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NMC Nursing &
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Council

Private and confidential

Mrs M Bulbeck

(GOSPORT MEMORIAL)

Code A th

1 June 2010

PRE/NA/CM/Code A12053.1

Direct line: **Code A**

Fax No: 020 7242 9579

Email: fitness.to.practise@nmc-uk.org

DX: 37970 Kingsway

Dear Mrs Bulbeck

Code A

I am writing about the above named whose case was placed before the Preliminary Proceedings Committee of the NMC at its recent meeting.

The Preliminary Proceedings Committee gave careful consideration to the papers before it and decided to decline to proceed with the matter.

Decisions and reasons for the decisions

The panel considered the allegations very carefully and evaluated the information before it including [...] the clinical and nursing notes, the drug chart and 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 eight 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 [complainant's name deleted] in her complaint letter to the Council has identified concerns about why her mother was commenced on a syringe driver when the staff were seemingly unaware of her mother's pain. The panel believe that for completeness they should consider this allegation at this time [as a ninth allegation].

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4. Decision: Declined to proceed with this allegation

Reasons:

Mrs Bulbeck in her complaint letter details how on one occasion during a two and half month period while she was visiting the ward she found that Mrs Middleton's meal was placed out of her reach and had no cutlery. Mrs Bulbeck alleges that Mr [Code A] as the clinical manager, failed to ensure that the meal provided was within reach. Mr [Code A] in his response to the allegation details that at the time he had concerns about the ward staffing level and had exercised accountability in accordance with the UKCC's *Code of Professional Conduct* by raising these concerns through four risk event forms drawing attention to the risks caused by poor staffing.

The panel believe that Mr [Code A] acted entirely appropriately by exercising such accountability with regard to staffing levels and the impact they were having on patient care. Accordingly, the panel believe that this allegation is incapable of amounting to misconduct and they have therefore declined to proceed with the matter.

5. Decision: Declined to proceed with this allegation

Reasons:

Mrs Bulbeck in her complaint letter details how on many occasions during a two and half month period while she was visiting the ward she found that Mrs Middleton's call bell was out of reach preventing her from calling for assistance. Mrs Bulbeck alleges that [Code A] as the clinical manager, failed to ensure that the call bell was within easy reach. [Code A] in his response to the allegation details that at the time he had concerns about the ward staffing level and had exercised accountability in accordance with the UKCC's *Code of Professional Conduct* by raising these through four risk event forms drawing attention to the risks caused by poor staffing levels.

The panel believe that [Code A] acted entirely appropriately by exercising such accountability with regard to staffing levels and the impact they were having on patient care. Accordingly, the panel believe that this allegation is incapable of amounting to misconduct and they have therefore declined to proceed with the matter.

6. Decision: Declined to proceed with this allegation

Reasons:

Mrs Bulbeck in her complaint letter refers to how staff failed to ensure that Mrs Middleton lower body and in particular her legs were kept warm while she was sitting out of bed. [Code A] in his response states that this may have been the result of the patient moving and the blanket falling off. He goes on to acknowledge that it is possible that Mrs Middleton's care was poor in this respect.

The panel are of the opinion that even if proven, this allegation would not amount to removal from the register as the alleged misconduct is not sufficiently serious. The likelihood of harm from the patient's legs being exposed was negligible. Accordingly, this allegation is closed as the panel have declined to proceed.

7. Decision: Declined to proceed with this allegation

Reasons:

Mrs Bulbeck in her complaint letter raises concerns about the standard of nursing care and the attitude of some staff towards vulnerable helpless patients. In her letter Mrs Bulbeck does cite specific examples of what she believes is poor care. [Code A] is cited as the registrant in this allegation as he was the clinical manager with overall responsibility for the care delivered. [Code A] in his response acknowledges that there might have been occasions when Mrs Middleton's care was poor. To some extent this is borne out by the Trust's report by Ms Jane Williams which looked into the complaints raised by Mrs Bulbeck. Steps were taken following this report to resolve the issues and address areas of poor practice. This allegation is set at a time when there were concerns about the staffing levels on the ward. [Code A] exercised accountability in accordance with the UKCC's *Code of Professional Conduct* by raising concerns about staff levels and completing four risk event forms.

The panel believe that [Code A] acted entirely appropriately by exercising such accountability with regard to staffing levels and the impact they were having on patient care. Accordingly, the panel believe that this allegation is incapable of amounting to misconduct and they have therefore declined to proceed with the 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.*

I am sorry for the delay in conveying the committee's decision to you. Thank you for bringing your concerns to the Council's attention.

Yours sincerely

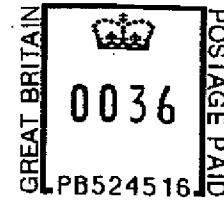
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