

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

**Substantive Order Review Hearing
Tuesday 23 August 2022**

Virtual Hearing

Name of registrant: Steven Boyd

NMC PIN: 96J0650E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing – November 1999

Relevant location: Norfolk

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, Lay member)
Marian Robertson (Registrant member)
Helen Kitchen (Lay member)

Legal Assessor: Sanjay Lal

Hearings Coordinator: Taymika Brandy

Nursing and Midwifery Council: Represented by Shekyena Marcelle-Brown, Case
Presenter

Mr Boyd: Present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into
effect on 1 October 2022 accordance with
Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for a period of 12 months.

This order will come into effect at the end of 1 October 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a conditions of practice order, originally imposed by a panel of the Fitness to Practise Committee on 1 March 2019 for 12 months. This was reviewed on 25 February 2020 when the conditions of practice order was extended for a further 12 months. The order was reviewed on 22 February 2021 when the conditions of practice order was again extended for a further 12 months. The order was reviewed on 21 February 2022 where the order was replaced with a suspension order for a period of 6 months.

The current order is due to expire at the end of 1 October 2022.

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 6 nurse at Churchill Ward, Fermoy Unit, Queen Elizabeth Hospital, in that you;

- 1) On 8 July 2016, used an inappropriate de-escalation technique with patients, in that you*
 - a) Invited a number of patients to vote as to whether they wished to see, one male patient assault another male patient;*
- 2. On various dates, displayed an inappropriate and/or aggressive attitude towards patients and/or colleagues, in that you:*

- a) *In allowing patients' relatives into restricted bed areas, stated 'I've broken the rules...I don't give a shit' or words to that effect;*
- b) *On one occasion, became so agitated with your line manager (Ms 2) and/or the content of the meeting, that she had to draw the meeting to a close;*
- c) *On 8 July 2016, whilst discussing access to the closed garden area with your colleague (Ms 4), shouted and/or swore at her;*
- d) *Instructed staff to ignore two clinical support workers, or words to that effect;*

That you whilst employed as a band 5 nurse with Cambian Group, based at Cambian Willows between 10 April 2017 and 30 July 2017:

- 3. *During a patient's section under the Mental Health Act, advised that the patient was fit to provide a statement to the police;*
- 4. *On a date between 5 May 2017 and 30 July 2017, on one occasion or more, during the morning, greeted Patient A by remarking 'are you dead?' or words to that effect*

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

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

'The panel noted that the last reviewing panel found that Mr Boyd had insufficient insight.

There is no evidence before this reviewing panel to show that Mr Boyd has considered his previous misconduct or demonstrated further steps to show insight. Further, there is no information before the panel to suggest that Mr Boyd has taken the steps to strengthen his practice. There is no evidence

that Mr Boyd has complied with the conditions of practice order, worked in a nursing role or taken any steps to improve his knowledge in the areas of concern. He has also not engaged with the regulator or the regulatory process. In light of this, the panel is of the view that there remains a risk of harm and also a risk of repetition of the conduct found proved.

The last reviewing panel determined that Mr Boyd was liable to repeat matters of the kind found proved. In light of the information before this reviewing panel today, it determined that Mr Boyd 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

The third 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 seriousness of the case and the public protection issues identified. 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 Mr Boyd'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 Mr Boyd’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 imposing a conditions of practice order on Mr Boyd’s registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel next considered the continuation of the current conditions of practice order.

Mr Boyd has not fully engaged with the NMC since the imposition of the conditions of practice order on 1 March 2019 and there is no information before it to conclude that Mr Boyd is willing to comply with any conditions imposed upon his practice. The panel is mindful that it is a nurse’s role to engage in NMC proceedings and not doing so is a breach of their obligation as a practitioner. The panel also noted that there is no information before it to suggest that any extension of current conditions of practice order would be met positively and lead to Mr Boyd practising safely in the future.

The panel concluded that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest due to Mr Boyd’s non engagement. An extended period was given by the previous reviewing panel in light of the Covid-19 pandemic. There is no information before the panel to suggest that the pandemic had impacted upon Mr Boyd’s ability to comply with the conditions of practice order and no request has been made for a further period.

The panel determined therefore that a suspension order is the only appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of six months that would provide Mr Boyd with an opportunity to engage with the NMC as to whether he wishes to return to nursing. It considered this to be the most appropriate and proportionate sanction available.

The panel considered a striking-off order but concluded that this would not be the appropriate order at this present moment, however a future panel is likely to consider this order should Mr Boyd remain disengaged from the NMC's proceedings.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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 your bundle. It has taken account of the submissions made by Ms Marcelle-Brown on behalf of the NMC, it also heard your oral evidence under affirmation.

Ms Marcelle-Brown submitted that your fitness to practise is still currently impaired on the grounds of public protection and otherwise in the public interest. She further submitted that you did not fully engage with this NMC process for a period of time and that you did not provide evidence to previous panels or follow recommendations given by it.

Ms Marcelle-Brown referred the panel to your reflective account, which you sent to your NMC Case Officer on 14 July 2022 and a further personal statement sent on 11 August

2022. She submitted that your level of reflection and insight into your misconduct at this time is limited. She further stated that your personal statement does not address your misconduct and focuses more on why you had not engaged. She further submitted that notwithstanding this, your personal statement is positive and beneficial in understanding why you have not been engaging, however it does not assist the panel in determining whether your fitness to practise is currently impaired.

Ms Marcelle-Brown explained that there are no positive character references or testimonials before the panel. Further she stated that there is no evidence of education or training, continuous personal development and what you have done to strengthen your practice.

Ms Marcelle-Brown submitted that you are not currently working in a clinical setting, and have not done so since February 2019, therefore, you have been unable to demonstrate your ability to practise safely. However, she submitted that, it is possible for you to strengthen your practice outside of a clinical setting by reading relevant materials and completing training courses in the areas of concern identified.

Ms Marcelle-Brown submitted that you have only recently engaged, and the risk of repetition remains of the conduct found proved. She further submitted that you have indicated you wish to return to the nursing profession, not imminently, but in the future.

Ms Marcelle-Brown submitted that it would pose a risk to the public and raise public interest concerns if you were permitted to practice without restrictions in place, as there is no evidence that the initial concerns have been mitigated. She further submitted that in the absence of this evidence your fitness to practise currently remains impaired.

Ms Marcelle-Brown referred the panel to the NMC guidance on standard reviews of substantive orders before they expire, ref REV-3a and asked the panel to consider the following:

‘Has the nurse, midwife or nursing associate complied with any conditions imposed? What evidence has the nurse, midwife or nursing associate

provided to demonstrate this? What is the quality of that evidence and where does it come from?

•Does the nurse, midwife or nursing associate show insight into their failings or the seriousness of any past misconduct? Has their level of insight improved, or got worse, since the last hearing?

•Has the nurse, midwife or nursing associate taken effective steps to maintain their skills and knowledge?

•Does the nurse, midwife or nursing associate have a record of safe practice without further incident since the last hearing?

•Does compliance with conditions or the completion of required steps demonstrate that the nurse, midwife or nursing associate is now safe to practise unrestricted, or does any risk to patient safety still remain?'

Ms Marcelle-Brown submitted that you have shown insufficient and limited insight and that you have tried to show insight into your previous misconduct and perhaps with more time it will be developed. She further invited the panel to consider if you have addressed the concerns specifically relating to your inappropriate attitude and aggression towards colleagues and if there is any evidence before it to support this.

Ms Marcelle-Brown informed the panel that the NMC's position is neutral with regards to which sanction is appropriate, however she reminded the panel that a striking-off order is now available for the panel should it choose to impose such an order. She submitted that it is not the NMC's position that the concerns are such that this would be the appropriate order in this case. She further submitted that the panel may wish to consider a further period of suspension to allow you to demonstrate further insight, complete the relevant training courses and demonstrate your ability to strengthen your practice as you have now reengaged with this process.

The panel had regard to your oral evidence under affirmation.

You told the panel that since the initial substantive hearing you have found it very hard to return to nursing.

You explained that you made lots of attempts to reengage with the process for the last four to six months. You explained that you had sought employment and found a job in a factory, and as a result, you have found it hard to evidence your clinical practice.

You explained that you recognise that nursing was having a negative influence on you and your life as it had affected your personality somewhat. You further stated that, over a period of time, you gained insight by working in a different environment under a different regime and that you do recognise that at the time of the concerns, you were not functioning as a professional.

You explained that since working outside of the nursing profession you feel better as you have been working in a different environment and not at the same level of responsibility.

You stated that you have not written any reflective pieces or attended any training courses as nursing came very distant to you and it was something in the background. You further stated that you did not have the time or money to focus on nursing.

You explained that if you were to return to the profession you would not want to return to the same position or level of responsibility that you had in your previous clinical roles. You explained that you are aware of deficits in your practice regarding reflection and your compliance with the Code, and that you would feel safer if you returned to nursing under guidance.

You explained that since the incidents found proved at the original substantive hearing, you have progressed into different roles in the factory you currently work in. You further explained that there are some opportunities, including an opportunity to work as a Welfare Officer.

You explained that the Welfare Officer position may allow you to demonstrate and offer some reassurance to future panel's that you are moving in the right direction. You explained that in this role, you would support employees at a time of crisis and provide

support. You also explained that you would try and reflect on your practice through this role and provide further evidence for the panel to consider. You explained that you would like to return to nursing and do a Return to Practice (RTP) course in the future, but you are not financially in position to make a commitment like that.

You explained that whilst working under pressure your anxiety and stress does overcome you and you can shout and lose control of your emotions. You stated that whilst working in a noisy factory you do still have to shout to be heard.

You apologised and explained that you were unable to provide references and testimonials today as your current employers policy prevents you from obtaining these from your managers.

You apologised for your non-engagement as you had become so distant and were not in the right frame of mind, especially following the review that led to the imposition of a suspension order.

You explained that you do not think that you will be in clinical practice before the next hearing. You further explained that you do recognise the public protection issues identified, your behaviour and actions and the effect that they have had.

You explained that you thought if you ignored these proceedings, they would disappear, and you would have been struck off. You explained that you felt isolated and going forward you would like to be more transparent about how you are feeling and what may be affecting you. You stated that you accept your responsibilities and the need to see the process through till the conclusion to gain public trust.

You explained that in relation to the charges, you acknowledge that you did not act in an acceptable manner, and you feel deeply remorseful for those actions. You further explained that the incident in relation to voting was portrayed in a way that you do not agree with and at the time, you felt that you had no other alternative way to stop the assault. You stated that you have now reflected on how damaging it could have been for all involved and those observing and how this may have resulted in a loss of public confidence in the organisation.

You explained that you would like to return to nursing but not in the immediate future, possibly in the next two years, as you will need time to explore the courses available to you.

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 your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that it had no evidence before it to show that you had considered your previous misconduct or demonstrated further steps to show insight. At this hearing the panel noted that you have begun to reengage with this regulatory process and in doing so you have demonstrated some limited insight. The panel noted that you have recognised some of your failings, and when questioned during the course of this hearing about the incidents in relation the charges you were able to reflect on the impact it had on your colleagues and patients at the time. The panel considered your reflective account and personal statement and was of the view that whilst both documents do demonstrate a positive step in your reengagement, both documents reflect your insight on your own personality and how it may have contributed to the failings at the time.

In its consideration of whether you have taken steps to strengthen your practice, the panel considered that you have clearly identified that you are not ready to return back to nursing and that you will require a period of two years before you explore this option. The panel also considered that in your oral evidence you stated that you are not ready to work in a pressurised working environment where stressful circumstances may arise. The panel noted that in your reflective account and personal statement, you have not addressed the area of concerns identified at the original substantive hearing. The panel further noted that it did not have any testimonials of references, however it did acknowledge that you explained the reasons for this. The panel took account of your remorse in relation to your failings and that you accept that your actions had an impact on those around you.

The original panel determined that you are liable to repeat matters of the kind found proved. Today's panel has received no evidence of the steps you have taken to further strengthen your practice, such as evidence of training courses you have undertaken, reading or further reflection on the charges found proved. The panel considered that you have not sufficiently identified and reflected on the impact of your actions on patients and your colleagues at the time. The panel further noted that you it has been sometime since you have worked in a clinical setting, namely February 2019, and as a result you have not been able to demonstrate an ability to practise safely. In light of this, the panel has determined that there remains a risk of repetition. 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 your 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 your 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 conditions of practice on your 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 were suitable or workable in all of your current circumstances and that would adequately address the concerns relating to your misconduct. The panel also considered that you have been clear in stating that you do not intend to return to nursing imminently and that this is something you still wish to explore, although maybe not for a couple of years. In light of this, the panel was of the view that a conditions of practice order was not appropriate at this time.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings and continue to engage in these proceedings. The panel concluded that a further period of suspension would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice. It would also give you an opportunity to approach past and current colleagues to attest to your good conduct in the workplace.

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 12 months which would provide you with an opportunity to engage with the NMC and to provide evidence of your insight. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 1October 2022 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 further panel may be assisted by:

- Details of your intention to return to nursing, including any steps taken to date
- Any further learning that you have done, particularly in relation to communication
- Any reflection on issues in relation to the concerns and the impact it had on patients and colleagues at the time

This will be confirmed to you in writing.

That concludes this determination.