

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
17 July 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant Nurse:	Mr Steven James Campbell
NMC PIN:	84E0121S
Part(s) of the register:	Nursing - Sub Part 1 RN3: Mental health nurse (9 October 1987)
Area of Registered Address:	Scotland
Type of Case:	Conviction
Panel members:	Yvonne Brown (Chair, Lay Member) Alice Clarke (Registrant member) Paul Webb (Registrant member)
Legal Assessor:	Andrew Lewis
Panel Secretary:	Deepan Jaddoo
Facts proved:	1
Fitness to practise:	Impaired
Sanction:	Striking Off Order
Interim Order:	Interim Suspension Order – 18 months

Details of charge:

That you, a Registered Nurse:

- 1) Were convicted on 24 January 2019 at Glasgow Sheriff Court of on 18 October 2017 at Cuthbertson Ward, Gartnavel Royal Hospital, Great Western Road, Glasgow, whilst employed as a Nurse there, assaulting a patient and did seize her on the body and forcibly pull her across the floor there.*

AND in light of the above, your fitness to practise is impaired by reason of your conviction

Decision on Service of Notice of Meeting:

The panel was informed that written notice of this meeting had been sent to Mr Campbell's registered address by recorded delivery and by first class post on 10 June 2019. Royal mail documentation confirmed that the notice was delivered to Mr Campbell's registered address on 11 June 2019 and signed for in the name 'CAMPBELL'.

The notice made clear that the case would be considered at a meeting, and would be held in private on or after 15 July 2019.

The panel accepted the advice of the Legal Assessor.

In light of all of the information available, the panel was satisfied that Mr Campbell 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").

Background:

At the time of the incident, Mr Campbell was employed as a Nurse on the Cuthbertson Ward (“the Ward”) at Gartnavel Royal Hospital (“the Hospital”), part of NHS Greater Glasgow and Clyde (GCC).

Concerns were raised on 23 October 2017 by the relatives of a patient residing on the Ward. The relatives state that they witnessed Mr Campbell, on 18 October 2017, dragging another patient (Patient A) by the legs along the corridor of the ward.

Mr Campbell was referred to the NMC by GCC on 22 November 2017. He appeared at the Glasgow Sheriff Court (the Court) on 19 December 2018 where he pleaded guilty to ‘assaulting a patient and did seize her on the body and forcibly pull her across the floor there’.

He was sentenced on 24 January 2019 and ordered to comply with a Community Payback Order (200 hours unpaid work to be completed within four months). Mr Campbell was also issued with a Restriction of Liberty Order (3 months to remain within dwelling from 7pm to 7am daily).

Decision on the findings on facts and reasons:

In reaching its decision on the facts, the panel considered all the documentary evidence adduced in this case.

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

In relation to the finding of facts, the legal assessor referred the panel to Rule 31 (2) of the Rules and invited the panel to have regard to the Certificate of Conviction dated 24 January 2019.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel is satisfied that it is more likely than not that the incidents occurred as alleged.

Having been provided with a copy of the 'extract conviction', dated 24 January 2019, obtained from the Glasgow Sheriff Court, the panel had regard to Rule 31 (2) which states:

31 (2) Where a registrant has been convicted of a criminal offence –

(a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and

(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

In light of the above, the panel found the facts proved, by way of the 'extract conviction'.

Decision on impairment:

The panel next went on to decide whether, as a result of the conviction, Mr Campbell's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor which included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

In considering the issue of impairment, the panel had careful regard to the approach formulated by Dame Janet Smith in her report of the 5th Shipman inquiry, and which was cited with approval in the case of the *Grant*.

“Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. Has in the past acted/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. ...*

The panel found that limbs a, b and c were engaged in this case. The panel considered that there was sufficient evidence that Mr Campbell’s conduct had placed a patient at unwarranted risk of harm in the past. It also considered that a registrant who had been convicted of assault and had not provided any explanation or evidence of remorse for his actions was liable to place patients at unwarranted risk of harm in the future.

The panel considered that Mr Campbell had in the past and was liable in the future to bring the nursing profession into disrepute. The criminal conviction and the facts upon which it is based inevitably led to this conclusion, in the absence of any evidence of insight or remediation.

The panel also considered that Mr Campbell had in the past breached fundamental tenets of the nursing profession and was liable to do so in the future. The panel had regard to the Code: Standards of conduct, performance and ethics for nurses and midwives (2015) (the Code) which was in force at the relevant time. The panel has concluded that Mr Campbell's actions resulting in his conviction, fell seriously short of the conduct and behaviour expected of a registered nurse, and further that they amounted to a breach of following parts of the Code:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people's human rights.

4 Act in the best interests of people at all times

6 Always practise in line with the best available evidence

20 Uphold the reputation of your profession at all times

20.1 keep to and uphold the standards and values set out in the Code

20.4 keep to the laws of the country in which you are practising

The panel noted that a conviction for an offence of the kind identified in this case is very difficult to remediate. There was nothing from Mr Campbell which would enable the panel to conclude that any degree of remediation had taken place. There was also nothing from Mr Campbell which demonstrated that he has shown any insight into his conviction or to suggest that he has understood the damage that a conviction of this kind may cause to the reputation of the profession.

The panel also considered whether the public interest required a finding of impairment to be made in this case. The panel determined that it did. A reasonable and fully informed member of the public would expect a finding of impairment to follow a conviction of this kind. Any other outcome would undermine confidence in the profession and in its regulation. The panel therefore finds that Mr Campbell's fitness to practise is currently impaired by reason of his conviction.

Decision and reasons on sanction:

Having found that Mr Campbell's fitness to practise is currently impaired the panel considered what sanction, if any, was appropriate and proportionate to impose.

In reaching its decision the panel has had regard to all of the documentary evidence before it.

The panel accepted the advice of the legal assessor. He referred it to the NMC's Sanctions Guidance (SG) and in particular to the passages relating to convictions.

The panel had particular regard to following paragraphs from the SG:

"Criminal convictions

Sentences previously imposed by the criminal courts are not necessarily a reliable or definitive guide to the seriousness of the conviction as far as professional regulation is concerned. There may have been specific personal mitigation which led the court to its decision on sentence, which carries less weight in the regulatory context because of the different public interest considerations that apply.

Cases involving criminal offending by nurses and midwives are a good illustration of the principle that the reputation of the profession is more important than the

fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the 'price'. (Council for the Regulation of Healthcare Professionals v (1) General Dental Council (2) Alexander Fleischmann [2005] EWHC 87 (Admin)”

Throughout its deliberations, the panel has kept at the forefront of its mind the public interest which includes the protection of patients and others, maintaining public confidence in the nursing profession, the NMC as a regulator, and declaring and upholding proper standards of conduct and behaviour.

The panel is aware that the purpose of a sanction is not to be punitive, although it may have a punitive effect. The panel has also borne in mind that any sanction it imposes must be reasonable, proportionate and appropriate and it must balance the public interest with Mr Campbell's own interests. The panel has recognised that the decision on sanction is a matter for it to determine exercising its own professional judgement.

The panel has also taken account of the aggravating and mitigating factors in this case.

The panel identified the following as aggravating factors in Mr Campbell's case:

- Mr Campbell's actions placed Patient A at unwarranted risk of harm;
- Mr Campbell's lack of insight;
- Mr Campbell's lack of remediation for his actions.

The panel identified the following as mitigating factors in this case:

- The panel has no evidence to suggest that there have been any previous concerns raised in relation to Mr Campbell's clinical practice or conduct over the course of his long career as a nurse;

- Mr Campbell had numerous positive testimonials which attest to his good character and professionalism.

The panel then turned to the question of which sanction, if any, to impose. It considered each available sanction in turn, starting with the least restrictive sanction and moving to a more restrictive sanction, only if satisfied that the less restrictive sanction was inadequate to protect the public or the public interest.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel first considered whether to take no action. The panel bore in mind that it had identified at the impairment stage that there remained a risk of repetition due to Mr Campbell's lack of insight and remediation. As such, any repetition of Mr Campbell's conduct would bring with it and unwarranted risk of harm to patients. To take no action would therefore not provide any protection to the public. In addition, the panel considered that to take no further action would be inadequate to mark the seriousness of Mr Campbell's criminal conviction and would therefore not be in the public interest of declaring and upholding standards and maintaining public confidence in the profession.

The panel next considered whether imposing a conditions of practice order would be a sufficient and appropriate sanction. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable and are generally more appropriate where a registrant's clinical competence or health has been called into question. This is not such a case; no issues have been raised in relation to Mr Campbell's clinical practice or health, nor would conditions protect patients or the public interest.

Mr Campbell has been convicted of a serious criminal charge related to assaulting a patient whilst at work. The panel has therefore concluded that there are no conditions of practice that could be formulated to address the particularly grave nature of Mr Campbell's criminal behaviour.

The panel then went on to consider whether a suspension order would be an appropriate and proportionate sanction. Whilst the panel has identified that a suspension order would be sufficient to protect the public during the period of suspension, there was no evidence of any reflection or remediation by Mr Campbell. Further, Mr Campbell has not demonstrated any insight for his actions. The panel took into account the seriousness of the misconduct, which placed Patient A at significant risk of unwarranted harm, and its overarching duty to uphold proper standards and uphold public confidence in the profession.

The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction as it would fail to meet the wider public interest in maintaining public confidence in the nursing profession.

Finally, in relation to a striking-off order, the panel carefully considered the following questions as set out in the SG:

Is striking-off the only sanction which will be sufficient to protect the public interest? Is the seriousness of the case incompatible with ongoing registration?

Can public confidence in the professions and the NMC be sustained if the nurse or midwife is not removed from the register?

It noted the following points:

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following:

Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly patients or other people the nurse or midwife comes into contact with in a professional capacity.

Abuse of position, abuse of trust, or violation of the rights of patients, particularly in relation to vulnerable patients.

Persistent lack of insight into seriousness of actions or consequences.

The panel had particular regard to the seriousness of Mr Campbell's actions which resulted in him being convicted for assaulting a patient whilst at work. The panel noted that Patient A depended upon and placed trust in Mr Campbell to protect her and safeguard her best interests. In the panel's view, Mr Campbell failed to do this. There was no evidence that Mr Campbell had learned from what had happened following his conviction, or had taken any steps to address his conduct or behaviour. As a result, there remained the potential that other residents could be placed at unwarranted risk of harm if Mr Campbell was to remain on the register. The panel noted that Mr Campbell disregarded the safety and wellbeing of a patient under his care and unlawfully assaulted her. The panel has no evidence of any remorse from Mr Campbell for his actions, which it found concerning.

The panel noted that Mr Campbell had provided no reasonable explanation for acting in this manner.

Given the risk identified, coupled with Mr Campbell's lack of insight, remorse, and his apparent unwillingness to fully appreciate the seriousness and impact of his actions, the panel formed the view that his conduct is fundamentally incompatible with his remaining

on the register. To allow Mr Campbell to remain on the register would significantly undermine public confidence in the profession and in the NMC as a regulatory body. Having considered the SG, the panel concluded that Mr Campbell's actions breached fundamental aspects of the Code and that nothing short of a striking off order would be sufficient in this case.

The panel considered that this order was necessary to maintain public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel therefore directs the Registrar to strike Mr Campbell's name off the register. The effect of this order is that the NMC register will show that he has been struck off the register.

Mr Campbell may not apply for restoration until five years after the date that this order takes effect.

Unless subject to an appeal, this order will take effect 28 days from the date this decision is deemed to have been served upon Mr Campbell.

Determination on Interim Order:

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

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the case and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

This determination will be confirmed to Mr Campbell in writing.

That concludes this determination.