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Fitness to Practise in Community Nursing

Abstract

The Nursing and Midwifery Council (NMC) have a key role to play in regulating the nursing profession and one of ways in which this is conducted is through the fitness to practise process. The percentage of nurses that experience this is very small, but the NMC have a responsibility to protect, promote and maintain the health, safety and wellbeing of the public and ensure there is public confidence in the nursing services provided. This article analyses a community orientated fitness to practise case, through its journey and considers the impact on the registrant from a practical and psychological perspective.

Key words

Nursing and Midwifery Council (NMC), Fitness to Practise, public confidence, raising concerns, professional standards, regulation, hearing, sanctions,

Introduction

One of the main roles of the Nursing and Midwifery Council (NMC) is to regulate the nursing profession and one of the ways in which they do this is to investigate concerns about nurses, midwives and nursing associates (NMC, 2023). Nursing professionals must make sure that their skills, knowledge, education and behaviour do not fall below the standards set out in The Code, to ensure they are 'fit to practise' (NMC, 2018) and that they work in a professional culture that values equality, diversity and inclusion and prioritises openness and learning (NMC, 2022). If a concern is raised about an individual's right to be on the register, then that nurse, midwife or nurse associate will go through a fitness to practise process. There are more than 700,000 nurses, midwives and nurse associates on the NMC register and the percentage of those that are referred by employers or even progress to the investigation stage is very small, approximately 0.08% (Dean, 2020; NMC, 2019).

However, referrals by members of the public are on the rise and have been the biggest source of fitness to practise cases since 2019, with a figure of 33% being recorded (Foster, 2024). The main concerns fall into the following categories:

- Patient care: 22-23%
- Communication issues: 13-14%
- Behaviour and violence: 14%
- Dishonesty: 8-10%

However, many of these cases are closed at screening stage and often this is because they might have been inappropriate in nature but initially raised due to dissatisfaction with an employer's response or individuals have simply got lost in the options when attempting to raise concerns about care they or their family have received (Foster, 2024). The NMC will investigate serious concerns that put patient safety at risk, such as abuse of professional position, improper relationships, discrimination or serious mistakes in care, violence or fraud or serious breaches of confidentiality (Dean, 2020). Inherently, the NMC have an overarching objective to protect the public and to do this they need to:

- protect, promote and maintain the health, safety and wellbeing of the public
- promote and maintain public confidence in the nursing and midwifery professions
- promote and maintain proper professional standards and conduct for nursing and midwifery professionals. (NMC, 2022)

There are 12 principles that NMC uphold for fitness to practise and the essence of which is to ensure consistency and transparency and not punish people for past events. These principles do encourage employers to act first to deal with concerns, and those that are referred on will be dealt with swiftly and

the context of where the nurse has been practising will always be considered (NMC, 2022). At the screening stage, the regulators will check to see if the complaint meets four thresholds:

1. Are the concerns serious enough?
2. Does it meet formal requirements, such as being about an identifiable registrant?
3. Will the NMC be able to obtain credible evidence?
4. If the nurse can demonstrate they have already remedied the issue, can it be considered dealt with. (Dean, 2020)

The majority of referrals end here, but if the case meets the threshold for moving forward and it is considered serious enough, an 'interim order' can be imposed which suspends a nurse or a 'conditions of practice order' which limits how they can work (Dean 2020).

Outline of a case study

Nurse B had been qualified for nearly 30 years when her case was presented to the NMC. She was working as a community nurse with a trust in the West of England, where she had been in employment for 2 years. As per NMC regulations, although the hearing was in public, parts of the proceedings were conducted in private to protect the privacy of each party.

It was noted that Nurse B had accessed patient A's clinical records on three separate occasions over a two-month period without any clinical justification and then on more than one occasion had disclosed confidential medical information to third parties. These records contained up to five years sensitive medical history and the content of which was shared with a mutual friend. This friend then informed patient A of the breach in confidentiality and he requested an audit trail of the access to his medical records. Nurse B had also shared this information with a colleague.

In addition to the patient complaint documents, further evidence presented also included emails that outlined chronologies of conversations between Nurse B and her colleagues.

In reaching its decisions, the panel considered all the oral and documentary evidence in this case together. Patient A presented live evidence, and two witness statements were provided including the complaints investigator and clinical systems managers from the trust.

Nurse B initially disputed these claims and suggested she was accessing the records for clinical purposes even though the frequency and duration of such activities would not concur with this, as the evidence from all parties would confirm.

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Nurse B's fitness to practise was currently impaired. The panel took the view that this behaviour was misconduct and Nurse B accepted this. They also proceeded to find that fitness to practise was also impaired. The rationale for this was that Nurse B had sought to conceal her true motives and concealed evidence, thus not respecting patient A's right to privacy on a personal and sensitive matter and failed to address the level of harm and impact.

In considering the context of this situation, it was clear that on reflection nurse B had remorse over the incident and had positive references from other colleagues suggesting she was usually trustworthy and respectful.

Outcome

The panel considered this case very carefully and decided to make a suspension order with a review for a period of 12 months. The effect of this order was that the NMC register showed that Nurse B's registration had been suspended.

At the end of the period of suspension, another panel will review the order.

Analysis of the case study- The Code

The case study cited above has been summarised to provide a concise outline of the details, its influencing factors and the outcome. The content, interactions and analysis were far more detailed than can be discussed here. Following a hearing, the NMC need to consider whether the practitioner's fitness to practise is impaired and whether they could they present a risk to the public. Moreover, it is also vital to question if they able to uphold professional standards and public confidence in the profession. In the case of Nurse B, there were several elements of the NMC Code (2018) that were not upheld. Through her behaviour it was suggested that she did not treat the patient with kindness, respect and compassion, thus upholding their dignity (section 1.1). She did not get properly informed consent and document it before she shared information, therefore not acting in the best interests of the patient at all times (section 4.2). Nurse B did not respect the patients right to privacy and confidentiality (section 5.1) but one of the most concerning aspects of her conduct was that she did not uphold the reputation of her profession by taking advantage of patient A's vulnerability, not respecting his personal boundaries and not communicating responsibility.

Following a hearing there are several sanctions that can be imposed which are not intended as a punishment, but are there to protect the public (NMC, 2023). These include:

- **Caution order-** a practitioner is cautioned for their behaviour but is allowed to practise without restriction which can last up to 5 years.
- **Conditions of practice order-** this restricts practise for up to three years and must be reviewed by a fitness to practice panel before it expires. Concerns about practise are considered capable of being addressed through re-training or assessment.
- **Suspension order-**which prevents the practitioner from practising for a specified length of time
- **Striking-off order-** if a practitioner is struck off their name is removed from the register, and they are not allowed to work in the UK.

For nurse B the outcome was a suspension order with a review for a period of 12 months. This would mean that she would not be able to return to her place of work and resume her usual duties, which could have been very distressing.

The impact for the registrant

A fitness to Practice investigation is daunting, complex and often lengthy experience and can be very distressing for the nurse even if they have not done anything wrong (Dean, 2020). As Watters (2018) suggests, the impact of this is starting to be recognised however there is more to be done to safeguard registrants and to support their mental health as individuals often do not know where to turn to for support and the stress can impact sleep, confidence, trust and induce feelings of paranoia. It is expected that the nurse will have legal representation via their union which will be specialist and specific and they will often provide counselling and careers and financial advice (Royal College of Nursing, RCN 2025). It is clear that NMC have very clear processes when dealing with concerns raised by the public; for community nurses this case serves as a reminder of how easy it can be for boundaries to be overstepped and professionalism to be questioned when providing care outside of an inpatient setting.

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