

Private and confidential
Mrs M Jackson

Code A

1 June 2010

PRE/ **Code A** 12053.1/ **Code A**

Direct line: **Code A**

Code A

DX: 37970 Kingsway

Dear Mrs Jackson

Code A

I am writing about the above named whose case was placed before the Preliminary Proceedings Committee of the NMC at meeting on 12 and 13 April 2010.

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

Decisions and reasons in respect of **Code A**

The panel considered the allegations very carefully and evaluated the information before it including the letter of complaint from Mrs Jackson, 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 Mrs Jackson 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.

The additional allegation is therefore:

In respect of Patient A, that

9. On the 20 August 1998 you commenced a syringe driver containing Diamorphine and Midazolam without establishing the patient's pain level

In respect of Patient A

1a. (1.1) Decision: Declined to proceed with this allegation

Reasons:

On the 17 August 1998 it appears that **Code A** made an entry in the nursing record to say that "daughter seem aware that mum's condition is worsening, agrees active treatment not appropriate and to use syringe driver if Mrs Wilkie is in pain". Mr Beed accepts that this is his contemporaneous record.

The panel note that the complaint in this matter was made in 2002 and that the alleged incident occurred in 1998. The passage of time will have a bearing on the Council's ability to discharge its responsibilities around the burden of proof in this case. In addition, there are no independent witnesses to the discussion between Mr Beed and Mrs Jackson.

The panel considers that it is clear from Mrs Jackson's own letter that she was made aware that Mrs Wilkie was dying and this corresponds with the clinical notes which state on the 21 August 1998 that there was "marked deterioration over the last few days". The medical practitioner who made this entry also refers to the family being "aware and happy".

Mrs Jackson in her letter of complaint indicates that she did say to **Code A** that she did not want her mother to suffer. While this may not be entirely in keeping with the record made the panel are of the opinion that the statement that she did not want her mother to suffer could indicate that analgesia including up to the use of a syringe driver could be appropriate to achieve this aim.

In any event, legally, Mrs Jackson's consent to the use of a syringe driver would not have been required as the staff would be required to apply the best interests test once Mrs Wilkie was not in a position to consent for herself.

The panel are of the opinion that even if proven, this allegation would not amount to removal from the register. Accordingly, the panel have declined to proceed with this matter.

1b. (1.2) Decision: Declined to proceed with this allegation**Reasons:**

On the 21 August 1998 **Code A** made an entry in the clinical records to confirm death and also made a record in the nursing notes. In both entries Mr Beed reports that the family were present at the time of confirmation of death rather than at the specific point where Mrs Wilkie died.

Mrs Jackson suggests that this record indicates that she was present at the moment of death. However, the panel believe that the record does not suggest this.

The panel are of the opinion that even if proven, this allegation would not amount to removal from the register as it has no bearing on the clinical care of the patient. Accordingly, this allegation is closed and the panel have declined to proceed with this matter.

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

On the 20 August 1998 **Code A** was asked to come and see Mrs Wilkie by Mrs Jackson because she was reportedly in pain. **Code A** arrived shortly before 13.50 hrs and then a short time later administered pain relief via a syringe driver.

The panel are of the opinion that **Code A**'s practice with regard to pain assessment and record keeping may have fallen short of the required standard. However, he did take action to address Mrs Wilkie's pain within a short timescale once he had seen Mrs Wilkie and had spoken to Mrs Jackson.

The panel are of the opinion that even if proven, this allegation would not amount to removal from the register as action was taken to address the pain as soon as Mr Beed was aware of the problem. Accordingly, this allegation is closed and the panel have declined to proceed.

3. Decision: Declined to proceed with this allegation

Reasons:

Mrs Jackson alleges that on the 21 August 1998 [Code A] failed to monitor Mrs Wilkie appropriately and keep the family informed of her condition. The panel note that the window when Mrs Jackson was not present would have been approximately 2 hours in duration. There is no evidence that Mr Beed did not observe Mrs Wilkie during this period. It is difficult for any registrant to say for certain when a patient is about to die and therefore even with monitoring it would not be possible for Mr Beed to inform Mrs Jackson of the impending event.

[Code A] said to Mrs Jackson that Mrs Wilkie had only just died when she arrived at the ward. Given that all nursing staff were trained to confirm death and that this confirmation had not at this time taken place it is likely that there was a short period between death and Mrs Jackson arriving at the ward. Thus notifying her by telephone of the death may not have been possible.

The panel are of the opinion that even if proven, this allegation would not amount to removal from the register as there is no question of misconduct from this allegation. Accordingly, this allegation is closed as the panel have declined to proceed.

9. Decision: Declined to proceed with this allegation

Reasons:

On the 20 August 1998 [Code A] was asked to come and see Mrs Wilkie by Mrs Jackson because she was reportedly in pain. [Code A] arrived shortly before 13.50 hrs and then a short time later administered pain relief via a syringe driver. The panel are of the opinion that [Code A] practice with regard to pain assessment and record keeping may have fallen short of the required standard. However, he did acknowledge that Mrs Wilkie's was in pain by taking action to obtain analgesia.

Mr Beed administered the prescribed drugs and commenced the syringe driver at the lowest level from within the prescribed range. In any event, it would not be possible for a panel of the Professional Conduct Committee to establish whether the level of pain was such, not to warrant the use of sub-cutaneous opiates. Therefore, it would not be possible for the Council to discharge its responsibilities around the burden of proof in respect of this allegation.

The panel are of the opinion that even if proven, this allegation would not amount to removal from the register as action was taken in relation to Mrs Wilkie's pain. Accordingly, this allegation is closed and the panel have declined to proceed.

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

Code A