Name of registrant: Saji Kunnel Bhaskaran
NMC PIN: 03H1192O
Part(s) of the register: Registered Nurse – Sub part 1
Area of Registered Address: England
Type of Case: Misconduct
Panel Members: Edward Lucas (Chair, lay member)
Jan Fowler (Registrant member)
Rebecca Nowell (Lay member)
Legal Assessor: Leighton Hughes
Panel Secretary: Rob James
Registrant: In attendance but not represented
Nursing and Midwifery Council: Represented by Ariane Adam, counsel,
instructed by NMC Regulatory Legal Team.
Order being reviewed: Suspension Order (6 months)
Outcome: Conditions of Practice Order (6 months) to come into effect at the end of 22 October 2017 in accordance with Article 30 (1)
Decision and reasons on review of the current order:
The panel decided to impose a conditions of practice order for a duration of six months. This order will come into effect at the end of 22 October 2017 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of an order that was originally imposed by a panel of the Conduct and Competence Committee on 18 September 2014. At that point, a Conditions of Practice order was made for a period of 18 months. The order was subsequently reviewed on 15 March 2016 and the Conditions of Practice order was extended for a period of nine months. The order was reviewed for the second time on 15 December 2016 and was varied and extended for a further three months. The order was most recently reviewed on 20 March 2017 and the Conditions of Practice order was replaced with a suspension order for a period of six months. The current order is due to expire at the end of 22 October 2017.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved which resulted in the imposition of the substantive order was as follows:

“That you, whilst employed as a Staff Nurse at Marion Lauder House care home,

1. On 18 April 2013 slapped Resident A on the hand.

And in light of the above your fitness to practise is impaired by reason of your misconduct.”

The original substantive panel on 17 September 2014 determined the following with regard to impairment:

“The panel notes that the incident found proved was isolated and there is no evidence that such behaviour has occurred before or since. The panel heard that colleagues considered your actions which gave rise to the incident were out of character. However, given that Resident A was highly dependent on those
responsible for his care it was your duty to treat him with dignity and compassion at all times. You gave no consideration to the physical or psychological harm that you could have caused Resident A and the impact that it could have had on other residents, or indeed colleagues, who witnessed the incident. The panel has no doubt that your fitness to practise was impaired at the time of the incident.

The panel has given careful consideration to the question of insight. You continue to maintain that you did not slap Resident A. The panel has found against you on that issue. You did tell the panel that you recognised that slapping a patient was unacceptable in any circumstances and would amount to serious misconduct. The panel has therefore been able to conclude that you have at least some insight into the nature of the misconduct that has been found proved. However the panel also noted that you have twice failed to reach the required standard in Safeguarding procedures and cannot conclude that you have attained the required level of insight into your failing. In these circumstances the panel; has determined that you have not remediated the misconduct found against you.

Further the panel is in no doubt that the public interest requires a finding of current impairment to be made. Your conduct was wholly unacceptable and the public would justifiably be alarmed if it did not result in a finding of impairment.

For all the reasons outlined above, the panel determined that your fitness to practise is currently impaired by reason of your misconduct.”

The original substantive panel on 17 September 2014 determined the following with regard to sanction:

“The panel then considered whether a conditions of practice order would be appropriate and proportionate and determined that it would. In this case there is no evidence of harmful, deep-seated personality or attitudinal problems. There are however identifiable areas of your practice in need of development and retraining. Mr Broderick submitted that you are willing to respond positively to
retraining and the conditions of practice will protect patients during the period they are in place.

The panel is satisfied that conditions can be formulated which are workable, practicable and measurable, and which would be a reasonable and proportionate response to the risks identified. The panel is also satisfied that this sanction is sufficient to declare and uphold proper standards and to maintain public confidence in the profession. The panel considers that the public interest will be satisfied by the safe practice of an experienced nurse.

The panel took into account your continued commitment to the nursing profession and your engagement with the regulatory process. Given your positive response to areas formally identified by your employer, this panel is of the view that you are willing to respond positively to a conditions of practice order and, in the light of your assurance, it has confidence that you will comply with them.

In all the circumstances, the panel concluded that a conditions of practice order would be the least restrictive sanction that would protect patients and fully address the public interest concerns in this case. Further, the panel concluded that a period of 18 months would be both appropriate and proportionate. This is sufficient time to enable you to undertake relevant professional development, to reflect further upon your practice and to bring evidence of this to a review hearing.”

The previous reviewing panel on 16 March 2017 determined the following with regard to impairment:

Regarding insight, the panel noted that the previous panel found that Mr Bhaskaran had shown some insight into the charge found proved against him.

“At this hearing, the panel noted that Mr Bhaskaran has not provided any new information, in his absence, for the panel’s consideration.
The panel had regard to the telephone note dated 13 March 2017 detailing a conversation between the NMC and Mr Bhaskaran which stated:

“[Mr Bhaskaran said that if he has any submissions for [the] panel he will send it to [the case officer] before.... [Mr Bhaskaran] again said if he has anything to send [the case officer] he will send via email before the date.”

The panel concluded that Mr Bhaskaran had been provided the opportunity to send in new information and had not done so.

In its consideration of whether Mr Bhaskaran has remedied his practice the panel took into account the telephone note dated 16 March 2017 detailing a conversation between the NMC and a Registered Nurse at Fox Earth Lodge, where Mr Bhaskaran was employed in June 2016. The telephone note stated:

“[The nurse] informed [the Case Officer] that the last time [Mr Bhaskaran] was paid was on 28 September 2016 and that he was off sick prior to this date. [The Case Officer] asked Sarah what date he was off sick and she said that they could not confirm but probably a week or two before the above date.

[The nurse] said that [the owner of Fox Earth Lodge] wrote to [Mr Bhaskaran] on 18 October 2016 to try and arrange a meeting with him about his future at Fox Earth but [the owner] did not receive a response from him…”

The panel concluded that Mr Bhaskaran may not have been working since September 2016 and there is no information to confirm that he has adhered to the current conditions of practice order.

The previous panel determined that Mr Bhaskaran was liable to repeat matters of the kind found proved. This panel has neither heard nor received any information to contradict this. In light of this the panel determined that there is a continued
risk of repetition of the misconduct found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel bore in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. With no new information before it, this panel determined Mr Bhaskaran’s fitness to practise remains impaired on the grounds of public protection and the public interest.”

The previous reviewing panel on 16 March 2017 determined the following with regard to sanction:

“The panel next considered the continuation of the conditions of practice order. In all the circumstances, the panel concluded that a conditions of practice order is no longer practicable nor appropriate as Mr Bhaskaran has not complied with the current conditions of practice order. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore that a suspension order is the only appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of six months. It considered this to be the most appropriate and proportionate sanction available. This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 22 April 2017 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001.

The panel considered striking Mr Bhaskaran off the register but determined that this would be a disproportionate response at this time.”
Decision on current fitness to practise

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, your own bundle of certificates and reflective accounts and an email from Mr 1 in which a job offer was confirmed if the panel decided to allow you to practise either under conditions or unrestricted. It has taken account of your oral evidence and that of Mr 1, together with the submissions made by Ms Adam on behalf of the NMC.

You told the panel that you are currently working as a Carer at Abbeydale Nursing Home and have been in the role for around 6 months. You explained that you had found it hard to find employment as a Registered Nurse when you had been on a conditions of practice order but had been informed by Mr 1, your current line manager, that he would be able to offer you this role if the NMC allowed you to practise again, either on a conditions of practice order or unrestricted.

You told the panel that you would be able to cope if a similar incident occurred and understood the importance of reporting relevant incidents to your manager and to safeguarding. You told the panel that you understood the effect that your actions had had on the patient in your care and on the wider nursing profession and stated that you had never acted that way to a patient before and had not since the incident.

You told the panel that you have completed online training and presented it with certificates relating to infection prevention control, dementia care, safeguarding of vulnerable adults, communicating effectively and mental capacity. You also provided a reflection of this learning.
Mr 1 gave evidence over the telephone. He told the panel that he had not worked on the same shift as you but had received good feedback from other members of staff. He further stated that there had been no complaints with regard to your practice and confirmed that he was aware of the original allegations and had read the reasons of previous NMC panels. He also confirmed that he would be able to offer you a job as Registered Nurse if the panel allowed you to practise again.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance. The panel also bore in mind the public interest in the safe return to work of a Registered Nurse.

The panel considered whether your fitness to practise remains impaired.

Regarding your insight, the panel considered that you now understand the importance of escalating concerns to safeguarding and your manager but it was not satisfied that you fully appreciate the vulnerable nature of the patients in your care. The panel further noted that you did not seem to be able to answer questions relating to further training that was necessary and considered the training that you had undertaken so far to be inadequate.

The panel had regard to your reflective piece and in particular you comment that:

"I have learnt about how to deal with the residents if they are aggressive or violent."

The panel considered this to be an inappropriate response to your misconduct and found that you still had trouble understanding your failings when working with patients in your care.
The last panel determined that you were liable to repeat matters of the kind found proved. Notwithstanding your clear developing insight, this panel could not safely exclude the risk of repetition. In light of this the panel determined that you are still liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is required.

For these reasons, the panel finds that your fitness to practise remains impaired.

**Determination on sanction**

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 29 of the Order. The panel has also taken into account the NMC’s Sanctions Guidance (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered substituting the current suspension order with a conditions of practice order. Your misconduct was serious, however, there is evidence of your developing insight and your genuine wish to return to nursing. Further the panel
considered that it would be possible to formulate practicable and workable conditions, that if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel determined that the imposition of a conditions of practice order would allow you demonstrate that you are able to practise safely as a Registered Nurse. Further, it considered that it would enable you to demonstrate the progress that you have made to a future panel.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

1. You must notify the NMC within 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer;

2. You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them;

3. You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study;

4. At any time that you are employed or otherwise providing nursing or midwifery services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of weekly meetings to discuss your performance and clinical caseload.

5. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:
1) Safeguarding of vulnerable adults
2) Managing challenging behaviour
3) The impact on the nursing profession and wider public of your failure to safeguard vulnerable adults and manage challenging behaviour

6. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least once a month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.

7. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.

8. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.

9. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.

10. You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.
11. You must immediately inform the following parties that you are subject to a conditions of practice order under the NMC’s fitness to practise procedures, and disclose the conditions listed at (1) to 10 above, to them:

a. Any organisation or person employing, contracting with, or using you to undertake nursing work;
b. Any agency you are registered with or apply to be registered with (at the time of application);
c. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment; and
d. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).

The order will be reviewed prior to its expiry.

The panel determined that a future panel would be assisted by your continued engagement in the NMC process along with your attendance at the hearing.

This decision will be confirmed to you in writing.

That concludes this determination.