

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

**Substantive Order Review Hearing
Monday, 5 February 2024**

Virtual Hearing

Name of Registrant: Mark Edwin Round

NMC PIN 04C0402W

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – (level 1) April 2007

Relevant Location: Flint

Type of case: Misconduct

Panel members: Judith Webb (Chair, lay member)
Jacqueline Metcalfe (Registrant member)
Robert Fish (Lay member)

Legal Assessor: Jayne Salt

Hearings Coordinator: Sharmilla Nanan

Nursing and Midwifery Council: Represented by Lucy Chapman, Case Presenter

Mr Round: Not present and not represented at the hearing

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 6 March 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 Mr Round was not in attendance and that the Notice of Hearing had been sent to Mr Round's registered email address by secure email on 4 January 2024.

Ms Chapman, 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, and, amongst other things, information about Mr Round'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 Round 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 Round

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

Ms Chapman referred the panel to correspondence between the NMC and Mr Round which included a telephone attendance note dated 5 February 2024 stating that he will not be attending today's hearing.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Round. In reaching this decision, the panel has considered the submissions of Ms Chapman, 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:

- Mr Round has informed the NMC by telephone that he will not be attending today's hearing;
- No application for an adjournment has been made by Mr Round;
- There is no reason to suppose that adjourning the hearing 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 and in the public interest to proceed in the absence of Mr Round.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order for a period of 6 months. This order will come into effect at the end of 6 March 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the seventh review of a substantive conditions of practice order originally imposed for a period of six months by a Fitness to Practise Committee panel on 7 August 2020. This order was reviewed on 28 January 2021 where it was changed to a six month suspension order, and then on 27 July 2021 where it was confirmed. This order was further reviewed on 28 January 2022 where it was changed to a six month conditions of practice order, and then on 29 July 2022 where it was confirmed. The order was reviewed on 23 January 2023 when the panel decided to confirm the conditions of practice order. The order was last reviewed on 4 September 2023 when the panel decided to vary the conditions of practice order for a period of 6 months.

The current order is due to expire at the end of 6 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:

'That you a registered nurse,

On 16 October 2017, whilst working a shift at Rhiwlas Care Home

1. In respect of Resident A,

1.1. attempted to remove a suprapubic catheter by pulling at it and re-inserting it several times.

1.2. attempted to reinsert a new catheter which had become unsterile during the process.'

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

'The panel considered whether Mr Round's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Round had insufficient insight. At this hearing the panel determined that Mr Round has not demonstrated an understanding of how his actions put patients at a risk of harm, nor an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, the panel determined that Mr Round has not demonstrated how he would handle the situation differently in the future.

In its consideration of whether Mr Round has taken steps to strengthen his practice, the panel took into account that Mr Round has not worked as a registered nurse for several years and therefore has not been able to demonstrate his compliance with the substantive conditions of practice

order. The panel considered that Mr Round has not provided the NMC with evidence of any additional relevant training he has undertaken, nor an up-to-date reflective piece.

The last reviewing panel determined that Mr Round was liable to repeat matters of the kind found proved. Today's panel has heard no new information or material changes in circumstances. In light of this, this panel determined that Mr Round remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment remains 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 Round's fitness to practise remains impaired.'

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

'The panel next considered whether imposing a varied conditions of practice order on Mr Round'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 Round has been unable to comply with conditions of practice due to his inability to gain employment as a registered nurse and had regard to the issues he addressed in his emails dated 27 July and 1 September 2023.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting that Mr Round has indicated his difficulty in gaining employment as a registered nurse due to the current conditions of practice order. The panel determined that in this case, the current conditions of practice order could be varied in a way that would still 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 disproportionate and would not be a reasonable response in the circumstances of Mr Round's case in light of the emails which Mr Round sent on 27 July and 1 September 2023, indicating that he does not wish to lose his PIN and outlining his difficulties in gaining employment.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to vary the current conditions of practice order for a period of 6 months, which will come into effect on the expiry of the current order, namely at the end of 7 September 2023. It decided to impose the following, varied conditions which it considered are appropriate and proportionate in this case:

- 1. You must not carry out any catheterisations until you have successfully:
 - a) completed a training course on catheterisation procedure; and*
 - b) been assessed and deemed as competent by your line manager.**
- 2. You will send your case officer evidence that you have successfully completed a training course on catheterisation within 14 days of successful completion.*
- 3. You will send your case officer a report from your line manager setting out your performance (including both your level of knowledge and ability to apply your skills effectively) in relation to following procedure during catheterisation at least 7 days before any 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.*
 - 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 when you are working independently.*
7. *You must tell your case officer, within seven days of you 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 six months.

Further, the panel determined that a future panel would be assisted by Mr Round's attendance at the next substantive order review hearing and a testimonial/reference from his current employer.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Round'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. It has taken account of the submissions made by Ms Chapman on behalf of the NMC.

Ms Chapman provided the panel with a background of the case which included a summary of the decisions made by past reviewing panels. She referred today's panel to the relevant pages in the NMC bundle. She submitted that Mr Round has not attended today's hearing, nor has he provided any evidence which suggests that he is no longer impaired and has addressed the misconduct found at the substantive hearing. She submitted that from the telephone call that Mr Round had with the NMC, on 5 February 2024, it appears that he is not currently working as a registered nurse which was the position at the last review. She submitted that there is no evidence of Mr Round's improved insight before today's panel despite his suggestion that he should no longer have any conditions in place.

Ms Chapman submitted that an extension of the current conditions of practice order would be appropriate to allow Mr Round the opportunity to secure work as a registered nurse, demonstrate compliance with the conditions and demonstrate improved insight. However, she submitted that the appropriate order to impose was ultimately a matter for the panel.

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 Round's fitness to practise remains impaired.

Today's panel noted that the last reviewing panel found that Mr Round had not demonstrated an understanding of how his actions put patients at a risk of harm, nor an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, the last reviewing panel determined that Mr Round had not demonstrated how he would handle the situation differently in the future. At this hearing, today's panel took into consideration that Mr Round last provided a reflective statement on 5 October 2021, before the third substantive review order hearing, in which he demonstrated some limited insight. However, the panel bore in mind that the reflective statement did not address insight in respect of his failings and the impact on patient health and welfare, and the wider impact on public confidence in the nursing profession. The panel noted that at this hearing it had no further information regarding Mr Round's insight of the areas of concern and it concluded that he has not acknowledged the misconduct in his practice which was found at the substantive hearing.

In its consideration of whether Mr Round has taken steps to strengthen his practice, the panel considered that it had no new information regarding any training he has completed or efforts made to keep up to date related to the charges found proved or any fundamental nursing skills. The panel noted that it has been six years since he last practised as a nurse.

Today's panel has received no new information which addresses the concerns in Mr Round's insight nor any evidence of his strengthened practice. In light of this, this panel determined that Mr Round remains 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 was of the view that an informed member of the public would be concerned to learn about Mr Round's lack of meaningful engagement with the NMC, his lack of strengthened nursing practice by way of addressing the concerns through training, his failure to acknowledge his mistakes, or present an understanding of why his failings were an example of poor practice. The panel was of the view that these all presented reasons which would undermine the confidence in the nursing profession. 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 Round's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Round'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 it should allow the current order to lapse on expiry. It took into account that whilst Mr Round has previously stated that the conditions of practice order prevent him from finding work as a nurse, he has not provided any information to indicate that he no longer wishes to be a registered nurse. The panel noted that since the reflective statement dated 5 October 2021, provided at the third substantive review Mr Round's level of insight has decreased.

The panel next considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case, Mr Round's diminishing insight and his lack of meaningful engagement with the NMC. 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, Mr Round's decreasing lack of insight, lack of meaningful engagement with the NMC and the public protection issues identified, an order that does not restrict Mr Round'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 Round'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 considered whether imposing a conditions of practice order on Mr Round'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 next considered the continuation of the current conditions of practice order. It bore in mind that Mr Round has not meaningfully engaged with the NMC since the imposition of the conditions of practice order on 29 January 2022. It noted he has not demonstrated any improved insight or acknowledgement of the misconduct found at the substantive hearing. The panel bore in mind Mr Round's unchanging position and lack of accountability in relation to the seriousness of the facts found proved at the substantive hearing. The panel determined there is no information before it to conclude that Mr Round is currently willing to comply with any conditions imposed upon his practice.

On this basis, the panel concluded that a conditions of practice order is no longer practicable or the appropriate order in this case. Although, the panel concluded that workable conditions of practice could be formulated which would protect the public they concluded that these would not satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of 6 months would provide Mr Round with an opportunity to engage with the NMC, provide any evidence of learning in relation to the failings found proved at the substantive hearing and evidence of his insight

as to how his failings have impacted patients and public confidence in the nursing profession. It considered this to be the most appropriate and proportionate sanction available.

The panel took into consideration that it could impose a striking-off order. It considered that Mr Round has not meaningfully engaged with the NMC nor demonstrated any further insight or strengthened practice since the last hearing. The panel bore in mind that Mr Round has previously engaged with the NMC and has not expressed an intention to leave the nursing profession. In light of this it decided provide Mr Round with a further opportunity to demonstrate insight, provide a reflective piece and provide evidence of strengthened practice. It took into account that any future reviewing panel may consider the imposition of a striking off order.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 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.

Any future panel reviewing this case would be assisted by:

- Your attendance at any future hearing.
- A reflective statement which demonstrates how your failings could affect and impact:
 - a) patient's health and welfare.
 - b) public confidence in the nursing profession.
- Testimonials from either paid or unpaid work.
- Mr Round's intentions for his future nursing career.

This will be confirmed to Mr Round in writing.

That concludes this determination.