

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
31 January 2020**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Sophia McGill
NMC PIN:	78J2068E
Part(s) of the register:	Registered Nurse (Sub Part 2) – November 1981 Registered Nurse (Sub Part 1) – Adult Nursing – November 2000 Registered Specialist Community Public Health Nurse – September 2003 Community Practitioner Nurse Prescriber – September 2003
Area of Registered Address:	England
Type of Case:	Misconduct & Conviction
Panel Members:	Richard Davies (Chair, Lay member) Claire Clarke (Registrant member) Sadia Zouq (Lay member)
Legal Assessor:	Tracy Ayling QC
Panel Secretary:	Caroline Pringle
Mrs McGill:	Not present and not represented
Nursing and Midwifery Council:	Represented by Bryony Dongray, NMC Case Presenter
Order being reviewed:	Suspension order (12 months)
Fitness to Practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 11 February 2020 in accordance with Article 30 (1)

Service of notice of hearing

The panel was informed at the start of this hearing that Mrs McGill was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Mrs McGill on 4 December 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered and signed for at Mrs McGill's registered address on 6 December 2019.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Proceeding in absence

The panel then considered proceeding in the absence of Mrs McGill. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Dongray, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Dongray referred the panel to an email from Mrs McGill, dated 16 January 2020, in which she confirmed that she would not be attending the review and was happy for it to proceed in her absence. Ms Dongray referred the panel to the principles in *GMC v Adeogba* [2016] EWCA Civ 162 and *R. v Jones (Anthony William), (No.2)* [2002] UKHL 5. She submitted that, in light of Mrs McGill's recent email and her previous non-attendance at hearings, there was no good reason not to proceed and there was no reason to suppose that an adjournment would secure her attendance. In these circumstances, Ms Dongray invited the panel to proceed in the absence of Mrs McGill.

Mrs McGill had been sent notice of today's hearing and the panel was satisfied, from her email, that she is aware of today's hearing and has chosen not to attend. It noted that Mrs McGill disengaged from these proceedings some time ago and had no reason to believe that an adjournment would result in Mrs McGill's attendance. Having weighed the interests of Mrs McGill with those of the NMC and the public interest in the expeditious review of this order, the panel determined to proceed in Mrs McGill's absence.

Decision and reasons on review of the current order

The panel decided to make a striking-off order. This order will come into effect at the end of 11 February 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a 12 month suspension order imposed by a Fitness to Practise panel on 11 January 2019. The current order is due to expire at the end of 11 February 2020.

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,

1) On or about 3rd August 2017:

a. attended work whilst under the influence of alcohol

b. consumed alcohol whilst on duty

2) On or about 3rd or 4th August 2017 failed to provide medication, namely cetirizine, to Patient A

3) *On or about 3rd or 4th August 2017 failed to complete the MAR chart to indicate if carbocysteine had been administered to Patient A*

4) *Failed to engage with the NMC investigation in that Mrs McGill declined to provide a sample for medical testing*

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

That you a registered Nurse,

5) *Were convicted on 25 November 2015 of driving whilst under the influence of alcohol*

6) *Failed to disclose to the NMC that on 25th November 2015 Mrs McGill were convicted of driving whilst under the influence of alcohol*

7) *Your actions set out in Charge 6 were dishonest in that Mrs McGill deliberately sought to mislead the NMC by withholding this information*

And in light of the above, your fitness to practise is impaired by reason of your conviction as set out in charge 5, and your misconduct as set out in charges 6 and 7.

The substantive panel determined the following with regard to impairment:

The panel considered that although Mrs McGill's failings in this case may be remediable, there was no evidence of even the beginnings of any remediation. Mrs McGill has shown no insight into her behaviour and, rather than express any remorse or regret, she had stated in

correspondence to the NMC that she had done nothing wrong. Whilst there is some suspicion that both the conviction and the misconduct may be symptoms of an underlying health condition, the panel noted that there is no medical evidence to support that. Furthermore Mrs McGill refused to cooperate with an investigation into that question.

In the absence of any remediation or insight, the panel considered that there is a serious risk of repetition in this case. The panel therefore determined that a finding of impairment was necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those profession. The panel determined that, in this case, a finding of impairment on public interest grounds was required both in respect of the misconduct and the conviction.

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

The substantive panel determined the following with regard to sanction:

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where ‘...the case is at the lower end

of the spectrum of impaired fitness to practise, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that Mrs McGill’s misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel then considered a conditions of practice order but determined that there were no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining or other conditions.

Furthermore the panel concluded that the placing of conditions on Mrs McGill’s registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction...

Whilst there is no evidence that Mrs McGill has any insight, and the panel has identified that she does pose a significant risk of repeating her behaviour, the concerns about her clinical practice relate to one shift. Her dishonesty was by omission and, although it continued for the whole period that she did not declare her conviction, the panel does not consider that at this stage it should be regarded as evidence of a deep seated personality or attitudinal problem. Furthermore, despite the seriousness of Ms McGill’s misconduct, the panel has identified that it could be a symptom of a potential underlying health condition. As such, the panel considered that, in Mrs McGill’s case, the misconduct was not fundamentally incompatible with remaining on the register.

A suspension order will provide protection to the public but will give Mrs McGill an opportunity to address her shortcomings. Whilst the panel acknowledges that it has no basis for optimism in that regard, it considers that the chance to do so (which a period of suspension will provide) is appropriate and will not involve any risk to the public or the wider public interest. The panel has considered whether a striking off order may be more appropriate but it determined that, at this stage, it is not necessary and would work against the public interest by precluding the potential return to work of an experienced nurse. Accordingly, the panel has concluded that a suspension order is the appropriate and proportionate sanction.

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 12 months was appropriate in this case both to mark the seriousness of the misconduct and to provide a reasonable period in which Mrs McGill can begin to address her shortcomings.

Mrs McGill should be aware that this order, rather than a striking off order, has been imposed to give her a chance to resume her nursing career. 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, including that of a striking off order.

Any future reviewing panel may be assisted by:

- Mrs McGill's attendance in person at any review hearing.*
- Evidence that Mrs McGill has cooperated fully with a further NMC investigation into her health.*

- *Evidence of the development of full insight which may be assisted by a full reflective piece.*
- *References and testimonials from any work undertaken by Mrs McGill, whether paid or unpaid.*
- *Evidence of how Mrs McGill has kept her knowledge and skills up to date.*

Decision on current fitness to practise

The panel considered whether Mrs McGill's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined it as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. It noted the decision of the last panel. However, it exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it, including the decision and reasons of the substantive panel and two emails from Mrs McGill, dated 13 November 2019 and 16 January 2020. It also took account of the submissions made by Ms Dongray on behalf of the NMC.

Ms Dongray informed the panel that, since the last hearing, there has been no engagement from Mrs McGill other than emails sent by her on 20 November 2019 and 16 January 2020. Both of these emails stated that Mrs McGill has not practised as a nurse for two years and has no intention of returning to the profession. In the absence of any evidence of insight, remediation, or safe practice, Ms Dongray submitted that Mrs McGill's fitness to practise remains impaired. With regard to the issue of sanction, Ms Dongray submitted that a suspension order was the minimum required to protect the public but also invited the panel to consider a striking-off order in light of Mrs McGill's non-engagement.

The panel 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 Mrs McGill's fitness to practise remains impaired. The substantive panel determined that Mrs McGill had shown no insight and "*no evidence of even the beginnings of any remediation*". This panel was in the same position. It has no evidence from Mrs McGill regarding any insight or remediation. In fact, the only information it had from Mrs McGill were two emails. The first of these, sent on 13 November 2019, stated that Mrs McGill has not practised for two years and has no intention of returning to nursing practice. Mrs McGill's second email, sent on 16 January 2020, confirms this position and states that Mrs McGill is enjoying her retirement. Although there was some suggestion at the substantive hearing of an underlying health condition, Mrs McGill has not cooperated with the NMC investigation into this issue. As a result, the panel has no evidence to support this.

Mrs McGill did not engage with her substantive hearing. Her lack of engagement has persisted over the past 12 months, with the exception of her emails which state that she has left the profession. The panel considered that in the absence of any evidence of insight or remediation, Mrs McGill's fitness to practise remains impaired on both public protection and public interest grounds, for the reasons identified by the substantive panel.

Determination on sanction

Having found Mrs McGill'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 Articles 29 and 30 of the Order. The panel also took account of the NMC's Sanctions Guidance and bore 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. Taking no action would not restrict Mrs McGill's practice and therefore

would not protect the public. The panel also decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate for the same reasons.

The panel next considered the imposition of a conditions of practice order. The panel bore in mind that conditions of practice must be practical and workable. Given that Mrs McGill is not currently working as a nurse, and has indicated that she has no intention of doing so, the panel determined that it would not be possible to formulate workable conditions.

The panel next considered imposing a further suspension order. The panel noted that there has been no meaningful engagement from Mrs McGill during these proceedings. The substantive panel had no evidence of any insight or remediation, nor any indication from Mrs McGill that she would be willing to address the concerns regarding her practice and conduct in the future. Mrs McGill has not taken the opportunity afforded to her by the substantive panel, and has continued to disengage. Her most recent correspondence with the NMC confirms that she has retired and does not intend to return to nursing practice. In these circumstances, the panel decided that a further period of suspension would serve no useful purpose. The panel bore in mind that all registrants have a duty to engage with the NMC and that, at this stage in Fitness to Practise proceedings, the onus is on them to satisfy the panel that they intend to remediate and return to safe practice. This panel considered that Mrs McGill's consistent lack of engagement has become fundamentally incompatible with remaining on the NMC register. It therefore decided that a striking-off order was now the only sanction which would both protect patients and uphold public confidence in the nursing profession and the NMC as its regulator.

Accordingly, the panel determined to make a striking-off order. This order will come into effect upon the expiry of the current suspension order, namely at the end of 11 February 2020, in accordance with Article 30(1) of the Nursing and Midwifery Order 2001.

This decision will be confirmed to Mrs McGill in writing.

That concludes this determination.