



IN THE HIGH COURT OF JUSTICE

AC-2024-LON-000128

KING'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN

AC-2024-LON-000128

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

-and-

(1) THE NURSING AND MIDWIFERY COUNCIL
(2) BENJAMIN APPLETON

Respondents

ORDER BY CONSENT

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 no 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 Nursing Associate on the register established and maintained by the First Respondent

AND UPON the First Respondent's Fitness to Practise Committee ('the Committee') having found that the fitness to practise of the Second Respondent was impaired by reason of misconduct and on the 9 November 2023 imposed on the Second Respondent a twelve month conditions of practice order with a review ("the Decision")

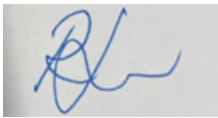
AND UPON the Appellant having lodged an appeal on 12 January 2024 against the Committee's decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended)

AND UPON the First and Second Respondents conceding that the appeal should be Allowed for the reasons set out in Schedule 1

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.

2. The Decision is quashed and substituted with an order that the Second Respondent be suspended from the Register for a period of twelve months to be reviewed by the First Respondent's Fitness to Practise Committee before expiry pursuant to Article 30(1) of the Nursing and Midwifery Order 2001. Matters to be considered by the Committee at review must include those set out at Schedule 2.
3. The First Respondent is to pay the Appellant's reasonable costs of the appeal subject to detailed assessment in default of agreement.
4. No other order as to costs.



Hill Dickinson LLP
On behalf of the Appellant



Nursing and Midwifery Council
The First Respondent

DocuSigned by:

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Benjamin Appleton
The Second Respondent

BY THE COURT

Approved by Andrew Kinnier KC DHCJ

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Schedule 1
Statement of reasons

1 Ground 1: Failure to consider full gravamen of misconduct.

The Decision was wrong and/or unjust because of a serious procedural irregularity in that the Committee failed to consider the full gravamen of the Second Respondent's misconduct and/or whether the misconduct revealed a deep-seated attitudinal problem.

2 Ground 2: Failure to properly identify aggravating and mitigating factors.

The Decision was wrong and/or unjust because of a serious procedural irregularity in that the Committee failed to properly identify the aggravating and mitigating factors arising in the case against the Second Respondent.

The Committee took into account only two aggravating features and thereby erred by failing to take into account the following material considerations:

- a) Abuse of position of trust- the Second Respondent had worked with Patient A in a professional capacity when she was an inpatient in hospital where she was experiencing pain and required treatment. He contacted her via social media whilst she was still an inpatient and went on to instigate messages with sexual content including explicit photographs;
- b) Incomplete insight- the Second Respondent continued to lack full insight into his misconduct (despite having carried out professional boundaries training since messaging Patient A prior to the hearing) and the Committee found at the impairment stage that there was no evidence to demonstrate that the Second Respondent understood how to maintain boundaries between his professional and private life in the event he was attracted to a patient in the future;
- c) Duration of misconduct- the misconduct took place over a significant period of time. After the initial period of messaging, the Second Respondent attempted to revive contact 8 and 14 months later;

Further, the Committee erred in attributing excessive weight to the following mitigating factors:

- a) Personal mitigation- there was very little evidence before the Committee to explain how or why the Second Respondent's health explained or was relevant to the misconduct;
- b) The Covid pandemic- there was little evidence to explain why this might have impacted on the Second Respondent's judgement or was relevant to the misconduct;
- c) The Committee identified the fact the Second Respondent had not undergone specific training on professional boundaries as a mitigating factor, however the absence of specific training is not mitigation. In any event, prior to the misconduct the Second Respondent had worked as a healthcare assistant for approximately 8 years, had completed an NVQ level 3 in health and social care

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in 2016, and had undertaken an apprenticeship and qualified as a registered nursing associate in 2020.

3 Ground 3: Sanction insufficient to protect the public.

The conditions of practice order was insufficient for the protection of the public. Nothing short of a period of suspension with review would have been sufficient to mark the seriousness of the misconduct and maintain public confidence in the profession as well as proper professional standards and conduct for members of the profession.

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Schedule 2

Matters to be considered by the Committee

- a. A copy of the Committee's decision of 10 November 2023 with the findings on sanction redacted;
- b. A copy of this consent order and accompanying schedules;
- c. Any other evidence which the First or Second Respondents wish to place before the Committee, subject to the requirements of fairness and relevance, which may include but is not limited to:
 - i. Evidence of the Second Respondent's reflection on or insight into his misconduct, the impact on Patient A and the wider profession;
 - ii. Evidence of further training by the Second Respondent.
 - iii. Testimonials, from any paid or unpaid work.

