

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

**Substantive Order Review Meeting
30 November 2020**

Virtual Hearing

Name of registrant: Mairi Campbell Riley

NMC PIN: 77J0239S

Part(s) of the register: Registered Adult Nurse
Sub part 1 (19 December 1980)
Registered Mental Health Nurse
Sub part 1 (15 March 1982)

Area of registered address: Ayrshire, Scotland

Type of case: Misconduct

Panel members: David Crompton (Chair, Lay member)
Kathryn Smith (Registrant member)
June Robertson (Lay member)

Legal Assessor: Nigel Mitchell

Panel Secretary: Max Buadi

Order being reviewed: Suspension order (10 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect at the end of 15 January 2021 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel was informed that notice of this meeting had been sent to Mrs Riley via email to an email address held on the NMC register on 27 October 2020.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, 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 Mrs Riley 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 substantive order

The panel decided to impose a striking-off order.

This order will come into effect at the end of 15 January 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 8 months by a Fitness to Practise Committee panel on 14 June 2019. This was reviewed on 7 February 2020 and the suspension order was extended for a period of 10 months.

The current order is due to expire at the end of 15 January 2021.

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, whilst employed Home Manager of Westbank Nursing Home:

- 1. did not take appropriate disciplinary action against Colleague A in response to:*
 - a. an incident in which you saw him:*
 - i. grab Colleague B, pin Colleague B to a wall and kiss Colleague B on the neck.*
 - ii. scream and or shout in the face of a resident with dementia.*
 - b. his use of abusive and or sexual language:*
 - i. towards colleagues*
 - ii. in the presence of residents.*
- 2. breached Colleague C's confidentiality in that you disclosed information relating to her health to Colleague A when there was no managerial reason to do so.*

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 Mrs Riley's fitness to practise remains impaired.

The panel noted that it had no evidence before it that Mrs Riley had remediated her practice or developed further insight in relation to her professional practice. The panel had regard to Mrs Riley's current circumstances in the email from her representative, dated 6 February 2020, which states:

"I have spoken with Ms Riley and taken instructions. Ms Riley will not be attending the hearing tomorrow nor will I be representing her in her absence. The reason for that is that she has confirmed to me that she no longer

wishes to practice nursing even in the event that her suspension is lifted. If you could relay that to the Panel that would be most helpful.”

The panel reminded itself that it was not undertaking a review of the facts found proved. This hearing is solely to determine whether Mrs Riley’s fitness to practise remains impaired and, if so, what sanction, if any, to impose. The panel noted it had no new information from Mrs Riley regarding her insight in relation to the facts found proved or that the risk of repetition, as identified by the original panel, has reduced. The panel therefore decided that a finding of current impairment on public protection grounds remains necessary.

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 noted that a suspension order for a period of eight months may ordinarily address and meet the public interest concerns. However, the panel considered a member of the public with full knowledge of the facts in this case, would not be satisfied if a finding of current impairment was not made. The panel 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 Riley’s fitness to practise remains impaired.

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

The panel also had regard to the email from Mrs Riley’s representative, dated 6 February 2020, which indicates that Mrs Riley does not intend to practice as a nurse. The panel concluded therefore, that in those circumstances a conditions of practice order would not be workable and would serve no useful purpose.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Riley further time to fully reflect on her previous misconduct and/or provide the NMC with clear evidence of her intention to no longer practice as a registered nurse. The panel determined

therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of ten months which would provide Mrs Riley with an opportunity to engage with the NMC and develop further insight and remediation and/or provide the NMC with clear evidence of her intention to no longer practice as a registered nurse. It considered this to be the most appropriate and proportionate sanction available.

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Riley'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. Whilst it has noted the decision of the last panel, this panel 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 emails from Mrs Riley dated 4 March 2020 and 2 September 2020.

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 noted that the last reviewing panel noted that it had no evidence to demonstrate that she had remediated her practice or developed further insight in relation to her professional practice.

At this meeting, the panel had no information from Mrs Riley to demonstrate that the concerns of the substantive panel have been addressed. The panel noted in an email, dated 2 September 2020, that Mrs Riley had stated her intention of never nursing again. As a result, she has not provided any evidence that she has taken steps to remediate her

misconduct and it appears she has no intention of doing so. Further, she has not provided a reflective piece or any evidence of insight into her misconduct. The panel noted that it appears that Mrs Riley does not accept she has done anything wrong which appears to demonstrate a lack of insight in light of the original panel's findings.

In light of this lack of information and Mrs Riley's lack of engagement, the panel determined that there remains a risk of harm to the public if Mrs Riley was permitted to practise as a nurse without restriction, and concluded that her fitness to practise remains impaired on the grounds of public protection.

The panel also had regard to the wider public interest, which includes declaring and upholding proper professional standards and maintaining public confidence in the regulatory process. The panel considered that public confidence in the profession and the regulatory process would be undermined if there were no finding of impairment especially where a registered nurse has failed to protect colleagues and patients from being verbally abused. The panel therefore concluded that a finding of current impairment also remained necessary on wider public interest grounds.

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

Decision and reasons on sanction

Having found Mrs Riley 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 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 Mrs Riley'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 Riley'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 Riley'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 Riley's misconduct.

The panel has received information that Mrs Riley does not intend to return to practise as a nurse. In these circumstances, 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 Mrs Riley has not shown remorse for her misconduct. Further, Mrs Riley has not demonstrated any insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Riley no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel considered allowing the order to lapse in light of Mrs Riley's stated intention to never practice nursing again. However, it was of the view that other than her emails stating this intention, Mrs Riley has not provided the NMC with clear and sufficient evidence of her intention to no longer practice as a registered nurse.

The panel bore in mind that the last reviewing panel cautioned Mrs Riley that a striking-off order would be an option for the next reviewing panel. In light of the lack of evolving insight

and demonstrable remediation that the period of suspension would have afforded her, the panel determined that it was necessary to take action to prevent Mrs Riley 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 15 January 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs Riley in writing.

That concludes this determination.