



AC-2024-LON-001473

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) NURSING AND MIDWIFERY COUNCIL

(2) DAVID AINSWORTH

Respondents

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ORDER BY CONSENT

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**UPON** the parties having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

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

**AND UPON** the Second Respondent being a Nurse on the register established and maintained by the First Respondent.

**AND UPON** the Committee having decided on 23 February 2024 that the fitness to practise of the Second Respondent was impaired and that he should be subject to a suspension order for a period of 12 months with review

**AND UPON** the Appellant having lodged an appeal on 29 April 2024 against the decision of the Panel pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended)

**AND UPON** the First and Second Respondents conceding the appeal should be allowed on the basis of the reasons set out in schedule 1.

**BY CONSENT IT IS ORDERED THAT:-**

1. The appeal is allowed.
2. The suspension order is quashed and substituted with an order directing the Registrar of the First Respondent to strike-off the Second Respondent's name from the Register.
3. The First Respondent is to pay the Appellant's reasonable costs in the agreed amount of £5,108.20.
4. There be no order as to costs as between the Appellant and Second Respondent.
5. The hearing listed for 13 November 2024 be vacated.

Dated: 5 August 2024

Signed



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**Browne Jacobson LLP**  
**For and on behalf of the Appellant**

Signed:



.....  
**Nursing and Midwifery Council**  
**For and on behalf of the First Respondent**

Signed:



.....  
**David Ainsworth**  
**Second Respondent**

Order approved  
Clare Ambrose sitting as a Deputy Judge of the High Court  
Date: 2nd September 2024

BY THE COURT

## Schedule 1 – statement of reasons

1. On 23 February 2024 a Fitness to Practise Committee (“the Committee”) of the Nursing and Midwifery Council (“NMC”) decided that David Ainsworth (“the Registrant”) should be suspended. Whilst working for the Nottingham Emergency Medical Services (“NEMS”) as a registered nurse and Clinical Team Leader within the out of hours primary care service, the Registrant had telephone consultations with two patients. Firstly, the Mother of Patient A, a child with symptoms consistent with sepsis, who the Registrant advised attend a pharmacy rather than A and E; and secondly, Patient B, an adult with high potassium levels in their blood, who was asked to attend for repeat bloods when they should have been referred immediately to A and E or to the renal team.
2. There were concerns that the Registrant’s record of the telephone consultation with Patient A’s mother was deliberately inaccurate and the account which he had given when challenged about his care of Patient B was dishonest.
3. The Registrant self-referred in respect of a third matter – following a local investigation into his conduct – where he had advised a colleague to attend hospital directly (thereby fast tracking him without the proper referral) which, when challenged, he falsely attributed to a fabricated Clinical Commissioning Group (“the CCG”) pilot scheme.
4. The NMC referred his conduct to the Committee alleging a mixture of clinical concerns and dishonest conduct. The Registrant, who was legally represented in the early part of the fitness to practise process but acted in person before the Committee, admitted all factual allegations, including dishonesty. The Committee found misconduct and went on to find impairment on the grounds of public protection (because of the ongoing risk of repetition arising from limited insight) and public interest. The Committee imposed a suspension order for a period of 12 months, with review.
5. The Professional Standards Authority for Health and Social Care considers that the decision of the Committee was not sufficient for the protection of the public on the following grounds:
  - i. The Committee identified significant concerns about the Registrant’s limited insight into his dishonesty and his lack of understanding about the consequences of his actions. It found that he may still resort to lying in future. The Committee was wrong to rely/rely to the extent which it did, upon the fact that the Registrant was unrepresented before the Committee as an explanation for his limited insight and/or justification for the imposition of a suspension order rather than a striking-off order. The Registrant held a senior management position at the material time, he was an experienced nurse (of approximately 30 years) and had provided multiple written reflective pieces. He gave extensive, coherent oral

evidence in chief and under cross examination and had also been legally represented by solicitors and counsel at earlier stages of the fitness to practise process. It was irrational to attribute significant deficiencies in insight to a lack of representation.

ii. The Committee failed to have any, or any adequate, regard to the NMC's Sanctions Guidance when calibrating the seriousness of the Registrant's misconduct. If it had properly considered the Sanctions Guidance it would have clearly concluded that the Registrant's misconduct sat at the more serious end of the scale because it involved the following (as itemized in the Sanctions Guidance):

- a. deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care;
- b. misuse of power;
- c. vulnerable victims;
- d. direct risk to people receiving care;
- e. premeditated, systematic or longstanding deception.

iii. The Committee's finding that the Registrant's misconduct was remediable was wrong in that:

- a. The Committee's finding that a suspension would adequately address the public interest and public protection concerns was irrational in that it contradicted the Committee's earlier finding that if a similar situation arose in future, the Registrant may resort to lying in an attempt to cover up wrongdoing;
- b. Given the findings about limited insight and likelihood of future dishonesty it was irrational not to find deep seated attitudinal issues;
- c. The Committee was wrong to find that a 12 month suspension would *"allow you time to think very carefully about the impact of your behaviour and, in due course, to demonstrate to a reviewing panel that you have the necessary insight to satisfy such a panel that you no longer represent a risk to patients"* in circumstances where before the Committee the Registrant *"did not recognize how [his] conduct had impacted negatively on the reputation of the nursing profession or the patients and that you have not demonstrated an understanding of the serious nature of [his] actions"*, despite four years having passed since the misconduct and local investigations into his actions.

iv. The Committee found that the Registrant's insight in respect of his dishonesty was limited and found that if faced with a similar situation in future he may resort to lying in an attempt to cover up his wrongdoing. In

the circumstances, it failed to give any adequate reason(s) for its conclusion that a period of suspension would adequately protect the public. The Committee failed to give any, or any adequate, reasons as to why the Registrant's name could remain on the register without undermining public confidence in the profession where his dishonest misconduct included misuse of his senior position to attempt to cover up wrong doing and where the Committee had found that his limited insight meant that he may resort to lying again in future.