

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

**Substantive Order Review Hearing
Monday 21 February 2022**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	Steven Boyd
NMC PIN:	96J0650E
Part(s) of the register:	Registered Nurse Mental Health Nursing – November 1999
Area of registered address:	Norfolk
Type of case:	Misconduct
Panel members:	Patricia Richardson (Chair, lay member) Jennifer Childs (Registrant member) Anna Ferguson (Registrant member)
Legal Assessor:	Nigel Ingram
Hearings Co-ordinator:	Dylan Easton
Nursing and Midwifery Council:	Represented by Aoife Kennedy, Case Presenter
Mr Boyd:	Not present and unrepresented
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Suspension order (6 months) to come into effect on 1 April 2022 in accordance with Article 30(1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Boyd was not in attendance and that the Notice of Hearing had been sent to Mr Boyd's registered email address on 17 January 2022.

Ms Kennedy, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and electronic link to the hearing and, amongst other things, information about Mr Boyd's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Boyd has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Boyd

The panel next considered whether it should proceed in the absence of Mr Boyd. The panel had regard to Rule 21 and heard the submissions of Ms Kennedy who invited the panel to continue in the absence of Mr Boyd.

Ms Kennedy referred the panel to an email from Mr Boyd to the NMC, dated 5 February 2022, wherein he states the following:

'I won't be able to attend on Monday 21st February.'

Ms Kennedy told the panel that there are no further communications with Mr Boyd.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Boyd. In reaching this decision, the panel has considered the submissions of Ms Kennedy, the representations from Mr Boyd, and the advice of the legal assessor. It had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Boyd;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Mr Boyd has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Boyd.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a six month suspension order.

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

This is the third 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 most recently reviewed on 21 February 2021 when the conditions of practice order was again extended for a further 12 months.

The current order is due to expire at the end of 1 April 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 second reviewing panel determined the following with regard to impairment:

'The panel considered whether Mr Boyd's fitness to practise remains impaired.

The panel took account of Mr Boyd's current circumstances, and noted that the Covid-19 pandemic may have added difficulties in finding an employer to provide him with the supervision as required by the conditions of practice. It noted that Mr Boyd has not provided any evidence which shows an understanding of how he put patients at risk of harm.

The panel also took note of the fact Mr Boyd has not provided any of the suggested documentation requested by the last reviewing panel, nor has he provided any documentation to show developing insight or attempts at remediation, or any evidence of compliance with the current conditions of practice. Therefore, the panel finds 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 Mr Boyd's fitness to practise remains impaired.'

The second 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 reasons identified above, 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 further 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 determined that it would be possible to formulate appropriate and practical conditions which would address the concerns highlighted in this case.

The panel noted that Mr Boyd has not complied with the current substantive conditions of practice. However, the panel is concerned Mr Boyd may not have had an opportunity to comply due to difficulties securing the level of supervision required due to the pandemic.

The panel also noted that Mr Boyd's engagement with the NMC has been limited. This was via a telephone conversation and email exchange, both instigated by the NMC and concerning his attendance at the hearing. The panel is therefore willing to

give Mr Boyd the opportunity to comply with the conditions imposed and engage more substantially with the NMC process.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Boyd's case as the panel considered his current lack of engagement may be due to the current circumstances.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 1 April 2021. It decided to impose the following conditions which it considered are appropriate and proportionate in this case, and will allow Mr Boyd a further opportunity to reflect and remediate:

1. At any time that you are employed or providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:

a) Working at all times on the same shift as, but not necessarily under the direct observation of another registered nurse or registered clinician who is physically present in or on the same ward, unit, floor or home that you are working in or on.

2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan:

a) To provide evidence of successful completion of recognised learning/education/training (this includes hours and/or certificates) in clinical risk management. Following this you must provide a written reflection of what you have learnt and understood.

b) To provide evidence of successful completion of recognised learning/education/training (this includes hours and/or certificates) in

communication with vulnerable patients. Following this you must provide a written reflection of what you have learnt and understood.

- 3. You must meet with your line manager, mentor or supervisor at least every 2 months to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*
- 4. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.*
- 5. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC before any NMC review hearing or meeting.*
- 6. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
- 7. You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
- 8. You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*

9. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*

10.

a) *You must within 7 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study;*

b) *You must within 7 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement;*

11. *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (10) above, to them:*

a) *Any organisation or person employing, contracting with, or using you to undertake nursing work;*

b) *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services;*

c) *Any prospective employer (at the time of application) where you are applying for any nursing appointment; and*

d) *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 1 April 2021 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Boyd'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 a further bundle containing emails between the NMC and Mr Boyd. It has taken account of the submissions made by Ms Kennedy.

Ms Kennedy referred the panel to an email from the NMC to Mr Boyd, dated 15 April 2021, wherein it requests an update of his employment status and whether he intends to return to nursing. She told the panel that Mr Boyd did not reply to this email. Ms Kennedy referred the panel to another email wherein the NMC requested the same information, dated 15 February 2022, to which Mr Boyd did not reply.

Ms Kennedy submitted that Mr Boyd is still currently impaired on the grounds of public protection and otherwise in the public interest. She informed the panel that none of the documentation suggested by the last reviewing panel has been provided for consideration today. Ms Kennedy told the panel that Mr Boyd is not currently working in nursing, and he has not informed the NMC of any further attempt to secure employment in a nursing role.

Ms Kennedy submitted that Mr Boyd has shown no further insight, made any attempts to remediate the concerns identified, or shown evidence of understanding of the impact of his actions on patients. In light of this, she submitted that there remains a high risk of repetition of the concerns identified.

Ms Kennedy informed the panel that the NMC's position is neutral with regards to which sanction is appropriate, however she reminded the panel that Mr Boyd is no longer participating in the process. She reminded the panel that a striking-off order is now available for the panel should it choose to impose such an order.

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 Boyd's fitness to practise remains impaired.

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.

Decision and reasons on sanction

Having found Mr Boyd'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 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.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 1 April 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:

- Mr Boyd's engagement with the NMC and attending any future review hearings.

- Mr Boyd informing the NMC as to whether it is his intention to return to a career in nursing.

This will be confirmed to Mr Boyd in writing.

That concludes this determination.