

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

**Substantive Order Review Hearing
Thursday, 25 July 2024**

Virtual Hearing

Name of Registrant: Richard Neill Magee

NMC PIN: 81I0060N

Part(s) of the register: Nurses Part of the Register-Sub Part 1
RN5: Learning Disabilities, level 1
(8 January 1987)

Nurses Part of the Register-Sub Part 2
RN7: General Nurse, level 2
(6 October 1983)

Relevant Location: Belfast

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, Lay member)
Anne Considine (Registrant member)
Helen Kitchen (Lay member)

Legal Assessor: Gerard Coll

Hearings Coordinator: Samantha Aguilar

Nursing and Midwifery Council: Represented by Rory Gordon, Case Presenter

Mr Magee: Not present and not represented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 2 September 2024 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 Magee was not in attendance and that the Notice of Hearing had been sent to Mr Magee's registered email address by secure email on 25 June 2024.

Mr Gordon, 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 Magee's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In light of all of the information available, the panel was satisfied that Mr Magee 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 Magee

The panel next considered whether it should proceed in the absence of Mr Magee. The panel had regard to Rule 21 and heard the submissions of Mr Gordon who invited the panel to continue in the absence of Mr Magee. Mr Gordon submitted that Mr Magee has not engaged in previous substantive order review hearings, as such, Mr Gordon submitted that Mr Magee has voluntarily absented himself.

Mr Gordon submitted that there had been no engagement at all by Mr Magee 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. He further submitted that the charges in this case are so serious that there is a strong public interest in the expeditious review of this matter.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mr Magee. In reaching this decision, the panel has considered the submissions of Mr Gordon, and the advice of the legal assessor. It had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It considered that:

- No application for an adjournment has been made by Mr Magee;
- Mr Magee has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- 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 Magee.

Decision and reasons on review of the substantive order

The panel decided to extend the suspension order for a period of 12 months. This order will come into effect at the end of 2 September 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is a review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 3 November 2022. This was reviewed on 25 July 2023. The reviewing panel decided to allow the Suspension Order to lapse upon its expiry on 2 September 2023 to allow Mr Magee [PRIVATE] and remove himself from the NMC Register. On 11 August 2023, the NMC invited the same panel to revisit its decision on sanction due to there being another disciplinary matter against Mr Magee, information that was not available to the panel when it made its decision on sanction on 25 July 2023. The reviewing panel reconsidered its decision and decided to impose a further Suspension Order for 12 months.

The current order is due to expire at the end of 2 September 2024.

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 the nightshift of the 30 September and 1 October 2017, between 23.56 to 05.01 hours slept whilst on duty.*
- 2. Being the nurse in charge on the nightshift of the 30 September and 1 October 2017, between 23.56 and 05.01 hours failed to;*
 - a. Carry out patient observations.*
 - b. Ensure that patient observations were carried out by staff.’*

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

The reviewing panel on 25 July 2023 determined the following with regard to impairment:

‘The panel noted that the original panel found that Mr Magee’s misconduct was capable of being remediated however, it had no evidence before it to suggest that Mr Magee had shown insight, remorse or had taken any steps to strengthen his practice. At this hearing, the panel concluded that there has been no material change since the last hearing and Mr Magee has continued to not engage or communicate with the NMC. The panel noted that Mr Magee has shown no remorse and has neither demonstrated developing insight, nor remediated the concerns identified at the substantive hearing therefore, the risk of harm remains.

The panel 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 Magee's fitness to practise remains impaired.'

The same reviewing panel revisited its decision on sanction on 11 August 2023. It determined the following with regard to sanction:

'The panel has been invited by the NMC to reconsider its decision on sanction. The panel noted that on 25 July 2023, it was not informed by the NMC that there was another disciplinary matter against Mr Magee. Its decision was made in ignorance of the fact that there is another matter pending. The panel now have the full facts which were not before it on the last occasion and those are matters that it will bear in mind when considering the appropriate and proportionate sanction in this case.

[...]

It noted that although Mr Magee has shown no evidence of insight, remorse or strengthened practice since the original substantive hearing in November 2023, it was of the view that a suspension order would adequately mark the serious nature of Mr Magee's misconduct and present him with a further opportunity to engage with his regulator. It would also suitably protect the public and satisfy the public interest. Accordingly, the panel determined to impose a suspension order for the period of twelve months.

The panel decided a period of twelve months to allow Mr Magee ample time to reflect on his conduct and re-engage with the NMC should he choose to do so.

The panel also considered whether a striking off order was an appropriate and proportionate sanction. The panel noted that the only new information provided at this hearing is that there is another Fitness to Practise matter pending, but the panel had no information about this. The panel therefore decided that there is no new information to justify a striking off order and it would be disproportionate at this time.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 2 September 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 Magee's engagement with the NMC and his attendance at a future hearing*
 - *Up-to-date reflection addressing the charges found proved by the original substantive hearing*
 - *Alternatively, evidence from Mr Magee that [PRIVATE] and does not intend to return to the profession'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Magee'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, including the main NMC bundle. It has taken account of the submissions made by Mr Gordon on behalf of the NMC and noted that it has received no information whatsoever from Mr Magee.

Mr Gordon provided the panel with a background of the case. He submitted that in light of those facts, Mr Magee's fitness to practise was impaired by reason of misconduct. He summarised the procedural history of this case. He submitted that although on any reading, the panel may feel that the misconduct that occurred originally is capable of being remediated, there is no evidence before it that Mr Magee has shown any insight, any remorse or taken any steps to strengthen his practice.

Furthermore, Mr Gordon submitted that there is no evidence put before the panel today of any material change since the last substantive order review hearing and because there was information that Mr Magee was [PRIVATE], and this may be why Mr Magee has failed to engage with the review hearing today.

Mr Gordon referred the panel to *General Optical Council v Clarke* [2018] EWCA Civ 1463, which provides guidance on whether [PRIVATE] can be taken into account when considering if a Registrant's fitness to practise is impaired. Mr Gordon submitted that the previous panel determined that in Mr Magee's case, [PRIVATE] had no bearing on whether his fitness to practise was impaired. Mr Gordon stated that it is regrettable that Mr Magee has become uncontactable to confirm if he [PRIVATE]. Without such confirmation, Mr Magee could practice unrestricted. Accordingly, he invited the panel to continue to extend the current suspension order to ensure that there is a safeguard in place in case Mr Magee decides to [PRIVATE].

The panel asked Mr Gordon if he had any information pertaining to the other disciplinary matter raised on 11 August 2023. Mr Gordon submitted that he is making his application for the panel to extend the Suspension Order based only on the information he has at present. Mr Gordon submitted that in light of the absence of further information in respect of the other matter, he invited the panel to extend the Suspension Order to satisfy the public protection and public interest considerations.

The panel heard and accepted the advice of the legal assessor. This included references to the NMC Guidance Rev-1 and Rev 3 and *General Optical Council v Clarke*.

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 Magee's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that there has been no material change since the last hearing and Mr Magee has continued not to engage or communicate with the NMC.

At this hearing, the panel has seen no material change to the case. Mr Magee has not engaged or communicated with the NMC, shown no remorse and has neither demonstrated developing insight, nor remediated the concerns identified at the substantive hearing. The charges found proved were serious and relate to his nursing practice. The panel therefore took the view that the risk of harm remains.

The panel accepted that Mr Magee's lack of engagement could be due to [PRIVATE]. The panel bore in mind the principles of *General Optical Council v Clarke* in that Mr Magee's [PRIVATE] have no bearing on his impairment and carefully considered the NMC's overarching objectives. The panel 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 Magee's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Magee'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 Magee'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 Magee'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 Magee'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 Mr Magee's lack of engagement. It concluded that a conditions of practice order was not practical or workable without engagement from Mr Magee and therefore would not adequately protect the public or satisfy the public interest.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow the NMC to establish the position on the other regulatory matter raised on 11 August 2023. It would also allow Mr Magee time to re-engage with the NMC and confirm his intentions in respect of his nursing career.

The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response. It took the view that this 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 12 months which would provide Mr Magee 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 2 September 2024 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:

From the NMC:

- An understanding of the NMC's position in respect of the other matter raised on 11 August 2023 which led to the reviewing panel's reconsideration of its decision on sanction.

From Mr Magee:

- Mr Magee's engagement with the NMC and his attendance at a future hearing.
- An up-to-date reflection addressing the charges found proved by the original substantive hearing.
- Alternatively, evidence [PRIVATE]

This will be confirmed to Mr Magee in writing.

That concludes this determination.