

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

**Substantive Order Review Meeting
Tuesday 6 February 2024**

Virtual Meeting

Name of registrant: Thankgod Reuben

NMC PIN: 01A10300

Part(s) of the register: Registered Nurse Adult – Sub part 1
RN1 – 21 December 2020

Relevant Location: Hampshire

Type of case: Misconduct

Panel members: Peter Wrench (Chair, Lay member)
Margaret Marshall (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Nigel Mitchell

Hearings Coordinator: Sherica Dosunmu

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

Outcome: **Suspension order (6 months) to come into effect on 19 March 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mr Reuben's registered email address on 8 January 2024. The notice informed Mr Reuben that his conditions of practice order would be reviewed at a meeting on or after 6 February 2024, unless he asked for the review to take place at a hearing. He was invited to submit evidence if he so wished.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Reuben has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to make a suspension order for a period of 6 months.

This order will come into effect at the end of 19 March 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (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 19 May 2023.

The current order is due to expire at the end of 19 March 2024.

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:

'On 13 October 2020:

1. *Took hold of Patient A's right wrist:*
 - i. *when there was no clinical need to do so.*
 - ii. *or, in the alternative, with more force that was clinically required.*

2. *Twisted Patient A's right wrist:*
 - i. *when there was no clinical need to do so.*
 - ii. *or, in the alternative, with more force that was clinically required.'*

The original panel determined the following with regard to impairment:

'The panel is of the view that a vulnerable patient was put at real risk and was caused physical and emotional harm as a result of Mr Reuben's misconduct. Mr Reuben's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mr Reuben has not attended the hearing and has not provided the panel with any evidence of insight, reflection, remediation, relevant training undertaken, or testimonials which address the regulatory concerns. The panel considered that Mr Reuben has not demonstrated any remorse and has not provided an apology, even in the contemporaneous accounts at the time of the incident. The panel had regard to the fact that Mr Reuben has a long career and there are no other regulatory concerns which relate to his nursing practice as far as the panel is aware.

The panel recognises Mr Reuben's right to dispute how Patient A suffered the bruising to his right wrist. The panel also noted that there has been no evidence provided of any empathy or understanding on Mr Reuben's part, that Patient A was a vulnerable person who suffered injury, pain and distress as a result of Mr Reuben's actions.

The panel was satisfied that the misconduct in this case is potentially capable of being addressed, but it had no evidence before it that Mr Reuben had taken any steps to do so. The panel was of the view that as

harm has been caused in the past, a real risk remains that potential harm could be caused in the future.

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 determined that a finding of impairment on public interest grounds is also required because an informed member of the public would be concerned to learn that a nurse who has injured a vulnerable elderly patient, causing significant bruising to his wrist, was permitted to practise unrestricted without having addressed the misconduct.

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 Mr Reuben's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Mr Reuben's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential ... 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 failings highlighted in this case. The panel consider that there is no evidence of deep-seated personality issues in Mr Reuben's case. It took into account that the regulatory concerns do seem to centre on Mr Reuben's ability to communicate with patients who are suffering from dementia or have some mental health difficulties and were therefore of the view that some retraining in communication, for example, may assist. The panel further noted that there is no wider evidence of general incompetence.

The panel was of the view that it is in the public interest to return effective nurses to practice, and this is the least restrictive sanction. The panel considered it could formulate conditions which would sufficiently protect the public. It considered that it was in the public interest that, with appropriate safeguards, Mr Reuben should be able to return to practise as a nurse. It therefore determined that this is the most proportionate sanction to put in place.

The panel had regard to the fact that this was a one-off incident which occurred in 2020 and that, other than on this occasion, Mr Reuben has had an unblemished career of 34 years as a 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 or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Reuben's case as there were no wider concerns about Mr Reuben's practice. In the last analysis, the panel consider that this is not about the deliberate infliction of cruel violence to an elderly vulnerable patient, but rather, a very bad professional misjudgement: failing to consider perfectly satisfactory alternative courses of action, resulting in the totally inappropriate execution of what the registrant believed was his professional duty to remove the inhaler from Patient A.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions 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 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.*
2. *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.*
3. *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*
4. *You must tell your NMC 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.*
5. *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*

6. *You will send the NMC a report seven days in advance of the next NMC hearing or meeting from either:*
 - *your clinical supervisor*
 - *your line manager.*
 - *mentor or supervisor.*

7. *You must ensure that you are directly supervised any time you are working by another registered nurse until such time that your manager or supervisor deems you competent to practice independently and safely.*

8. *You will not work as a nurse without supervision until you have completed relevant training in respect of:*
 - *Caring for elderly patients with dementia and their mental health*
 - *Physical intervention*
 - *Communication skills with patients.*

9. *You will send your NMC case officer evidence that you have successfully completed the training detailed in condition 8.*

10. *You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about caring for elderly patients with dementia and their mental health, physical intervention and communication skills with patients. You must:*
 - *Send your NMC case officer a copy of your PDP seven days before the next NMC hearing*
 - *Send your case officer a report before the next NMC hearing. This report must show your progress towards achieving the aims set out in your PDP.*

11. *You must prepare a reflective statement in advance of your next NMC hearing. Your reflective statement should address the regulatory concerns identified by the panel.*

The period of this order is for nine months. The panel has decided that this period of time is necessary to enable Mr Reuben to address the regulatory concerns identified. The panel is unclear regarding Mr Reuben's current employment status and a period of nine months would enable him to work with an employer to comply with the conditions of practice order. Furthermore, the panel was of the view that nine months would satisfactorily address the public interest concerns.

Before the order expires, a panel will hold a review hearing to see how well Mr Reuben 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 with another order.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Reuben'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.

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 Reuben's fitness to practise remains impaired.

The panel noted that the original substantive panel found that Mr Reuben had not demonstrated any insight or remorse. It noted that the original substantive panel had no evidence before it to demonstrate that Mr Reuben had an understanding of how his actions caused a vulnerable patient to suffer injury, pain and distress. This panel had no new information before it to suggest any development of insight or remorse.

In its consideration of whether Mr Reuben has strengthened his practice, the panel took into account that the original substantive panel had no information before it regarding any steps Mr Reuben may have taken to address the concerns raised about his practice. This panel was not provided with any evidence of the same from Mr Reuben and had no further information to demonstrate that the concerns about his practice identified by the original substantive panel have been addressed and were unlikely to reoccur. Mr Reuben has not engaged with the NMC to provide any information such as testimonials/employment references or evidence demonstrating that he has complied with the conditions of practice order imposed. He has not provided any evidence of relevant training addressing the regulatory concerns. The panel therefore determined that there was no evidence before it to demonstrate that Mr Reuben has strengthened his nursing practice since the conditions of practice order was put in place.

The original substantive panel determined that Mr Reuben was liable to repeat matters of the kind found proved. Today's panel has concluded, given the lack of engagement, lack of evidence of insight, remorse or strengthened practice, that there still 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 Mr Reuben's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Reuben'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 Reuben'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 Reuben'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 conditions of practice order on Mr Reuben's registration would still be a sufficient and appropriate response. It was mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that Mr Reuben has not engaged with the NMC and has not followed the last panel's recommendations. It also noted that it has no knowledge of Mr Reuben's current circumstances. As a result, the panel could not be satisfied that Mr Reuben would be willing to comply with a conditions of practice order in the future and therefore concluded that a conditions of practice order is no longer practicable in this case. It determined that a conditions of practice order was not appropriate to protect the public or satisfy the wider public interest.

The panel considered the imposition of a suspension order. It considered that a suspension order would allow Mr Reuben a further opportunity to fully reflect on his previous failings. The panel was of the view that a six month suspension order would

afford Mr Reuben adequate time to engage with the NMC, and to demonstrate insight and steps he has taken to strengthen his practice. It would also give Mr Reuben an opportunity to provide evidence of compliance with the previous conditions of practice order.

The panel therefore determined that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel decided to impose a suspension order for the period of six months to give Mr Reuben a further opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

The panel gave serious consideration to a strike-off order. However, it determined that it would be disproportionate at this stage. The panel noted that a strike-off order would be available to the next reviewing panel.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 19 March 2024 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order. It will be open to Mr Reuben to apply for an early review of the suspension order if he has new information to provide.

Registered professionals have a duty to cooperate with their regulator in its consideration of matters affecting their fitness to practise. If they do not, they throw into question their suitability to remain on the register. Mr Reuben has failed to communicate with the NMC at all in the period since the substantive hearing. A key requirement for a future panel will be information about Mr Reuben's current work circumstances and future intentions, whether this is work inside or outside of the nursing profession. It would also be assisted by:

- Mr Reuben's engagement with the NMC
- Mr Reuben's attendance at a future NMC hearing
- Evidence of up-to-date training addressing the regulatory concerns
- Up-to-date testimonials and references from those that Mr Reuben works with.

This will be confirmed to Mr Reuben in writing.