

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

CLAIM NO: CO/622/2014

STATUTORY APPEAL PURSUANT TO SECTION 29 OF THE NATIONAL HEALTH  
SERVICE REFORM AND HEALTH PROFESSIONS ACT 2002

BETWEEN

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

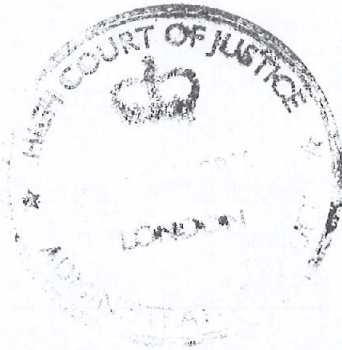
Appellant

and

(1) THE NURSING AND MIDWIFERY COUNCIL

(2) MR ZIA UL HAQUE

Respondents



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CONSENT ORDER

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UPON the First Respondent and Second Respondent conceding that the decision under appeal was unduly lenient within the meaning of s29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the parties agreeing to the substitution of an order for a 9 month suspension (which will be subject to a statutory review in accordance with Article 30 of the Nursing and Midwifery Order 2001)

AND UPON neither Party being either a child or protected party and the Appeal not being an appeal from the decision of the Court of Protection

BY CONSENT

IT IS ORDERED THAT:

1. The appeal is allowed.
2. The 12 month Conditions of Practice Order imposed by the Conduct and Competence Committee of the First Respondent on 9 December 2013 is hereby substituted for an order for a 9 month suspension (which will be subject to a statutory review in accordance with Article 30 of the Nursing and Midwifery Order 2001), such order to commence on the date of this Consent Order.
3. At the review hearing, the review panel shall have placed before it;
  - a. A copy of this Consent Order, schedule 1 of which refers to the Grounds on which this appeal is brought by the Appellant and the extent to which these Grounds are conceded by the First and Second Respondents;

AS by

- b. The documents listed in schedule 2;
  - c. A note, in the terms set out in schedule 3, setting out the considerations the review panel are invited to take into account when reviewing the Second Respondent's case.
4. No order as to costs is made against the Second Respondent.
  5. The First Respondent is to pay the Appellant's costs in the sum of £16,450.00, inclusive of VAT and disbursements within 21 days of the date of this Order.
  6. The appeal hearing listed to be heard on 18 November 2014 be vacated.

*Andrew Guldart*

WE CONSENT TO AN ORDER IN THE ABOVE TERMS

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Solicitors for the Appellant

First Respondent

Second Respondent

Signed:

*ANNIE SURDIE PARTNER  
CAPSTICKS*

Dated 17/11/14

Signed:

*Alice Hilken  
NMC*

Dated 17/11/14

Signed:

*Zia Ul Haque*

Dated 17.11.14

*By the Court*

## SCHEDULE 1

1. The Second Respondent is a registered nurse. On 9 December 2013, the Conduct and Competence Committee of the First Respondent (the "Committee") determined the Second Respondent's fitness to practise was impaired and imposed a Conditions of Practice Order for a period of 12 months.
2. The Appellant appealed against the decision on sanction of the Committee in reliance on the following grounds:

Ground 1: The Conditions of Practice were manifestly inappropriate having regard to the Committee's earlier findings that: the Second Respondent had no insight; the conduct was not easily remediable; the conditions did nothing to address the risk of repetition; and the Committee concluded that this gave rise to issues of public protection but none of the conditions addressed this matter.

Ground 2: Given the seriousness of the misconduct, a Conditions of Practice Order was manifestly insufficient to declare and uphold standards and maintain public confidence in the profession.

Ground 3: The Committee failed to apply the Indicative Sanctions Guidance properly or at all. It further failed to consider or to give appropriate weight to the guidance in respect of sexual misconduct and erasure.

Ground 4: The Committee failed to give adequate weight to the seriousness of the finding that the Second Respondent had asked others to re-write records. Further or alternatively, dishonesty should have been expressly pleaded.

Ground 5: The Committee failed to provide adequate reasons for its decision.

3. The First Respondent and Second Respondent accept that the appeal should be allowed on the grounds set out above, save that it is not agreed that dishonesty should have been expressly pleaded in relation to Ground 4.
4. The parties have agreed that the decision on sanction of a 12 month Conditions of Practice Order be substituted for a sanction of a 9 month Suspension Order (which will be subject to a statutory review in accordance with Article 30 of the Nursing and Midwifery Order 2001) such order to run from the date of this Consent Order.

## SCHEDULE 2

5. The copy documents of the original hearing are to be placed before the review panel, together with the transcripts of the first hearing, the Appellant's Grounds of Appeal, the Appellant's Skeleton Argument and this Consent Order.

## SCHEDULE 3

6. Set out below is the wording, as agreed by all of the parties, to be placed before the review panel at the review hearing to invite them to take these considerations into account when reviewing the Second Respondent's case:

*"Following a challenge by the Professional Standards Authority for Health and Social Care (the "Authority"), which was conceded by the Nursing and Midwifery Council (the "NMC") and the Registrant on the terms set out in this Order, and the consequent agreement by the Authority, the NMC, and the Registrant with regard to its disposal, this case is being placed before you at a review hearing following the 9 month period of suspension of the Registrant.*

*As well as this Order, you have before you the transcripts of the findings of the Conduct and Competence Committee (the "Committee"), and the Authority's Grounds of Appeal and Skeleton Argument. Schedule 1 of this Order sets out the basis upon which the Appeal was conceded by the Registrant and the NMC.*

*It was agreed by the parties that the sanction originally imposed of a 12 month Conditions of Practice Order be substituted for a 9 month Suspension Order with a review hearing.*

*Factors addressed in the Authority's appeal, which underpinned this substitution of the sanction, included:*

- *The Registrant's lack of insight and that, even if he did have insight, the inappropriate conduct and propensity to commit sexually inappropriate behaviour is not easily remediable. Additionally, this propensity gives rise to public protection issues.*
- *Further and in any event, given the seriousness of the misconduct, regard should have been given to declaring and upholding standards of the profession and the need to maintain public confidence in the profession. It should be noted that the*

*original Committee found that the Registrant's misconduct had "destroyed" public confidence in him as a nurse.*

- *The Indicative Sanctions Guidance and, in particular, the guidance in respect of sexual misconduct.*
- *The seriousness of the finding that the Registrant had asked others to re-write records and the clear evidence that this was directed at covering-up gaps in the records and/or misleading the CQC. Alteration of medical records is an extremely serious matter, particularly when done in the context of an investigation by a regulator into care standards.*

*This case is now placed before you for consideration at a review hearing in the usual way.*