

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

**Substantive Order Review Hearing
Monday, 6 November 2023**

Virtual Hearing

Name of Registrant: Andrea Burdon

NMC PIN 04K0539E

Part(s) of the register: Registered Nurse – Sub part 1
Mental Health Nursing -14 March 2005

Relevant Location: Oldham

Type of case: Misconduct

Panel members: Bernard Herdan (Chair, Lay member)
Amanda Revill (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Richard Ferry-Swainson

Hearings Coordinator: Hamizah Sukiman

Nursing and Midwifery Council: Represented by Rakesh Sharma, Case Presenter

Miss Burdon: Not present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Suspension order (12 months) to come into effect on 12 December 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 Miss Burdon was not in attendance and that the Notice of Hearing had been sent to Miss Burdon's registered email address by secure email on 5 October 2023.

Mr Sharma, 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. The Notice of Hearing also provided information about Miss Burdon's right to attend, be represented and call evidence as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Burdon 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 Miss Burdon

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

Mr Sharma submitted that there had been no engagement at all by Miss Burdon with the NMC in relation to these proceedings and, consequently, there was no reason to believe that an adjournment would secure her attendance on some future occasion. He drew the panel's attention to Miss Burdon's non-engagement more generally and submitted that there has been no correspondence or engagement from Miss Burdon since December

2021 with the exception of one telephone call. He further submitted that Miss Burdon has not engaged with or attended any NMC proceedings for two years.

He drew the panel's attention to the communication log dated 3 May 2023. He informed the panel that the contents of the telephone conversation are not of concern today, but he submitted that this telephone log demonstrated Miss Burdon's attitude towards the NMC and the regulatory proceedings more generally. The log stated:

'... She says that she doesn't care what we do but wants no further contact. I tried to explain about the appeal and that it would be better for her to be involved but she says she won't be attending anything and has just put my email in the junk. She says she'll put any further emails there too ...'

Mr Sharma submitted that Miss Burdon has made clear she does not wish to engage with her regulator. He invited the panel to proceed in Miss Burdon's absence in light of both her non-engagement with the NMC and the expiry of the suspension order on 12 December 2023.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Burdon. In reaching this decision, the panel has considered the submissions of Mr Sharma and the advice of the legal assessor. The panel regarded relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- The suspension order is due to expire on 12 December 2023;
- Miss Burdon has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- No application for an adjournment has been made by Miss Burdon;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The communication log, dated 3 May 2023, which indicate Miss Burdon's attitude towards engaging with the NMC on proceedings more generally;

- There is a strong public interest in the expeditious review of the case and;
- It is in Miss Burdon's own interests that an order restricting her practice be reviewed.

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

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for a period of 12 months.

This order will come into effect at the end of 12 December 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 11 November 2022.

The current order is due to expire at the end of 12 December 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:

- 1. Refused a request by Patient A that a different nurse administer their medication (**proved**)*
- 2. Attempted to check Patient A's glucose levels (**proved in its entirety**)*
 - 2.1 Without consent*
 - 2.2 With excessive force*
- 3. While in Patient A's room, used one or more of the following words or words to the effect of the following toward Patient A (**proved in its entirety**)*
 - 3.1 'I'll fucking hit you back'*
 - 3.2 'Go on, do it. I'll knock you out you fucking fat bastard'*
- 4. Poked and/or pushed Patient A (**proved**)*

5. While in or near the main Ward area, shouted the following words or words to the effect of one or more of the following in respect of Patient A: **(proved in its entirety)**

5.1 That Patient A was a 'fat cunt'

5.2 'If he hits me I'll fucking kill him'

5.3 'I'll knock him the fuck out.'

5.4 On one or more occasions other than at 5.3 above 'I'll knock him out'

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.'

The original panel determined the following with regard to impairment:

'The panel had regard to this test and found that the first three limbs were engaged in this case. The panel determined that Miss Burdon put Patient A at an unwarranted risk of harm. She had not gained consent to take Patient A's glucose levels and had attempted to do so with excessive force. This use of physical force caused Patient A to fall back. The panel also noted that Miss Burdon used threats of violence as well as abusive language towards Patient A which had caused them distress and repeated similar language in the ward area.

The panel considered that Miss Burdon did not adhere to the standards expected of a nurse. This failure had brought the profession into disrepute and breached the fundamental tenets of the profession in that she had failed to provide proper care for her vulnerable patient.

Regarding insight, the panel considered that Miss Burdon has not engaged with this hearing. The panel determined that during the investigation interview on 10 June 2020, Miss Burdon showed some insight into the concerns raised but there was no evidence that this insight had developed further since the interview.

The panel considered whether Miss Burdon's misconduct is capable of remediation and came to the decision that her practice was remediable. However, the panel had no evidence that Miss Burdon had strengthened her practice, Further, Miss

Burdon had not provided sufficient evidence of reflection to demonstrate her understanding of the impact her actions had on Patient A or her colleagues. Therefore, the panel considered that there is a real risk of repetition and decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objective of the NMC is 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 determined that a finding of impairment on public interest grounds is also required. It considered that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Burdon's fitness to practise impaired on the grounds of public interest. Having regard to all of the above, the panel was satisfied that Mrs Burdon's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel considered that it might be possible to formulate conditions of practice appropriate to protect the public and support Miss Burdon to return to safe practice. However, the panel considered that due to Miss Burdon's lack of engagement, there is no indication that she would comply with any conditions imposed. The panel also had no evidence of Miss Burdon's intention to return back to nursing and whether she would be willing to engage with a conditions of practice order.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where the following 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel determined that the facts found proved all occurred during an isolated incident and that there had been no other disciplinary matters raised prior to this incident. The panel noted that Miss Burdon has worked in nursing for a considerable period of time, without previous regulatory findings and had demonstrated some insight during the local investigation.

The panel concluded that a suspension 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 further determined that a suspension order was necessary to protect the public. The panel considered that whilst Miss Burdon has demonstrated some insight and a degree of remorse, she has not addressed the concerns raised, or engaged with the NMC in these proceedings and therefore there is a risk of repetition.

The panel carefully considered whether a striking-off order would be appropriate but, taking account of all the information before it, the panel concluded that it would be disproportionate. The panel noted Miss Burdon has had a long-standing career and is capable of taking action to strengthen her practise. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register and that it was appropriate to support a nurse of general good character to return to safe practice. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Burdon's case to impose a striking-off order. The panel considered that a suspension order was sufficient to protect the public and address the public interest.

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

Decision and reasons on current impairment

The panel has considered carefully whether Miss Burdon'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 had regard to all of the documentation before it. It considered the submissions made by Mr Sharma on behalf of the NMC. He provided the panel with a background on the matter. Mr Sharma submitted that, due to the suspension order, Miss Burdon has not worked as a registered nurse since the imposition of the order and subsequently has not demonstrated evidence of safe practice. He further submitted that in light of this, the same risks to the public, patients and the reputation of the NMC remains. He submitted that Miss Burdon has not provided evidence of remediation or strengthening of her practice and has not provided a reflective statement demonstrating remorse or insight.

He drew the panel's attention to the original panel's finding on limited insight. He drew the panel's attention to the lack of developing insight shown by Miss Burdon at the time. He submitted a year has passed since the finding, and there has been no evidence of developed insight since, despite the further opportunities given to Miss Burdon to engage with the NMC.

Mr Sharma invited the panel to consider the communication log, and he submitted that Miss Burdon has completely failed to engage with the Professional Standards Authority (PSA) appeal process in the High Court so far. Whilst the panel is not considering the PSA appeal at this hearing, Mr Sharma submitted that the telephone call demonstrates a level of contempt Miss Burdon holds for the regulator and regulatory processes, despite the NMC's attempts to get her to engage. He submitted that not only has no further insight been demonstrated, but the limited insight Miss Burdon previously demonstrated has no relevance today, in light of her attitude towards the regulatory process since then.

He further submitted that a well-informed member of the public would be interested to see the attitude demonstrated throughout the regulatory process. Consequently, the public interest concerns remain.

Mr Sharma submitted that a continued suspension order would not be suitable for this case. He submitted that the original risks remain and have not decreased, and the risks may have increased owing to Miss Burdon's lack of insight and remediation. He submitted that a further suspension order would serve no purpose, as Miss Burdon has no intention of engaging with the NMC and has no prospect of returning to nursing due to her refusal to engage with her regulator.

He submitted that the panel should consider the evidence, the seriousness of the charges, Miss Burdon's continued lack of engagement with the NMC, her lack of insight or remediation, the continuing risk to the public and to the reputation of the profession and the attitude Miss Burdon demonstrated in the only contact she had with the NMC in two years in the telephone call. He submitted that, in light of all these considerations, a striking-off order would be the only suitable sanction.

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 Miss Burdon's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Burdon showed some insight into the concerns raised but there was no evidence that the insight had developed since the investigation interview. At this hearing, this panel concluded that Miss Burdon has not engaged with the NMC, and consequently has provided no evidence of strengthened practice or remediation through work or retraining. The panel did not have sight of any reflective statements or testimonials. The panel noted the limited insight Miss Burdon showed at the substantive hearing and concluded that there remains a risk to patients and the public as there has been no evidence of developing insight since the original hearing.

The panel considered the only evidence of engagement with the NMC available to the panel is the telephone call on 3 May 2023. The panel concluded it demonstrated attitudinal concerns in relation to the NMC and its regulatory processes.

The original panel determined that Miss Burdon was liable to repeat matters of the kind found proved. Today's panel has received no new information from Miss Burdon to the contrary. In light of this, this panel determined that Miss Burdon is 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 Miss Burdon's fitness to practise remains impaired.

Decisions and reasons on sanction

Having found Miss Burdon'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 and public interest issues identified, an order that does not restrict Miss Burdon'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 Miss Burdon'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 Miss Burdon'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. Given that Miss Burdon has not engaged with the NMC in the period since she was dismissed from the Trust, the panel concluded it was not able to formulate conditions of practice that would adequately address the concerns relating to Miss Burdon's misconduct, particularly in light of Miss Burdon's lack of evidence of strengthened practice or remediation. The panel also considered Miss Burdon's attitude towards the NMC, and the panel concluded that it has seen no engagement from Miss Burdon to suggest that a conditions of practice order would be workable.

The panel considered the imposition of a further period of suspension. It determined that a suspension order would allow Miss Burdon further time to fully reflect on her misconduct. The panel concluded that a further 12-month suspension order would be the appropriate and proportionate response and would afford Miss Burdon adequate time to further develop her insight and take steps to strengthen her practice. The panel considered that the charges, whilst serious, occurred in an incident over one day during the early stages of the COVID-19 pandemic when Miss Burdon may well have been under considerable pressure. However, the panel also considered Miss Burdon's subsequent lack of engagement with the NMC and in its processes. The panel concluded that Miss Burdon has not demonstrated any further insight or evidence of strengthened practice so far and noted the communication log which demonstrated Miss Burdon's attitudes towards the NMC.

The panel noted Mr Sharma's recommendation that Miss Burdon should be struck off, but it determined, on fine balance, that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Whilst Miss Burdon's lack of engagement with the NMC indicates an attitudinal concern, the panel took into account that this is the first review hearing and determined strike-off would be disproportionately severe given all the circumstances. The panel hoped that Miss Burdon may yet choose to engage with the NMC in the coming year.

Accordingly, the panel determined to impose a suspension order for the period of 12 months would provide Miss Burdon with an opportunity to engage with the NMC. 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 12 December 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:

- Miss Burdon's engagement with the NMC and attendance at any review hearing;
- A written reflection on the incident, how Miss Burdon could have acted differently and how her behaviour impacted patients, colleagues and the reputation of the profession;
- Evidence of any training completed that may address the concerns identified; for example courses in conflict resolution;
- A clear indication of Miss Burdon's intentions and whether she wishes to pursue a career in nursing;
- Testimonials from paid or voluntary work and current character references.

This will be confirmed to Miss Burdon in writing.

That concludes this determination.