills.

Mr D'Alton submitted that from the email documentation received from Miss Pollard she has sought to address these concerns with obtaining supervision when administering prescribed medication as part of her aesthetics practice but that more evidence of longevity of this improvement is required.

Mr D'Alton submitted that the reflective piece that Miss Pollard provided shows developing insight. He submitted that while there is some evidence of a strengthening of practice this is limited due to the difficulties Miss Pollard has experienced in securing employment as a registered nurse.

Mr D'Alton submitted that a conditions of practice order remains appropriate to provide for the public protection and that workable and proportionate conditions could be formulated. He submitted that a variation to some of the conditions to more accurately reflect Miss Pollard's current employment as an aesthetic practitioner would be appropriate and made suggestions that the panel may wish to consider.

The panel also had regard to Miss Pollard's written representations showing her completing online training in medications administration courses and evidence of her being supervised while administering medication.

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 Pollard's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Miss Pollard had developing insight. At this hearing the panel had sight of Miss Pollard's written reflective piece and her continued engagement with the NMC.

The panel noted that Miss Pollard has completed a number of recent online courses relating to the administration of aesthetics medication and that she has been receiving supervision in this area. However, the panel considered that it would be of value to help strengthen her practice if Miss Pollard was able to attend a practical course on medication administration. The panel further noted that a number of the training certificates Miss Pollard submitted and the testimonials are from 2019 or 2021 and that given nearly five years has passed since then more recent examples would be of benefit to show current strengthening of practice.

The panel considered that as Miss Pollard was not currently working as a registered nurse there is a limited amount of strengthening of practice that she has been able to demonstrate. Therefore, there remains a risk of repetition.

The last reviewing panel determined that Miss Pollard was liable to repeat matters of the kind found proved. Today's panel has heard no new evidence which would change this view. In light of this, this panel determined that Miss Pollard is now 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 Miss Pollard's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Pollard'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 Pollard'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 Miss Pollard'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 varied conditions of practice order on Miss Pollard'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 Pollard has been complying with current substantive conditions of practice as far as possible due to their current employment status but is engaging with the NMC and is willing to comply with any conditions imposed.

The panel was of the view that a varied 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 and Miss Pollard has been engaged in the process and continuing to show developing insight. In this case, there are conditions which could be formulated to 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 Miss Pollard's case as the problems raised are not attitudinal in nature and could be remediated by further strengthening of practice.

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 6 April 2024. 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 limit your nursing practice to:
 - a) a single substantive employer; and/or
 - b) your self-employed aesthetics practice.
You cannot be employed by an agency.

2. Where you are engaged in medicines administration, management, and documentation, including prescription only medicines for the purposes of aesthetics, this must be under direct supervision until such time as you have been formally assessed as meeting the requirements by another registered nurse, or other registered medical practitioner.

3. If employed under condition 1. A) you must adhere to the following:
 - a) Having been formally assessed on medicines administration, management, and documentation, you must send a copy of this assessment to the NMC within seven days of the sign off date.
 - b) You must have fortnightly formal meetings with your supervisor, mentor, or line manager to discuss your progress in relation to meeting the required standards of medicines administration, management, and documentation. These meetings should include discussions of any clinical incidents and near misses.
 - c) You must obtain a report which covers all of the matters set out in condition 3.B) from your line manager, supervisor, or mentor and send it to your case officer prior to any substantive order review.

4. If working under condition 1. B) you must adhere to the following:
 - a) Having been formally assessed on medicines administration, management, and documentation for the purposes of aesthetics, you must send a copy of this assessment to the NMC within seven days of the sign off date.
 - b) You must keep a record of all medication supervisions and send this record to the NMC before any substantive order review.

5. 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.
6. 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.
7. You must immediately give a copy of these conditions to:
- a) Any organisation you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
8. 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.
9. 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 6 April 2024 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 Miss Pollard 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:

- Miss Pollard's attendance at the hearing;
- An updated reflective piece showing insight and recent strengthening of practice.

This will be confirmed to Miss Pollard in writing.

That concludes this determination.