

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing**

25 July 2019

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

Name of registrant:	Carmine Accardo
NMC PIN:	14J0014C
Part(s) of the register:	Registered Nurse - Sub Part 1 Adult Nursing – October 2014
Area of Registered Address:	Italy
Type of Case:	Lack of competence, misconduct and lack of knowledge of English
Panel Members:	Anthony Mole (Chair, Lay member) Mark Gibson (Registrant member) Seamus Magee (Lay member)
Legal Assessor:	Nigel Ingram
Panel Secretary:	Max Buadi
Registrant:	Registrant not present and not represented
Nursing and Midwifery Council:	Represented by Conal Baillie, counsel, instructed by NMC Regulatory Legal Team.
Order being reviewed:	Suspension Order (3 months)
Fitness to practise:	Impaired
Outcome:	Striking-Off Order to come into effect at the end of 5 September 2019 in accordance with Article 30 (1).

Service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Accardo was not in attendance, nor was he represented in his absence.

The panel was informed that the notice of this hearing was sent to Mr Accardo on 18 June 2019 by recorded delivery and first-class post to his registered address in Italy. The panel noted that notice of this hearing was delivered to Mr Accardo's registered address on 29 June 2019.

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 Mr Accardo. 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 Baillie, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Mr Baillie submitted that Mr Accardo was informed of today's hearing again by email on 3 July 2019 and there has been no response. Mr Baillie also submitted that Mr Accardo had been reminded of his previous hearings and had not responded to the NMC.

The panel noted that there had been no response from Mr Accardo in relation to the notice of hearing. The panel was mindful that the original panel noted Mr Accardo's previous limited engagement. However, despite being informed of today's hearing, he has chosen to disengage.

The panel, therefore, concluded that he had chosen voluntarily to absent himself. The panel had no reason to believe that an adjournment would result in Mr Accardo's attendance. Having weighed the interests of Mr Accardo's with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr Accardo's absence.

Decision and reasons on review of the current order:

The panel decided to impose a striking-off order. This order will come into effect at the end of 5 September 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a suspension order, originally imposed by a Fitness to Practise panel on 3 May 2018 for 12 months. The current order is due to expire on 5 September 2019.

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

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

That you, a registered nurse:

1. *Failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a nurse in that you:*
 - 1.1. *On 12 January 2016 applied a Hyoscine patch to patient A instead of the prescribed Lidocaine patch.*
 - 1.2. *On 3 February 2016 attempted to give a patient a nebuliser by disconnecting the tubing from the patient's ventilator.*
 - 1.3. *On 27 February 2016 started an Aminophylline infusion for patient B when the Mar chart indicated that this medication had been stopped.*
 - 1.4. *Failed to seek guidance or assistance in respect of any /all of your actions in charge 1a) – c).*
2. *Do not have the necessary knowledge of English to practise safely and effectively.*
3. *Failed to co-operate with NMC investigation in relation to your knowledge of English in that you did not comply with the NMC's request and or direction to take a language assessment.*

And in light of the above, your fitness to practise is impaired by reason of your lack of competence or in the alternative your misconduct in relation to charge 1 above and / or by your lack of knowledge of English in relation to charge 2 above, and / or by your misconduct in relation to charge 3.

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

The panel considered whether Mr Accardo's fitness to practise remains impaired.

The panel noted an email sent by Mr Accardo to the NMC on 8 March 2019, within which he states:

"If I have to send you any documentation, in terms of reflective statement about everything that should help with case I will." [sic]

It further noted that an email was sent by the NMC to Mr Accardo on 10 April 2019, inviting him to submit any information he wished for this reviewing panel to consider.

Despite the email exchanges, the panel had no evidence before it attesting to Mr Accardo's insight, remediation or his intention to undertake an IELTS assessment. Further, despite the helpful suggestions made by the original panel as to what a reviewing panel would be assisted by, today's panel had no information before it to evidence that Mr Accardo had complied with these suggestions.

In the absence of any new information before it, the panel determined that Mr Accardo remains 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 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. 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 Accardo's fitness to practise remains impaired.

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

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Accardo further time to fully reflect on his previous failings. It considered that, in light of Mr Accardo's email of 8 March 2019, he should be afforded a further period of time to evidence remediation, insight and demonstrate his intentions to a reviewing panel as to whether he wishes to return to the nursing profession and what, if any, steps he has undertaken to achieve this. The panel concluded that a further three month suspension order would be the appropriate and proportionate response.

The panel seriously considered imposing a striking off order. However, it noted that Mr Accardo had recently corresponded with the NMC showing some willingness to engage further with his regulator. Should Mr Accardo not comply with the following suggestions, a reviewing panel will have all sanctions available to them, including a striking off order.

A reviewing panel may be assisted by:

- A reflective statement demonstrating an understanding of the impact of Mr Accardo's failings upon patients, nursing colleagues, the public and the reputation of the profession;

- *Evidence that Mr Accardo has the necessary knowledge of English to practice safely and effectively, in the form of a successful IELTS assessment;*
- *References or testimonials from any employment (paid or unpaid, and within or outside the healthcare sector).*
- *Evidence of keeping up to date with current nursing practice.*
- *Evidence as to Mr Accardo's intention to return to the nursing profession.*

Decision on current fitness to practise

The panel has considered carefully whether Mr Accardo'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.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Mr Baillie. Mr Baillie outlined the background to the case. Mr Baillie submitted that Mr Accardo has not attended this hearing, nor has he provided any of the information recommended by the previous panel. On this basis, Mr Baillie submitted that there is no new information to undermine the previous panel's findings that Mr Accardo's fitness to practise is currently impaired on the grounds of public protection and public interest. However, Mr Baillie concluded that it is for the panel to decide if your fitness to practise remains impaired.

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 Accardo's fitness to practise remains impaired.

The panel noted that the last panel found that Mr Accardo's lack of competence and misconduct resulted in a pattern of failings over an extended period of time despite supervision and support.

Additionally, the last panel noted that his lack of knowledge of English put patients at a needless risk of harm and consequently had the potential to cause serious harm. The panel noted that there is no evidence before it that Mr Accardo had successfully completed the IELTS assessment. It is for these reasons, the panel concluded that not only does Mr Accardo still pose a risk of serious harm to patients but there is a risk of repetition.

The panel noted that the original panel found that Mr Accardo had not demonstrated any insight or remediation into his failings. The panel noted you had not engaged with today's proceedings and had not provided any new information.

The panel had no evidence before it demonstrating Mr Accardo's insight, remediation or his intention to complete the IELTS assessment. Additionally, the panel noted that the original panel provided Mr Accardo with some suggestions as to what a reviewing panel would be assisted by. Yet, despite this, today's panel had no evidence before it demonstrating Mr Accardo's compliance with these suggestions.

In light of this information, the panel decided that Mr Accardo remains liable to repeat the issues found if allowed to return to nursing without restriction. Consequently, the panel found Mr Accardo's fitness to practise currently impaired on public protection grounds.

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. The panel considered that members of the public would have expected Mr Accardo to attempt to remediate concerns about his nursing practice and improve his understanding of English if he wished to return to nursing. As there is no evidence of this, the panel considered that members of the public would expect the NMC as a regulator to take further action to

maintain confidence in the nursing profession and uphold 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 Accardo's fitness to practise remains impaired.

Determination on sanction

Having found Mr Accardo'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 29 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 risk of repetition identified and 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 seriousness of the case. The panel decided that since the areas of concern need to be remediated, it would be neither proportionate, nor in the public interest to impose a caution order.

The panel considered substituting the current suspension order with a conditions of practice order. However, the panel noted that there is a lack of engagement and no evidence to suggest any remediation or insight. Additionally, the panel noted Mr Accardo's stated intention of no longer practising in the United Kingdom as a registered nurse. Furthermore, it noted that in an email dated 31 March 2018, Mr Accardo's stated: "Honestly I just wish that all this process will finish as soon as possible..." Consequently, the panel concluded that a conditions of practice order would not be appropriate or workable.

The panel considered the imposition of a further period of suspension. The panel reminded itself of the original panel's and the reviewing panel's decisions and concurred. It noted that Mr Accardo had not engaged with today's proceedings and saw no evidence of any effort to remediate his practice. The view of this panel is that public confidence in the profession could not be maintained if Mr Accardo was allowed to practise. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances, particularly in the light of his expressed determination not to cooperate with the NMC. The panel determined that it was necessary to take action to prevent him from practising in the future to maintain public confidence in the profession and the NMC as a regulator. The panel concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order in respect to charges 1 (c), 1 (d) and 3 which relate to clinical misconduct.

This decision will be confirmed to Mr Accardo in writing.

That concludes this determination.