

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

Substantive Order Review Hearing

12 August 2019

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of Registrant Nurse: Lorna Jean McGougan
NMC PIN: 95I0366S
Part(s) of the register: RNA, Registered Nurse (sub part 1) – Adult
(28 August 1998)

Area of Registered Address: Scotland

Type of Case: Misconduct

Panel Members: Hilary Nightingale (Chair, lay member)
Sharon Peat (Registrant member)
David Evans (Lay member)

Legal Assessor: John Moir

Panel Secretary: Rob James

Registrant: Miss McGougan not in attendance and not represented

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter.

Order being reviewed: Conditions of Practice Order (9 months)

Fitness to Practise: Impaired

Outcome: Striking off order to come into effect at the end of 29 September 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

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

The panel was informed that the notice of this hearing was sent to Miss McGougan on 10 July 2019 by recorded delivery and first class post to her registered address.

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 Miss McGougan. 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 Mr Webb, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

The panel also noted the contents of an email dated 7 August 2019 from Miss McGougan in which she stated:

“I have already stated numerous times that I will not be attending and do not wish to correspond with the NMC on any subject.”

Miss McGougan 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, therefore, concluded that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Miss

McGougan's attendance. Having weighed the interests of Miss McGougan with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Miss McGougan's absence.

Decision and reasons on review of the current order:

The panel decided to make a striking off order. This order will come into effect at the end of 29 September 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a conditions of practice order, originally imposed by a Fitness to Practise panel on 27 February 2018 for nine months. The order was reviewed on 20 December 2018 and was extended for a period of nine months. The current order is due to expire at the end of 29 September 2019.

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

The charges found proved which resulted in the imposition of the substantive order was/were as follows:

“You, a registered nurse,

1. During the night shift commencing 8 April 2016 pulled Patient B from a chair:
 - 1.1 by her wrist against her will;
 - 1.2 using excessive force
2. During the night shift commencing 11 April 2016 pulled Patient A from a chair by her arms against her will

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

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

“The panel considered whether Ms McGougan’s fitness to practise remains impaired. The panel has been presented with no information demonstrating any

evidence of remorse, insight, or remediation. In particular, the panel noted that in Ms McGougan's email to the NMC dated 28 November 2018, she continued to deny the facts found proved by the substantive panel, and sought to deflect blame for her actions onto others. The panel was also concerned with regard to the tone within this email correspondence with her professional regulator.

In the light of Ms McGougan's lack of compliance with her current conditions of practice order, and lack of any evidence of insight or remediation, the panel concluded that nothing had been submitted to it to suggest that there is no longer a risk to the public. It determined that Ms McGougan's fitness to practise remains impaired on the grounds of public protection and in the wider public interest and in order to uphold proper standards of conduct and maintain public confidence in the nursing profession."

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

"The panel next considered the imposition of a conditions of practice order. The panel noted that Ms McGougan has not complied with her current conditions of practice order and has indicated that she does not wish to return to practise as a nurse. However, it determined that she should be afforded another opportunity to comply with the current conditions of practice order. The panel therefore determined that the current conditions of practice, as follows, should be extended for a period of 9 months:

1. 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. understanding autonomy, respect, dignity and patient choice particularly in the context of patients with limited capacity
 2. demonstrate evidence on how these regulatory and ethical matters impact on your practice

2. You must meet with your line manager, mentor or supervisor (or their nominated deputy) monthly to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.
3. 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.
4. 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.
5. 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.
6. 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.
7. You must tell 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.

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

9. a) You must within 14 days of accepting any post of 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.

b) You must within 14 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

10. You must immediately tell 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 (9) above, to them
 1. Any organisation or person employing, contracting with or using you to undertake nursing or midwifery work

 2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services

 3. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment

 4. 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 a course (at the time of application).

The period of this order is for nine months.

This panel did consider the imposition of a suspension order, but considered that it would serve no purpose as it would not allow Ms McGougan an opportunity to remediate.

... the reviewing panel may benefit from the following:

- Evidence of Ms McGougan's insight and remediation
- Evidence of any work undertaken – whether paid or unpaid, and any testimonials in relation to this
- Ms McGougan's attendance at her review hearing"

Decision on current fitness to practise

This panel has considered carefully whether Miss McGougan'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 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. It has taken account of the submissions made by Mr Webb on behalf of the NMC.

Mr Webb outlined the background of the case including the findings of both the substantive and first reviewing panels. Mr Webb submitted that Miss McGougan has effectively disengaged from the NMC and is no longer practising as a Registered Nurse. He informed the panel that Miss McGougan has been subject to a further referral in which a medication error and a breach of her conditions of practice order was allegedly made. This allegation has been investigated by the NMC and forwarded to the Case Examiners to make a finding.

Mr Webb informed the panel that the last meaningful contact the NMC had had with Miss McGougan was in November 2018 when she stated that she did not want to work

as a Registered Nurse. He told the panel that he did not wish to go into great detail on the new allegations as they are currently at an early stage in terms of the NMC process.

Mr Webb submitted that there was nothing to undermine the previous panel's finding that Miss McGougan's fitness to practise remains impaired. He further submitted that the panel may find that there is a lack of insight and no reflection on her actions. For this reason, he submitted that an order preventing her from unrestricted practice is necessary. Mr Webb referred the panel to the alleged breach of conditions and submitted that the panel may find that conditions are no longer appropriate.

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 Miss McGougan's fitness to practise remains impaired.

The panel took account of the fact that Miss McGougan no longer wishes to practise as a Registered Nurse and had only corresponded with the NMC in, what it considered to be, a disrespectful manner to her regulator. The panel noted that Miss McGougan has not remediated her misconduct despite being given the opportunity to do so by previous panels and has also not taken any time to reflect on her misconduct.

The panel took account of what the previous panel considered would assist this panel on making its decision and noted that Miss McGougan had not provided anything relating to her current employment by way of references and had declined to attend the hearing. Miss McGougan has also failed to provide any evidence of insight or remediation. The panel noted Miss McGougan's email dated 7 August 2019 and was of the view that this amounted to a full disengagement with the NMC process.

The last panel determined that Miss McGougan was liable to repeat matters of the kind found proved. This panel has heard no information that undermines that finding. In fact,

this panel has taken account of Miss McGougan's disengagement and continued lack of remediation coupled with allegations of a breach of the conditions of practice order. In light of this the panel determined that Miss McGougan remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment remains 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. A member of the public would be concerned if the panel considered that her fitness to practise was no longer impaired given her complete lack of remediation, clear lack of interest in returning to a nursing role and lack of engagement with her regulator.

For these reasons, the panel finds that Miss McGougan's fitness to practise remains impaired.

Determination on sanction

Having found Miss McGougan'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 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 continuing the current conditions of practice order. The panel has received information that Miss McGougan does not intend to return to practise as a nurse. In view of her clear settled intention not to return to nursing the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a suspension order. The panel noted that Miss McGougan does not intend to return to nursing and has not provided evidence of remorse for her misconduct, any remedial steps taken or of further insight into her failings. The panel was of the view that the misconduct found proved showed a lack of compassion that is necessary for a Registered Nurse and her continued lack of engagement with the regulator has demonstrated attitudinal issues. Further, Miss McGougan has made it clear that she does not intend to engage with NMC proceedings in the future. In these circumstances the panel determined that a period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Miss McGougan from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel therefore directs the registrar to strike Miss McGougan's name off the register.

In accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 this striking off order will come into effect upon the expiry of the existing conditions of practice order, namely at the end of 29 September 2019. The panel did consider imposing the striking off order with immediate effect but was of the view that there were no exceptional circumstances that necessitated this.

This decision will be confirmed to Miss McGougan in writing.

That concludes this determination.