

Private and confidential

**Code A**

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PRE/ **Code A** 12053.2

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Dear **Code A**

### **Preliminary Proceedings Committee**

I refer to our previous correspondence.

The Preliminary Proceedings Committee considered your case on 12 and 13 April 2010 and decided to decline to proceed with the matter.

The panel considered the allegations very carefully and evaluated the information before it including the letter of complaints from Mr Page and **Code A** the clinical and nursing notes, the drug chart for Mrs Page, the evidence given at the Coroner's inquest, Professor Ford's and Professor Black's expert reports together with the response made by Mr Chris Green (RCN Solicitor) on behalf of the registrant.

The panel note that pursuant of Rule 8 (1) (a) of the 1993 Rules, Council's staff have particularised seven allegations which have been put before the registrant in this case. The panel are grateful for this preliminary work. However, the panel have noted that Mr Page's letter to the Council arises from concerns about a police investigation into deaths at Gosport War Memorial Hospital. The police allegations relate to the administration of medication via syringe drivers. The panel believe that for completeness they should consider the matter of the commencement of the syringe driver in relation to the care of Mrs Page as part of allegation 1.

The panel note that the Council wrote to Mr Page to ask him to provide specific allegations against the registrant and no response was received.

**1. Decision:** Declined to proceed with this allegation

**Reasons:**

According to the clinical records Mrs Page was having Fentanyl patches on the 2 March 1998. On the 3 March 1998 she was commenced on a syringe driver containing Diamorphine and Midazolam. The syringe driver was commenced by the registrant and had been prescribed by Dr Barton who reviewed the patient on the 2 March 1998.

The drugs were commenced at the lowest possible dose in the prescribed range. It is not clear whether or not the Fentanyl patch was discontinued at the point where the syringe driver commenced.

The question is whether the registrant should have questioned the prescribing by Dr Barton. The panel are mindful that there is conflicting evidence from Professor Ford and Professor Black about whether the continuation of Fentanyl is appropriate when administering Diamorphine and Midazolam via a syringe driver. Given the conflicting opinion amongst experts the panel of the view that it would be unreasonable for a registrant to ascertain whether the prescribing was inappropriate.

**2. Decision:** Declined to proceed with this allegation

**Reasons:**

It is alleged that the on the 19 November 1999 the registrant failed to act in the best interests of Mrs Devine by not removing a Fentanyl patch until three hours after the syringe driver had commenced. The panel note that Dr Barton in evidence to the Coroner had indicated that she specifically requested that it remain in place. Professor Black again as part of the Coroner's proceedings describes how he considers that there was no negligence, culpability and that the administration of the medicines represents good palliative care.

The panel considers that this allegation is not capable of amounting to misconduct and therefore the panel have declined to proceed with this matter.

**3. Decision:** Declined to proceed with this allegation.

**Reasons:**

It is alleged that on the 19 November 1999 that the registrant failed to provide accurate information to [Code A] indicates that this call occurred at 8.15 am and that it was initiated by the registrant. The panel notes that this call took place before any sedation or analgesia had been given. In addition, given that the registrant initiated the call it is unlikely that the registrant would call to provide false information about the patient. There is no evidence to suggest that the registrant should have advised the complainant and her family to visit before 1pm at the time of the telephone discussion.

The panel considers that this allegation is not capable of resulting in removal from the professional register and therefore the panel have declined to proceed with this matter.

**4. Decision:** Declined to proceed with this allegation

**Reasons:**

It is alleged that the registrant returned clothing to [Code A] saying they were "too good" for a hospital stay as they were dry clean only. The registrant in her response details how the ward had facilities to launder clothing but not dry clean only items. While this allegation may be capable of proof the panel are of the opinion that it would not result in removal from the register and they have therefore declined to proceed with this matter.

**5a. Decision:** Declined to proceed with this allegation

**Reasons:**

It is alleged that the registrant made an incorrect statement in the records to state that Mrs Devine could not climb stairs. In her response the registrant indicates that this probably related to a physiotherapist and occupational therapist assessment of her ability to manage at home. Even if this allegation was proven it could not result in removal from the register and the panel have therefore declined to proceed with this matter.

**5b. Decision:** Declined to proceed with this allegation**Reasons:**

The panel notes the allegation that details that the kidney infection and the prescription of antibiotics had not been written up. While it may be good practice to note in the nursing record that the review by the doctor had taken place, the primary responsibility for the recording of diagnosis and prescribing decisions lies with the doctor. For this reason the panel is of the opinion that even if proven this allegation would not result in removal from the register and the panel have therefore declined to proceed with this matter.

**6. Decision:** Declined to proceed with this allegation**Reasons:**

The panel notes the allegation that the registrant suggested that Mrs Devine was agitated on the morning of the 19 November 1999. The contemporaneous nursing record suggests confusion and aggression. The family members were not present at this time and are therefore not in a position to say one way or another than Mrs Devine was not agitated. Accordingly, the panel feels this allegation is not capable of amounting to misconduct. The panel have therefore declined to proceed with this matter.

**7. Decision:** Declined to proceed with this allegation**Reasons:**

The panel note the allegation concerning unprofessional comments about tensions between Code A. The registrant in her response states that "nursing staff sensed some tension between Code A. It is important that registrants note family dynamics as they can play a part in the care of patients. This is an observation which the panel do not consider to be unprofessional. The panel is of the opinion that this allegation is not capable of amounting to misconduct and they have therefore decided to decline to proceed with this matter.

In considering this matter, the committee sat with a legal assessor.

**Legal assessor's advice to the Preliminary Proceedings Committee:**

The role of this PPC (under Rule 9 (1) of the 1993 Rules) is to consider allegations of misconduct and, subject to any determination under Rule 8(3), where it considers that the allegations may lead to removal from the register, direct the Registrar to send to the practitioner:

- (a) a Notice of Proceedings;
- (b) copies of statements obtained by Council during the investigation of the allegations and any other documents the Preliminary Proceedings Committee considers appropriate which are in the Council's possession unless such documents have already been sent to the practitioner under Rule 8(2) or otherwise;
- (c) a request that the practitioner respond, in writing, to the Notice of Proceedings;

The PPC should bear in mind that the public have an interest in the maintenance of standards and the investigation into complaints of serious professional misconduct against practitioners; that public confidence in the NMC and the nursing profession requires, and complainants have a legitimate expectation that such complaints (in the absence of some special and sufficient reason) will be publicly investigated by the PPC and that justice should in such cases be seen to be done. This must be most particularly the case where the practitioner continues to be registered and practise.

The stage which has been reached is that

- (a) the Registrar has sent to each practitioner concerned a summary of the allegations against him/her;
- (b) each practitioner has been given a chance to submit a preliminary response to summary of allegations, which response has been made available to this PPC.

The PPC has a filtering role. The test to be applied is somewhat lower than a real prospect of success. The PPC will only be able to form a preliminary view as to whether there is a reasonable prospect of success on the material before it.

The PPC's is to decide whether the complaint ought to proceed. The PPC may *evaluate the available evidential material in order to determine whether, in its opinion, such material appears to raise a question as to whether the allegations may lead to removal from the register.* It may conduct an investigation into the prospects of the allegations and may refuse to refer if satisfied that, *in its opinion, such material does not appear to raise a question as to whether the allegations may lead to removal from the register,* but it does so with the utmost caution bearing in mind the one sided nature of their procedures under the Rules which provide that, whilst the practitioner is afforded access to the complaint and is able to respond to it, the complainant has no right of access or to make an informed reply to the response, and the limited material likely to be available before the PPC.

It is not the role of the PPC to resolve conflicts of evidence. The PPC must bear in mind its limited filtering role and must balance due regard for the interests of the practitioner against the interests of the complainant and the public and must bear in mind the need for reassurance of the complainant and the public that complaints are fully and properly investigated and there is no cover up. Any doubt should be resolved in favour of the investigation proceeding.

It is apparent that the exercise which is contemplated is one in which available material is to be *evaluated* to determine whether that material appears to raise a question of *whether the allegations may lead to removal from the register*. "Evaluation of material" must refer to consideration of the evidential material, not simply to an analysis of whether the complaint itself (if supported by evidence) would amount to serious professional misconduct.

If the PPC is considering exercising its powers under Rule 8(3) (b) of the Rules, it should first have regard to the matters set out in paragraphs 56 and 95 of Standlen J.'s judgement in *The Queen on the application of Michael McNicholas*.

If you have any questions arising from this letter, please do not hesitate to contact me on **Code A**

Yours sincerely

**Code A**