

Consent order approved. Hearing listed for 7 November 2024 to be vacated.



AC-2024-LON-001554

Mrs Justice Heather Williams

20 September 2024

AC-2024-LON-001554

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) OLAYINKA O SULE OLUWALEYE

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 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 Mental Health Nurse on the register established and maintained by the First Respondent.

AND UPON the Committee having decided on 1 March 2024 to impose a 6-month suspension order with review on the Second Respondent (“the Sanction Decision”)

AND UPON the Appellant having lodged an appeal on 3 May 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 Respondent conceding that the appeal should be allowed on the basis of the reasons set out in Schedule 2.

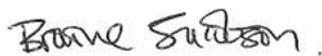
AND UPON the Second Respondent having no objection to an order directing that her name be removed from the Register.

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The Sanction Decision is quashed and substituted with an order directing the Registrar of the First Respondent to strike 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 £5,773.15.
4. There be no order as to costs as between the Appellant and Second Respondent.

Dated: September 2024

Signed:



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Browne Jacobson LLP
For and on behalf of the Appellant

Signed:


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Nursing and Midwifery Council

For and on behalf of the First Respondent

Signed:

O.Oluwa

.....

**Ms Olayinka O Sule Oluwaleye
Second Respondent**

BY THE COURT

Schedule 1

1. The Registrant was subject to the following charges:

That you, a registered nurse:

1. On 08-09 June 2019, when responsible for providing 2 to 1 care to Patient A
 - a. Placed Patient A in bed and/or allowed Patient A to be placed in bed at a 45 degree angle, when to do so was unsafe.
 - b. Arranged Patient A's room and/or allowed Colleague A to arrange Patient A's room so as to allow you and her to sleep whilst on duty.
 - c. Failed to keep Patient A under any/any adequate observation.
 - d. Slept whilst on duty and/or allowed Colleague A to do so.
 - e. Locked the door to Patient A's room and/or allowed the door to Patient A's room to be locked by Colleague A.
 - f. Did not provide your name to Patient A's grandson when asked to do so.
2. Your actions at 1a were intended to prevent Patient A getting out of bed and disturbing your and/or Colleague A's sleep.
3. Your actions at charges 1a and/or b and/or c and/or d knowingly placed Patient A at risk of aspiration and/or death.
4. Your actions at charge 1e were intended to prevent your sleeping whilst on duty being discovered.
5. Your actions at charge 1f lacked integrity in that you should have complied with Patient A's grandson's request, which was reasonable in the circumstances.

6. That you recorded incorrectly in Patient A's notes on 9 June 2019:
 - a. that the door had been locked in order to prevent him from disturbing other patients after midnight;
 - b. that his safety had been maintained all night;
 - c. that he had brought up phlegm shortly before his grandson arrived to visit and you had been about to attend to him.

7. That you said incorrectly in your email of 11 June 2019 that:
 - a. That the door had been locked from 1.30am to prevent patient A from getting into other patient's bays;
 - b. That you were going to get your gloves on to clean Patient A's mouth at the time his grandson arrived.

8. That you said incorrectly at the investigation meeting on 4 July 2019 that
 - a. You locked the door at around 1:30am so that Patient A could not get out;
 - b. That Patient A's head was raised up at about 45 degrees;
 - c. That you were going to get your gloves on to clean Patient A's mouth at the time his grandson arrived.

9. Your actions at 6a, 7a, and 8a, were dishonest in that you knew that the door had been locked to prevent your sleeping on duty being discovered.

10. Your actions at 6b and 8b were dishonest in that you knew that Patient A had been placed at an unsafe angle and inadequately supervised.

11. Your actions at 6c, 7b and 8c were dishonest in that you knew you had not taken steps to clean Patient A's mouth at the time his grandson arrived.

AND, in the light of the above, your fitness to practise is impaired by reason of your misconduct.

12. All charges were admitted by the Registrant.

Schedule 2 – Statement of reasons

1. On 1 March 2024 a Fitness to Practise Committee (“the Committee”) of the Nursing and Midwifery Council (“NMC”) decided that Olayinka O Sule Oluwaleye (“the Registrant”) should be suspended for a period of 6 months. On 8-9 June 2019, whilst working at Chelsea and Westminster Hospital, the Registrant put Patient A at serious risk of physical and emotional harm.
2. The Panel found that the Registrant had committed 18 breaches of the NMC’s “Professional standards of practice and behaviour for nurses, midwives and nursing associated”. It further found that the Registrant’s fitness to practice was currently impaired based on public protection and public interest grounds. Namely, the fitness to practice was impaired because the Registrant:
 - a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
 - b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
 - c) *has in the past acted dishonestly and/or is liable to act dishonestly in the future*
3. In particular, it was found that the Registrant “*put Patient A at serious risk of physical and emotional harm*”. The Registrant’s “*actions brought the profession into disrepute and also breached fundamental tenets of the profession. [The Panel] was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious*”. The Panel “*determined that the nature of [the] dishonesty, persisting over an extended period, presents challenges in terms of showing insight and remediation. The panel also highlighted concerning attitudinal issues apparent in the lack of compassion towards Patient A*”.
4. The Panel imposed a six-month suspension order with review. The Panel found that a striking-off order was disproportionate and unduly punitive.

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:

Ground 1: The Panel's decision on sanction was wrong based on its findings regarding misconduct and impairment. Based on the gravity and extent of the Panel's findings on misconduct and impairment, the only sanction properly open to it was a striking off order.

Ground 2: The Panel provided insufficient reasons for its decision not to strike off. The Panel's paucity of reasons for not striking off was in breach of the NMC's Sanctions Guidance on how a Fitness to Practice Committee should deal with proportionality. The failure to provide adequate reasons amounted to a serious procedural irregularity.

Ground 3: The Panel misapplied its Guidance. The Panel's treatment of sanction included multiple departures from its own guidance and these failures amounted to a serious procedural irregularity.