

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

Substantive Order Review Meeting

19 November 2019

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

Name of registrant: Elaine Sarah Anne Mckenzie

NMC PIN: 03B0065S

Part of the register: Registered Nurse - sub part
RNA: Adult nursing – Jan 2006

Area of Registered Address: Scotland

Type of Case: Misconduct

Panel members: Barbara Stuart (Chair, lay member)
Anne Grauberg (Registrant member)
Jade Rankine (Registrant member)

Legal Assessor: Fiona Barnett

Panel Secretary: Anita Abell

Ms Mckenzie: Not present and not represented

Order being reviewed: Suspension order – 4 months

Outcome: A striking off order to come into effect at the end of 28 December 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this meeting that Ms Mckenzie was not in attendance and nor was she represented in her absence.

Notice of this meeting was sent to Ms Mckenzie on the 8 October 2019 by recorded delivery to her address on the register. The notice informed Ms Mckenzie that her case would be considered at a meeting no sooner than 11 November 2019. The notice also informed her that she could ask for the matter to be considered at a hearing. No request for a hearing has been received.

In the light of all of the information available, the panel was satisfied that Ms Mckenzie has been served with notice of this hearing in accordance with the requirements of Rules 8 and 11A of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 ("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 28 December 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, originally imposed by a panel of the Conduct and Competence Committee on 26 April 2018 for 12 months. The order was reviewed on 25 April 2019 when a suspension order for a period of three months was imposed. That order was reviewed on 15 July 2019 when a further suspension order for a period of four months was imposed. The current order is due to expire at the end of 28 December 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 nurse:

1) On 18 March 2016, whilst employed by NHS Ayrshire and Arran Health Board, attended work for a shift when you were not fit due to consumption of alcohol.

2) Failed to cooperate with the NMC's investigation in that you did not provide consent to undergo a health assessment when requested to do so in letters dated:

a) 24 November 2016

b) 3 July 2017

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

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

The panel has considered carefully whether Mrs 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.

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 Mckenzie's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that since the imposition of the original order in April 2018, Mrs Mckenzie's insight had improved significantly. It had regard to a number of positive testimonials and took into account that Mrs Mckenzie had complied with the recommendations of the original panel by re-engaging with the regulatory process. She had made full admission to the charges and reflected on her misconduct recognising the severity of her misconduct and the necessity for the imposition of the substantive suspension order.

However, since the first review hearing in April 2019, there has been a complete lack of correspondence or engagement from Mrs Mckenzie. She has failed to respond to numerous letters, emails and telephone calls made by the NMC in an attempt to seek up-to-date information regarding Mrs Mckenzie's current personal and professional circumstances.

The panel bore in mind the reasons put forward by the reviewing panel for extending the suspension order for a further period of three months but noted that [PRIVATE], this panel would not be able to assess her current fitness to practise.

In the light of the lack of any evidence to the contrary, the panel found that Mrs Mckenzie's fitness to practise remains impaired, as she poses a continuing risk to public safety.

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

The panel 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 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 misconduct identified, an order that does not restrict Mrs 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 Mrs 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 on Mrs Mckenzie's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Mckenzie's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Mckenzie further time to re-engage with the NMC [PRIVATE]. The panel was concerned that Mrs Mckenzie had attended her last review and had been cooperating with the regulatory process but there is no information before the panel to explain her non-engagement since then.

The panel determined therefore that a suspension order is the appropriate and proportionate sanction at this point in time which would continue to satisfy the wider

public interest. It noted that the previous reviewing panel found there were no issues raised regarding her clinical performance. However, [PRIVATE], the risk of repetition meant that a finding of impaired fitness to practise was necessary on the grounds of public protection. This panel concurs. With this in mind, this panel decided to extend the suspension order for a further period of four months to allow Mrs Mckenzie a final opportunity to engage with the NMC and demonstrate further insight, remediation [PRIVATE].

The panel did go on to consider whether or not to strike Mrs Mckenzie off the register. However, due to her unexplained non-engagement, the panel decided that at this stage it would be inappropriate and disproportionate to permanently remove Mrs Mckenzie from the register.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 August 2019 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mrs Mckenzie's attendance at the next review hearing;*
- Evidence of re-engagement with the NMC;*
- [PRIVATE];*
- [PRIVATE]; and*
- Evidence of any training/education or planned future training, and of keeping professionally up to date.*

Decision on current fitness to practise 19 November 2019

The panel has considered carefully whether Ms 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 decisions of the substantive and previous reviewing panels. The panel is not bound by those decisions and it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it. The notice of hearing informed Ms Mckenzie that the deadline for her to submit evidence to the reviewing panel was 8 November 2019. Ms Mckenzie has not supplied any of the information suggested by the last reviewing panel. Although she attended the first substantive order review in April 2019, she did not attend the last hearing, nor send any information in for that panel to consider. She has now completely disengaged from the NMC. There is therefore no new information for this panel to consider. The panel noted the extensive efforts made by the NMC to contact Ms Mckenzie by post, email and telephone, all of which she has ignored.

As the panel has no information from Ms Mckenzie it concluded that a finding of continuing impairment is necessary on the grounds of public protection. Given the significant period of time since Ms Mckenzie has engaged with the NMC the panel concluded that Ms Mckenzie's fitness to practise is currently impaired on the grounds of public interest. That is to preserve standards of behaviour in the profession and uphold public confidence in the profession and the NMC as regulator.

For these reasons, the panel determined that Ms Mckenzie's fitness to practise remains impaired

Determination on sanction

Having found that Ms Mckenzie's fitness to practise is 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(1) 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.

It considered each available sanction in turn, starting with the least restrictive sanction and moving upwards.

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

The panel first considered whether to take no further action. This would allow Ms Mckenzie to practise without restriction when the panel has already concluded that her fitness to practise is impaired on the grounds of public protection. The panel concluded that to take no further action would not provide sufficient public protection and deemed it inappropriate. The panel then considered whether to impose a caution but concluded that this would be inappropriate for the same reasons as taking no further action.

The panel next considered replacing the suspension order with a conditions of practice order. However, the concerns in this case are not clinical. Further, the information before the panel does not suggest that Ms Mckenzie is willing and able to comply with a conditions of practice order. For these reasons a conditions of practice order would not be appropriate.

The panel next considered imposing a further suspension order. The panel took into account that Ms Mckenzie has shown a total disregard for her regulator for the previous six months, by not cooperating with requests from the NMC during the course of its investigation. She has not produced any information to explain this lack of cooperation. This is the third substantive order review and Ms Mckenzie has attended in the past so should be aware of what is expected of her. The panel noted that the last reviewing panel described the sanction it imposed as “a final opportunity to engage with the NMC”. Whilst this panel is not bound by that decision it considers that there is nothing in the information before it today to indicate that Ms Mckenzie would now take advantage of a further opportunity to engage. The panel therefore concluded that a suspension order was insufficient to satisfy the public interest in this case. The public interest includes upholding standards in the profession and maintaining confidence in the profession and in the NMC as regulator as well as ensuring the public is protected.

The panel therefore considered a striking off order. Taking into account Ms Mckenzie’s continued lack of engagement and failure to remediate her misconduct, the panel

concluded that Ms Mckenzie's misconduct is now fundamentally incompatible with continued registration. It concluded that a striking off order is appropriate and proportionate in this case.

This decision will be confirmed to Ms Mckenzie in writing.

That concludes this determination.