

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

Substantive Order Review Meeting

Wednesday 29 May 2019

Nursing & Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Georgina Elizabeth Mckenzie

NMC PIN: 05I0032E

Part(s) of the register: Midwifery
RM – Registered Midwife (9 September 2005)

Area of registered address: West Yorkshire

Type of case: Misconduct

Panel members: Jennifer Laing (Chair, registrant member)
Christina McKenzie (Registrant member)
Sadia Zouq (Lay member)

Legal Assessor: Richard Ferry-Swainson

Panel Secretary: Sara Page

Order being reviewed: Suspension order (9 months)

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

Decision on service of Notice of Meeting:

The panel noted at the start of this meeting that Miss Mckenzie was not in attendance and that written notice of this meeting had been sent to Miss Mckenzie's registered address by recorded delivery and by first class post on 28 March 2019.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Meeting was delivered to Miss Mckenzie's registered address on 29 March 2019. It was signed for in the name of 'G MCKENZIE'.

The panel took into account that the Notice of Meeting provided details of the review including the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Mckenzie has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' (as amended) ("the Rules").

Decision and reasons on review of the current order:

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

This is the first review of a suspension order originally imposed for a period of 9 months by a Fitness to Practise panel on 3 September 2018. The current order is due to expire at the end of 3 July 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 were as follows:

“That you, a registered midwife;

1. On 20 November 2011;

1.1 In relation to Patient 9 you did not start a CTG and/or begin fetal heart rate monitoring in a timely manner between 0141hrs and 0240hrs.

1.2 Did not take steps to ensure a better trace was obtained

2. [NOT PROVED]

3. On 4 November 2014 you;

3.1 Said to Patient 7 to only return to the hospital when she was ‘experiencing real pain’ or words to that effect.

3.2 You asked Patient 7 whether she ‘couldn’t cope with the pain’ or words to that effect.

4. On 13 November 2014 provided an inadequate handover of care for Patient 6 in that;

4.1 Your notes were not detailed.

4.2 [NOT PROVED]

4.3 [NOT PROVED]

5. On 29 June 2015 said to Patient 2;

5.1 ‘I heard that you have been complaining that I haven’t seen you yet’ or words to that effect

5.2 I will see you when I see you or words to that effect

6. On 4 January 2016 you

6.1 Said to Patient 1 ‘I’m not giving you anything until I know who is looking after that baby’ or words to that effect

- 6.2 Refused to administer pain relief to Patient 1 until Patient 1 arranged for someone to look after her newborn child.
- 6.3 Administered Oramorph to Patient 1 without a second checker present [ADMITTED]
- 6.4 Discharged Patient 1 without checking her test results [ADMITTED]

- 7. On a date unknown between 15 February 2016 and 21 February 2016 you;
 - 7.1 Pushed Person 1's hand away from his child
 - 7.2 Said to Person 1 'don't rub it because it will scab over in a few days' or words to that effect [ADMITTED]
 - 7.3 [NOT PROVED]

- 8. On 22 February 2016 provided an inadequate handover of care for Patient 3 in that you did not communicate the safeguarding concerns.

- 9. On 3 March 2016 you breached patient confidentiality in that you sent Patient 4 home with the patient notes of another person [ADMITTED]

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

The original panel determined the following with regard to impairment:

“The panel finds that Miss McKenzie's ... at charge 8 in particular clearly left the baby of Patient 3 and other colleagues at risk of unwarranted harm in that she did not make the relevant parties aware of the escalating safeguarding concerns. Further, Miss McKenzie's actions in relation to misconduct brought the profession into disrepute and breached fundamental tenets of the profession.

The panel was of the view that Miss McKenzie's behaviour has clearly caused significant harm to a number of patients in her care.

Regarding insight, the panel considered that Miss McKenzie has not shown that she understands, in any way, the impact that her actions had on the patients in her care or on the Midwifery profession.

The panel noted Miss McKenzie's written submissions that were provided to the NMC in September 2017. It was of the view that Miss McKenzie's attempts to reflect on her actions were simply a replication of a theoretical analysis rather than a personal, genuine understanding of the impact that her own behaviour has had on the particular patients in her care. Further, the panel was of the view that the training undertaken by Miss McKenzie is not relevant in addressing to her poor communication and attitude.

In its consideration of whether Miss McKenzie has remedied her practice the panel was of the view that the attitudinal failings found at charges 3, 5, 6 and 7 were difficult to remediate and demonstrate a pattern of behaviour. There is no evidence of remediation. In light of its findings that Miss McKenzie did not have insight into the impact of her actions on the patients in her care, the panel was of the view that there was a risk of repetition of these actions.

The panel therefore decided that a finding of current impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was also required. It was of the view that the public would be concerned if Miss McKenzie's fitness

to practice was considered not to be found impaired after the panel's findings which related to both clinical and communicative failings stemming from attitudinal issues.”

The original panel determined the following with regard to sanction:

“The panel considered the following to be aggravating features of the case:

- Miss McKenzie has demonstrated no insight into her failings;
- There has been direct harm caused to patients in Miss McKenzie's care;
- The misconduct took place over a significant period of time;
- Miss McKenzie has repeated her misconduct and shown a pattern of behaviour;
- In refusing to administer pain relief medication to a patient in her care, Miss McKenzie has demonstrated an abuse of trust in her position as a Registered Midwife;
- One of the failings relates to safeguarding;
- Much of the misconduct relates to attitudinal failings which the panel has determined are difficult to remediate;
- Miss McKenzie has not demonstrated remorse towards the patients involved and has focused on her regret of what she did in general terms rather than the effect her actions had on those in her care.

The panel considered the following to be mitigating features of the case:

- Miss McKenzie has indicated that she suffered from health issues during the period of time in question;
- There was evidence before the panel that Miss McKenzie had suffered from bullying in the workplace during this period;
- Miss McKenzie has made some attempts to retrain although not related to her attitudinal or communication issues;

- Miss McKenzie has provided positive, albeit somewhat dated, testimonials...

This is not a case involving a single instance of misconduct. There is no insight. Further, the panel had concerns about the attitudinal issues demonstrated with a number of patients over a period of time. It considered that such behaviour had the potential to warrant a striking off order.

The panel determined that, although there had been a clear breach of fundamental tenets of the profession, there are in Miss McKenzie's case some mitigating circumstances. The panel considered that, in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel had regard to the fact that the imposition of a suspension order would ensure protection of the public and would also address the public interest concerns in the case. The panel determined that a period of suspension would allow Miss McKenzie to re-engage with her regulator and to properly reflect on her misconduct and the effect of her actions on the patients in her care.

The panel considers a nine month suspension order will allow Miss McKenzie to re-engage, consider the panel's findings and reflect on her misconduct.

The panel further considered whether a striking-off order would be proportionate in Miss McKenzie's case. Taking account of all the information before it, and taking account of all the mitigation noted by the panel, it concluded that it would be disproportionate. Should Miss McKenzie take the opportunity to reflect upon her behaviour and address the concerns identified, it would be in the public interest to retain the services of an experienced Registered Midwife on the NMC register...

Any future panel may be assisted by:

- evidence of a reflective piece that demonstrates that Miss McKenzie understands what impact her actions have had and what steps she

has undertaken that might assure a reviewing panel that the misconduct will not recur;

- Miss McKenzie's attendance at any review hearing."

Determination on current impairment:

The panel has considered carefully whether Miss Mckenzie'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 judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and a letter from Miss Mckenzie, dated 12 March 2019.

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 Mckenzie's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Mckenzie's insight was limited and although she had made some admissions to the charges, she was unable to demonstrate an understanding of how her misconduct impacted negatively on the reputation of the nursing and midwifery professions and affected the patients in her care. In addition, the panel had regard to Miss Mckenzie's letter, dated 12 March 2019 in which she states:

“I am confirming this in writing to inform the NMC that I no longer wish to return to the profession. I have taken a different path in my professional career outside the realms of the health care profession and I am requesting voluntary removal from Nursing & Midwifery Register ...” [sic]

The panel took into account that during a telephone conversation with her NMC Case Officer, in reference to the recommendations of the original panel, Miss Mckenzie stated that “it seems unfair that the panel can force her to continue nursing when she does not want to and write responses that do not reflect her true feelings.” Miss Mckenzie has failed to cooperate with her regulator and made it clear that she does not wish to do so and there is no evidence before the panel of remediation or retraining. The panel concluded that Miss Mckenzie has not developed any insight into her conduct and 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required, since to do otherwise would risk undermining public confidence in the profession and the NMC as its regulator.

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

Determination on sanction:

Having found Miss Mckenzie’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, although 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 seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Mckenzie's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where "the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again." The panel considered that Miss Mckenzie's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice order on Miss Mckenzie's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. In view of Miss Mckenzie's clear intention not to return to midwifery, 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 further suspension order. The panel noted that Miss Mckenzie has not shown remorse for her misconduct. Further, Miss Mckenzie has not demonstrated any insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Miss Mckenzie no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose, particularly in light of Miss Mckenzie's failure to provide a reflective piece, as suggested by the original panel, and her declared intention to not return to the profession. The panel determined that it was necessary to take action to prevent Miss Mckenzie 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 3 July 2019 in accordance with Article 30(1).

This decision will be confirmed to Miss Mckenzie in writing.

That concludes this determination.