Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Order Review Hearing
Tuesday, 18 March 2025

Virtual Hearing

Name of Registrant:	Alexander Davidson Birnie
NMC PIN	90B0442S
Part(s) of the register:	Nurse Independent / Supplementary Prescriber (V300) – 31 October 2013 Registered nurse – Adult (RN1) – 7 November 1998 Registered nurse – General (level 2) (RN7) – 22 September 1991
Relevant Location:	Aberdeenshire and Aberdeen City
Type of case:	Misconduct
Panel members:	Rachel Ellis (Chair, lay member) Vivienne Stimpson (Registrant member) Georgina Foster (Lay member)
Legal Assessor:	Ian Ashford - Thom
Hearings Coordinator:	Adaobi Ibuaka
Nursing and Midwifery Council:	Represented by Nawazish Choudhury, Case Presenter
Mr Birnie:	Present and unrepresented
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	**Suspension order (9 months) to come into effect on 8 April 2025 in accordance with Article 30 (1)**

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

[PRIVATE]

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for a period of 9 months.

This order will come into effect at the end of 8 April 2025 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 6 months by a Fitness to Practise Committee panel on 10 September 2024.

The current order is due to expire at the end of 8 April 2025.

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:-

NHS Grampian

1. *On 30 May 2018 in relation to Patient A:*

a. *Grabbed the patient's head.*
b. *Said "turn your fucking head" to the patient or words to that effect.*

2. *On an unknown date in 2018 said "fuck off" to Colleague A or words to that effect.*

3. *On 1 June 2018 in relation to Patient B:*

a. *Said loudly "open your mouth" or words to that effect.*
b. *Held the patient's head.*
c. *Attempted to force feed medication to the patient using a spoon.*

…

4. *…*

5. *…*

6. *...*

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 found that limbs a, b and c of Dame Janet Smith's "test" were engaged.

The panel found that Patient A and Patient B were at risk of physical and psychological harm as a result of Mr Birnie's misconduct. It also determined that Mr Birnie's conduct to Colleague A caused her distress. Mr Birnie's misconduct breached the fundamental tenets of the nursing profession, to prioritise and care for patients with respect, kindness and compassion and work collaboratively with colleagues. The panel therefore determined that Mr Birnie's conduct brought the nursing reputation into disrepute.

Regarding insight, the panel determined that it had no evidence before it that Mr Birnie has shown insight. Mr Birnie has not demonstrated an understanding of how his actions put patients at a risk of harm nor has he demonstrated an understanding of why what he did was wrong and how this impacts negatively on the reputation of the nursing profession. The panel bore in mind that it has no information that Mr

Birnie has apologised to the patients or his colleagues for his misconduct. Mr Birnie has not demonstrated how he would handle a similar situation differently in the future.

The panel was satisfied that the misconduct in this case is capable of being addressed. However, the panel bore in mind that it had no evidence before it that Mr Birnie has taken steps to strengthen his practice. The panel took into account that it had no evidence of any relevant training that Mr Birnie has undertaken to strengthen his practice, nor did it have a reflective piece written by Mr Birnie addressing the concerns identified.

The panel is of the view that there is a risk of repetition based on Mr Birnie's lack of insight and lack of evidence of strengthened practice. The panel took into account that Mr Birnie's conduct behind the charges found proved has not been remediated. 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 determined that a finding of impairment on public interest grounds is required because an informed member of the public would be concerned to learn that a registered nurse with the concerns identified in this case is allowed to practise with no restrictions on their NMC registration.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Birnie's fitness to practise impaired on the grounds of public interest.

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

The panel had regard to the documents that had been submitted by you which contained a reflective statement and references. The panel also had regard to the documents provided by the NMC following its direction.

The panel considered your reflective statement. The panel took into account that you did not consider how your actions put vulnerable patients at a risk of harm or the effect upon them, nor did you demonstrate an understanding of why your actions were wrong and how they impacted negatively on your patients, colleagues and on the reputation of the nursing profession. It had limited information as to how you would handle a similar situation differently in the future. The panel determined that you have very limited insight.

The panel considered the five references that you provided to the panel which date from 2018 until the present. It noted that two of these references were personal character references whilst the remaining three references were provided by your work colleagues. The panel took into consideration that your work colleagues provided positive reflections on your work. However, it was unclear to the panel if the authors of these references knew the full circumstances of your NMC referral.

The panel bore in mind the training that you have undertaken has been relevant to your role as an advanced nurse practitioner and it was unclear when this training ended. The panel took into account that the training did not relate to concerns identified in the charges.

The panel concluded that whilst this additional information changed its assessment of your level of insight from 'no insight' to 'very limited insight', there was no reason to change its finding that your fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on your 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 factors outlined in the SG and bore in mind that these

factors are not exhaustive. It noted that there is evidence of a harmful attitudinal problem. It had regard to your very limited insight and your lack of understanding of the impact that your actions had on the vulnerable patients in your care. The panel was of the view that it is difficult to create conditions that can monitor and assess the attitudinal concerns identified by the charges found proved. The panel was not satisfied that patients will not be put at risk of harm either directly or indirectly as a result of any conditions imposed and that any conditions imposed will adequately protect patients during the period they are in force. The panel concluded that there are no practical or workable conditions that could be formulated, given the nature of the proved charges in this case. You were likely to encounter patients with dementia or other vulnerabilities in every area of nursing, and so no workable conditions could be devised to protect the public. Further, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *…*
- *…*

The panel bore in mind that this was not a single incident but related to a single period of incidents in a long career. The panel bore in mind its finding that this shows you have an attitudinal problem. However, it noted that you have not repeated your misconduct since the material time but have demonstrated some

insight, albeit limited. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with you remaining on the register.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. The panel was of the view that your misconduct was attitudinal in nature, but capable of remediation and did not amount to a course of conduct that was incompatible with remaining on the register. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order. This is because although the misconduct was serious, it was of limited duration and was out of character given your long career. The panel took account of the fact that you had no training in dementia nursing and that you were experiencing issues at work. You struggled to cope with the demands of a management role in an area of nursing with which you were unfamiliar. Without diminishing the seriousness of the matters found proved, in these circumstances the panel decided that striking you from the Register would be disproportionate.

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

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the need to protect the public until such time as a reviewing panel is satisfied that you are fit to practice without restriction. The panel noted that you have been subject to an interim order of suspension for approximately none months, which satisfies the public interest in this case.

The panel determined that a suspension order for a period of six months was necessary to enable you to spend time developing insight as to your conduct, and to strengthen your nursing practice.'

The original panel also stated:

'Any future panel reviewing this case would be assisted by:

- *Your continued engagement and attendance at any future hearing.*
- *A reflective statement, using, for example, the Gibbs reflective model (1988), that addresses:*
    - *An understanding of how your actions put patients at a risk of harm with reference to standards in the NMC Code of Conduct.*
    - *An understanding of why your actions, found proved in the charges, were wrong and how it impacted negatively on your patients, your colleagues and on the reputation of the nursing profession.*
    - *How you would handle similar situations differently in the future.*
- *Evidence of training in the following areas:*
    - *How to manage vulnerable and challenging patients.*
    - *Effective communication and teamworking.'*

Decision and reasons on current impairment

The panel has considered carefully whether your 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 ability to practise safely, kindly and effectively. 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 responses from you. It has taken account of the submissions made by Mr Choudhury on behalf of the NMC, along with your evidence and submissions.

Mr Choudhury took the panel through the background of the case.

Mr Choudhury submitted that this is the first review of your substantive suspension order and stated that it is positive that you have attended this review, and have had some form of legal representation. He submitted that you have undertaken a higher English course and computer training, which is to be commended. However, this does not accord with what the substantive panel required from you to a satisfactory level.

[PRIVATE]

Mr Choudhury submitted that the persuasive burden is on you to prove you have sufficiently addressed your past impairment. Mr Choudhury drew this panel's attention to the recommendations of the original substantive panel, that stated what this panel would be assisted by. Mr Choudhury submitted that you have not provided the information recommended by the original substantive panel and submitted that your fitness to practise is still impaired.

Mr Choudhury submitted that the panel may feel it is appropriate to extend the substantive order to give you time to fulfil these recommendations.

The panel also had regard to your oral evidence. You gave evidence under affirmation.

[PRIVATE]

You said that you have tried to make contact with the NMC and the communication with the NMC has been very poor. You explained to the panel that you told the NMC and original substantive panel that [PRIVATE] you would like an identifiable person from the NMC that you could contact in relation to your reflective piece. You said that the original substantive panel recommended courses in England, but told the panel it was difficult to do a clinical related course as you lived in Scotland and were no longer part of the NHS.

[PRIVATE]

You stated that a lot of people see you as proficient and therefore put a lot of work on you and you feel that as you are a nurse on the front line there are more expectations placed on you. You say that you are only *'one person'* in the team. [PRIVATE].

When asked if you had an understanding of how your actions put patients at a risk of harm, you stated that you would review your workload and delegate more. You further stated that you would maintain standards of care but understand you have failed to do that

previously. You said that you had tried to do the best for people you care for, although, accepted that your judgement was clearly clouded at the time.

When asked about whether you had an understanding of how your actions put patients at a risk of harm, in reference to the standards in the NMC Code of Conduct, you said that the patients may have felt frightened and anxious and that they may feel scared or intimidated also.

The panel asked you how you would manage vulnerable and challenging patients and effective communication and team work in the future, and if you had done any training in either of those areas since the last hearing. You stated that by doing a higher English course, it helps you learn more about communication prompting you to read journals and articles about communication. You further stated that you have books [PRIVATE], which has helped you to appreciate effective communication and understand the importance of this.

You said to the panel that you would do things differently in the future with regards to administering medication. You said that you would reassure the patients and go back and try again later or try a different nurse, if a patient was refusing their medication. You stated that you would try different methods instead, and if that didn't work document the medication as not being given.

You told the panel that you were in a clinical emergency in the community recently and had to do a head to toe assessment and call emergency services. You submitted that you missed the challenges of clinical decision making and carrying out clinical duties.

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 your fitness to practise remains impaired.

The panel was mindful of the suggestions made to you by the original substantive panel in relation to providing a reflective statement and evidence of training in specific areas related to the misconduct.

The panel noted that the original panel found that you had a lack of insight. At this hearing the panel had regard to your attendance of this hearing, your oral evidence, your personal and health issues over the years, as well as your higher English course.

The panel next considered whether you had shown any further insight or remorse into your actions. It noted that you did not provide a written reflection. The panel asked you some questions in relation to your understanding of how your actions put patients at risk of harm, why your actions were wrong and how they impacted negatively on your patients, colleagues and reputation of the nursing profession, and how you would handle similar situations differently in the future. Whilst you gave some information about how patients would have felt, the panel was of the view that there was insufficient focus on the recommendations and little evidence of insight and strengthening of your practice. The panel was also of the view that you had not provided sufficient reflection on how your conduct affected others and that you had focused more on your own personal circumstances.

In its consideration of whether you have taken steps to strengthen your practice, the panel noted that although, you have undertaken a higher English course, and have not worked due to your health condition and personal issues, you had not taken any appropriate steps to show you had strengthened your practice in the arears of concern.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel has not heard any new information or evidence that would suggest otherwise. The panel is of the view that your lack of insight and lack of evidence of strengthening your practice, demonstrated that you were 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 your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 and it would not address the public protection concerns.

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 your 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 your 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 and it would not address the public protection concerns.

The panel next considered whether conditions of practice on your 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, noting that the charges related more to your attitudinal issues 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 your misconduct and attitudinal issues.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings and behaviour. It considered that you need to gain a full understanding of how your behaviour had impacted upon patients, colleagues, the organisation you were working for and the nursing profession as a whole.

The panel concluded that a further 9 months suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice. It would also give you an opportunity to approach past colleagues that are health professionals to attest to your clinical practice and professionalism in your workplace assignments.

The panel understood you want the NMC to provide you with more guidance and direction. However, the panel took the view that the recommendations from the last panel were clear. As you are an accountable professional it is your responsibility to persuade future reviewing panels that your fitness to practise is no longer impaired. It may be helpful for you to seek the support of another nurse or mentor to assist you in completing the steps necessary within the recommendations.

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 9 months, which would provide you with an opportunity to engage with the NMC and to provide evidence in accordance with the recommendations. It considered this to be the most appropriate and proportionate sanction available.

The panel also considered a striking-off order, but decided it would be disproportionate, at this stage, as the behaviour was remediable and not incompatible with remaining on the register.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 8 April 2025 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:

- Your continued engagement and attendance at any future hearing.
- A reflective statement that addresses:
    - An understanding of how your actions put patients at a risk of harm with reference to standards in the NMC Code of Conduct.
    - An understanding of why your actions, found proved in the charges, were wrong and how it impacted negatively on your patients, your colleagues and on the reputation of the nursing profession.
    - How you would handle similar situations differently in the future.
- Evidence of training in the following areas:
    - How to manage vulnerable and challenging patients.
    - Effective communication and teamworking.
- Testimonials from former colleagues.

This will be confirmed to you in writing.

That concludes this determination.