

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

**Substantive Order Review Hearing
Monday, 11 March 2024**

Virtual Hearing

Name of Registrant: David Anthony Mott

NMC PIN 0011102E

Part(s) of the register: Registered Nurse – RNA
Adult Nursing – September 2003

Relevant Location: Redcar and Cleveland

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, Lay member)
Jane Jones (Registrant member)
Matthew Wratten (Lay member)

Legal Assessor: Hala Helmi

Hearings Coordinator: Elizabeth Fagbo

Nursing and Midwifery Council: Represented by Rosie Welsh, Case Presenter

Mr Mott: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: Suspension order (4 months) to come into effect on 19 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 Mr Mott was not in attendance and that the Notice of Hearing had been sent to Mr Mott's registered email address by secure email on 9 February 2024.

Ms Welsh, 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 Mr Mott'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 Mott 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 Mott

The panel next considered whether it should proceed in the absence of Mr Mott. The panel had regard to Rule 21 and heard the submissions of Ms Welsh who invited the panel to continue in the absence of Mr Mott. She submitted that Mr Mott had voluntarily absented himself as he waived his right to attend.

Ms Welsh referred the panel to the documentation from Mr Mott which included an email, dated 20 February 2024, which stated the following:

'...[PRIVATE]...'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Mott. In reaching this decision, the panel has considered the submissions of Ms Welsh, the written representations from Mr Mott, 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 Mott;
- Mr Mott has informed the NMC that he has received the Notice of Hearing and confirmed that he does not feel practicably able to attend any hearings relating to this matter;
- Mr Mott had a history of non-attendance at the substantive pre-hearing conference and very limited attendance at the substantive hearing
- Mr Mott voluntarily absented himself;
- 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 to proceed in the absence of Mr Mott.

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

At the outset of the hearing, Ms Welsh made a request that this case be held partially 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).

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 go into private session as and when [PRIVATE] is being discussed in order to protect the privacy of Mr Mott [PRIVATE].

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for a period of four months.

This order will come into effect at the end of 19 April 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 20 September 2023.

The current order is due to expire at the end of 19 April 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:

3) Did not administer prescribed medication to Resident A, namely:

- a) Amitriptyline*
- b) Atorvastatin*
- c) Zopiclone*

4) Did not administer prescribed medication to Resident B, namely:

- a) Simvastatin*
- b) Hypomellose eye drops*
- c) Trimethoprim*
- d) Omeprazole*

5) Did not administer prescribed medication to Resident C, namely:

- a) Eye drops*
- b) Trimbo inhaler*
- c) Trimethoprim*

- 6) *Did not administer prescribed medication to Resident D, namely:*
- a) *An inhaler*
 - b) *Nitrofurantoin*
 - c) *Apixaban*
 - d) *Atorvastatin*
 - e) *Simvastatin*
 - f) *Donepezil*
- 7) *Did not administer prescribed medication to Resident E, namely:*
- a) *Simvastatin*
 - b) *Donepezil*
- 8) *Did not administer prescribed medication Baclofen to Resident F.*
- 9) *Did not administer prescribed medication to Resident G, namely:*
- a) *Two doses of Omeprazole*
 - b) *Amitriptyline*
 - c) *An inhaler*
- 10) *Did not administer prescribed medication to Resident H, namely:*
- a) *Nitrazepam*
 - b) *Quinine*
 - c) *Docusate*
 - d) *Mitazapine*
- 11) *Did not administer prescribed medication to Resident I, namely:*
- a) *Cefalexin*
 - b) *Hypomellose eye drops*
- 12) *Did not check the syringe driver for Resident J during the night.*
- 13) *Did not administer Morphine 10mg sub cut during the night to Resident J.*
- 15) *Wrote over an audit completed in red ink as a stock check, in black ink.'*

The original panel determined the following with regard to impairment:

'The panel finds that residents were put at risk and that there was the potential for harm as a result of Mr Mott's misconduct. Mr Mott's misconduct breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It went on to consider whether there may be a risk of repetition and in doing so it assessed Mr Mott's current insight, remorse and remediation.

The panel noted that Mr Mott has been a registered nurse for 20 years and has no previous fitness to practise history.

Regarding insight, the panel determined that Mr Mott's insight is limited. The panel noted that during the initial investigation Mr Mott had apologised and expressed relief that no residents came to actual harm. However, he still denied some aspects of the reported incidents such as failing to check the syringe driver. Furthermore, he sought to deflect blame onto other staff and onto the general management of the Home. He has not recognised how his conduct has impacted negatively on the reputation of the nursing profession or on the residents and he has not demonstrated any adequate understanding of the serious nature of his failings.

In relation to remorse, the panel noted that there was no evidence of any reflection from Mr Mott. Rather his comments have been limited to the effect that these proceedings have had on him and his family.

The panel was satisfied that the misconduct in this case is potentially capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Mott had remedied his practice. Despite being given the opportunity, Mr Mott has not provided the panel with any evidence of appropriate training or other steps he has taken to strengthen his practice. The panel noted Mr Mott's email dated 17 May 2023 in which he stated, "the likelihood of me returning to nursing is very remote."

The panel therefore determined that there remains a risk of repetition and that a finding of current 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 concluded that public confidence in the profession would be undermined if a finding of current impairment was not made in this case and therefore also finds Mr Mott's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient; and*
- No evidence of harmful deep-seated personality or attitudinal problems.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted

the hardship such an order could potentially cause Mr Mott. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of 6 months was appropriate in this case to allow Mr Mott an opportunity to reflect on the failings identified and to undertake appropriate training to strengthen his practise, should he decide to return to nursing.

At 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. Further, there is guidance available [REV-3h] for a nurse who does not wish to continue practising but is under a substantive order.

Any future panel reviewing this case would be assisted by:

- *Mr Mott's engagement with the NMC and participation at any Substantive Order Review Hearing;*
- *A clear indication of Mr Mott's future nursing career intentions;*
- *A reflective statement from Mr Mott demonstrating his insight into the misconduct;*
- *Testimonials from any paid or voluntary work; and*
- *Any evidence of up-to-date targeted training particularly in relation to the importance of medicines administration.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Mott'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 Mr Mott's email in response to the notice of hearing for this review hearing. It also took into account the submissions made by Ms Welsh on behalf of the NMC.

Ms Welsh outlined the background of the case. She submitted that the nature of Mr Mott's misconduct is serious relating to multiple failings in administering prescribed medication and falling seriously short of standards breaching fundamental tenants as a professional and exposing service users to an unnecessary risk of significant harm.

Ms Welsh submitted that the NMC has not received any of the recommended information suggested by the previous panel which may assist this panel from Mr Mott. She submitted that Mr Mott's future intentions regarding his practice are unclear as there is no information before the panel today to suggest that Mr Mott has engaged in any relevant training in relation to his failing or that he has strengthened his practice. Ms Welsh submitted that since the original substantive order hearing matters have not progressed and there is no information before the panel today to demonstrate any remediation or insight from Mr Mott. Therefore, his fitness to practise remains impaired.

Ms Welsh referred the panel to Mr Mott's email dated 20 February 2024. She submitted that in this email Mr Mott focuses on the impact that the proceedings are having on him [PRIVATE]. However, she submitted that Mr Mott has not provided any evidence of reflection, appropriate training or steps he has taken to strengthen his practice since the suspension order was imposed. She informed the panel of the NMC's response to the email which sought clarification and prompted Mr Mott to provide further information regarding his future career intentions, to which he did not respond.

Ms Welsh further submitted that the risks to the public have not reduced and there remains a real risk of significant harm to the public and a real risk of repetition as Mr Mott has not provided any insight or reflection into his failings and it is unclear whether he intends to

return to practise as a registered nurse. Ms Welsh submitted that it is a matter for the panel to consider whether Mr Mott's fitness to practise remains impaired and the appropriate sanction based on the information before it today.

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 Mott's fitness to practise remains impaired.

At this hearing there was no new information before the panel of any insight, remediation, remorse or any steps taken by Mr Mott to strengthen his practice. There was an absence of any evidence from him concerning the context in which his failings took place. The panel therefore concluded that there had been no material change of circumstances since the original substantive hearing.

In light of this, the panel considered that patients could be placed at a real risk of significant harm if Mr Mott was permitted to practise unrestricted due to the serious nature of the charges found proven. It was of the view that as there is no information before it to suggest Mr Mott has demonstrated sufficient insight and taken the necessary steps to strengthen his practice therefore, a real risk of repetition remains. Therefore, it determined that a finding of 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 Mott's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Mott'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. The panel had been made aware that taking no action and allowing the order to lapse, would have the effect of Mr Mott ceasing to be on the register as his registration has expired. The panel was however not clear about Mr Mott's intention regarding returning to nursing in the future as he has not indicated any clear plan or intention in correspondence to the NMC. The panel therefore 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 Mott'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 Mott'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 a conditions of practice on Mr Mott's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The original panel concluded that the identified failings are remediable. This panel has no information as to whether Mr Mott would comply with any conditions, and he has stated that he is currently not able to seek employment as a registered nurse. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not be practical in the current circumstances. The panel was not therefore able to

formulate conditions of practice that would adequately address the concerns relating to Mr Mott's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Mott further time to fully reflect on his previous failings. It considered that Mr Mott needs to reflect and gain a full understanding of how the failings of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel concluded that a further four months suspension order would be the appropriate and proportionate response and would afford Mr Mott adequate time to further develop his insight and take steps to strengthen his practice.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of four months would provide Mr Mott with an opportunity to engage with the NMC and provide further information regarding his future career intentions. It considered this to be the most appropriate and proportionate sanction available.

The panel discussed imposing a striking off order however it concluded that this was disproportionate in all of the current circumstances.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 19 April 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.

The panel was of the view that if Mr Mott decides that he no longer wishes to practise as a registered nurse, a future panel will be able to allow the existing order to lapse and bring the matters to a close if Mr Mott provides the following:

- Evidence of alternative permanent employment or that he is seeking employment in a new field (such as contract)
- Letters from medical professionals evidencing a long-term health condition that would prevent him from returning to work
- Documents to show he has retired (such as pension payslips)
- A detailed statement clearly setting out his current situation and his future intentions to not return to nursing.

The panel was of the view that if Mr Mott decides that he would like to return to practise as a registered nurse a future panel reviewing this case would be assisted by:

- Mr Mott's engagement with the NMC and participation at any Substantive Order Review Hearing;
- A clear indication of Mr Mott's future nursing career intentions
- A reflective statement from Mr Mott demonstrating his insight into the misconduct;
- Testimonials from any paid or voluntary work; and
- Any evidence of up-to-date targeted training particularly in relation to the importance of medicines administration.

This will be confirmed to Mr Mott in writing.

That concludes this determination.