Conduct and Competence Committee

Substantive Order Review Hearing

28 April 2017

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of Registrant Nurse: Miss Angella Agatha Pinto

NMC PIN: 72J1702E

Part(s) of the register:
- Registered Nurse – Sub part 2
- Adult Nurse – November 1974
- Registered Nurse – Sub part 1
- Adult Nurse – January 1987
- Health Visitor – April 1992

Area of Registered Address: England

Panel Members:
- David Flinter (Chair, Lay member)
- Gregory Hammond (Lay member)
- Rona McKay (Registrant member)

Legal Assessor: Nicholas Wilcox

Panel Secretary: Tafadzwa Taz Chisango

Nursing & Midwifery Council: Represented by Mr Christopher Scott, Case Presenter, instructed by the NMC Regulatory Legal Team

Miss Pinto: Not present and not represented

Order being reviewed: Suspension order – 12 months

Outcome: Striking off order to be imposed upon expiry in accordance with Article 30 (1), namely at the end of 2 May 2017.
Service of Notice of Hearing
The panel was informed at the start of this hearing that Miss Pinto was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Miss Pinto on 29 March 2017 by recorded delivery and first class post to her registered address.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Proceeding in absence
The panel then considered proceeding in the absence of Miss Pinto. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Mr Scott, on behalf of the NMC. The panel accepted the advice of the legal assessor.

Mr Scott invited the panel to continue in the absence of Miss Pinto on the basis that she had voluntarily absented herself. Mr Scott submitted that Miss Pinto stated that she has been trying to obtain legal representation but has been unable to secure representation in time for this hearing. Mr Scott told the panel that Miss Pinto, in a telephone call dated 27 April 2017 to an NMC case officer, discussed a postponement. However Miss Pinto in a letter dated 27 April 2017 has requested a short extension to the current order in order to obtain representation, therefore the panel can proceed.

The panel accepted the advice of the legal assessor. The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of
Rule 21 is one that should be exercised “with the utmost care and caution” as referred to in the case of R. v Jones (Anthony William), (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Pinto. In reaching this decision, the panel has considered the submissions of the case presenter, Miss Pinto’s written representations and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of Jones. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- Miss Pinto was aware of this hearing and agreed the date on 16 March 2017;
- Miss Pinto has requested a short extension to the current order;
- There is a strong public interest in reviewing this case prior to its expiry. In this regard, the panel noted that the expiry date of the current substantive order is 2 May 2017 and that the Rules require that a review must take place before the order expires.

In these circumstances, the panel has decided that it is fair, appropriate and necessary to proceed in the absence of Miss Pinto.

**Decision and reasons on review of the current order:**
The panel is reviewing the order pursuant to Article 30(1) of the Nursing and Midwifery Order 2001 (the Order). The panel decided to impose a striking off order. This order will come into effect at the end of 2 May 2017 in accordance with Article 30 (1).

This is the fourth effective review of a conditions of practice order originally imposed by a panel of the Conduct and Competence Committee on 9 July 2013 for 18 months. The substantive order was first reviewed on 2 July 2015 when the conditions of practice order was varied and extended for a period of 3 months. This order was reviewed on 5 October 2015 and replaced with a varied conditions of practice order for a period of 6 months. On 29 April 2016, this order was reviewed and replaced with a twelve month suspension order. The current order is due to expire at the end of 2 May 2017.
The charges found proved which resulted in the imposition of the substantive order were as follows:

That you, whilst working as a health visitor at the Bartongate Surgery, between 23rd November 1992 and 24th January 2008:

1. Failed to keep adequate health visitor records for Child A (who was on the Child Protection Register), in that you:

   (a) on an unknown date between 31st May 2007 and around 5th June 2007, amended Child A’s health visitor records by adding several entries for the period of 13th October 2005 to 28th February 2007;

   (b) did not indicate that the entries at charge 1(a) were retrospective;

   (c) after 26th September 2005, you did not plan any home visits to Child A;

   (d) between 19th September 2005 and around 5th June 2007, you did not complete a schedule of growing skills assessment for Child A;

   (e) between 19th September 2005 and around 5th June 2007, you did not complete a chronology of significant events for Child A;

   (f) did not record a visit to Child A’s family on 16th April 2007 in Child A’s notes;

   (g) did not record any observations in respect of Child A’s vision after 21st July 2006;

   (h) between 19th September 2005 and around 5th June 2007, did not record the reasons that led to Child A being placed on the Child Protection Register;

   (i) between 19th September 2005 and 31st May 2007, did not record any evaluations of the actions taken in respect of Child A;
2. [Not proved];

3. Failed to keep adequate health visitor records and/or provide appropriate care for Child B (who was on the Child Protection Register), in that you:

   (a) [Not proved];

   (b) between 1st March 2007 and around 5th June 2007, did not complete a schedule of growing skills assessment for Child B;

   (c) upon recording that on 18th December 2003 Child B was ‘strapped in pushchair. Unkempt appearance.’, did not record any actions taken to follow up this assessment and/or did not take any actions to follow up this assessment;

   (d) on 18th December 2003, did not sign the entry you made in Child B’s records;

   (e) upon recording that on 9th October 2003, Child B had a diagnosis of oral and genital thrush, did not record any actions taken to follow up this diagnosis and/or did not take any actions to follow up this diagnosis;

   (f) between 13th September 2005 and 10th May 2007, did not refer Child B for an assessment of his vision, speech and hearing;

   (g) on unknown dates between 13th September 2005 and around 5th June 2007, stored records for Child B’s siblings in Child B’s records;

   (h) [Not proved];

   (i) on 13th September 2005, did not document the two year assessment in Child B’s records;

4. Failed to keep adequate health visitor records for Child C, in that you:
(a) after 20th August 2001, did not record any entries in Child C’s health records, despite further assessments being carried out;

5. [Not proved]:

(a) [Not proved];

6. Failed to keep adequate health visitor records for Child E and/or provide appropriate care, in that you:

(a) after 5th September 2005, did not visit Child E and/or record any entries in Child E’s health records;

7. Failed to keep adequate health visitor records for Child F and/or provide appropriate care, in that you:

(a) after 18th August 2004, did not visit Child F and/or record any entries in Child F’s health records;

8. On unknown dates prior to 15th October 2007, you inappropriately stored patients’ records in a desk drawer;

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

The reviewing panel on 29 April 2016 determined the following with regard to impairment:

The panel took the view that Ms Pinto has failed to sufficiently engage with her conditions of practice order, and has failed to produce evidence that she is in compliance. The panel do not have evidence that Ms Pinto has fully remediated the concerns over her misconduct, and note that she had lodged an appeal with
the High Court, detailing that she believed that the allegations made by Gloucestershire NHS Primary Care Trust (the Trust) were untrue and made for discriminatory reasons. The panel took the view that Ms Pinto’s insight seems to have regressed since the substantive hearing. The panel concluded that Ms Pinto has failed to adequately remediate and that there remains a risk of harm to patients, and a risk of repetition remains.

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 had borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance.

For these reasons, the panel finds that Ms Pinto’s fitness to practise remains impaired.

The previous reviewing panel on 29 April 2016 determined the following with regard to sanction:

The panel next considered the continuation of the conditions of practice order. The panel took the view that there is no indication of Ms Pinto’s willingness to engage with the current conditions of practice order. A substantial period of time has passed without meaningful progress since the substantive order was granted, and there has been a lack of evidence of compliance with the current conditions of practice order. On this basis the panel concluded that a conditions of practice order is no longer practicable. In all the circumstances the panel considered that a conditions of practice order is no longer the appropriate or proportionate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.
The panel determined therefore that a suspension order is the only appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months, to allow Ms Pinto to fully remediate the concerns raised by this panel. It considered this to be the most appropriate and proportionate sanction available.

Decision on current fitness to practise

Mr Scott submitted that it is for the panel to consider fully the case and determine whether Miss Pinto’s fitness to practise is currently impaired and, if so, which sanction is appropriate. Mr Scott informed the panel that there has been no material change in this case. He referred the panel to Miss Pinto’s letter dated 27 April 2017 in which she has requested a short extension to the current suspension order.

Miss Pinto in her written representations submitted that a short extension would allow her to obtain legal representation and this would aid her at her next review hearing.

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

The panel has had regard to all of the documentation before it, including the on table papers. It has taken account of the submissions made by Mr Scott on behalf of the NMC and the written representations of Miss Pinto.

The panel has considered carefully whether Miss Pinto’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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.
In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Pinto’s fitness to practise remains impaired.

In its consideration of whether Miss Pinto has remedied her misconduct the panel took into account the recommendations made by the previous reviewing panel that a future reviewing panel would benefit from:

- evidence of further education and/or training, in particular safeguarding;
- evidence of engagement;
- evidence of steps taken to keep your nursing skills up to date; and
- a reflective piece to include your insight into the concerns raised and details of your future plans

Miss Pinto has not presented any such material for the panel’s consideration nor any reasons for this. The last panel determined that Miss Pinto had shown no insight or remediation and this panel has neither heard nor received any information to contradict this. Miss Pinto has engaged with the NMC only on matters of process. 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 is also required on wider public interest grounds.

For these reasons, the panel finds Miss Pinto’s fitness to practise remains impaired.
Determination on sanction

Having found Miss Pinto’s fitness to practise currently impaired, the panel then considered which, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 29 of the Order. The panel has also taken into account the NMC’s Indicative Sanctions Guidance (ISG) 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 risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution but concluded that this would be inappropriate in view of the risk of repetition identified and 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 replacing the suspension order with a conditions of practice order. The panel noted that Miss Pinto had previously been on a conditions of practice order but had not shown evidence of compliance with the conditions of practice order. A substantial period of time had passed without any meaningful progress before the order was replaced with a suspension order. On this basis the panel concluded that a conditions of practice order was not an appropriate or proportionate order in this case.

The panel went on to consider whether to further extend the period of the suspension order. The panel noted that Miss Pinto was given a clear indication by the previous panel as to the information she should provide to assist this panel. However, she has failed to follow any of the previous panel’s recommendations. Miss Pinto’s failure to meaningfully engage with her regulator on matters of substance is a matter of significant concern. She has failed to demonstrate that she has gained any further insight into the seriousness of her actions and their potential consequences, and she has failed to
demonstrate a willingness to remediate. In all the circumstances, the panel concluded that a further period of suspension would serve no useful purpose.

In confirming its view that a suspension order is no longer appropriate in this case, the panel referred to the ISG and in particular, paragraph 68, which sets out the factors which support the making of a suspension order. It considered that the following factors are applicable and determined that none of them is apparent in this case:

68 This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

68.1 A single instance of misconduct but where a lesser sanction is not sufficient.
68.2 No evidence of harmful deep-seated personality or attitudinal problems.
68.3 …
68.4 The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.
68.5 …
68.6 …

Paragraph 69 is also engaged.

69 When imposing a suspension order the panel, if it considers it appropriate, should set out in clear and unambiguous terms any expectations it has or actions the nurse or midwife could take that would assist the review panel when it considers the case before the expiry of the order.

The panel has borne in mind the serious nature of Miss Pinto’s misconduct. The panel wishes to stress that it is incumbent upon a registrant, whose fitness to practise has been found to be impaired, to engage appropriately with her regulator to demonstrate remediation of her misconduct. Miss Pinto’s lack of meaningful engagement and insight since the substantive order was imposed is indicative of a failure to do so on her part. The original conditions of practice order was reviewed on two previous occasions before
it was replaced with a suspension order. The panel is of the view that Miss Pinto has been provided with a sufficient opportunities to remediate her misconduct.

This panel paid particular attention to the direction made by the previous panel with regard to her engagement, in particular that "The panel considered a striking off order but did not consider this to be the appropriate and proportionate sanction at this time, however, that situation may change in the future given the passage of time, should Ms Pinto continue to fail to engage." The panel noted that Miss Pinto has been subject to a substantive order since 2013 and it is of the view that such a point has now been reached.

The panel had regard to the NMC’s Indicative Sanctions Guidance when considering the imposition of a striking off order. It had particular regard to paragraph 72 which provides a none-exhaustive list of factors which can justify such an order, including:

72.7 Persistent lack of insight into seriousness of actions or consequences

The panel also noted the key consideration articulated in paragraph 71.3 which asks

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

The panel has determined that the only appropriate and proportionate sanction in this case is to replace the current suspension order with a striking-off order. The panel is satisfied that, while a further suspension order would protect the public, a striking-off order is the only order that would be sufficient to satisfy the wider public interest in maintaining public confidence in the profession and the regulatory process and to declare and uphold proper standards of conduct and behaviour.

The panel has no up to date information regarding Miss Pinto’s current personal or professional circumstances. Thus it has no information as to the impact on her of a striking-off order. Nevertheless, the panel is satisfied that the public interest outweighs Miss Pinto’s own interests in this case.
The striking-off order will take effect from the expiry of the current suspension order at the end of 2 May 2017 in accordance with Article 30(1) of the Order.

The panel therefore directs the Registrar to strike off Miss Angella Agatha Pinto’s name from the NMC register. Miss Pinto may not apply for restoration until a period of five years after the date the striking-off order takes effect.

This decision will be confirmed to Miss Pinto in writing.

That concludes this determination.