

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

**Substantive Order Review Meeting
Tuesday, 4 June 2024**

Virtual Meeting

Name of Registrant: William Victory McAuley

NMC PIN 87D0006S

Part(s) of the register: Registered Nurse – Sub Part 1 & 2
General Nursing Level 2 – October 1988
Adult Nursing Level 1 – October 2003

Relevant Location: Fife

Type of case: Lack of competence

Panel members: Darren Shenton (Chair, Lay member)
Des McMorrow (Registrant member)
Margaret Stoddart (Lay member)

Legal Assessor: John Bassett

Hearings Coordinator: Eleanor Wills

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 21 July 2024**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mr McAuley's registered email address by secure email on 3 May 2024.

Further, the panel noted that the Notice of Meeting was also sent to Mr McAuley's representative at UNISON on 3 May 2024.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 3 June 2024 and inviting Mr McAuley to provide any written evidence seven days before this date.

The panel noted Mr McAuley's email to the NMC dated 5 May 2024 with the subject '*Re: 072048 Hearing bundle for substantive order review meeting*'.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr McAuley has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) ('the Rules').

Decision and reasons on review of the current order

The panel decided to allow the order to lapse. This will come into effect at the end of 21 July 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 23 March 2021. This was reviewed on 8 March 2022 and a further suspension order was imposed for a period of 12 months. This was next reviewed on 23 March 2023 and a further suspension order was imposed for a period of 3 months. This was last reviewed on 9 June 2023 when the panel imposed a further suspension order for a period of 12 months.

The current order is due to expire at the end of 21 July 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 failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 6 multiple sclerosis nurse specialist in that you:

1. On 6 July 2017 in relation to a patient assessment:

- a. Did not discuss the assessment in advance with other members of the multi-disciplinary team;*
- b. Did not raise any concerns about the patient to the speech and language therapist;*
- c. Incorrectly ascribed the patient’s swallowing problems to oral thrush in a letter to the GP.*

While subject to an informal supported improvement action plan at NHS Fife from 19 September 2017 to 29 November 2017 you:

2. Were unable to complete the objectives of the action plan in that you:

- a. Did not demonstrate knowledge and understanding of your role and responsibilities as a Band 6 Multiple Sclerosis (MS) nurse;*
- b. Did not demonstrate compliance with record keeping standards of accuracy and completeness;*
- c. Did not complete an MS nurse assessment to the required standard;*
- d. Did not maintain improvement in the content of verbal and written communication;*
- e. Did not demonstrate an understanding of completing monthly statistics correctly;*

- f. Did not demonstrate ongoing reflection skills on your work;*
- g. Did not demonstrate an ability to follow instructions.*

While subject to a formal capability plan from 1 December 2017 at NHS Fife:

3. On a date before 8 December 2017:

- a. failed to undertake a bladder scan before giving advice to a patient;*
- b. incorrectly advised the above patient to use a bladder stimulator once daily, when twice daily was correct;*
- c. Did not review the above patient after two weeks;*
- d. Did not take any action upon identifying the above patient was in pain.*

4. On a date before 18 January 2018:

a. In relation to Patient A:

- i. Verified a clinical letter which contained incorrect advice;*
- ii. Did not complete the patient notes for an assessment carried out on 23 November 2017;*
- iii. Gave advice to the patient which was not in accordance with the pathway;*

b. In relation to Patient B:

- i. Did not inform the GP that Patient B had had a fall;*
- ii. Did not take action to address the patient's pain;*

c. In relation to Patient C:

- i. Did not assess the patient;*
- ii. Did not identify the correct advice to provide to Patient C;*

d. In relation to Patient D did not assess the patient before recommending medication;

e. In relation to Patient E did not follow up the patient.

That you failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 5 nurse in that, while subject to a formal capability process at NHS Fife, you:

On Letham Ward

5. *On or about 27 February 2018:*

- a. Used a scanner with which you were unfamiliar;*
- b. Did not tell colleagues that you were unfamiliar with the scanner before using it;*
- c. Incorrectly performed a bladder scan.*

6. *On 27 February 2018:*

- a. Did not hand over patient observations to the other nurse on shift in a timely way;*
- b. Did not carry out regular observations on the patient.*

7. *On 27 February 2018:*

- a. [Not proved]*
- b. [Not proved]*

8. *On an unknown date in March 2018:*

- a. Did not complete a supervised drugs administration round timeously;*
- b. Did not sign the Kardex to record you had administered medication.*

9. *On 17 May 2018 left a patient unattended on the toilet contrary to handover instructions.*

In Ward 3

10. *On or about 2 October 2018 did not sign the Kardex to record the administration of medication.*

11. *[Not proved]*

12. *On 3 October 2018 could not describe the difference between positive and negative fluid balance.*

13. *On 3 October 2018 did not follow instructions to contact the volunteer coordinator.*

14. *Between 2 October 2018 and 22 November 2018 completed the practical element of your PVC insertion training before the theoretical element.*

15. *On 5 November 2018 did not provide appropriate care to a patient (Patient A on Ward 3) who requested assistance on the toilet.*

16. *In relation to Patient B on Ward 3:*

a. On 5 November 2018 washed the patient with water without checking its temperature;

b. On 7 November 2018 threw the patient's shirt across his bed.

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

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

'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 McAuley's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr McAuley had expressed that he wishes to return to nursing. However, that panel were concerned that Mr McAuley had not responded at all to any of the recommendations of the previous panel and had not engaged with the proceedings. Further, that panel considered that Mr McAuley had not provided any up-to-date information regarding his current employment status or any reference or testimonials from this employer. The last reviewing panel determined that Mr McAuley was liable to repeat matters of the kind found proved. In the absence of any steps to strengthen his practice or evidence of

remediation of his lack of competence, this panel determined that a risk of harm to the public remained were Mr McAuley permitted to practise without restriction.

Today's panel has received a reflective piece dated 6 June 2023 and a reference dated 2 June 2023. However, this panel determined that Mr McAuley is still liable to repeat matters of the kind found proved as the reflective piece does not demonstrate his nursing competence and only limited insight into his failings, and nor does it address his responsibility in the events that led to the regulatory process. The panel noted that Mr McAuley has indicated that he has started a course on 'An Introduction to Leading with Kindness and Compassion' which is a positive move but does not address clinical competency failings. The panel found that there is no evidence that he has sought any training or other development in order to assist with his clinical competence. The panel also noted the testimonial provided by Mr McAuley was very positive but unfortunately it was of little weight as it is from a domestic role within a hospital rather than a more relevant role such as Healthcare Assistant where he could demonstrate his competence in a care work setting.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel was of the view that a reasonable and well-informed member of the public would be concerned if a nurse against whom such findings have been made were permitted to practise unrestricted. Further, the panel has borne in mind that its primary function is to protect the public 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 McAuley's fitness to practise remains impaired.'

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

'The panel strongly considered whether to impose a striking-off order in light of the absence of Mr McAuley's engagement and insight over a significant period of time. The panel was of the view that Mr McAuley has had time to demonstrate his developing competence and insight into his failings, which until recent weeks, he had not begun to address. The panel was encouraged to see a recent reflective piece and some limited engagement. However, the panel felt the reflections to be lacking in insight and felt there was still a long way to go.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr McAuley further time to fully reflect on his previous failings. The panel concluded that a further 12-month suspension would be the appropriate and proportionate response and would afford Mr McAuley adequate time to further develop his insight and take steps to find work (paid or unpaid) in a more relevant setting to strengthen his practice. It would also give Mr McAuley an opportunity to approach health professionals to attest to his competence in a more relevant role such as a Healthcare Assistant.

The panel determined therefore that an extension of the current 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 extend the current suspension order for a period of 12 months which would provide Mr McAuley with further opportunity to engage with the NMC, provide evidence of professional development including documentary evidence of any training or courses relating to nursing or caring, and evidence of experience in a caring role (paid or unpaid) to demonstrate development in the areas of concern.

The panel noted it would be open to the next panel to impose a striking-off order. This panel wish to reiterate the seriousness of this case and its expectations of Mr McAuley, which include more meaningful engagement with these proceedings, much greater demonstration of an understanding into his failings and actively pursue avenues to demonstrate his clinical competence.

This extension to the current suspension order will take effect at the end of 21 July 2023 in accordance with Article 30(1).

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

This panel was disappointed not to see Mr McAuley actively engaging with any of the recommendations made by the previous panels. The lack of such engagement led this panel to a very serious consideration of a striking-off order. The panel would suggest that to minimise the chances of a striking-off order in the future, any future panel would expect to see:

- *Personal attendance at the next review.*
- *Evidence of professional development, including documentary evidence of any training or courses relating to nursing or caring skills and competencies.*
- *Evidence of relevant reading and review (for example nursing journals).*
- *Evidence of experience in a caring role (paid or unpaid) to demonstrate remediation in the areas of concern.*
- *Testimonials or references from a line manager or supervisor that detail Mr McAuley's performance in a caring role.*
- *A detailed reflective statement that includes considerations of the impact of Mr McAuley's actions on patients (preferably using a recognised model).'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr McAuley'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 written responses from Mr McAuley and his representative from UNSION.

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 McAuley's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr McAuley had limited insight into his failings. At today's meeting the panel was of the view that there has been no meaningful engagement by Mr McAuley since the last review on 9 June 2023. The panel had no further reflective piece before it, hence no evidence of any additional insight. The panel noted that Mr McAuley has not demonstrated an understanding of how his actions puts patients at risk of harm or why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel had no evidence that Mr McAuley has sought any additional training to address his clinical competency failings. Further the panel had no evidence before it of any remedial steps that have been undertaken.

The last reviewing panel determined that Mr McAuley was liable to repeat matters of the kind found proved. Today's panel has received no new information. The panel noted it has not had sight of any further reflection or any evidence to support that Mr McAuley has strengthened his practice and therefore it determined that there remains a real risk of repetition and subsequently a real risk of harm given the nature of the facts 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 noted Mr McAuley's

lack of engagement, remediation and strengthening of practice. The panel therefore determined that a reasonable and well-informed member of the public would be very concerned if Mr McAuley was allowed to practise unrestricted, given the charges found proved against him.

In this case, the panel concluded that a finding of continuing impairment on public interest grounds is also required.

The panel also noted that in the absence of any engagement there is no evidence to support Mr McAuley's '*safe, kind and professional*' practice.

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

The panel had regard to the previous findings on impairment in coming to this decision. It bore in mind that its primary purpose was to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

The panel took into account the NMC guidance titled '*Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place*', reference '*REV-3h*', last updated 24 April 2023. The panel considered the nature and seriousness of the concerns. The panel took into account Mr McAuley's long career as a registered nurse. The panel noted the communication between the NMC, Mr McAuley and his representative which stated that he has no intention to return to practise as a nurse. The panel had regard to the email from Mr McAuley to the NMC dated 5 May 2024, in which he stated:

'Good afternoon, As I am retiring later this year and I have no intention of returning to clinical duties, I think it would be prudent to have my name removed from the Register with immediate effect. I will not be sending any further information nor will I, or my representative, be attending any meeting with regards to this matter. Kindly inform me when this matter is finally closed.'

The panel was mindful of the decision of last reviewing panel, in that it seriously considered a striking-off order. The panel however noted that it has documentary evidence

before it, of Mr McAuley's intention to not return to practise as a registered nurse. The panel noted that Mr McAuley only remains on the Register due to the imposition of the current substantive order. The panel was of the view that a finding of current impairment was sufficient to protect the public and address the public interest. Were Mr McAuley to apply for readmission to the Register, the Registrar will be able to take account of the finding of impairment in determining whether he is capable of safe and effective practice. The panel therefore determined that allowing the order to lapse was the appropriate and proportionate order in this case which would allow Mr McAuley to be removed from the Register.

The substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 21 July 2024 in accordance with Article 30(1).

This will be confirmed to Mr McAuley in writing.

That concludes this determination.