

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

**Substantive Order Review Hearing
Thursday, 13 September 2023**

Virtual Hearing

Name of Registrant: Michael Christopher South

NMC PIN 98C1260E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nurse - March 2001

Relevant Location: Northampton

Type of case: Misconduct and Lack of Competence

Panel members: Rachel Carter (Chair, Lay member)
Manjit Darby (Registrant member)
Robert Cawley (Lay member)

Legal Assessor: Paul Housego

Hearings Coordinator: Sabrina Khan

Nursing and Midwifery Council: Represented by Surinder Singh Gohlan, Case Presenter

Mr South: Not present and unrepresented

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 22 October 2023**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr South was not in attendance and that the Notice of Hearing had been sent to Mr South's registered email address by secure email on 09 August 2023.

Mr Singh, 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 was sent to Mr South's email address notified by him to the NMC and that it provided details of the substantive order being reviewed, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr South'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 South 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 South

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

Mr Singh referred the panel to the documentation from Mr South which included a letter from Mr South dated July 2023 which stated:

'I would like the hearing to continue as planned. I do not have the relevant technology to participate in video-conferencing. However, I could make arrangements to attend in person in London if required.'

Otherwise, I would be happy for you to continue without me. And that my non-participation is not seen as a lack of engagement or respect for NMC.'

Mr Singh also referred the panel to a later letter from Mr South dated 16 August 2023 which stated:

'My future plans do not include further training or nursing practice...' and 'I would like the hearing to continue as planned.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr South. In reaching this decision, the panel has considered the submissions of Mr Singh, the letters from Mr South, and the advice of the legal assessor. It has had particular regard to relevant case law (*General Medical Council v Adeogba* [2016] EWCA Civ 162) and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr South;
- Mr South has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- 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 to proceed in the absence of Mr South.

Decision and reasons on review of the substantive order

The panel decided to allow the current order to lapse.

This is the second review of a substantive conditions of suspension order originally imposed for a period of nine months by a Fitness to Practise Committee panel on 24 March 2022. This was reviewed on 16 December 2022 when the panel decided to extend the substantive suspension order for a period of nine months.

The current order is due to expire at the end of 22 October 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 while working at Northamptonshire Healthcare NHS Foundation Trust between 20 August 2015 and 28 February 2017:

1. *On 26 August 2016 did not conduct a search of Patient 1 and/or Patient 1’s property on her return to the ward after authorised leave. **[Charge found proved]***

2. *Your inaction at Charge 1 contributed to a loss of opportunity to identify that Patient 1 was bringing one or more paracetamol on to the unit or had consumed one or more paracetamol while on authorised leave. **[Charge found proved]***

3. *In your statement to your employer dated 29 August 2016, and/or your statement to your employer dated 22 September 2016 and/or your interview on 22 September 2016 and 05 October 2016, about the incident at Charge 1, you made one or more of the following representations which were not true.*
 - a) *That you had been on a break when Patient 1 entered **[Charge found proved]***
 - b) *That you had not let Patient 1 into the Ward **[Charge found proved]***

- c) That HCA 1 had told you they let Patient into the Ward **[Charge found proved]**
- d) That HCA 1 had told you they had conducted a bag search on the return of Patient 1 to the Ward **[Charge found proved]**
- e) That you had subsequently searched Patient 1's wheelchair and/or bag
[Charge found proved]
- f) That you had carried out the search at e) above in the presence of HCA 1 and/or Patient 1. **[Charge found proved]**
4. Your representations at one or more of 3 a)-f) above were dishonest in that you were making a representation which you knew was not true.
[Charge found proved in respect of charges 3a – d and 3f in respect of HCA 1. Charge 4 not proved in respect of charge 3e and 3f in respect of Patient 1.]
5. On 18 November 2015
- a) ...
- b) Identified to Nurse 3 the wrong patient when alerting him of the absconding at charge 5a). **[Proved by admission]**
6. On or around 20 October 2015, having been requested to do so by Nurse 3, did not inform colleagues that a Patient was being transferred from Harbour Ward to Bay Ward, and/or did not provide colleagues with any or adequate information about that Patient in preparation for the transfer. **[Charge found proved]**
7. In relation to Patient 2, did not formulate a person-centred care plan.
[Charge found proved]
8. In relation to Patient 6, did not produce a Physical Health Care Plan for them, prior to 25 January 2016 **[Charge found proved]**
9. In relation to Patient 7:

a) *Did not evaluate their care plan between 20 December 2015 & 15 January 2016*

[Charge found proved]

b) *Did not document in their clinical record that their rights had been read to them during the admission. [Charge found proved]*

10. *In relation to Patient 11, did not put in place a care plan to support staff in dealing with occasions when that Patient placed themselves on the floor.*

[Charge found proved]

11. *In relation to Patient 11, on 23 December 2016:*

a) *Did not seek advice and/or assistance promptly in relation to their continued presentation on the floor. [Charge found proved]*

b) *Did not escalate the concerns about Patient 11 to the Ward Matron. [Charge found proved]*

c) *Did not carry out NEWS/physical observations on Patient 11 or instruct another member of staff to do so. [Charge found proved]*

12....

13. *On 28 October 2015*

a) *Administered Insulin to a patient at 14:00 when it should have been administered at 12:00 [Proved by admission]*

b) ...

c) ...

14. *On 26 December 2015*

a) *Gave Patient 3 their medication Depakote at approximately 12:30 when it was not prescribed until 17:00/18:00. [Proved by admission]*

b) *Did not document the medication error at 14 a) above in Patient 3's records. [Charge found proved]*

c) *Asked Nurse 1 not to include the medication error at 14 a) above in her handover notes. [Proved by admission]*

d) When asked by Nurse 2 to report the medication error and/or document the error at 14 a) above replied with words to the effect of 'It doesn't matter. It's only Depakote, it should not be a problem' **[Proved by admission]**

e) Did not complete an incident form via DATIX for the medication error at 14 a) above. **[Proved by admission]**

15. Your actions at Charges one or more of 14 b) to 14 e) above demonstrated a lack of integrity in that you sought to avoid there being a record and/or report of the error at 14 a) above, when you knew there should have been. **[Charge found proved in its entirety]**

16. On 4 August 2016 and/or 5 August 2016 administered CETRIZINE 10mg to Patient 9 when this medication had been cancelled on 3 August 2016. **[Proved by admission]**

17. On 17 August 2016 administered olanzapine to Patient 10 at the wrong time. **[Proved by admission]**

18. ...

19. On one or more occasion between 20 August 2015 and 22 July 2016 did not effectively run the ward and/or support staff when acting as the Nurse in Charge in that you:

a) ...

b) ...

c) ...

d) ...

e) Did not allocate breaks fairly **[Charge found proved]**

f) When asked questions or otherwise asked for assistance by staff, did not attempt to answer queries or otherwise assist. **[Charge found proved]**

g) (On One occasion) asked a physical health nurse to undertake mental health duties. **[Proved by admission]**

*h) On 22 July 2016 rotated staff to the section 136 suite for more than one hour. **[Proved by admission]***

*20. On 26 June 2016 did not follow the fire policy procedure. **[Proved by admission in that you accept that you did not dial 5555 but dialled 0]***

*21. Did not pass the Immediate Life Support Course between 20 August 2015 and 28 February 2017. **[Proved by admission]***

*22. On one or more occasions when a patient raised a query or concern with you, you, did not prioritise a patient's needs. **[Charge found proved]***

*23. Did not complete the capability plan put in place. **[Proved by admission]***

And, in light of the above, your fitness to practise is impaired by reason of you misconduct in respect of charges 1-17, and by reason of your lack of competence in respect charges 18-23.'

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

"The panel has considered carefully whether Mr South'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.

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 South's fitness to practise remains impaired.

The panel noted that the original panel found, at the time of the substantive hearing, that Mr South had not yet developed sufficient insight. At this meeting, the panel took into consideration that Mr South had not engaged with the NMC and that he had not provided any of the requested information outlined by the panel at the substantive hearing.

In its consideration of whether Mr South has taken steps to strengthen his practice, the panel took into account that it had no new information before it.

The original panel determined that Mr South was liable to repeat matters of the kind found proved. Today's panel has no new information and in light of this the panel determined that Mr South remains 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 Mr South's fitness to practise remains impaired."

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

“Having found Mr South’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 issues identified, an order that does not restrict Mr South’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 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 South’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 South’s misconduct and lack of competence at this time.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr South further time to fully reflect on his previous failings. The panel concluded that a further nine month suspension order would be the appropriate and proportionate response and would afford Mr South

adequate time to further develop his insight and take steps to strengthen his practice.

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 nine months would provide Mr South with an opportunity to engage with the NMC and provide the next reviewing panel with a reflective piece, evidence of training relevant to the charges found proved at the substantive hearing and up to date testimonials or references from voluntary positions or current employers. It considered this to be the most appropriate and proportionate sanction available.

The panel bore in mind that a striking off order is not available to it at this time.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 22 January 2023 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review 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:

- A reflective piece evidencing Mr South's understanding of his failings, particularly in relation to the dishonesty and integrity, the potential impact on patients and his work colleagues;*
- Detailed evidence of any training Mr South has undertaken during the period of his suspension which is relevant to the charges found proved;*
- Up-to-date references or testimonials from voluntary positions or current employers detailing any work Mr South has undertaken during the period of suspension; and*
- Mr South's engagement with the NMC and his attendance at a future review hearing.*

This will be confirmed to Mr South in writing.

That concludes this determination.

Decision and reasons on current impairment

This panel has considered carefully whether Mr South'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 the responses from Mr South. It has taken account of the submissions made by Mr Singh on behalf of the NMC. He provided a background of the case. He submitted that there has been no change in the risk posed by Mr South to the public. He invited the panel to extend the suspension order to further nine months to give Mr South an opportunity to strengthen his practice and engage with the NMC.

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 South's fitness to practise remains impaired.

The panel noted that the original panel found, at the time of the substantive hearing, that Mr South had not yet developed sufficient insight. At this hearing, the panel took into consideration that Mr South has not provided any evidence of insight into his misconduct. The panel noted that in his letter to the NMC of July 2023 Mr South stated '*I do not believe I was dishonest nor am I a risk to anyone.*' Taking into account the entirety of Mr South's

correspondence, the panel considered that Mr South displayed only limited insight into the misconduct finding of the substantive panel.

The original panel determined that Mr South was liable to repeat matters of the kind found proved. This panel considered that Mr South's shortcomings were serious and therefore, in light of this the panel determined that Mr South remains liable to repeat matters of the kind found proved. Thus, the panel decided that a finding of continuing impairment is necessary on the grounds of public protection.

In its consideration of whether Mr South has taken steps to strengthen his practice, the panel took into account the new information before it. This was that Mr South wished to study and take another career path and was now *'indifferent'* to the nursing profession. Mr South has indicated that he no longer wants to practice as a registered nurse, and there was nothing to indicate that he had taken any positive steps in relation to his nursing practice since the substantive hearing. Notwithstanding his stated intention, the panel considered that there would be a risk of repetition should Mr South return to practice in the future.

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 is also required on public interest grounds.

For these reasons, the panel finds that Mr South's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr South'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 noted the NMC's request for a further suspension of nine months. The panel concluded that since Mr South had taken no positive steps in the two periods of suspension, each of nine months, and had expressed the wish not to return to nursing it would serve no useful purpose to give him a further, third, opportunity, when his recent indication was that he did not intend to seek to return to the profession.

The panel then considered whether to make a striking off order. The panel noted that the substantive panel had not found the matters serious enough to make a striking off order. Provided the public was protected there was no reason to make a striking off order. The panel considered whether allowing the order to lapse would protect the public. The panel took into account the NMC guidance on allowing an order to expire when a nurse's registration will lapse (REV-3h). The panel noted that Mr South has not practised for over five years and that his registration is only active because this substantive order is in place. The panel decided that a striking-off order would be disproportionate because the public will be protected as Mr South will be removed from the register when the suspension order expires. Should Mr South ever change his mind and seek to rejoin the register the public is protected as the finding of current impairment in this determination will be on the record for the Registrar to consider.

The panel determined that the public interest concerns have been addressed because the allegations against Mr South have been fully investigated and appropriate sanctions have been imposed. A well-informed member of the public would be satisfied that in circumstances where Mr South no longer wants to return to work as a registered nurse, feels unsupported and has taken steps to change career path, allowing the order to lapse is an appropriate and proportionate response in the public interest.

The panel therefore decided to allow this order to lapse in accordance with article 30(1).

This decision will be confirmed to Mr South in writing.

That concludes this determination.