

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

**Substantive Order Review Hearing
Friday, 2 February 2024**

Virtual Hearing

Name of Registrant: Leonajar Bato Pulido

NMC PIN 01B16750

Part(s) of the register: Registered Nurse – RN1, Adult Nurse (February 2001)

Relevant Location: London

Type of case: Misconduct

Panel members: Fiona Abbott (Chair, Lay member)
Mark Gibson (Registrant member)
Jan Bilton (Lay member)

Legal Assessor: Hala Helmi

Hearings Coordinator: Tyrena Agyemang

Nursing and Midwifery Council: Represented by Uzma Khan, Case Presenter

Mr Pulido: Present and unrepresented

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order (9 months) to come into effect on the expiry of the existing order on 15 March 2024 Article 30 (1)**

Decision and reasons on application for hearing to be held in private

During the course of the hearing, the panel invited submissions on whether the parts of the hearing relating to [PRIVATE] should be held in private. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Khan indicated that she supported the application to the extent that any reference to [PRIVATE] should be heard in private.

You also supported the application.

The panel accepted the advice of the legal assessor. Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard there will be references to [PRIVATE], the panel determined to hold such parts of the hearing in private as and when such issues are raised.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for a period of nine months.

This order will come into effect at the end of 15 March 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of nine months by a Fitness to Practise Committee panel on 18 May 2023.

The current order is due to expire at the end of 15 March 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved were as follows. All except charge 1c, were found to amount to misconduct.

'That you, a registered nurse whilst employed as a Ward Manager at the Royal Hospital for Neuro- Disability,

- 1. inappropriately used confidential information in that you;*
 - c) on the 18 September 2019 sent to Nurse A information containing details of new recruits to the hospital when you had no authority to do so.*
- 2. breached professional boundaries in respect of Nurse A in that you:*
 - a) on 13 September 2019 contacted her via Whatsapp on her personal telephone using your personal telephone when you had no authority to do so;*
 - b) on 14 September 2019 you contacted her via Whatsapp on her personal telephone using your personal telephone when you had no authority to do so and failed to identify yourself.*
 - c) between 15 September 2019 and 22 November 2019 on more than one occasion as set out in Schedule A contacted her in a personal capacity when you had no duty or authority to do so.*
- 3. breached professional boundaries in respect of Nurse B in that you;*
 - c) between 6 November 2019 and 22 November 2019 contacted her on more than one occasion as set out in Schedule B using Whatsapp in a personal capacity when you had no authority to do so.*
- 4. your conduct in charge 3 above was sexually motivated.*

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

Schedule A

15 September 2019

18 September 2019

25 September 2019

Schedule B

6 November 2019

“good morning Amor, it was just a joke. Text me when your in the kitchen so I can say hello to you. I hope you have a productive day. Talk later okay? You too have a great day.”

“Hi How are you? Did you get to Asda? Let me know if you need help with anything?”

8 November 2019

“Hi, how are you? How’s your OSCE preparation”.

9 November 2019

“Good morning Amor, any plans for today”.

11 November 2019

“Hi Amor. It was nice to catch you in the kitchen. I won’t lie I go there to get a glimpse of you. You must be a good cook too! Have a great day.”

12 November 2019

“Good morning Amor. Have a great day also. Maybe catch you in the kitchen again later yeah? Are you cooking tonight? Hmmm...”

16 November 2019

“Good morning Amor have a quiet rest day. I’m sure your still in bed. Hope you finished your knittibg. Is that a therapy? To de-stressed yourself? It was fun to hang out with your group last night”. [sic]

“Good night Amor”.

20 November 2019

“I’ll come, and I miss you or the drinking”.

22 November 2019

“You look busy today, its so hard to get you attention, take it easy”.

“I heard your out tonight. Enjoy central London”.’

The original panel determined the following with regard to impairment:

‘The panel next went on to decide if as a result of the misconduct, Mr Pulido’s fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in Grant in reaching its decision. In paragraph 74, she said:

‘In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role,

but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'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 and/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 decided that limbs b and c in Grant are engaged in this case. The panel determined that it had not seen any reflective statements or sufficient insight from Mr Pulido into his conduct, although during his investigation interview he accepted with hindsight that his behaviour towards Nurse B had been inappropriate. The panel noted that he showed no remorse or understanding of the impact of his behaviour on the Nurse B. The panel was of the view that Mr Pulido had very limited understanding of the seriousness of his misconduct. The panel

determined that whilst Mr Pulido's conduct is potentially remediable, there is no evidence before it to show that he has tried or is trying to remedy his behaviour, therefore it cannot say that his unprofessional conduct is unlikely to be repeated.

The panel finds that Nurse B may have been put at risk of emotional harm as a result of Mr Pulido's misconduct and that he had therefore breached a fundamental tenet of the nursing profession and brought its reputation into disrepute.

The panel considered that due to Mr Pulido's lack of insight, remorse or remediation, and the identified risk of potential emotional harm, there remains a risk of repetition of his misconduct arising out of charge 3c and 4. The panel had careful regard to the NMC's Fitness to Practice Guidance, which states that fitness to practise relates to managing risks not only to patients but also to members of the public, which the panel considers includes colleagues. On the basis of all the information before it the panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Pulido's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Pulido's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'Having found Mr Pulido's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- *Abuse of power*
- *Negative emotional impact on junior nurses*
- *Lack of remorse*
- *Repeated behaviour involving Nurse B*
- *Damage to the reputation of the profession*

The panel also acknowledged the following mitigating features:

- *The period of personal stress Mr Pulido was under during the relevant time*
- *Limited insight*

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 Pulido'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 Pulido's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mr Pulido'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 took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of general incompetence;*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. It noted that Mr Pulido's misconduct was not related to deficiencies in his clinical practice. Having regard to the nature of the charges found proved, the panel was of the view that it would not be possible to formulate relevant conditions of practice to address the misconduct in this case. Furthermore, the panel concluded that the placing of conditions on Mr Pulido's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that some of these factors were applicable in Mr Pulido's case. The panel noted that this was the only instance of the type of behaviour found proved, although it had occurred on a number of occasions. The noted that there were no clinical patient safety issues in this case and that it was an isolated incident in an otherwise unblemished career a registered nurse and that it would be disproportionate to go beyond a suspension order.

The panel determined that the conduct as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that Mr Pulido has not engaged with the NMC since March 2020 and further, had not provided anything by way of a written reflective statement or expression of remorse or insight into his failings. The panel determined that although there is a risk of the repetition of the behaviour identified, it was of the view that Mr Pulido's conduct is remediable.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register and that a suspension order would mark the seriousness of the conduct identified.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel

acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Pulido's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Pulido. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining 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 determined that a suspension order for a period of nine months is appropriate in this case to mark the seriousness of the misconduct and to uphold the wider public interest. The nine months will give Mr Pulido sufficient opportunity to reflect carefully on his misconduct and consider how best to address the identified failures.

At 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 Mr Pulido's reflection and understanding of why his conduct was wrong, the impact on his colleagues and on the wider reputation of the wider nursing profession*
- Details of courses or learning undertaken on the importance of maintaining professional boundaries'*

Decision and reasons on current impairment

The panel has considered carefully whether your 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 your submissions. It has taken account of the submissions made by Ms Khan on behalf of the NMC. She took the panel through the background of the case and referred it the facts found proved.

Ms Khan adopted the submissions of the NMC at the substantive hearing held on 18 May 2023, in relation to your impairment, and she submitted there is nothing new evidentially before the panel today for it to consider and be satisfied that there has been a change in the risks you pose. Further she submitted that you have not provided a positive reflection in respect of the misconduct, your behaviour or any evidence of remediation for the panel's consideration. She told the panel that you were invited by the previous panel at substantive hearing in its written decision to submit some information that would demonstrate your insight, remorse and an understanding of the harm on your colleagues. However, you did not provide any of the requested information for the panel today.

Ms Khan submitted that the panel may hear from you today regarding what you have done since the last hearing, but there is no evidence of the detail of those courses, the contents of those courses, the length of those courses, and the aims of those courses nor that they have been completed successfully.

Ms Khan submitted that nearly nine months have passed since the imposition of this order, which is a considerable amount of time, in which a number of courses could have been completed, but the panel have nothing before it today. She submitted the NMC Code sets out the requirement for nurses to reflect on their behaviours and

consequently, develop an understanding of insight in respect of behaviours that might be identified as being deplorable. Further she submitted that no written reflection was provided in readiness for the hearing today in order for the panel to see if you have developed any insight, and also evidence of any understanding of your previous behaviours and how you may have remediated in relation to those concerns.

Ms Khan therefore submitted that at this stage there have been no changes since the imposition of the substantive order.

Ms Khan submitted that these are serious matters which have consequently had a serious impact upon your employment and it would have been beneficial to you to provide a reflective piece that could then be supported by any oral evidence that you may wish to address the panel with today.

In light of this Ms Khan submitted that your practice remains impaired and the panel may wish to impose a further suspension order to allow you more time to reflect on your actions, develop some insight and some understanding. She further submitted that alternatively the panel may consider imposing a conditions of practice order.

The panel also had regard to your oral evidence. You told the panel that you undertook two training courses, whilst you were still working. The courses, which you said were not mandatory, were about maintaining professional boundaries.

You told the panel that you put yourself in the shoes of your colleagues and that you understand how they must have felt. You told the panel that as they were new to the UK you were trying to help them as you had been in a similar situation yourself.

You told the panel that you contacted them outside of work using 'WhatsApp' and that as you all lived in the same accommodation you wanted to help them settle into their new surroundings.

You told the panel that you were not trying to take advantage of them, but you were just having casual conversations with them. You said that this is why you completed the

training courses, so that you could develop some insight into how you should have conducted yourself.

[PRIVATE]. You told the panel that this is why you saw them often as you were sharing the kitchen and living area.

You told the panel that prior to these concerns you have never been involved in any incidents or been referred to the NMC. You explained that you always try and maintain professional boundaries with colleagues and that this was just 'banter'.

You told the panel that you were unable to attend the substantive hearing last year as you lost access to your work emails and when you finally gained access you were informed that you had been suspended and were not able to practise. You explained that this had a big impact on you and you decided to take a career break and return to the Philippines.

You told the panel that you have been considering whether or not you should retire in light of your age, but you concluded that you wanted to continue practising in the only career you have known.

You told the panel that you have learned from the incident and are still learning and that you want to stop things like this from happening again and you believe you are fit to practice.

In answer to questions, you told the panel that since the imposition of the order you have not completed any training nor have you kept your practice up-to-date.

You explained that the courses you did complete, but you could not tell the panel when you completed them. You further explained that when you arrive back in the UK you will contact the HR department and retrieve copies of the completion certificates.

You told the panel that as a result of the training you are now more aware of how to guide new nurses, how to speak to them and how to maintain personal and professional boundaries with them.

You told the panel that once in the Philippines you did not investigate any free training or online courses that might be available to you.

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 your fitness to practise remains impaired. In making its decision, the panel referred to NMC guidance on Standard reviews of substantive orders before they expire (REV-3a).

The panel noted that the original panel found that you had insufficient insight, together with your lack of engagement and it was of the view that there was a risk of repetition of the conduct found proved.

At this hearing the panel had the benefit of your attendance and hearing from you directly, where you outlined your understanding of the misconduct found proved and what you would do differently in future.

The panel was concerned that you did not fully engage with the previous panel's recommendations by providing a reflective piece and details of the courses that you undertook. The panel considered the evidence you gave regarding the courses was vague and lacking in detail. Further you told the panel that you completed the two courses, whilst you were at your previous employment, however since the imposition of the substantive order, you have not completed any training.

The panel acknowledged the breakdown in your relationship and that you are currently residing in the Philippines caring for your mother. However, it was of the view that you could have been better prepared for the hearing today and demonstrated a more in depth understanding of the impact your actions, namely the abuse of power, the sexual motivation and damage these behaviours would have on the reputation of the profession and the wider public interest.

When questioned during the course of this hearing about how you would handle the situation differently in the future, the panel was not convinced your insight is sufficiently developed and whether you have fully grasped the seriousness of what happened.

The panel considered that your insight is developing, however it was not sufficient for the panel to conclude that you are safe to return to unrestricted practice.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the two courses you stated that you have completed. However, it had no evidence of the completion of the courses, details of the subjects covered or whether you had successfully passed the course. The panel had no further evidence from you to demonstrate any remediation you have undertaken.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel has not heard or received any new information to suggest otherwise. In light of this, this panel determined that you are still 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.

Decision and reasons on sanction

Having found your 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 your 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 your 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 your 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 your misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings. It considered that you need to gain a full understanding of the impact of your

actions on the nurses involved and how the misconduct of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for.

The panel concluded that a further nine month suspension order would be the appropriate and proportionate response to reflect your continuing journey to reaching sufficient insight and reflection. The duration would also afford you adequate time to further develop your insight and take steps to strengthen their practice.

The panel determined therefore that a 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 impose a further suspension order for the period of nine months. This duration would also provide you with an opportunity to continue to engage with the NMC, to provide evidence of your reflection, evidence of any recent training courses that you have undertaken, provide testimonials from any work, whether paid or unpaid either in a healthcare setting or not and provide a reflective piece. 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 15 March 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:

- Your attendance at any future NMC review hearings and continued engagement with the NMC;
- Testimonials in relation to any paid or unpaid work you undertake;
- Evidence of any recently completed, relevant training; and

- A reflective piece addressing your reflection, insight and understanding of why your conduct was wrong, the impact on your colleagues and on the reputation of the wider nursing profession.

This will be confirmed to you in writing.

That concludes this determination.