

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

**Substantive Order Review Hearing  
Friday 9 June 2023**

Virtual Hearing

<b>Name of registrant:</b>	<b>William Victory McAuley</b>
<b>NMC PIN:</b>	87D0006S
<b>Part(s) of the register:</b>	Registered Nurse General Nurse, Level 2 (24 October 1998) Adult nurse, Level 1 (10 October 2003)
<b>Relevant Location:</b>	Scotland
<b>Type of case:</b>	Lack of competence
<b>Panel members:</b>	Nicola Dale (Chair, Lay member) Sally Underwood (Registrant member) Robert Fish (Lay member)
<b>Legal Assessor:</b>	Simon Walsh
<b>Hearings Coordinator:</b>	Zahra Khan
<b>Nursing and Midwifery Council:</b>	Represented by Jonathan Deans, Case Presenter
<b>Mr McAuley:</b>	Not present and not represented at the hearing
<b>Order being reviewed:</b>	Suspension order (3 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Suspension order extended for 12 months from 21 July 2023 in accordance with Article 30 (1) (a)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr McAuley was not in attendance and that the Notice of Hearing had been sent to Mr McAuley's registered email address on 10 May 2023.

Further, the panel noted that the Notice of Hearing was also sent to Mr McAuley's representative at UNISON on 10 May 2023.

Mr Deans, 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 venue of the hearing and, amongst other things, information about Mr McAuley'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 McAuley 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 McAuley**

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

Mr Deans referred the panel to the documentation from Mr McAuley's representative at UNISON which included an email dated 7 June 2023, stating:

*'Mr McAuley is unable to attend the hearing, and therefore we will be unable to represent in person.'*

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr McAuley. In reaching this decision, the panel has considered the submissions of Mr Deans, the representations made on Mr McAuley's behalf, and the advice of the legal assessor. It has had particular regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr McAuley or his representative;
- Mr McAuley's representative 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 Mr McAuley's 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 McAuley.

### **Decision and reasons on review of the substantive order**

The panel decided to extend the current suspension order.

This extension will come into effect at the end of 21 July 2023 in accordance with Article 30(1) (a) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third 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.

The current order is due to expire at the end of 21 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 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 second reviewing panel determined the following with regard to 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.*

*The panel heard and accepted the advice of the legal assessor.*

*The panel had regard to the information before it, noting that since the previous review on 8 March 2022, there had been no new information and that Mr McAuley's last communication with the NMC was an email, dated 4 March 2022, which was before the previous reviewing panel.*

*The panel noted that in the aforementioned email, Mr McAuley expresses that 'I wish to return to nursing as this is all I have known for the vast majority of my working life'. However, the panel expressed concern that Mr McAuley had not responded at all to any of the recommendations of the previous panel and has continued not to engage with these proceedings. Further, the panel considered that Mr McAuley has not provided any up-to-date information regarding his current employment status or any reference*

*or testimonials from this employer. In the absence of any steps to strengthen his practice or evidence of remediation of his lack of competence, the panel determined that a risk of harm to the public remained were Mr McAuley permitted to practise without restriction. 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 McAuley's fitness to practise remains impaired.'*

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

*'The panel first considered whether to take no further 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 McAuley's practice would not be appropriate in the circumstances. The Sanction Guidance 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 McAuley'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 McAuley's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel bore in mind Mr McAuley's lack of engagement with these proceedings and that he has not provided any evidence in relation to his current employer. The panel considered that the charges found proved at the substantive hearing related to fundamental nursing skills and were wide ranging. It also noted that it had no evidence of insight into these failings. In all the circumstances, the panel concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.*

*Whilst the panel did consider whether a further period of suspension would procure any meaningful engagement from Mr McAuley, it concluded that a short additional time period would afford Mr McAuley a final opportunity to engage with these proceedings, given that he has stated he does wish to return to the profession. Further, it would allow him to address the recommendations of this panel. The panel therefore considered this to be the most appropriate and proportionate sanction available. Accordingly, it determined to impose a suspension order for the period of three months, with a review before expiry of the order.*

*The panel did not consider a striking off order, as this sanction is not available to it at this time. However, the panel did note Mr McAuley's lack of engagement with these proceedings and considered that it is not in the public interest for them to be on going and that the public would not expect these proceedings to be unnecessarily prolonged.*

*The panel noted that a striking-off order would be among the sanctions available to a future panel.*

*This suspension order will take effect upon the expiry of the current suspension order, namely the end of 21 April 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:*

- *Evidence of professional development, including documentary evidence of any training or courses relating to nursing or caring.*
- *Evidence of relevant reading 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.*
- *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 Mr McAuley's bundle. It has taken account of the submissions made by Mr Deans on behalf of the NMC.

Mr Deans provided a background of the case and referred to the relevant pages of the bundles. He submitted that all of the charges found proved relate to competency. Further, he submitted that Mr McAuley's fitness to practice remains impaired.

Mr Deans referred to Mr McAuley's reflective piece dated 6 June 2023. He submitted that the reflective piece is not very detailed, does not address the charges found proved against Mr McAuley, that there is no evidence of steps that Mr McAuley has taken to strengthen his practice or demonstrate his competency. He also referred to Mr McAuley's reference dated 2 June 2023 and submitted that the reference refers to his role as a domestic rather than a care role.

Mr Deans submitted that it is clear that Mr McAuley has been informed of the possibility that the panel may impose a striking-off order. However, he submitted that Mr McAuley has now engaged with these proceedings to an extent.

Mr Deans therefore invited the panel to extend the suspension order for a further period of 12 months to allow Mr McAuley time to address his competency.

The panel also had regard to Mr McAuley's reflective piece dated 6 June 2023, a reference dated 2 June 2023, and an email correspondence between Mr McAuley's representative and the NMC between 10 May 2023 and 7 June 2023.

Mr McAuley's representative stated, in an email dated 7 June 2023:

*'In the circumstances I would suggest that he is granted a further 12 months to progress his remediation.'*

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 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.

### **Decision and reasons on sanction**

Having found Mr McAuley'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 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 McAuley'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...'* The panel considered that Mr McAuley's lack of competence 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 order on Mr McAuley'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 McAuley's lack of competence whilst he is working in a domestic role and shown limited insight.

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).

This will be confirmed to Mr McAuley in writing.

That concludes this determination.