

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

**Substantive Order Review Hearing
Monday 14 November 2022**

Virtual Hearing

Name of registrant:	Martin Yerrill
NMC PIN:	08F1909E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing (September 2008)
Relevant Location:	Cambridgeshire
Type of case:	Misconduct
Panel members:	Sarah Lowe (Chair, Lay member) Jacqueline Metcalfe (Registrant member) Kevin Smyth (Lay member)
Legal Assessor:	Ben Stephenson
Hearings Coordinator:	Zahra Khan
Nursing and Midwifery Council:	Represented by James Edenborough, Case Presenter
Mr Yerrill:	Not present and not represented at hearing
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 30 December 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 Yerrill was not in attendance and that the Notice of Hearing had been sent to Mr Yerrill's email registered address on 14 October 2022.

Mr Edenborough, 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, dates and venue of the hearing and, amongst other things, information about Mr Yerrill'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 Yerrill 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 Yerrill

The panel next considered whether it should proceed in the absence of Mr Yerrill. The panel had regard to Rule 21 and heard the submissions of Mr Edenborough, who invited the panel to continue in the absence of Mr Yerrill. He submitted that Mr Yerrill had voluntarily absented himself.

Mr Edenborough referred the panel to the documentation from Mr Yerrill which included an email from Mr Yerrill to his case officer, dated 11 November 2022, which stated:

'I will not be able to attend the meeting on Monday, it can still go ahead'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Yerrill. In reaching this decision, the panel has considered the submissions of Mr Edenborough, the email dated 11 November 2022 from Mr Yerrill, 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:

- Mr Yerrill has informed the NMC, on 11 November 2022, that he is not attending the hearing and stated that it can proceed in his absence;
- No application for an adjournment has been made by Mr Yerrill;
- 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.

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

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 30 December 2022 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 9 months by a Fitness to Practise Committee panel on 31 August 2021. This was reviewed on 20 May 2022 when the panel decided to confirm the suspension order for a further 6-month period.

The current order is due to expire at the end of 30 December 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, working at St Neots Hospital:

- 1) *On 20 April 2017 left the medication room key unattended in the door lock while you were in the clinic room*

- 2) *On 5 July 2017 administered Lorazepam 1mg by intramuscular injection without making sufficient effort to persuade a patient to accept oral medication*

- 3) *On 21 March 2018:*
 - a) *left medication in the room of a patient*
 - b) *signed the patient's MAR chart to indicate that the medication had been administered*

- 4) *...*

a) ...

b) ...

5) *On 5 August 2018, in respect of Patient A:*

a) ...

b) ...

c) ...

d) ...

e) *Failed to ensure that an on-call medic was informed and/or that a medical review was completed after the use of rapid tranquilisation by intramuscular injection*

f) *Failed to adequately monitor and/or document the monitoring of Patient A, or any refusal by the patient to be monitored, following the use of rapid tranquilisation by intramuscular injection*

g) *Failed to adequately document the whole event from any attempt at de-escalation through to the administration of the rapid tranquilisation*

6) ...

7) *On 24 September 2018 stated during an investigation meeting that:*

a) *Patient A had punched [Mr 1] in the face on 5 August 2018*

b) *Patient A had not assaulted you on 5 August 2018*

8) *And your actions specified at charge 7a) and 7b) were dishonest in that:*

a) *You knew that you had been punched in the face by Patient A*

b) ...

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 Mr Yerrill's fitness to practise remains impaired.

The panel noted the points the original panel suggested a future reviewing panel would be assisted by and considered that Mr Yerrill has not provided any of this information in advance of today's hearing. The panel considered that Mr Yerrill has been responding to emails sent to him by the NMC, although there is a lack of meaningful engagement with the NMC's proceedings.

The panel took into account that the concerns found proved at the original hearing have not yet been addressed and there is no evidence that Mr Yerrill has demonstrated any insight or remorse for his actions and the impact that they could have had on colleagues, patients and the public. The panel considered that the concerns are remediable.

The panel noted the reference made to an email by Mr Yerrill, at the original hearing, that was dated 5 November 2020 which stated:

'I no longer want to attend either virtually or in person and I am not wanting to go back into nursing'.

The panel noted that Mr Yerrill has not provided any other information to the NMC in relation to his intentions and future plans since this email was received in November 2020. It noted that Mr Yerrill has not renewed his registration. The panel have no information on Mr Yerrill's current employment position.

The original panel determined that Mr Yerrill was liable to repeat matters of the kind found proved. Today's panel considered that there has been no material

change in circumstances since the original hearing and as the concerns have not yet been addressed, there remains a real risk of harm to patients and a risk of repetition should Mr Yerrill be permitted to practise unrestricted. In light of this, this panel determined that Mr Yerrill is still liable to repeat matters of the kind found proved. The charges found proved relate to fundamental areas of nursing practice including medication administration, record keeping and monitoring of patients. 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 Yerrill's fitness to practise remains impaired.'

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

'Having found Mr Yerrill'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 considered allowing the current order to lapse on the basis that Mr Yerrill had indicated in November 2020 that he no longer wanted to practise as a nurse. It

considered the NMC's guidance on 'Allowing orders to expire when a nurse or midwife's registration will lapse', which indicates that taking this option is likely to be appropriate if:

- the nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,*
- the nurse, midwife or nursing associate doesn't want to continue practising, and*
- the public are protected because the panel have made a clear finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife or nursing associate attempts to re-join the register.*

In relation to a nurse not wanting to continue practising, the guidance states that 'The nurse... will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery'. In light of this, the panel did not have enough current information before it today from Mr Yerrill in order to take that course of action, in relation to his intentions and future plans. The panel therefore decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict Mr Yerrill'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 Yerrill'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 conditions of practice on Mr Yerrill'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 considered that the concerns found proved at the original hearing have not yet been addressed, and that there would be no workable conditions of practice that could be formulated as it does not have any information on Mr Yerrill's intentions, future plans or current employment status. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Yerrill's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Yerrill further time to fully reflect on his previous failings and dishonesty. The panel considered that a further period of suspension would allow Mr Yerrill a further opportunity to re-engage with the NMC's proceedings and provide it with information of what his intentions and future plans are, as well as his current employment position. It considered the email from Mr Yerrill to the NMC in November 2020 about not intending to return to nursing and noted that it does not have any up-to-date information today as to whether this is still the case.

The panel therefore determined that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. It considered that a striking-off order would be disproportionate at this stage. Accordingly, the panel determined to impose a suspension order for a period of 6 months which would provide Mr Yerrill with an opportunity to develop his insight and remediation, and to engage with the NMC and provide information about his intentions for the future, including whether he does in fact want to

return to nursing or not. 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 29 June 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 Yerrill's engagement with the proceedings;*
- *A reflective piece to include the impact of his actions on patients and the profession;*
- *Evidence of continuous professional development; and*
- *Any testimonials from paid or unpaid work.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Yerrill'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 response from Mr Yerrill in regard to proceeding in his absence. It has taken account of the submissions made by Mr Edenborough on behalf of the NMC.

Mr Edenborough took the panel through the background of the case and referred it to the relevant pages within the bundle. He also took the panel through the original panel's decision and the decision of the first reviewing panel.

Mr Edenborough referred to receipt of an email from Mr Yerrill in November 2020, at the original hearing, which stated that he did not intend to return to nursing practice. He submitted that there has been no change to Mr Yerrill's wish to disengage with the nursing profession as a whole. He submitted that Mr Yerrill has also not renewed his registration, and there is no information before the panel today of his current employment status.

Mr Edenborough submitted that the NMC invites the panel to impose a striking-off order due to Mr Yerrill's prolonged lack of engagement and insight, or to continue the suspension order for a further period of time.

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 Yerrill's fitness to practise remains impaired.

The panel noted the points the original panel suggested a future reviewing panel would be assisted by:

- Mr Yerrill's engagement with the proceedings;
- A reflective piece to include the impact of his actions on patients and the profession;
- Evidence of continuous professional development; and

- Any testimonials from paid or unpaid work.

In addition, the first reviewing panel indicated that a clear explanation of Mr Yerrill's plans for the future away from nursing or midwifery would assist in any further review.

The panel considered that Mr Yerrill has not provided any of this information in advance of today's hearing. The panel considered that Mr Yerrill has been responding to emails sent to him by the NMC, although there is a lack of meaningful engagement with the NMC's proceedings.

The panel took into account that the concerns found proved at the original hearing have not yet been addressed and there is no evidence that Mr Yerrill has demonstrated any insight or remorse for his actions and the impact that they could have had on colleagues, patients and the public. The panel considered that the concerns are remediable.

The original panel determined that Mr Yerrill was liable to repeat matters of the kind found proved. Today's panel considered that there has been no material change in circumstances since the original hearing and as the concerns have not yet been addressed, there remains a risk of repetition and consequently a real risk of harm to patients should Mr Yerrill be permitted to practise unrestricted. The charges found proved relate to fundamental areas of nursing practice including medication administration, record keeping and monitoring of patients. There was also a finding of dishonesty. 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 Yerrill's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Yerrill'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.

The panel considered allowing the current order to lapse on the basis that Mr Yerrill had indicated in November 2020 that he no longer wanted to practise as a nurse. It considered the NMC's guidance on 'Allowing orders to expire when a nurse or midwife's registration will lapse', which indicates that taking this option is likely to be appropriate if:

- *the nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,*
- *the nurse, midwife or nursing associate doesn't want to continue practising, and*
- *the public are protected because the panel have made a clear finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife or nursing associate attempts to re-join the register.*

In relation to a nurse not wanting to continue practising, the guidance states that '*The nurse... will need to give the panel a clear explanation of their plans for the future away*

from nursing or midwifery'. In light of this, the panel did not have enough current information before it today from Mr Yerrill in order to take that course of action, in relation to his intentions and future plans. The panel therefore decided that it would be neither proportionate nor in the public interest to allow the order to lapse.

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 Yerrill'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 Yerrill'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 Mr Yerrill'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 Yerrill's misconduct.

The panel has received information that Mr Yerrill does not intend to return to practise as a nurse.

In view of Mr Yerrill's noted intention not to return to nursing, 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 there has been no evidence of remediation and has not shown remorse for his

misconduct. Further, Mr Yerrill 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 Yerrill 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 determined that it was necessary to take action to prevent Mr Yerrill 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 30 December 2022 in accordance with Article 30 (1).

This decision will be confirmed to Mr Yerrill in writing.

That concludes this determination.