

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

**Substantive Order Review Hearing**

**29 May 2019**

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

<b>Name of registrant:</b>	Mr Angelo Cappiello
<b>NMC PIN:</b>	12H0177C
<b>Part(s) of the register:</b>	RN1: Registered Nurse – Sub Part 1 Adult (20 August 2012)
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Trevor Spires (Chair, lay member) Carla Hartnell (Registrant member) Lisa Lezama (Registrant member)
<b>Legal Assessor:</b>	Nicholas Wilcox
<b>Panel Secretary:</b>	Sophie Cubillo-Barsi
<b>Registrant:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Aimee Stokes, Case Presenter
<b>Order being reviewed:</b>	Suspension Order – 6 months
<b>Outcome:</b>	Striking off order to come into effect at the expiry of the current order in accordance with Article 30 (1)

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Cappiello 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 Cappiello on 26 April 2019 by recorded delivery and first class post to his registered address. The panel noted that notice of this hearing was delivered and signed for on 2 May 2019, alongside the printed name of 'Mark' but was subsequently returned to the NMC.

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 Cappiello. 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 Ms Stokes, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Stokes referred the panel to a telephone note dated 24 May 2019. The telephone note details a conversation between Mr Cappiello and an NMC case officer, within which Mr Cappiello states that 'he was not interested' in attending the hearing and felt that participating in these proceedings would be a 'waste of time for him and the NMC'.

Ms Stokes submitted that Mr Cappiello has voluntarily absented himself from these proceedings and invited the panel to proceed in his absence.

Mr Cappiello had been sent notice of today's hearing and the panel was satisfied that he was aware of today's hearing and had chosen voluntarily to absent himself. The panel had no reason to believe that an adjournment would result in Mr Cappiello's attendance. Having weighed the interests of Mr Cappiello with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr Cappiello'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 expiry of the current order in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a suspension order originally imposed by a Fitness to Practise panel on 14 June 2017 for 12 months. The current order is due to expire on 14 July 2019.

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, a registered nurse:*

1. *On 4 April 2015, did not give administer amoxicillin to Resident A at the following times:*
  - 1.1. *08:00;*
  - 1.2. *14:00;*
2. *...*
3. *...*
4. *...*
5. *Alternatively, did not document mirtazapine administered to Resident D on 14-15 April 2015;*
6. *...*
7. *...*
8. *...*
9. *On 22 April 2015, administered alendronic acid to Resident B, when this medication was not due;*
10. *On 22 April 2015, administered alendronic acid to Resident C, when this medication was not due;*
11. *...*

12. ...

13. On 17 June 2015, did not change Resident F's incontinence pad, or did not ensure that Resident F's incontinence pad was changed;

14. On 13 August 2015:

14.1. Abandoned your shift leaving no registered nurse on duty;

14.2. Left trolley keys unsecured;

15. On ~~25~~ 24 August 2015, did not respond to Resident H vomiting appropriately in that you:

15.1. Attempted to administer paracetamol to Resident H;

15.2. Lifted Resident H's legs;

16. During September 2015, did not update Resident B's care plan.

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

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

*Regarding Mr Cappiello's insight, the panel noted that the previous substantive order review panel found that Mr Cappiello had started to show some insight, but that this was in its very early stages and was far from fully developed. That panel was of the view that this panel would be assisted by a written reflective essay from you, exploring the effect of your failings on patients and explaining what you have learned since, and what you would do differently in the future. That panel acknowledged that you were unfamiliar with the concept of reflective essays, and considered that you might find it useful to use a model for this, such as the Gibbs' or Johns' model.*

*This panel was provided with a brief statement from Mr Cappiello dated 20 November 2018. In that statement he refers to frictions between him and other members of staff which existed at the time of the events to which the charges found proved relate. He also states that by acting as he did he put residents in his care at risk, impacting significantly on their health and wellbeing. He also refers to training which he has undertaken. However, apart from alluding to*

*friction with colleagues, he does not clearly identify in the statement the causes of his misconduct as found in those charges, i.e. what went wrong. Nor does he state clearly in what ways he will act differently in the future in order to ensure that such mistakes are not repeated. This panel was of the view that the statement provided by Mr Cappiello did not amount to a structured, comprehensive reflective statement based on a model such as Gibbs or Johns.*

*This panel also considered whether Mr Cappiello has remediated the deficiencies in his practice. The panel noted that the previous reviewing panel found that, although Mr Cappiello stated that he had completed relevant training courses, that panel had no evidence of this and therefore could not be satisfied that he have remediated his practice.*

*Mr Cappiello provided this panel with 4 training certificates undertaken on various dates in October 2018. They related to Moving and Handling, Safeguarding Adults, Medication Administration and Infection Control. However, there was no evidence of any training in respect of record keeping, an area that was specifically flagged by the last panel. Nor had Mr Cappiello stated in his reflective statement what he had learned from these courses and how they would assist him to avoid any repetition of his misconduct.*

*The panel concluded that, whilst Mr Cappiello has demonstrated some further insight and remediation of his practice, his efforts still fell well short of what would be required to show full insight and remediation.*

*The panel also noted that no references or testimonials had been provided by Mr Cappiello. From Mr Cappiello's recent emails to the NMC, it was evident that he has been working as a care assistant. The panel was therefore surprised by the lack of any references or testimonials, or any explanation as to why these were not forthcoming.*

*In light of these considerations, the panel determined that Mr Cappiello remains liable to repeat matters of the kind found proved, which would involve putting*

*patients at unwarranted risk of harm, bringing the reputation of the profession into disrepute and breaching a fundamental tenet of the profession. The panel therefore decided that a finding of continuing impairment 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. In view of the seriousness of the charges found proved, the panel determined that, in this case, a finding of continuing impairment on public interest grounds was also required.*

*For these reasons, the panel determined that Mr Cappiello's fitness to practise is currently impaired.*

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

*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 it would be neither proportionate nor in the public interest to impose a caution order.*

*The panel next considered the imposition of a conditions of practice order. The panel considered whether the imposition of a conditions of practice order would be sufficient to protect patients and the wider public interest. In Mr Cappiello's favour, it noted that there was no evidence of general incompetence and no deep seated attitudinal problems. However, in the light of Mr Cappiello's limited insight and remediation, the panel was not satisfied that suitable, practical and workable*

*conditions could yet be formulated which would adequately protect patients during the period they were in force.*

*The panel next considered whether to extend the current suspension order. In Mr Cappiello's favour, the panel again noted that there is no evidence of deep seated personality or attitudinal problems. Further, Mr Cappiello has been engaging with these proceedings and has provided some further evidence of insight and remediation. However, the panel was satisfied that Mr Cappiello needs to demonstrate further progress on these fronts before a panel could confidently conclude that he is fit to return to safe practice as a registered nurse. Accordingly, the panel decided to impose a further suspension order. The period of the order will be 6 months, to enable Mr Cappiello to reflect further, undertake further training and provide references and testimonials.*

*The panel did consider whether it would be more appropriate to impose a striking off order. However, given that Mr Cappiello's deficiencies are in principle remediable, and that he is engaging constructively with these proceedings, the panel determined that this would be wholly disproportionate in the present circumstances.*

*This panel considered that any future reviewing panel is likely to be assisted by the following:*

- Mr Cappiello's continued engagement and his attendance at a review hearing;*
- A further, more detailed reflective statement structured on a recognised model such as Gibbs or Johns (information about which should be readily accessible to Mr Cappiello on the internet);*
- Evidence of further retraining in record keeping;*
- References and testimonials from managers and/or colleagues relating to Mr Cappiello's employment as a care assistant and/or his employment whether paid or unpaid in any other work.*

## **Decision on current fitness to practise**

The panel has considered carefully whether Mr Cappiello'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. It has taken account of the submissions made by Ms Stokes.

Ms Stokes provided the panel with the background to Mr Cappiello's case. Ms Stokes referred the panel to the recommendations made by the previous panel. She informed the panel that Mr Cappiello has failed to comply with these recommendations to produce a reflective piece, testimonials or evidence of remediation. Ms Stokes told the panel that the note of a telephone conversation, dated 24 May 2019, stated that Mr Cappiello has moved back to Italy and has indicated that he has no intention of returning to nursing practice in England. In light of this, and in the absence of any new information that could undermine a finding of impairment, Ms Stokes invited the panel to find that Mr Cappiello remains currently impaired on both public protection and public interest grounds. She submitted that as a result of Mr Cappiello's 'step back' in his approach to these proceedings, the panel should seriously consider a striking off order at this time.

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 Cappiello's fitness to practise remains impaired. The panel noted that Mr Cappiello has engaged with the NMC sporadically throughout these

regulatory proceedings. However, the panel had no evidence before it to demonstrate remediation or improved insight into his failings, despite numerous suggestions by previous reviewing panels as to ways to do so.

In light of these considerations, the panel determined that Mr Cappiello remains liable to repeat matters of the kind found proved, which would involve putting patients at unwarranted risk of harm, bringing the reputation of the profession into disrepute and breaching fundamental tenets of the profession. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel bore 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. In view of the seriousness of the charges found proved, the panel determined that, in this case, a finding of continuing impairment on public interest grounds was also required.

For these reasons, the panel determined that Mr Cappiello's fitness to practise is currently impaired.

### **Determination on sanction**

Having found Mr Cappiello 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 allow the current order to lapse upon expiry or to impose a caution order. However, the panel 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 next considered the imposition of a conditions of practice order. The panel considered whether the imposition of a conditions of practice order would be sufficient to protect patients and the wider public interest. The panel noted that there was no evidence of general incompetence and no deep seated attitudinal problems. However, in the light of Mr Cappiello's limited insight, remediation and unwillingness to engage, the panel was not satisfied that Mr Cappiello would comply with those conditions.

The panel next considered imposing a further suspension order. The panel noted that Mr Cappiello has not shown remorse for his misconduct. Further Mr Cappiello has only demonstrated limited insight into his previous failings despite ample opportunity to do so. The panel noted Mr Cappiello's clear intention that he does not wish to return to nursing practice in the UK. In light of this, the panel determined that a further period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Mr Cappiello from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Mr Cappiello in writing.

That concludes this determination.