

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

**Substantive Order Review Hearing  
Thursday 13 July 2023**

Virtual Hearing

**Name of Registrant:** Abdikadir Hassan Mohamed

**NMC PIN** 16D1034C

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – April 2016

**Relevant Location:** Bath and North East Somerset

**Type of case:** Misconduct

**Panel members:** Anthony Kanutin (Chair, Lay member)  
Judith McCann (Registrant member)  
Janine Green (Lay member)

**Legal Assessor:** John Caudle

**Hearings Coordinator:** Claire Stevenson

**Nursing and Midwifery Council:** Represented by Alban Brahimi

**Mr Mohamed:** Not present and not represented

**Order being reviewed:** Suspension order (3 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (12 months) to come into effect on 6 August 2023 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 Mohamed was not in attendance and that the Notice of Hearing had been sent to Mr Mohamed's registered email address by secure email on 14 June 2023.

Mr Brahim, 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Mohamed'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 Mohamed 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 Mohamed**

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

Mr Brahim submitted that there had been no engagement at all by Mr Mohamed with the NMC in relation to these 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 Mohamed. In reaching this decision, the panel has considered the submissions of Mr Brahimi 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 Mohamed has not engaged with the NMC and has not responded to any of the communications with him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- There is a strong public interest in the expeditious review of the case; and
- This is a mandatory review and the order expires on 6 August 2023

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Mohamed.

### **Decision and reasons on review of the substantive order**

The panel decided to impose a twelve month suspension order to come into effect at the expiry of the current suspension order on 6 August 2023 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 six months by a Fitness to Practise Committee at a meeting on 7 October 2022. This was reviewed at another meeting on 8 March 2023 where the panel extended the suspension order for a further three months.

The current order is due to expire at the end of 6 August 2023.

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 whilst employed at Culver Hayes Nursing Home, a nursing home for residents with dementia, did:*

- 1) On 12 April 2021 behaved in an aggressive, threatening and demeaning manner towards Resident B, in that you;
  - a) Shouted at Resident B;*
  - b) Repeatedly told Resident B to go to his room;*
  - c) Invited Resident B to hit you;*
  - d) Got very close to Resident B and said that you would hit him;*
  - e) Shouted 'if you are a resident then behave as a resident';**
  
- 2) Your aggressive behaviour caused distress to;
  - a) Residents, notably Resident B and Resident C;*
  - b) Staff, notably Colleague A, Colleague B and Colleague C all of whom witnessed the incident.**
  
- 3) Your actions at 1 and 2 above were unprofessional and caused escalation of an incident which had the potential to put others at risk rather than de-escalating a situation.*

*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 next went on to decide if as a result of the misconduct Mr Mohamed's fitness to practise is currently impaired.*

*Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.*

*In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant reaching its decision. In paragraph 74, she said:*

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

*In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:*

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

*For reasons already set out above in relation to misconduct, the panel considered that limbs a, b and c were engaged by Mr Mohamed's misconduct in this case.*

*The panel concluded that Mr Mohamed in speaking to Resident B in an aggressive, threatening and demeaning manner had in the past acted so as to put the vulnerable residents under his care at an unwarranted risk of harm. The panel determined that his failings breached fundamental tenets of nursing practice and that his misconduct is liable to bring the nursing profession into disrepute. In the panel's judgement, the public do not expect a nurse to act as Mr Mohamed did. They require nurses to adhere at all times to the appropriate professional standards and to safeguard the health and wellbeing of patients.*

*The panel however recognised that it had to make a current assessment of Mr Mohamed's fitness to practice, which involved not only taking account of past misconduct but also what has happened since the misconduct came to light. The panel had regard to the case of Cohen and considered whether the concerns identified in Mr Mohamed's nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether Mr Mohamed had provided evidence of insight and remorse.*

*Regarding insight, the panel considered the notes of Mr Mohamed's local interview, undertaken contemporaneously on 16 April 2021. It noted that he stated [PRIVATE]. The panel was of the view that it had no evidence before it of Mr Mohamed's current insight.*

*The panel considered whether Mr Mohamed's misconduct is capable of remediation, whether it has been remediated, and whether there is a risk of repetition of similar concerns occurring at some point in the future.*

*The panel was satisfied that all of the regulatory concerns identified by the NMC were capable of remediation. The panel noted that Mr Mohamed is no longer working as a registered nurse. It also noted that Mr Mohamed is subject to an interim conditions of practice order. Despite this, it had no evidence before it that Mr*

*Mohamed had taken steps to strengthen his practice and remediate the concerns identified.*

*The panel is of the view that Mr Mohamed's lack of insight and remediation indicate that there remains a risk of repetition of the concerns raised.*

*The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.*

*The panel bore in mind that the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.*

*The panel was satisfied that having regard to the nature of the misconduct in this case, "the need to uphold proper professional standards and public confidence in the profession would be undermined" if a finding of current impairment were not made. It was of the view that a fully informed member of the public would be seriously concerned by Mr Mohamed's professional conduct in his behaviour towards vulnerable patients should he be permitted to practice as a registered nurse in the future without some form of restriction.*

*Having regard to all of the above, the panel was satisfied that Mr Mohamed's fitness to practise is currently impaired.'*

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

*'Having found Mr Mohamed's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.*

*The panel took into account the following aggravating features:*

- *Mr Mohamed's behaviour was towards extremely vulnerable residents;*
- *Abuse of a position of trust as his behaviour was witnessed by healthcare professionals Mr Mohamed was senior to;*
- *Clear lack of insight into failings and no evidence of remediation;*
- *Mr Mohamed's conduct put patients at risk of suffering harm;*

*The panel found no mitigating features in this case.*

*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 Mohamed'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 Mohamed'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 placing conditions of practice on Mr Mohamed'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 took into account the SG, in particular:*

- *No evidence of harmful deep-seated personality or attitudinal problems;*



- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*

*The panel bore in mind that the concerns in this case stem from a behavioural issue on behalf of Mr Mohamed. It was of the view that it would be difficult to formulate conditions to address this. It also had no evidence before it of Mr Mohamed's willingness to undertake training or comply with conditions of practice.*

*Mr Mohamed has provided the panel with no evidence of insight into the concerns raised, and the panel consider that behavioural issues are very difficult to address. Therefore it was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:*

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

*The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.*

*It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a*

*punitive effect, it would be unduly punitive in Mr Mohamed's case to impose a striking-off order.*

*Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.*

*The panel noted the hardship such an order will inevitably cause Mr Mohamed. However this is outweighed by the public interest in this case.*

*The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.*

*The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct.*

*At 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 Mohamed's re-engagement with the NMC;*
- *Evidence of insight into the misconduct found and steps taken to strengthen practice.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Mr Mohamed'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 Mr Brahimi on behalf of the NMC. He referred it to the history of the case.

Mr Brahimi submitted that there is no new material or information before the panel to suggest that Mr Mohamed had addressed the concerns and no evidence of insight or of strengthening his practice. He submitted there was nothing before the panel since the last meeting and it is up to Mr Mohamed to satisfy the panel that he is not currently impaired. On this basis he submitted there remains a high risk of repetition. He submitted there remains a risk of serious harm to the public and an order remains necessary to protect the public.

Mr Brahimi submitted that a well informed member of the public would be deeply concerned if there were to be no finding of impairment and this could cause damage to the confidence in the profession and the NMC as regulator.

Mr Brahimi acknowledged that a suspension order would prevent Mr Mohamed from finding work as a registered nurse however in applying the principle of proportionality the need to protect the public and the wider public interest outweighs any prejudice or financial difficulty caused to Mr Mohamed.

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 noted that the last reviewing panel took account of all the information before it. It considered that there had still been no engagement from Mr Mohamed since those proceedings. It noted that the original panel requested 'Mr Mohamed's re-engagement with the NMC' and 'Evidence of insight into the misconduct found and steps taken to strengthen

practice', however there has been no information before it today from Mr Mohamed that he has shown any insight into his misconduct, evidence that he has strengthened his practice, or whether he understands the impact his actions could have had on residents, colleagues and the wider public. There is no evidence to show the level of risk in this case has reduced.

The panel has received no new information or evidence from Mr Mohamed indicating that he has addressed the original concerns and there has been no further engagement. It noted that the original concerns took place in April 2021 at which time his employment was terminated on 16 April 2021. It was of the view that the concerns are extremely serious. The panel noted there was no information around Mr Mohamed's working practice in excess of two years.

The panel noted that the incident did not just traumatise one resident, there were other residents and care workers present. There were a range of people affected by his misconduct. As a registered nurse Mr Mohamed should have de-escalated the situation but Mr Mohamed actually appeared to escalate it which is the opposite of what would be expected. It noted that the onus is on Mr Mohamed to demonstrate he has taken steps to strengthen his practice and show that he is no longer impaired.

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 Mohamed's fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found Mr Mohamed'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. The panel 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 as Mr Mohamed has not shown any evidence of remediation or insight, again determined that an order that does not restrict Mr Mohamed'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 Mohamed'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 Mohamed'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 determined that the concerns are attitudinal which could not be appropriately managed by a conditions of practice order. The panel bore in mind the absence of any insight, remorse, lack of awareness and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel noted that Mr Mohamed is continuing to disengage with the proceedings, and there is no evidence before it to suggest that he would comply with any conditions of practice imposed. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Mohamed's misconduct.

The panel considered the imposition of a further period of suspension. The panel considered that this is the second review of the substantive order and the suspension currently in place expires on 6 August 2023. It noted that there continues to be no engagement from Mr Mohamed with these proceedings, and there is no evidence before

the panel today that the level of risk has reduced since the last meeting. The panel was disappointed that there is still no engagement by Mr Mohamed and was aware that it had all sanction options available to it today. However, upon careful consideration, the panel decided that a period of suspension would provide Mr Mohamed with another opportunity to engage with the NMC and take steps to address the concerns and would be proportionate. The panel highlighted that, should Mr Mohamed continue to disengage with these proceedings, a future reviewing panel may consider a more severe sanction at that stage.

The panel considered that this is a serious albeit one off incident and there is potential to change and reflect from mistakes made by Mr Mohamed. It considered that a striking off order would not be proportionate at this stage. Mr Mohamed's regulatory concerns were dealt with both in the first instance and at the first review at meetings which Mr Mohamed would not have been able to attend. Mr Mohamed is not represented. The panel noted the previous panel's comments with regard to imposing a higher sanction, however, in light of the fact it has only been nine months since Mr Mohamed was suspended, the panel felt that the public would be suitably protected with a suspension order in place. The panel hopes that Mr Mohamed will engage in future proceedings and take steps to remediate and strengthen his practise. The panel reminded itself that there is a duty on registrants to engage with their regulator and any future panel may be concerned if Mr Mohamed does not engage over that extended period of time.

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 one year which would provide Mr Mohamed with a further opportunity to engage with the NMC.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 6 August 2023 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 Mohamed's engagement with the NMC and attendance at the next review;
- Evidence of insight, remorse, remediation to the misconduct and steps taken to strengthen his practise;
- Any references from paid or unpaid work.

This will be confirmed to Mr Mohamed in writing.

That concludes this determination.