

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

**17 May 2019**

**The Pharmaceutical Society, Northern Ireland, 73 University Street, Belfast BT7  
1HL**

<b>Name of registrant:</b>	Patrick Francis Maguire
<b>NMC PIN:</b>	82Y0031N
<b>Part(s) of the register:</b>	Registered Nurse – Mental Health Nursing – 1 July 1999
<b>Area of registered address:</b>	Northern Ireland
<b>Type of Case:</b>	Conviction
<b>Panel Members:</b>	Nigel Hallam (Chair, Lay member) Allison Hume (Registrant member) Derek McFaul (Lay member)
<b>Legal Assessor:</b>	Laura McGill
<b>Panel Secretary:</b>	Roshani Wanigasinghe
<b>Mr Maguire:</b>	Present and represented by Dr Jane Wright instructed by Unison
<b>Nursing and Midwifery Council:</b>	Represented by Samantha Forsyth, Case presenter
<b>Facts proved by admission:</b>	All
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking off order
<b>Interim Order:</b>	Interim suspension order (18 months)

## **Details of charge:**

That you, a registered nurse:

- 1) On 28 August 2018, in the Crown Court in Northern Ireland, were convicted of *'Defendant on the 27<sup>th</sup> day of October 2017, assaulted [Patient A] thereby occasioning him actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861'*.
  
- 2) On 26 September 2018, in the Crown Court in Northern Ireland, were convicted of:
  - a) *'Defendant on the 27<sup>th</sup> day of October 2017, being an officer on the staff of or otherwise employed in a hospital, namely, the Rosebrook Ward, Bluestone Unit, Craigavon Hospital, neglected [Patient A], a patient for the time being receiving treatment for mental disorder as an inpatient in the said hospital, contrary to Article 121(1) of the Mental Health (Northern Ireland) Order 1986.*
  
  - b) *'Defendant on the 27<sup>th</sup> day of October 2017, with intent to pervert the course of public justice did an act which had a tendency to pervert the course of public justice, namely, that he entered incorrect details into the Datix system, the handover sheet and the progress notes, contrary to Common Law.*

AND in light of the above, your fitness to practise is impaired by reason of your conviction(s).

## **Background**

You were convicted on 28 August 2018 for assault occasioning actual bodily harm on a Patient A and then convicted on 26 September 2018 for wilful neglect of the patient and perverting the course of justice. Patient A was an inpatient at the Bluestone Unit of Craigavon Hospital (the Hospital). Patient A suffered from various mental health

problems and was bipolar, which is manifested by manic episodic episodes. Patient A was admitted on 23 October 2017 and you were working the night shift on the 27 October 2017.

There is CCTV footage which shows Patient A had wanted to go out for a further smoke. Whilst Patient A was in the corridor, you had attempted to restrain him. Patient A had subsequently punched you. Patient A was restrained by you and a colleague. Patient A had then tried to punch you again and in retaliation, you had punched Patient A, three times. Thus, Patient A had fallen to the ground and had bled profusely due to an injury to his face. It had later come to light that Patient A had a broken nose.

Following this, a female nurse arrived you told her that Patient A had punched you and whilst you were attempting to move Patient A, he was accidentally hit in the face by a knee. You had recorded this explanation of the incident on the datix system, the handover sheet, and the progress notes. This therefore related to the charge of perverting the course of public justice.

The wilful neglect charge relates to you having not ensured that Patient A received immediate medical attention and it was not until the following morning that Patient A was examined.

You were sentenced to nine months immediate imprisonment for assault occasioning actual bodily harm, and then six months imprisonment to run concurrently for the neglect and perverting the course of public justice.

### **Decision and Reasons on application pursuant to Rule 31:**

The panel heard an application made by Ms Forsyth under Rule 31 (2) (b) of the Nursing and Midwifery (Fitness to Practise) Rules 2004 to allow part of the CCTV footage, which had been relied upon in the criminal proceedings into evidence. Ms

Forsyth submitted that the panel would be assisted in its decision making by having sight of the CCTV footage.

Ms Forsyth outlined a list of factors to be taken into consideration when determining whether it would be fair and relevant to admit this material into evidence.

Dr Wright raised an objection to the admission of the CCTV on the basis that the Registrant had already been convicted and therefore it was not relevant.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel considered the submissions from both parties and the legal advice and concluded that it would be fair and relevant to admit the CCTV evidence.

#### **Decision and reasons on application under Rule 19:**

Ms Forsyth requested that this hearing should be held partly in private on the basis that your case involves matters which are inextricably linked to your health.

Ms Forsythe referred the panel to Rule 19 which states

19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.

(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Dr Wright, on your behalf, indicated that she supported the application.

The panel accepted the advice of the legal assessor.

Having heard that this case involves matters of your health, the panel determined to hold such parts of this hearing in private.

## **Decision on the findings on facts and reasons:**

In reaching its decision on the facts, the panel considered all the documentary evidence adduced in this case including the bundle and the responses from you to the NMC.

Ms Forsyth, on behalf of the Nursing and Midwifery Council (NMC), opened the hearing by providing the panel with some context for your conviction and outlined the background of the case. She invited the panel to find the facts found proved based on the certificate of your conviction and your admission.

Dr Wright on your behalf indicated that you have admitted the facts contained in the charges.

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel is satisfied that it is more likely than not that the incidents occurred as alleged.

The charges concern your conviction and, having been provided with a copy of the certificate of conviction, the panel finds the charge proved by virtue of the certificate and by virtue of your admission in accordance with Rule 31 (2) and (3) of the Rules which states:

- (2) Where a registrant has been convicted of a criminal offence—
  - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
  - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

In light of the above, the panel found the facts proved, by way of the certificate of conviction.

**Submission on impairment:**

Having announced its finding on all of the facts, the panel then moved on to consider whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel heard oral evidence from two witness tendered on your behalf, Mr 1 and Mr 2.

The panel first considered the overall credibility of all of the witnesses it had heard from.

The panel found Mr 1 to be a clear witness. It considered Mr 1 to be credible and reliable. The panel accepted that Mr 1 attempted to assist it to the best of his knowledge and belief. The panel considered Mr 1 to be shocked by the incident and genuine in his evidence.

The panel found Mr 2 to come across credible, reliable and clear. The panel found Mr 2 to be clear and bore in mind the efforts he had made to assist the panel with his answers. The panel also considered Mr 2 to be shocked by the incident and genuine in his evidence.

The panel heard submissions from both parties.

Ms Forsyth, on behalf of the NMC, stated that nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest

and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable in the future to act dishonestly.

Ms Forsyth submitted that in this case all elements of the above test are engaged. She submitted that the conduct in relation to the charge is a serious departure from the accepted standards and proper behaviour expected of a registered nurse.

Ms Forsyth reminded the panel that they must consider public protection and the public interest. Ms Forsyth submitted that the very nature of your conviction is not easily remediable.

She stated that there is little to indicate that you have remediated the conduct which lead to your conviction. She invited the panel to find impairment on the grounds of public protection and the public interest.

Dr Wright submitted that you admit your current fitness to practice is impaired by reason of your convictions and made detailed admissions on your behalf including the context of the conditions you were working at the time **[PRIVATE]**. Dr Wright also referred the panel to the bundle submitted by you, which included a reflective piece a memo outlining staffing pressures in Bluestone Unit at the time.

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

## **Decision on impairment:**

The panel has exercised its own judgement in determining the issue of impairment. In considering whether your fitness to practise is currently impaired, the panel reminded itself of its duty to protect the public and the wider public interest. This includes declaring and upholding proper professional standards of conduct and behaviour and maintaining public confidence in the nursing profession and the NMC as regulator.

The panel took into account the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

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

The panel found that limbs a, b, c and d of the case of Grant were engaged in this case.

The panel did not disagree with Ms Forsyth's submission that you have departed from fundamental elements of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2015* ("the Code").

The panel took into account that you have engaged in proceedings and attended this hearing. It noted that you admit that your fitness to practise is impaired by reason of your conviction and that you have submitted that you have no recollection of the incident of the assault that took place or your actions which caused Patient A's nose to break.

The panel noted that these are very serious matters and conduct of the kind identified in this case are very difficult to remediate.

The panel considered the seriousness of your conviction and was mindful of the need to uphold proper professional standards. The panel noted that you were convicted of a serious offence involving one of your vulnerable patients. It took into account that harm was caused to Patient A and your subsequent dishonest actions after this incident.

Given the serious nature of your conviction, the panel determined that a finding of impairment is necessary in order to protect the public and the wider public interest. It was of the view that if no finding of impairment was made, public confidence in the profession and the NMC as regulator would be seriously undermined.

The panel also considered whether the public interest required a finding of impairment to be made in this case. The panel determined that it did. A reasonable and fully informed member of the public would expect a finding of impairment to follow such a very serious conviction. Any other outcome would undermine confidence in the profession and in its regulation. The panel therefore finds that your fitness to practise is currently impaired by reason of your conviction.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired, by reason of your conviction, on public protection and public interest grounds.

#### **Submissions on Sanction:**

Ms Forsyth, whilst recognising that the decision and sanction was for the panel alone, submitted that the NMC considered a striking-off order to be the appropriate sanction.

Ms Forsyth outlined the aggravating and mitigating features in this case. The aggravating features being:

- This was an assault causing actual bodily harm to a patient resulting in serious injuries and a criminal conviction;
- The Criminal conviction was so serious that you received an immediate sentence of imprisonment;
- Patient A had to wait until the next morning to receive medical treatment;
- You are an experienced psychiatric nurse;
- Patient A was a vulnerable patient;

- This was a deliberate breach of the duty of candour to cover up when things have gone wrong;
- Serious dishonesty conviction for perverting the course of justice, continued dishonesty as it was not just one document.

In terms of mitigation Ms Forsyth indicated the following:

- Insight and understanding – you have developed insight and entered guilty pleas at court. In your reflective piece you described yourself as being deeply ashamed of your actions and horrified by the CCTV footage of you hitting a vulnerable patient and you are clearly remorseful as to what happened;
- Personal mitigation – **[PRIVATE]** and provided information about the challenges of your work situation at that time;
- Evidence of good practice – you have not worked as a nurse since the incident but there is information to suggest that your length of service was positively commented upon by the judge.

Dr Wright made detailed submissions on your behalf and invited the panel to consider an alternative Order to a striking off order. She requested the panel to consider a twelve month suspension order with review.

The panel accepted the advice of the legal assessor. She referred it to the NMC's Sanctions Guidance (SG) and in particular to the passages relating to convictions.

### **Decision on sanction:**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching its decision, the panel had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. The panel bore in mind that any sanction imposed must be appropriate and proportionate and, although

not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel recognised that the Rosebrook Ward, Bluestone Unit of Craigavon Hospital was a challenging environment and that Patient A was a patient who presented challenging behaviour. Nevertheless, you were an experienced mental health nurse whose training should have comprehensively covered how to manage and de-escalate situations of the kind that you faced. Your actions significantly transgressed acceptable behaviour.

The panel gave appropriate weight to the positive oral statements by the witnesses.

The panel broadly concurred with the NMC analysis of the aggravating and mitigating features but considered that your conduct put Patient A at risk both of physical and psychological harm.

The panel had particular regard to following paragraphs from the SG:

The panel considered the aggravating features to be:

- Your criminal behaviour was extremely serious, causing serious harm to a vulnerable patient;
- You have received a custodial sentence;
- You are an experienced psychiatric nurse;
- Patient A was a vulnerable patient;
- Conviction for dishonesty.

The panel considered the mitigating features to be:

- Early admissions to the offences;
- Evidence of good practice prior to the offence, namely 38 years;
- Remorseful and deeply ashamed of your actions.

The panel first considered whether to take no action but concluded that this would be inappropriate due to the extremely serious nature of your conviction which is wholly unacceptable for a registered nurse. There are no exceptional circumstances that would justify taking such a course of action as it would be insufficient to address the wider public interest considerations in this case and would in turn seriously undermine public confidence in the profession and the NMC as a regulator. Furthermore, this would place no restriction on your practice and hence would not protect the public.

The panel then considered whether a caution order would be an appropriate or proportionate sanction. The panel is aware this sanction may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise. The panel is satisfied that due to the particularly serious nature of your conviction, it could not be said that this case was at the lower end of the spectrum of fitness to practise.

Accordingly, the panel has concluded that a caution order is not an appropriate or proportionate sanction as it would allow you to practise as a registered nurse without restriction and would therefore be wholly insufficient to protect the public and to serve the public interest in maintaining public confidence in the profession and the NMC as a regulator.

The panel next considered whether a conditions of practice order would be an appropriate and proportionate sanction. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable and are generally more appropriate where a registrant's competence has been called into question. This is not such a case; no issues have been raised in relation to your clinical practice, nor would conditions protect patients or the public.

You have been convicted of extremely serious criminal charges. The panel has therefore concluded that there are no conditions of practice that could be formulated to address the particularly grave nature of your criminal behaviour.

The panel then went on to consider whether a suspension order would be an appropriate and proportionate sanction. You have been convicted of extremely serious

criminal offences and your behaviour is a serious departure from the standards of conduct and behaviour expected of a registered nurse. Nurses occupy a position of privilege and trust in society and are expected to adhere to their Code of Conduct at all times. They must ensure their conduct justifies the trust the public places in both them and the nursing profession.

For these reasons the panel has concluded that temporary removal from the register would not be an appropriate sanction given the serious nature of your criminal convictions.

The panel determined that your criminal conviction is so serious and at odds with the role of a registered nurse that it would not be appropriate to allow you to remain on the register.

The panel has therefore concluded that a suspension order is not a sufficient sanction to adequately protect the public and to address the wider public interest considerations in maintaining public confidence in the nursing profession, nor the NMC as a regulator and in the declaring and upholding of proper standards of conduct and behaviour.

For all the above reasons, the panel determined that public confidence in the nursing profession and the NMC as a regulator would be seriously undermined if you were allowed to continue practising as a nurse.

Balancing all of these factors the panel has determined that the only appropriate and proportionate sanction in the particular circumstances of this case is a striking-off order. The panel has concluded that this order is necessary to mark the importance of maintaining public confidence in the profession and declaring and upholding of proper standards of conduct and behaviour. Furthermore, this will send to the public and the profession a clear message about the standards of conduct and behaviour required of a registered nurse.

Therefore, the panel decided to impose a striking off order. The effect of this order is that the NMC register will show that you have been struck-off the register.

## **Determination on Interim Order**

The panel has considered the submissions made by Ms Forsyth that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. She made an application for an interim suspension order to be imposed for a period of 18 months.

Dr Wright did not oppose the application.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of its findings and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the striking off order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.