

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

**Substantive Order Review Hearing
Wednesday, 7 June 2023**

Virtual Hearing

Name of Registrant: **Michee Pascal Dhoorah**

NMC PIN 01B1339E

Part(s) of the register: Sub Part 1 - RNA: Adult Nurse, Level 1 (31 July 2004)

Relevant Location: Hertfordshire

Type of case: Misconduct

Panel members: Georgie Hill-Jones (Chair, lay member)
Donna Hart (Registrant member)
Anthony Kanutin (Lay member)

Legal Assessor: Paul Hester

Hearings Coordinator: Franchessca Nyame

Nursing and Midwifery Council: Represented by Amy Hazlewood, Case Presenter

Mr Dhoorah: Not present and unrepresented at hearing

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 16 July 2023 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 Dhoorah was not in attendance and that the Notice of Hearing had been sent to Mr Dhoorah's registered email address by secure email on 9 May 2023.

Further, the panel noted that the Notice of Hearing was also sent to Mr Dhoorah's representative at the Royal College of Nursing (RCN) on 9 May 2023.

Ms Hazlewood, 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 information about Mr Dhoorah's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

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

The panel next considered whether it should proceed in the absence of Mr Dhoorah. The panel had regard to Rule 21 and heard the submissions of Ms Hazlewood who invited the panel to proceed in the absence of Mr Dhoorah.

Ms Hazlewood drew the panel's attention to a letter dated 1 June 2023 sent to the NMC by the RCN on Mr Dhoorah's behalf. The letter states:

'Our member will not be attending the hearing, nor will he be represented. No disrespect is intended by his non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in his absence.'

Ms Hazlewood invited the panel to infer that Mr Dhoorah has voluntarily absented himself from today's proceedings. She submitted that there is no reason to believe that an adjournment would secure his attendance at some future date, and that there is also a strong public interest in the expeditious review of this case, given the seriousness of the allegations.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mr Dhoorah. In reaching this decision, the panel considered Ms Hazlewood's submissions, the letter from the RCN dated 1 June 2023, and the advice of the legal assessor. It had particular regard to any relevant case law 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 Dhoorah;
- The RCN has informed the NMC that Mr Dhoorah 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;
- The current order is due to expire at the end of 16 July 2023; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel decided that it is fair to proceed in the absence of Mr Dhoorah.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order.

This order will come into effect at the end of 16 July 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive suspension order originally imposed by a Fitness to Practise Committee panel on 14 June 2019 for a period of 12 months. The suspension order was reviewed and confirmed on 10 June 2020. It was reviewed again on 8 December 2020 when it was replaced with a Conditions of Practice Order for a period of 18 months. The order was subsequently reviewed on 7 June 2022 in which the panel varied the conditions.

The current order is due to expire at the end of 16 July 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, whilst working as a Peripatetic Deputy Manager at Erskine Hall Care Home on 10 November 2017:

1. *Discussed with Student 1*

a. *the "perineum"*

Proved by admission

b. *checking his femoral pulse*

Proved

2. *Locked yourself in a bathroom with Student Nurse 1*

Proved

3. *Unzipped the trousers of Student Nurse 1*

Proved

4. *Pulled down Student Nurse 1's boxer shorts and exposed his genitals*

Proved

5. *Touched Student Nurse 1 on his inner thighs*

Proved

6. *Instructed Student Nurse 1 not to tell anyone about the actions specified in any or all of charges 1, 2, 3, 4 and 5*

Proved

7. *And your actions specified in any or all of charges 1,2, 3, 4 and 5 were*

a. *Inappropriate*

Proved

b. *Sexually motivated in that you sought sexual gratification in so doing*

Proved

8. *And your actions specified in charge 6 constitute a lack of integrity*

Proved

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

'The panel first considered whether your fitness to practise remains impaired. It bore in mind the nature and seriousness of the misconduct found proved. The panel considered that the misconduct found proved involved both sexual impropriety and a lack of integrity on your part, which was compounded by the vulnerability of the Student Nurse 1 and your intentional and deliberate abuse of trust in your position as a manager.

Bearing in mind the submissions of Ms Forbes, and in the absence of any new information to indicate that the risk of repetition has reduced, the panel determined that you remain 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.'

The previous panel determined the following with regard to sanction:

'The panel next considered whether imposing a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted Ms Forbes' submission that you have been unable to comply with the current order as you have not been working as a nurse.

The previous panel found your insight to be 'developing'. The panel today was disappointed that you have failed to act on the advice of the previous panel and engaged in proceedings, supplied a reflective piece or testimonials from an employer. Considering the nature of this case the panel was particularly disappointed that you had not provided evidence that you have completed a recognised training course concerning sexual harassment in the workplace. Further, there was no evidence before the panel to suggest that you have attempted to develop your insight into your misconduct. Despite these failures, the panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider

public interest. In this case, there are conditions which could be formulated to protect the public during the period they are in force.

The panel considered both a suspension order and a striking-off order carefully but determined that a varied conditions of practice order would better facilitate your return to safe and effective nursing practice. Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 16 July 2022. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

The panel decided that the public would be suitably protected by the implementation of the following conditions of practice:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. You must complete a Personal Development Plan (PDP) prior to your next review. This must consist of :
 - a) Integrity in the work place*
 - b) Professional boundaries with junior and senior colleagues as well as students*
 - c) Professional behaviour and sexual harassment in the workplace*
 - d) Your responsibilities as a registered nurse, an educator and a role model**

You must submit your PDP to the NMC seven days prior to any review.

- 2. You must ensure that you are supervised any time you are working. Your supervision must consist of:
 - Working at all times under direct supervision of your Supervisor**

- *Meetings every 3 months to discuss your PDP*
3. *You must complete a recognised training course concerning sexual harassment in the workplace.*
 4. *You must keep us informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
 5. *You must keep us informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
 6. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*
 7. *You must tell your case officer, within seven days of your becoming aware of:*
 - a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*

8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions'*

Decision and reasons on current impairment

The panel considered carefully whether Mr Dhoorah'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 carried out a comprehensive review of the order in light of the current circumstances. Whilst it noted the decision of the last panel, this panel exercised its own judgement as to current impairment.

The panel had regard to all of the documentation before it, including the NMC bundle, submissions from Ms Hazlewood, and written submissions sent by the RCN on behalf of Mr Dhoorah.

Ms Hazlewood took the panel through a brief background of the case and referred it to the relevant pages in the bundle. She submitted that there has been no further engagement from Mr Dhoorah since the last hearing, that he has not provided a reflective piece for today's hearing, and that there are no testimonials from his current employer.

Ms Hazlewood referred the panel to the written submissions from the RCN in the letter dated 1 June 2023. She submitted that Mr Dhoorah has not worked in an environment of management, supervision or trust, and therefore there remains no information to show the remediation as recommended by the previous panel. Further, Mr Dhoorah is not working in a nursing or clinical role as submissions put forward by the RCN indicate that he is currently working in a '*fast-food restaurant*'. Ms Hazlewood submitted that this limited Mr Dhoorah's ability to demonstrate compliance with the conditions of practice order. Based on this, Ms Hazlewood requested that the panel extend the conditions of practice order at this time.

The panel noted from the RCN's written submissions that Mr Dhoorah '*has been included in the adult barred list of the Disclosure and Barring Service as a result of the NMC proceedings. [Mr Dhoorah] was informed of the DBS decision to include him on the adult barred list on 27 November 2019*'. In response to questions from the panel with regard to the length or conditions of this DBS decision, Ms Hazelwood stated that she did not have any further information in relation to this.

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 Dhoorah's fitness to practise remains impaired.

The panel noted that there has been no engagement from Mr Dhoorah since the previous review with the exception of the RCN's written submissions. The panel also noted that Mr Dhoorah has not provided a reflective piece and as such has not shown insight into the effect his actions has had on him, his colleagues and the wider public.

In its consideration of whether Mr Dhoorah has taken steps to strengthen his practice, the panel took into account Mr Dhoorah has been unable to demonstrate compliance with the clinical elements of the conditions of practice order as he has not been practising. However, with particular regard to the recommendations of the previous panel and the conditions specifically addressing the charges found proved, the panel was of the view that that Mr Dhoorah could have attended a training course, set up a PDP and obtaining relevant testimonials but did not do so. In light of this, the panel determined Mr Dhoorah is liable to repeat matters of the kind found proved and 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, given

the seriousness of the charged found proved and the risk of repetition, a reasonable and fully informed member of the public would be horrified if Mr Dhoorah was not found to be currently impaired. Thus, the panel concluded that a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mr Dhoorah'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 Dhoorah'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 Dhoorah'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 the continuation of the current conditions of practice order on Mr Dhoorah's registration would still be proportionate, measurable and workable. The panel determined that there is no evidence to show there is a reduced risk of repetition and so there remains a significant risk to the public. It also does not satisfy the public interest given that it has been found proved that a senior nurse, for his own sexual

gratification, sexually assaulted a junior colleague and has been subject to the DBS adult barred list since November 2019. The panel concluded that, in circumstances where Mr Dhoorah is barred from working with adults, it would be illogical that he could then work as a registered nurse whilst that DBS barring remained in place. The panel further concluded that such behaviour is incompatible with being a professional nurse, and, since the DBS prohibits Mr Dhoorah from working with adults, that conditions are no longer workable.

On this basis, the panel concluded that a conditions of practice order is no longer practicable order in this case, and that no workable conditions of practice could be formulated.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel decided to impose a suspension order for the period of 12 months to provide Mr Dhoorah 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 conditions of practice order, namely the end of 16 July 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.

The panel noted the RCN written submissions regarding Mr Dhoorah being on the adult barred list and that he has been refused permission to appeal that listing. The panel beyond the submissions of the RCN was not provided any evidence of the barring or the refusal of permission to appeal. In these circumstances, the panel decided that the next reviewing panel should be provided with the following information by NMC:

- Firstly, that Mr Dhoorah is on the DBS Barred List;
- Secondly, that this barring is indefinite; and

- Lastly, that Mr Dhoorah has fully exhausted the review and appeal process and that it was exhausted by the judgment of the Upper Tribunal Administrative Appeals Chamber with its decision on 22 September 2022.

This will be confirmed to Mr Dhoorah in writing.

That concludes this determination.