

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

**Substantive Order Review Hearing
Tuesday 14 June 2022**

Virtual Hearing

Name of registrant:	Mr Rajeve Kumar Mahandru
NMC PIN:	95J2307E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing - Level 1 September 1998
Relevant Location:	Waltham Forest
Type of case:	Misconduct
Panel members:	Deborah Jones (Chair, Lay member) Esther Craddock (Registrant member) Susan Ellerby (Lay member)
Legal Assessor:	Robin Ince
Hearings Coordinator:	Anya Sharma
Nursing and Midwifery Council:	Represented by Laura Stockdale, Case Presenter
Mr Mahandru:	Not present and unrepresented
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Strike-off to come into effect at the end of 23 July 2022 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Mahandru was not in attendance and that the Notice of Hearing had been sent to Mr Mahandru's registered email address on 16 May 2022.

Ms Stockdale, 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 venue of the hearing and, amongst other things, information about Mr Mahandru'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 Mahandru has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Mr Mahandru

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

Ms Stockdale submitted that there had been no engagement at all by Mr Mahandru with the NMC in relation to today's proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Mahandru. In reaching this decision, the panel has considered the submissions of Ms Stockdale and the advice of the legal assessor. It has 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 Mahandru;
- Mr Mahandru has not engaged with the NMC since January 2021 and has not responded to any of the emails sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case since the current order is due to expire on 23 July 2022.

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

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Stockdale made a request that parts of this case may need to be held in private on the basis that proper exploration of Mr Mahandru's case may involve reference to his health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session in connection with Mr Mahandru's health as and when such issues are raised.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 23 July 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive conditions of practice order originally imposed for a period of two years by a Fitness to Practise Committee panel on 22 July 2018. This was reviewed on 11 June 2020 when the conditions of practice order was replaced with a suspension order for a period of 6 months. This was reviewed on 14 January 2021 when Mr Mahandru attended and was represented and the suspension order was replaced with a conditions of practice order for a period of 12 months. This was last reviewed on 13 December 2021 where the conditions of practice order was replaced with a suspension order for a period of 6 months.

The current order is due to expire at the end of 23 July 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:

'Whilst working as a Band 6 Community Psychiatric Nurse at Thorpe Coombe Hospital:

1. *Failed to provide adequate care to Patient A in that you:*
 - a) *Between November 2013 and October 2014 did not maintain:*
 - i) *Appropriate contact; **(Proved)***
 - ii) *...*
 - b) *...*

2. *Failed to provide adequate care to Patient B in that you, between April and October 2014 did not maintain:*
 - a) *Appropriate contact; **(Proved)***
 - b) *Appropriate records. **(Proved)***

3. *In relation to Patient C:*
 - a) *...*
 - b) *...*

4. *Did not ensure that care plans were up to date, sufficient or completed at all in that:*
 - a) *In May 2014, the care plans for one or more of the following patients were out of date:*
 - i) *Patient D **(Proved)***
 - ii) *Patient E **(Proved)***
 - iii) *Patient F **(Proved)***
 - iv) *Patient G **(Proved)***
 - b) *...*

5. *Did not ensure that CPA meetings were booked in that:*
 - a) *In May 2014, the next CPA meeting was not booked for one or more of the following patients:*

- i) Patient D (**Proved**)
- ii) Patient E (**Proved**)
- iii) Patient B (**Proved**)
- iv) Patient F (**Proved**)
- v) Patient CC (**Proved**)
- vi) Patient GG (**Proved**)
- b) ...

6. Did not ensure that crisis plans were up to date or completed at all in that:

a) In May 2014, the crisis plans were out of date for one or more of the following patients:

- i) Patient D (**Proved**)
- ii) Patient E (**Proved**)
- iii) Patient F (**Proved**)
- iv) Patient G (**Proved**)
- b) ...

7. ...'

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

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

The panel noted that the last reviewing panel were encouraged by Mr Mahandru's re-engagement with the NMC but found his insight to be limited. The panel also noted that in the last review hearing, Mr Mahandru had attended and engaged with the hearing and had stated:

'... you wished to return to community nursing. You said that you have had a long period of time to reflect and that nursing is your career, something that you have always enjoyed. You told the panel that whilst you understand you have not engaged with the NMC in the past, you

are now making efforts to engage, as evidenced by your attendance today.

...

You said that you do not feel that you are currently impaired to practise anymore and have taken the time to reflect on your 20 year nursing career. You informed the panel that at the time of the failings, you accept that you had potentially put patients at a risk of harm and understood the implications it had on the nursing professional as a whole.'

The panel noted Mr Mahandru has expressed a desire to return to nursing practice. However, there has been no engagement since the last hearing, and he has not provided any information to support this desire. It further noted that Mr Mahandru had told the previous reviewing panel that he had been suffering from mental health issues. The panel today noted that there is no clinical information to support this contention.

Mr Mahandru has not attended today nor engaged with the NMC since the last review. He has provided no information to suggest that his insight has developed since the last hearing, and whether he has taken any steps to remediate his failings. The panel also noted that it had no information as to whether Mr Mahandru is currently working as a registered nurse and if so, whether he has complied with the conditions of practice order.

The last reviewing panel determined that there was a real risk of repetition. Today's panel has received no new information before it to alter this risk and therefore, the panel was of the view that there remains a real risk of repetition. The panel considered that Mr Mahandru has not been working as a registered nurse for a significant period of time and has had time to reflect and remediate his practice, but he has not shown evidence of this. 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 and midwifery 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 Mahandru'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. 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 Mahandru'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 Mahandru'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 Mahandru's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, measurable, workable and proportionate.

The panel noted that the original order was imposed in 2018 and that Mr Mahandru has not been practising as a registered nurse since 2014. The panel also noted that Mr Mahandru did not engage with the NMC until the last review hearing and has not engaged since then. The panel noted that Mr Mahandru informed the previous review panel that he was suffering from mental health issues. He has never provided clinical information regarding these issues to the NMC. In the absence of any information to show that Mr Mahandru has complied with the conditions of practice order imposed on 14 January 2021, the panel concluded that there is nothing today to suggest that he is willing and able to work under the order if it were extended today.

On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order in this case.

The panel determined therefore that a suspension order is the 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 6 months would provide Mr Mahandru with a reasonable opportunity to re-engage with the NMC; provide evidence of his insight and the steps taken to remediate the concerns identified; provide any clinical information as to his health; and provide a future reviewing panel with evidence of any effort that he has made to secure employment as a registered nurse. In coming to this conclusion, the panel took into account that all sanctions will be available to the next reviewing panel including the power to strike Mr Mahandru from the register.

The panel carefully considered whether to impose a strike off order today. However, it decided that, at this stage, it would be both disproportionate and punitive.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 23 January 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 Mahandru's engagement with the NMC;*
- *Mr Mahandru's attendance, whether in person, by video-link or by telephone;*
- *A reflective piece from Mr Mahandru demonstrating insight into the concerns raised by the substantive panel;*
- *Evidence as to any steps taken by Mr Mahandru to maintain his skills and knowledge as a registered nurse;*
- *Any up-to-date references or testimonials from any employment including non-nursing, whether paid or unpaid;*
- *Evidence of efforts to secure employment in the nursing profession; and*
- *A clinical letter providing an update on Mr Mahandru's mental health concerns if this is a barrier to re-engagement.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Mahandru'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. It has taken account of the submissions made by Ms Stockdale on behalf of the NMC.

Ms Stockdale referred the panel to her written submissions and provided a detailed background to the case. She submitted that the NMC adopts a neutral position in regard to whether Mr Mahandru's fitness to practice remains impaired and, if so, what order is necessary for the protection of the public and to uphold public confidence and proper standards in the profession.

Ms Stockdale submitted that the NMC do, however, make the following observations. Mr Mahandru had not engaged in these proceedings since the second substantive review hearing which took place on 14 January 2021. Prior to that hearing Mr Mahandru had not engaged with these proceedings. Mr Mahandru has not attended today's hearing and has not provided any of the evidence requested by the Panel at the last review hearing which took place on 13 December 2021.

Ms Stockdale submitted that there is no evidence before the panel that Mr Mahandru has gained insight into his misconduct, has taken steps towards remediation or that the risk of repetition is any less than at the previous hearing. She submitted that the panel may therefore find that Mr Mahandru's fitness to practice remains impaired.

Ms Stockdale submitted that in these circumstances, the only option available to the panel, in light of the NMC's guidance on sanctions and to the purposes of

substantive review hearings are either for the suspension order to be further extended or a striking off order to be made.

The panel heard and accepted the advice of the legal assessor, who drew the panel's attention to the case of *Abrahaem v GMC [2008] EWHC 183 (Admin)*, which provided that the persuasive burden was on Mr Mahandru to demonstrate that he was no longer impaired.

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 Mahandru's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Mahandru had limited insight. At this hearing the panel had no new information before it to demonstrate that there has been a material change since the last review of this order. The panel considered that Mr Mahandru had not attended today's hearing nor had he engaged with the NMC since the second substantive review of this order.

In its consideration of whether Mr Mahandru has taken steps to strengthen his practice, the panel took into account there was no evidence before it of any developing insight or any remediation of the original concerns. The panel noted that it had no information before it in regard to Mr Mahandru's current employment and that he allowed his registration to lapse on 28 February 2017. The panel took into account that none of the previous panel's suggestions had been complied with by Mr Mahandru and therefore could not be satisfied that the concerns had been addressed.

The last reviewing panel determined that Mr Mahandru was liable to repeat matters of the kind found proved. Today's panel has received no new information from Mr Mahandru to suggest otherwise and is therefore of the view that there remains a real risk of repetition if he were allowed to practice unrestricted. 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 Mahandru's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Mahandru'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 Mahandru'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 Mahandru'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 Mahandru's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. There has been no contact from Mr Mahandru since January 2021. Furthermore, the panel noted that Mr Mahandru has not engaged with the NMC on the two occasions that conditions of practice orders were imposed upon him in the past. The panel therefore concluded that there were serious doubts as to whether Mr Mahandru would comply with any conditions of practice.

The panel next considered imposing a further suspension order. The panel noted that Mr Mahandru has not shown remorse for his misconduct. Further, Mr Mahandru has not demonstrated any insight into his previous failings. The panel was of the view that considerable evidence would be required to show that Mr Mahandru no longer posed a risk to the public. Moreover, there has been no response to the last period of suspension. Further, the previous panel's determination indicated that a striking off order was available to the next reviewing panel yet Mr Mahandru appears not to have taken the opportunity given to him to engage with the NMC and these proceedings. It is in the public interest to ensure cases are dealt with expeditiously and therefore the panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel is of the view that Mr Mahandru has had numerous opportunities to comply and engage with the NMC proceedings but has failed to do so. It considered that there is no evidence of any insight, remediation, remorse or any change since the last review of this order nor has there been any contact from him since the review in January 2021. Mr Mahandru has also not provided any information that has been suggested by previous reviewing panels. The panel was therefore of the view that, given the amount of time that has been afforded to Mr Mahandru, a striking off order is appropriate to maintain public confidence in the NMC as a regulator and to maintain professional nursing standards, which includes a duty upon a nurse to engage with its regulator.

The panel noted that, despite mentioning health concerns since the initial substantive hearing, Mr Mahandru has since not provided any formal evidence of any health issues. Accordingly, the panel determined that it could not take account of Mr Mahandru's alleged health issues when making its decision.

The panel determined that it was necessary to take action to prevent Mr Mahandru 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 23 July 2022 in accordance with Article 30(1)

This decision will be confirmed to Mr Mahandru in writing.

That concludes this determination.