

Conduct and Competence Committee
Substantive Hearing
9 January 2017

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of Registrant Nurse: Miss Jane Frances Kendall
NMC PIN: 70A1633E
Part(s) of the register: Registered Nurse - Sub Part 1 - Adult – 2 April 1973

Area of Registered Address: England
Type of Case: Misconduct

Panel Members: Tim Skelton (Chair Lay member)
Dr Mooi Standing (Registrant member)
Colin Kennedy (Lay member)

Legal Assessor: Graeme Sampson
Panel Secretary: Nour Shaheen

Miss Kendall: Not present and not represented at the hearing.

Nursing and Midwifery Council: Represented by Ms Nisha Dutt, counsel, NMC Regulatory Legal Team.

Outcome: CPD accepted - Caution order for a period of 24 months.

Details of charge:

That you a Registered Nurse, whilst employed at Moorland Nursing Home:

1. On 26 November 2014, upon finding Resident A unresponsive:

1.1. Failed to attempt Cardiopulmonary Resuscitation (CPR);

1.2. Failed to contact or ensure that the emergency services were contacted.

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

Decision on Service of Notice of Hearing:

The panel was informed at the start of this hearing that Miss Kendall was not in attendance and that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 5 September 2016. Royal Mail "Track and Trace" documentation confirmed that the notice of hearing was sent to Miss Kendall's registered address by recorded delivery on that date.

The panel took into account that the notice letter provided details of the allegation, the time, date and venue of the hearing and, amongst other things, information about Miss Kendall's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

A further letter was sent to Miss Kendall on 4 January 2017, stating that the venue of the hearing had been changed to Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Kendall has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the Registrant:

The panel had regard to Rule 21 (2) (b) which states:

“Where the registrant fails to attend and is not represented at the hearing, the Committee...may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant..”

Ms Dutt invited the panel to continue in the absence of Miss Kendall on the basis that she had voluntarily absented herself. Miss Kendall, and UNISON on her behalf, have agreed to the hearing proceeding in their absence as evidenced by the signed and dated CPD document.

The panel accepted the advice of the legal assessor. The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is one that should be exercised *“with the utmost care and caution”* as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Miss Kendall. In reaching this decision, the panel has considered the submissions of the case presenter and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Miss Kendall;

- the provisional agreement, which is signed and dated by Miss Kendall, contains a statement which states that she does not intend to attend the hearing and is content for it to proceed in her and her representative's absence;
- there is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Kendall.

Consensual panel determination: provisional agreement

"Ms Kendall is aware of the CPD hearing. Ms Kendall does not intend to attend the hearing and is content for it to proceed in her and her representative's absence. Ms Kendall will endeavour to be available by telephone should any clarification on any point be required.

The Nursing and Midwifery Council and Miss Jane Frances Kendall, PIN 70A1633E ("the parties") agree as follows:

1. Ms Kendall admits the following charges:

That you a Registered Nurse, whilst employed at Moorland Nursing Home:

1. On 26 November 2014, upon finding Resident A unresponsive:

1.1. Failed to attempt Cardiopulmonary Resuscitation (CPR);

1.2. Failed to contact or ensure that the emergency services were contacted.

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

2. The facts are as follows:

- 2.1 Ms Kendall was the nurse in charge at Moorland Nursing Home on 26 November 2014, when a resident was found by a care assistant to be unresponsive. The care assistant called Ms Kendall to attend to the resident.*
- 2.2 When Ms Kendall attended, she found the resident to be 'waxy, yellow and almost cold'. Ms Kendall stated that the resident was not breathing and having checked the resident, found that there was no pulse or vital signs of life. Ms Kendall admits that she subsequently failed to attempt CPR or call the emergency services. The resident did not have a DNAR in place and was in fact, certified dead later that day by paramedics.*
- 2.3 The police investigated this matter and found that there was nothing suspicious about the resident's death.*
- 2.4 The Coroner determined that whilst the resident's death was unexpected, she died from natural causes; therefore no further action was required.*
- 2.5 Ms Kendall has been registered since 1973 and has worked for the Home since 4 May 2007 and as such, has extensive nursing experience. Ms Kendall acted as the nurse/person in charge of the Home when the Home Manager was not on shift.*
- 2.6 Following the incident the Home conducted an internal investigation and Ms Kendall was suspended. The Home later lifted the suspension and issued her with a final written warning.*
- 3. Ms Kendall admits that the facts set out above amount to misconduct. She further admits that her standard of care on that occasion, fell short of what would be expected of a registered nurse in those particular circumstances (Roylance v General Medical Council [2000] 1 AC 311). More specifically, Ms Kendall admits*

that although she considered the resident had already died, as no DNAR was in place and the resident's death was unexpected, she was under an obligation to attempt CPR and to call for emergency assistance. Furthermore, Ms Kendall admits that she was acting outside of her competence on that occasion in that she was not qualified to certify death.

4. *In considering the issue of misconduct, the panel's attention is drawn to the NMC's code "Standards of conduct, performance and ethics for nurses and midwives". In particular, the panel may find the following extracts relevant:*

- *35 you must deliver care based on the best available evidence or best practice*
- *39 you must recognise and work within the limits of your competence*
- *61 you must uphold the reputation of your profession at all times*

5. *Ms Kendall admits that her fitness to practise is impaired by reason of her misconduct. The case of CHRE v (1) NMC and (2) Grant [2011] EWHC 927 (Admin) cites with approval the factors to be considered in respect of impairment formulated by Dame Janet Smith in her fifth Shipman Enquiry. Ms Kendall admits her fitness to practice is impaired pursuant to these factors in that she: -*

5.1. 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

5.2. Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or

5.3. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or

6. *Ms Kendall has reflected since the incident. In her letter to the NMC dated 18 May 2016 (**Appendix 1**), Ms Kendall states that faced with a similar situation, she would conduct CPR and would call the emergency services. Ms Kendall further states (**Appendix 2**) that she is very remorseful regarding the incident and reiterates the steps that she would take, faced with a similar situation. In her most recent reflective piece, Ms Kendall has stated that she is very confident that faced with a similar situation, she would react very differently; she would follow procedure and work according to local policies and national guidelines (**Appendix 3**).*
7. *Ms Kendall has undertaken re-training to address the deficiencies in her practice and to update her knowledge. Specifically, she has undertaken a course in 'End of Life Care' and 'Death, Dying and Bereavement'. A copy of the training certificates can be seen at **Appendix 4**.*
8. *As Ms Kendall is still currently employed by the Home where the incident occurred, the Home manager has provided a copy of her 2016 appraisal form and a reference dated 20 October 2016 confirming that they have no concerns; that she is a good employee and is working as per her job description. (**Appendix 5**)*
9. *Although Ms Kendall has been working without further concern since the incident, the parties agree that there is a risk of repetition in this case, albeit a small risk in that Ms Kendall has not been faced with a similar situation since.*
10. *The appropriate sanction in this case therefore, is a Caution Order for a period of 24 months. The indicative sanctions guidance states that a Caution Order may be appropriate where the case is at the lower end of impaired fitness to practice and the panel wish to mark the registrant's behaviour as unacceptable and should not happen again.*

11. *When determining the issue of sanction, the following aggravating/mitigating factors have been taken in to account:*

- *Ms Kendall is a nurse with many years of practice. As such, she should have been aware of her competence and her obligations in situations such as this.*
- *Ms Kendall has fully engaged with the proceedings; making full admissions and taking responsibility for her conduct.*
- *There is no evidence of deep-seated personality or attitudinal problems*

12. *The parties agree that given the seriousness of the registrant's misconduct, taking no further action would not be appropriate or proportionate in this case.*

13. *The parties considered whether a conditions of practice order would be a suitable and/or proportionate response. However, the parties agree, in light of the further training undertaken by Ms Kendall and her current good practice, that there are no concerns regarding her clinical competence. As such, there are no conditions of practice which could be formulated.*

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges set out at section 1 above, and the agreed statement of facts set out at section 2 above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.”

Panel determination:

The panel considered the provisional CPD agreement between Miss Kendall and the NMC, The panel noted the submissions and took into account that the CPD contained her admissions to the charges and an admission that her fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

The panel exercised its own judgement in reaching its decision on impairment and sanction.

The panel found the facts of the case proved by way of admission as contained within the CPD.

The panel next considered whether the facts found proved constituted misconduct. Miss Kendall's actions involved her failing to attempt CPR and ensure that emergency services were contacted, which clearly put a patient at risk of harm. The panel noted and agreed with the breaches of The code: Standards of conduct, performance and ethics for nurses and midwives 2008 (the "Code") as set out in the CPD, with the addition of the following from the Preamble:

**The people in your care must be able to trust you with their health and wellbeing
To justify that trust, you must:**

- make the care of people your first concern, treating them as individuals and respecting their dignity
- provide a high standard of practice and care at all times

The panel determined that Miss Kendall's actions fell seriously short of what would be expected of a registered nurse and constituted misconduct.

The panel next considered whether Miss Kendall's fitness to practise is currently impaired by reason of her misconduct.

The panel agreed that Miss Kendall's full admissions and acceptance of the CPD agreement, along with several reflective accounts, demonstrated considerable insight into her failings. The panel recognised the remorse and depth of Miss Kendall's reflection of the events and noted that she was able to demonstrate clearly and effectively what she has learnt from this incident and how she would behave in the future if faced with a similar situation. The panel considered that there was sufficient evidence of remediation on Miss Kendall's part, given that she has completed numerous training initiatives which were relevant to the misconduct identified, and has achieved all the competencies regarding "Verification of Death". However, the panel considered that there was a low risk of repetition given that Miss Kendall has not been faced with a similar situation since the relevant incident, and therefore the panel was concerned that there is a residual risk that she could repeat this behaviour.

Regarding impairment, Miss Kendal has in the past put patients at unwarranted risk of harm, has in the past brought the nursing profession into disrepute. Consequently, the panel determined that Miss Kendall's fitness to practise is currently impaired on grounds of public protection.

Further, Miss Kendall has in the past breached a fundamental tenet of the nursing profession. Consequently, the panel determined that Miss Kendall's fitness to practise is also currently impaired due to the need to declare and uphold the proper standards of conduct and behaviour, and to maintain public trust and confidence in the nursing profession.

The panel considered that the CPD properly reflected the fact that Miss Kendall's fitness to practise is currently impaired as a result of her misconduct.

The panel next considered what sanction, if any, to impose. In doing so it took into account the NMC's Indicative Sanctions Guidance. The panel noted and agreed with the aggravating and mitigating factors listed in the CPD.

The panel first considered whether to take no action, but determined that, in the light of the misconduct, this would not be sufficient to protect the public, nor would it satisfy the public interest.

The panel then considered imposing a caution order. The panel considered that the misconduct in this case falls at the lower end of the spectrum of impaired fitness to practise. Having careful regard to the documentation before it today, the panel decided that a caution order is appropriate and proportionate for the following reasons:

- Miss Kendal has shown considerable remorse;
- In her reflective pieces dated 18 May 2016, 12 October 2016 and 22 October 2016, Miss Kendall has demonstrated sufficient insight into her misconduct.
- Miss Kendall has taken steps to remediate her misconduct through training, and has been assessed as competent regarding verification of death.
- Miss Kendall has produced a positive reference from her current employer, who was also the referrer in this case, dated 20 October 2016, in which she is described as “a good employee and working as per her job description”.
- There have been no subsequent concerns raised as to Miss Kendall’s clinical practice, and she has fully engaged with these proceedings.

For all these reasons the panel considered that the risk of repetition is low.

In the panel’s judgement, a conditions of practice order would not be appropriate since there are no areas of Miss Kendall’s clinical practice identified as in need of remediation, other than those already addressed through Miss Kendall’s retraining. The reference from Miss Kendall’s employer, along with her 2016 appraisal, attests to her clinical abilities and safe practice.

The panel went on to consider whether to impose a suspension order, but determined it to be disproportionate in light of Miss Kendall's insight and remediation. A suspension order would neither be appropriate nor proportionate in the circumstances.

Accordingly, the panel agreed with the conclusions of the provisional CPD agreement and concluded that a caution order is the appropriate and proportionate sanction in this case. In the panel's view this order would satisfy the public interest in declaring and upholding proper standards of conduct so that confidence in the profession and its regulation is maintained.

The panel considers that a caution order for a period of 24 months sufficiently marks the seriousness of the misconduct. Accordingly, the panel has determined to accept the provisional CPD agreement.

That concludes this determination.