

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

**Substantive Order Review Meeting
1 August 2022**

Virtual Meeting

Name of registrant: James Gault Gardiner

NMC PIN: 95H0039S

Part(s) of the register: Nursing, Sub Part 1
RNA: Registered Nurse – Adult
(September 2001)

Relevant Location: Angus

Type of case: Misconduct

Panel members: Bryan Hume (Chair, Lay member)
Sharon Peat (Registrant member)
Alice Rickard (Lay member)

Legal Assessor: Mark Sullivan

Hearings Coordinator: Max Buadi

Order being reviewed: Suspension order – (3 months)

Outcome: **Strike off order to come into effect upon
expiry of the current order on 7 September
2022 in accordance with Article 30(1)**

Decision and reasons on service of Notice of Meeting

The panel noted that notice of this substantive order review meeting was sent to Mr Gardiner via email to an email address held on the NMC register on 29 March 2022. The notice informed Mr Gardiner that his conditions of practice order would be reviewed at a meeting on or after 25 July 2022, unless he asked for the review to take place at a hearing. The panel noted that there had been no response from Mr Gardiner.

The panel accepted the advice of the legal assessor.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The panel was satisfied that it was appropriate in the circumstances to conduct this review at a meeting rather than a hearing.

Decision and reasons on review of the current order

The panel decided to impose a strike-off order. This order will come into effect at the end of 7 September 2022 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive suspension order originally imposed for a period of three months by a Fitness to Practise Committee panel on 5 November 2021. On 26 January 2022, the suspension order was extended for six months.

The current order is due to expire at the end of 7 September 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, a registered nurse,

1) *In the course of a nightshift commencing on 20 February 2018:*

a) ...

b) *said to Patient A “stop fucking about, if you weren’t being such an ass, we would get along a lot better”, or words to that effect*

c) *said to Patient A “I’m not fucking interested”*

2) *In the course of a nightshift commencing on 17 August 2018*

a) *Unclipped the footplates from Patient B’s wheelchair and threw them to the ground, with force*

b) *said to Patient B “Go on then, fuck off, if you fall, I’m not fucking helping you” or words to that effect;*

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 noted that the original panel found that Mr Gardiner had not demonstrated any insight into his misconduct. Today’s panel had no new information before it to suggest that Mr Gardiner’s insight had developed, that he had remediated the allegations found proved or demonstrated any remorse for his failings. The panel noted that Mr Gardiner has not complied with the suggestions made by the original panel. To the contrary, no communication has been received by the NMC from Mr Gardiner since the substantive order was imposed. In light of this, the panel determined that there remains a risk that Mr Gardiner may repeat the misconduct found proved should a finding of impairment not be made. The panel therefore decided that a finding of continuing impairment remains 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 Gardiner's fitness to practise remains impaired.'

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

'The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Gardiner further time to fully reflect on his previous failings. It considered that Mr Gardiner has been suspended for three months and therefore concluded that a further six month suspension order would be the appropriate and proportionate response and would afford Mr Gardiner adequate time to further develop his insight, begin to remediate the misconduct found proved and take steps to strengthen his practice.

The panel seriously considered a striking off order but determined, that at this time, such an order would be disproportionate.

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 six months would provide Mr Gardiner with an opportunity to engage with the NMC as his regulator. 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 7 March 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 future panel reviewing this case would be assisted by:

- *Evidence of engagement by Mr Gardiner with the NMC and this process;*
- *A reflection by Mr Gardiner on*
 - *Why the incidents happened*
 - *The impact on the people involved, the wider professions and public confidence*
 - *What steps Mr Gardiner will take to prevent repetition*
- *Information on Mr Gardiner's future plans with regard to his nursing career.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Gardiner'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.

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 Mr Gardiner's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that there had been no material change of circumstances with regards to Mr Gardiner's case. At the current meeting the panel was of the view that there had been no change in circumstances.

This panel had no information from Mr Gardiner, since the last review hearing, to demonstrate that the concerns of the substantive panel had been addressed. He has not provided a reflective piece or any evidence of insight into his misconduct nor has he provided any evidence that he has taken steps to remediate his misconduct.

In light of this lack of information and Mr Gardiner's lack of engagement, the panel determined that there remains a risk of harm to the public if he were permitted to practise as a nurse without restriction, and concluded that his fitness to practise remains impaired 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 Gardiner's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Gardiner'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, 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 Mr Gardiner'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 Gardiner'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 Mr Gardiner'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 Mr Gardiner's misconduct.

The panel also bore in mind that Mr Gardiner had not engaged with these proceedings for a significant period of time. There was therefore no information before the panel to suggest that Mr Gardiner would be able or willing to comply with conditions and the panel concluded that practicable and workable conditions would not be possible to formulate.

The panel next considered imposing a further suspension order. The panel noted that Mr Gardiner has not shown remorse for his misconduct. Further, Mr Gardiner has not demonstrated any insight into his previous failings. It also bore in mind that due to Mr Gardiner's lack of engagement, his insight remains unchanged. The panel considered that the misconduct is remediable, but it had no evidence before it that Mr Gardiner has made any attempt to strengthen his practise. The panel was of the view that considerable evidence would be required to show that Mr Gardiner no longer posed a risk to the public. But despite being given two opportunities to engage, has failed to do so. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent

Mr Gardiner 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 7 September 2022 in accordance with Article 30(1).

This decision will be confirmed to Mr Gardiner in writing.

That concludes this determination.