

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

Substantive Order Review Meeting

3 December 2019

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

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| Name of registrant: | Mrs Joanne Margaret McPhee |
| NMC PIN: | 98C0238S |
| Part(s) of the register: | Registered Nurse – Sub Part 1 Adult – May 2001 |
| Area of Registered Address: | Glasgow |
| Type of Case: | Misconduct |
| Panel Members: | Malcolm Davidson (Chair, lay member) Sue Rourke (Registrant member) Derek McFaul (Lay member) |
| Legal Assessor: | Graeme Dalglish |
| Panel Secretary: | Tara Hoole |
| Order being reviewed: | Conditions of Practice Order (2 years) |
| Fitness to Practise: | Impaired |
| Outcome: | Striking-off order to come into effect at the end of 9 January 2020 in accordance with Article 30 (1) |

Service of Notice of Hearing

The panel was informed at the start of this meeting that notice had been sent to Mrs McPhee on 19 November 2019 by recorded delivery and first class post to her registered address. The notice informed Mrs McPhee that her conditions of practice order would be reviewed before its expiry at a meeting on or after 25 November 2019 and gave her the opportunity to request a hearing. There has been no response from Mrs McPhee.

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 11A and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

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 9 January 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 9 December 2014 for 18 months. On 7 June 2016 a reviewing panel varied and extended the conditions of practice order for a period of 18 months. This was reviewed by a panel of the Fitness to Practise Committee on 1 December 2017 and a conditions of practice order was imposed for a further two years. The current order is due to expire at the end of 9 January 2020.

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 were as follows:

'That you, whilst employed as a Band 5 nurse at Golden Jubilee National Hospital, Glasgow between 1 April 2008 and 1 June 2013:

1. *On 17 May 2012 administered a dose of 50mg IV Frusemide to Patient M instead of 10mg as prescribed.*
2. *...*
3. *On 23 August 2012 attempted to make up an IV insulin infusion from a pen refill rather than from a vial of insulin.*
4. *...*
5. *On 21 October 2012, having attempted to remove Patient R's Paravertebral Block, left a part of it in situ.*
6. *On 21 April 2013 allowed Patient 1 to self-administer two doses of insulin but did not sign the patient's drug Kardex.*
7. *On 21 April 2013 administered a dose of Gabapentin to Patient 2 but did not sign the patient's drug Kardex.*
8. *On 21 April 2013 did not sign Patient 3's drug Kardex to indicate that Patient 3 had declined a dose of Isosorbide dinitrate.*

AND, in the 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 noted that Mrs McPhee has been going through some personal life difficulties. She has been unable to work since the imposition of the substantive

order, and therefore has not engaged with the current conditions. The panel noted that Mrs McPhee accepted that her fitness to practise remains impaired. The panel therefore concluded that the issues identified in Mrs McPhee's practice have not been addressed. The panel therefore concluded that there remains a risk of repetition of her failings.

Given that Mrs McPhee is not currently working as a nurse and has therefore been unable to fully remediate her practice, the panel concluded that there remains a risk of repetition. In light of this a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is 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 Mrs McPhee's fitness to practise remains impaired.'

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

'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 ongoing public protection concerns. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that a

conditions of practice order could be formulated which would protect patients during the period they are in force.

The panel also gave consideration to the imposition of a suspension order but determined that in light of all the circumstances, this would be unduly punitive as the public can be adequately protected by the conditions of practice order.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to make a conditions of practice order for a period of 2 years, which will come into effect on the expiry of the current order. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

- 1. You must notify the NMC within 7 days of any nursing 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 7 days of you receiving notice of them.*
- 3. a) You must within 7 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.*

b) You must within 7 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
- 4. You must be supervised in drug administration until you are deemed competent to undertake this independently, having been assessed by your line manager, mentor or supervisor (or their nominated deputy).*

5. *You must not undertake intravenous drugs administration until you have completed a course of study and have been assessed and deemed competent to undertake this independently.*

6. *At any time that you are employed or otherwise providing nursing 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:*

A monthly meeting with your line manager, mentor or supervisor (or their nominated deputy) to discuss your performance and progress in relation to:

- *Medicines management*
- *Record keeping*
- *Working effectively and collaboratively with colleagues*

7. *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 in relation to the matters set out in Condition 6 above at least 28 days before the review of this order.*

8. *You must produce and submit to the NMC, at least 28 days before the review of this order, a written reflective piece demonstrating what you have learnt since returning to practice. In particular, you should address the issues outlined in Condition 6, namely:*

- *Medicines management*
- *Record keeping*
- *Working effectively and collaboratively with colleagues*

It should include your understanding of your previous failings and the impact of those on patients, colleagues and the public.

9. *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 (8) above, to them:*

- *any organisation or person employing, contracting with, or using you to undertake nursing work*
- *any nursing agency you are registered with or apply to be registered with (at the time of application)*
- *any prospective nursing employer (at the time of application)*
- *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)*

Decision on current fitness to practise

The panel has considered carefully whether Mrs McPhee'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.

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 McPhee's fitness to practise remains impaired.

The panel noted the previous panel's findings in relation to Mrs McPhee's lack of remediation and insight. Mrs McPhee has not engaged with the NMC since the hearing in 2017. As such, this panel has no new information before it to determine whether Mrs McPhee's insight had developed in the last two years or whether she had taken any steps to remedy her practice or comply with her conditions of practice order.

The last panel determined that Mrs McPhee was liable to repeat matters of the kind found proved. This panel has received no information to determine that this has been remediated and that there is no longer a risk of repetition of her failings. In light of this the panel determined that Mrs McPhee remains 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 has borne in mind that its primary function is 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 has determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Determination on sanction

Having found Mrs McPhee'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 noted that it could consider allowing the order to expire thereby allow Mrs McPhee's registration to lapse. However, the panel concluded that this would be inappropriate in view of the complete lack of engagement from Mrs McPhee, the risk of

repetition identified and the seriousness of the case. Also the panel has no information as to whether Mrs McPhee wishes to continue to practise as a nurse therefore the panel considered this was not an option open to it.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified, the seriousness of the case and that it would not protect the public. 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 for the same reasons as taking no action. 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 noted that Mrs McPhee has now been subject to a conditions of practice order for a period of five years.

The panel noted the outcome letter sent to Mrs McPhee from the last review hearing dated 6 December 2017 which states:

'A panel will review the order before it expires. You will need to give the panel whatever evidence it specified in the conditions of the order. It is up to you to obtain that evidence in time for the review.'

The letter goes on to detail the sanctions available to the reviewing panel including a striking-off order.

The panel noted that within the last two years there had been no engagement from Mrs McPhee. She has not demonstrated any compliance with the current conditions of practice order nor any interest or willingness to do so. The panel was of the view that there were conditions which Mrs McPhee could have complied with regardless of whether she was employed in the role of a registered nurse, such as the provision of a reflective statement. However, there is no evidence before the panel from Mrs McPhee.

Whilst the panel was of the view that Mrs McPhee's failings were, in theory, remediable this would require engagement from Mrs McPhee. The panel therefore concluded that there were no workable, practicable or realistic conditions which could be formulated

which would address the public protection and public interest identified in this case in light of Mrs McPhee's non-engagement.

The panel next considered imposing a suspension order. Previous panels have expressed concern about Mrs McPhee's lack of insight but, she has provided no evidence of the development of insight or remediation. In light of this the panel determined that a period of suspension would not serve any useful purpose.

In addition, the panel considered that it was not in the public interest to continually suspend a nurse or impose restrictions indefinitely when the concerns were not being remediated. The panel considered that public confidence in nurses and the NMC would not be maintained by allowing Mrs McPhee to remain on the register. It considered that, in the circumstances, Mrs McPhee's failings along with her complete disengagement from these proceedings are fundamentally incompatible with her remaining on the register. The panel therefore determined that it was necessary to take action to prevent Mrs McPhee 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 Mrs McPhee'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 suspension order, namely at the end of 9 January 2020.

This decision will be confirmed to Mrs McPhee in writing.

That concludes this determination.