

**Nursing and Midwifery Council  
Fitness to Practise Committee**

**Substantive Order Review Hearing**

**18 April 2019**

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

**Name of registrant:** Mrs Anne Susanne McDermott

**NMC PIN:** 73I1936E

**Part(s) of the register:** RN2, Registered Nurse (sub part 2)  
Adult (27 April 1977)  
RN1, Registered Nurse (sub part 1)  
Adult (19 February 2001)

**Area of Registered Address:** England

**Type of Case:** Misconduct

**Panel Members:** Andy Thompson (Chair, lay member)  
Claire Clarke (Registrant member)  
Jonathan Coombes (Registrant member)

**Legal Assessor:** James Holdsworth

**Panel Secretary:** Leigham Malcolm

**Mrs McDermott:** Not present and not represented in absence

**Nursing and Midwifery Council:** Represented by Ms Ruth-Ann Cathcart, NMC  
Case Presenter

**Order being reviewed:** Suspension Order – 12 months

**Fitness to Practise:** Impaired

**Outcome:** Striking-off order to come into effect at the end  
of 3 May 2019 in accordance with Article 30 (1)

## **Service of notice of hearing**

The panel was informed at the start of this hearing that Mrs McDermott was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Mrs McDermott on 13 March 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Mrs McDermott's registered address on 14 March 2019.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

## **Proceeding in absence**

The panel then considered proceeding in the absence of Mrs McDermott. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Cathcart on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Cathcart referred the panel to an email from Mrs McDermott date 15 April 2019 which stated:

“I will not be attending. I outlined some time ago that I have been retired for some years now and therefore do not think it is necessary for me to be involved in the process...”

Ms Cathcart submitted that the panel could be satisfied that she had voluntarily absented herself.

The panel also noted the contents of the email dated 15 April 2019 from Mrs McDermott in which she stated that she would not be attending the hearing.

In the light of Mrs McDermott's email, the panel was satisfied that she had been sent notice of today's hearing and the panel was satisfied that she was aware of today's hearing and it is of the view that she had chosen to disengage. The panel accepted that Mrs McDermott had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Mrs McDermott's attendance. Having weighed the interests of Mrs McDermott with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Mrs McDermott's absence.

### **Decision and reasons on review of the current order**

The panel decided to impose a striking-off order. This order will come into effect at the end of 3 May 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a suspension order for period six months originally imposed by a panel of the Conduct and Competence Committee on 31 March 2017. The current order is due to expire at the end of 3 May 2019.

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

At the substantive meeting held on 31 March 2017 the following charges were admitted and found proved:

That you, a registered nurse, on 23 July 2015:

1. At an unknown time between 09:00 and 11:30, administered 500mg of Nitrofurantoin to Patient A when 50mg was prescribed.
2. Did not record that the administration of Nitrofurantoin to Patient A set out at charge 1 was late.
3. At approximately 12:15, administered 500mg of Nitrofurantoin to Patient A when 50mg was prescribed.
4. Did not seek advice from a doctor before undertaking the administration set out at charge 3 despite its proximity to the administration set out at charge 1.

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

The second reviewing panel determined the following with regard to impairment:

The panel first considered whether Mrs McDermott's fitness to practise remains impaired.

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

In reaching its decision on impairment, the panel took into account the need to protect the public, maintain public confidence in the profession, and the need to declare and uphold proper standards of conduct and behaviour.

The panel considered the evidence before previous meetings. It noted that Mrs McDermott in her letter to the substantive hearing states “the error was totally unintentional and out of character having worked in nursing since the age of 18. Since retiring in September 2015, I...have no intention to return to any form of nursing work”. The panel also noted that Mrs McDermott applied for voluntary removal from the register which was refused.

There has been no further engagement from Mrs McDermott since the previous substantive panel review in September 2017. As there has been no further engagement the panel has no new information before it. There is no evidence to demonstrate remediation or insight. The panel has therefore concluded that the situation has remained unchanged and so there remains a risk of repetition of similar events. Consequently the panel concluded that Mrs McDermott’s fitness to practice remains impaired on the grounds of public protection.

The panel next considered whether Mrs McDermott’s fitness to practise remains impaired on the grounds of the wider public interest. That is the need to uphold standards, and to maintain confidence in the nursing profession and in the NMC as regulator. The panel concluded that the passage of time since the substantive hearing, just a few days short of a year, is sufficient for it to conclude that the public interest has been marked and served. Consequently the panel finds that Ms McDermott’s fitness to practice is no longer impaired on the grounds of public interest.

The second reviewing panel determined the following with regard to sanction:

Having found Mrs McDermott’s fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel took into account the aggravating and mitigating features summarised by the substantive panel, and the NMC’s Sanctions Guidance (SG.) It bore in mind that the purpose of a sanction is to protect the public and the public interest and not to be punitive, though it recognised that any sanction imposed may have a punitive effect.

The panel first considered whether to take no action or impose a caution order, but concluded that either option would be inappropriate. There has been no engagement from Mrs McDermott so there is no evidence of remediation or insight. The panel concluded that the risk of repetition identified at the substantive meeting remains and as such a restriction is required on Mrs McDermott's registration. The panel decided that in these circumstances it would not be proportionate to take no further action or impose a caution order.

The panel next considered imposing a conditions of practice order. The panel concluded that as Mrs McDermott had continued to disengage with the NMC regulatory process and she retired from the nursing profession in September 2015, over two years ago it would not be possible to formulate workable or practicable conditions.

The panel considered the imposition of a further period of suspension. It noted that this was a single instance of misconduct, there was no evidence of a harmful or attitudinal issue, and there has been no repetition since the original incident. The panel noted that the earlier substantive hearing concluded that Mrs McDermott has limited insight into the impact of her actions. The panel considered that imposing a further suspension order will give Mrs McDermott an opportunity to provide evidence of insight. The panel concluded that a suspension order would be the proportionate and appropriate sanction. The panel concluded that given the lack of engagement the length of the order should be for the maximum period of 12 months.

The panel considered the possibility of imposing a striking-off order, but concluded that such a sanction would be unduly punitive and disproportionate at this time, given the misconduct found proved relates to one incident in a lengthy career with no other findings against Mrs McDermott. However, the panel wishes to stress that, at the next review hearing, all available options (including a striking-off order) will be available to a reviewing panel.

The panel considered that a future reviewing panel would be assisted by:

- Evidence of Mrs McDermott's future career intentions.

- A reflective piece detailing Mrs McDermott's reasons for why this drug administration error occurred and how she would prevent such an error in the future.
- A reflective piece also detailing the impact of Mrs McDermott's actions on Patient A, Patient A's family, her colleagues and the reputation of the profession.
- Any evidence of up to date training in medication administration.

That concludes this determination.

### **Decision on current fitness to practise**

This panel has considered carefully whether Mrs McDermott's 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 the 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 and it has taken account of the submissions made by Ms Cathcart on behalf of the NMC.

Ms Cathcart outlined the background to Mrs McDermott's case. She highlighted that the previous reviewing panel found Mrs McDermott's fitness to practise impaired on the grounds of public protection only.

Ms Cathcart submitted that there is no evidence before the panel today to suggest that Mrs McDermott has remediated the concerns previously identified or developed her insight into her misconduct. She submitted that Mrs McDermott's current fitness to practise therefore remains impaired on the grounds of public protection.

Ms Cathcart told the panel that Mrs McDermott has repeatedly stated that she is retired and has no intention of practicing as a registered nurse in the future. However, she has provided no evidence of her retirement status or current situation. Ms Cathcart informed the panel that Mrs McDermott's registration is currently active. Given Mrs McDermott's lack of engagement throughout these regulatory proceedings, Ms Cathcart invited the panel to seriously consider imposing a striking-off order.

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 considered whether Mrs McDermott's fitness to practise remains impaired.

The panel noted that there was no new evidence to suggest that Mrs McDermott had remediated her misconduct or developed any insight into her failings. The panel had regard to an email from Mrs McDermott dated 15 April 2019 which stated:

“Although I vehemently refute the allegations against me, because this will be a situation which will rely upon one statement against another, I do not believe a conclusive outcome will be reached...”

The panel bore in mind that for the purposes of the substantive meeting on 31 March 2017 Mrs McDermott admitted the allegations against her. In view of her statement as set out above that she now “vehemently refutes the allegations”, the panel formed the view that Mrs McDermott may have an attitudinal issue, contrary to the findings of the previous panel. The panel considered that an attitudinal issue would be serious and would engage the public interest.

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 both public protection and public interest grounds is required.

As there had been no new information to suggest that the situation in this case had improved, and in view of the new concerns surrounding Mrs McDermott's attitude, the panel decided that her fitness to practice remains impaired.

### **Determination on sanction**

Having found Mrs McDermott's 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 30 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 risks identified and Mrs McDermott's lack of insight, remediation and her possible attitude problem. The panel decided that it would not be appropriate to take no further action.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risks identified above. The panel decided that it would not be appropriate to impose a caution order.

The panel then considered whether to impose a conditions of practice order. The panel bore in mind that Mrs McDermott has not engaged in any meaningful way throughout these regulatory proceedings. It also bore in mind that Mrs McDermott's statement that she has retired along with her stated intention not to practise as a registered nurse in the future. The panel was of the view that there was no reason to expect that a conditions of practice order would be practicable or effective in protecting the public. For these reasons the panel decided that a conditions of practice order would not be workable or appropriate in this case.

The panel next considered imposing a further suspension order. The panel noted that Mrs McDermott has demonstrated no remorse, remediation or insight into her

misconduct. Mrs McDermott's recent denial of the charges, however, has added a new dimension to the case as it seriously brings into question her professionalism. These factors combined with Mrs McDermott's failure to take up on any of the suggestions made by previous panels as to the evidence they may find helpful has led this panel to the conclusion that a further suspension order is no longer appropriate or viable.

The panel considered a striking-off order to be the most serious sanction and reserved, for the most part, for serious incidents of misconduct. The panel acknowledged that whilst Mrs McDermott's misconduct in this case may not be of the most serious kind, it was concerned about her continued lack of insight, remorse and remediation. The panel noted that Mrs McDermott accepted the allegations at the substantive hearing of this case. It considered that her recent denial of the allegations, contrary to her original acceptance, to raise further concerns about her professionalism, integrity and attitude.

The panel was of the view that persuasive evidence would be required to show that Mrs McDermott no longer posed a risk to the public. This has not been forthcoming throughout the regulatory process apart from the recent denial of the allegations which has only served to worsen the situation. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs McDermott from practising in the future should she choose to do so and concluded that the only sanction that would protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Mrs McDermott in writing.

That concludes this determination.