

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Meeting
14 May 2019**

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

Name of registrant:	Mirela-Alina Gusa
NMC PIN:	15G0482C
Part(s) of the register:	RN1: Registered Nurse – sub part 1 Nursing – 14 July 2015
Area of Registered Address:	Scotland
Type of Case:	Misconduct
Panel Members:	Nicholas Cook (Chair, Lay member) Donna Green (Registrant member) Georgina Foster (Lay member)
Legal Assessor:	Nigel Parry
Panel Secretary:	Aoife Kennedy
Order being reviewed:	Suspension order (12 months)
Outcome:	Striking off order, to come into effect at the end of 26 June 2019

Decision on Service of Notice of Meeting

The Nursing and Midwifery Council (NMC) sent written notice of this meeting to Ms Gusa at her address, as recorded in the NMC's electronic Register, by Royal Mail 'Signed For' service and by first class post on 5 March 2019 and by email.

The notice made clear that the case would be considered at a meeting and would be held in private on or after 6 May 2019 if she did not request a hearing by 29 April 2019. Ms Gusa has not requested that this review be heard at a hearing.

The panel accepted the advice of the Legal Assessor.

In the light of all of the information available, the panel was satisfied that Ms Gusa 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).

Decision and reasons on review of the current order

The panel decided to impose a striking-off order, removing Ms Gusa's name from the register. This order will come into effect at the end of 26 June 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of this order, originally imposed as a suspension order for a period of twelve months, by a panel of the Fitness to Practise Committee on 25 May 2018. This order is due to expire at the end of 26 June 2019.

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

The charges which resulted in the imposition of the substantive order were as follows:

“That you, a registered nurse:

1. ...;

2. On or around 13 August 2016 attended work as a carer at Deeside Care Home whilst unfit through alcohol and/or drugs;

3. Failed to engage with an investigation into your fitness to practise;

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

The substantive panel determined the following with regards to impairment:

“The panel had regard to the fact that the only correspondence that the NMC had received from Ms Gusa relating to its investigation was the email dated 31 October 2016 which stated:

“Good morning Dear Tangena Sultana,I am Mirela Gusa.I was surprised to read this referral.I don't know what they want from me.I mean the staff from Deeside Care Home.I want to tell you that I am in my country from two months ago and I don't have any job for the moment.Please tell me what I have to do ?Thank you verry much”

The panel had regard to the fact that Ms Gusa seemed to be surprised by the referral to the NMC. It was of the view that this showed minimal insight into her actions as she did not believe that appearing to be under the influence of alcohol and/or drugs whilst at work was something that the NMC, as her regulator, needed to investigate. Further, the panel considered that Ms Gusa did not have regard to the danger that her attending work in this state would present to the residents in her care.

The panel noted that, as far as it was aware, Ms Gusa is still in her home country and has made no attempt to remediate her failings in any way and failed to provide the NMC with the relevant medical examination despite requests for her to do so.

The panel is of the view that there is a risk of repetition based on Ms Gusa's apparent lack of insight and remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the importance of the need to protect the public and maintain confidence in the profession by upholding professional standards. The panel determined that, in this case, a finding of impairment on public interest grounds was required. It was of the view that a right thinking member of the public would be concerned if Ms Gusa's fitness to practise was not found to be impaired after being found to have attended work under the influence of alcohol and/or drugs and then failing to comply with her regulator.

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

The substantive panel determined the following with regards to sanction:

"The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates 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 panel determined that, although there had been a clear breach of fundamental tenets of the profession, there are in Ms Gusa's case mitigating circumstances. As such, the panel considered that, in Ms Gusa's case, the misconduct was not fundamentally incompatible with remaining on the register. The panel had no evidence before it that Ms Gusa had repeated this misconduct. It was of the view that there was a possibility of repetition but determined that temporary removal from the register with a review from a panel after a set period of time would address the public interest in the case. It would also allow Ms Gusa to recognise the seriousness of her misconduct and to reflect upon the importance of her engagement with any NMC regulatory process. However, the panel was also mindful that that this was an isolated incident and Ms Gusa had otherwise demonstrated good practice as a carer with no evidence of attitudinal problems.

The panel further considered whether a striking-off order would be proportionate in Ms Gusa's case. Taking account of all the information before it, including the mitigation provided to the panel, the panel concluded that it would be disproportionate and unduly punitive in this case to impose a striking off order. The panel was of the view that a period of suspension would allow Ms Gusa to re-engage with the NMC, reflect on her failings and demonstrate to a reviewing panel that she had learnt from her misconduct.

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 may cause Ms Gusa. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of public protection, 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 determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

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 including that of a striking off order. Any future panel may be assisted by evidence of:

- Ms Gusa's full engagement with the NMC;
- Attendance at the review hearing in some form be it on the telephone or in person;
- A reflective piece following a recognised model such as the Gibbs model addressing her past misconduct and the importance of adhering to the NMC Code of Conduct;
- Evidence of how Ms Gusa has stayed up to date with nursing practice including any courses she may have attended and reading she may have completed including online nursing journals;
- Relevant documentation relating to Ms Gusa's health. This could include a letter from her GP;
- Testimonials from any employment that she has undertaken either paid or voluntary."

Decision on current fitness to practise

This panel has considered carefully whether Ms Gusa'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 previous panels. However, it has exercised its own judgment as to current impairment.

The panel considered all of the documentation before it.

The panel accepted the advice of the Legal Assessor and exercised its own independent judgment in relation to this case.

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 bore in the mind the reasons why the original substantive panel and the previous reviewing panel found Ms Gusa's fitness to practise impaired.

The panel noted that Ms Gusa has not engaged with the NMC throughout this process, except for a brief email dated 31 October 2016.

Ms Gusa has not provided any evidence of any remediation. In the absence of any evidence of remediation there remains a real risk of repetition and, as a result, harm to patients if she were to return to practice without restriction.

The panel determined that there was no information before it upon which it could be satisfied that Ms Gusa's fitness to practise is no longer impaired. The panel therefore concluded that Ms Gusa's fitness to practise remains impaired on public protection and public interest grounds.

Determination on sanction

Having found Ms Gusa's fitness to practise is 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 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 and may have a significant financial impact and may cause hardship. The panel took into account the principle of proportionality, balancing protection of the public as well as the wider public interest against Ms Gusa own interests.

The panel first considered whether to take no action and allow the current order to lapse at its expiry. The panel has identified an ongoing risk of repetition and risk of harm to patients given the lack of any new information in respect of Ms Gusa's fitness to practise. In the absence of any information which would indicate a positive change in circumstances, the panel concluded that taking no action would be wholly inappropriate as it would be insufficient to protect the public and satisfy the public interest in the maintenance of public confidence in the profession.

The panel next considered whether to replace the current order with a caution order. However, for the reasons as set out above, the panel concluded that a caution order would neither be sufficient to protect the public nor would it be in the public interest as it would allow Ms Gusa to return to unrestricted practice and it would not protect the public or the wider public interest.

The panel next considered whether a conditions of practice order was an appropriate or proportionate response in this case. The panel referred to the substantive panel's decision in relation to conditions of practice, and noted that Ms Gusa has disengaged from NMC proceedings. Therefore, this panel could not be satisfied that Ms Gusa would comply with any conditions imposed. In the circumstances, the panel has concluded that it would not be possible to formulate appropriate and workable conditions.

The panel went on to consider the imposition of a further period of suspension. In so doing, it noted that Ms Gusa has not engaged with the NMC since her substantive hearing, despite the NMC making attempts to contact her via her registered address and via email. The panel noted that Ms Gusa was provided with clear information by the substantive panel as to what would assist a future panel when determining her fitness to practise. Ms Gusa has failed to comply with the recommendations and has not provided any evidence of remediation to the NMC.

The panel noted the lack of information into Ms Gusa's current situation, or level of insight or remediation. The panel is of the view that a further period of suspension would serve no useful purpose and would not be sufficient to satisfy the public interest.

The panel next considered a striking off order. Ms Gusa has not engaged with the NMC since her substantive hearing. Therefore the panel has no evidence to suggest that she would engage in the future. Ms Gusa has not demonstrated insight into her failings and the substantive panel found evidence of attitudinal issues. This combined with her disengagement with the NMC means there remains a real risk of harm to the public if she were to practise unrestricted and her continued impairment is fundamentally incompatible with remaining on the register.

The panel is of the view that a striking off order is the only order sufficient both to protect the public and to satisfy the public interest.

The panel therefore imposed a striking off order, which will come into effect at the end of 26 June 2019.

This decision will be confirmed to Ms Gusa in writing.

That concludes this determination.