

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

**Substantive Order Review Hearing**

**14 May 2019**

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

<b>Name of registrant:</b>	Mr Tamas Mocsari
<b>NMC PIN:</b>	11K0198C
<b>Part(s) of the register:</b>	Adult Nursing – November 2011
<b>Area of Registered Address:</b>	Hungary
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Kenneth Caley (Chair, lay member) Susan Greenwood (Registrant member) Linda Redford (Lay member)
<b>Legal Assessor:</b>	Susan Monaghan
<b>Panel Secretary:</b>	Sam Headley
<b>Nursing and Midwifery Council:</b>	Represented by Ruth Ann Cathcart, Case Presenter
<b>Mr Mocsari:</b>	Not present and not represented
<b>Order being reviewed:</b>	Suspension Order (12 months)
<b>Outcome:</b>	Striking Off order, to come into effect at the expiry of the current order

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Mocsari 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 Mocsari on 15 April 2019 by recorded delivery and first class post to his registered address. The panel noted that notice of this hearing was delivered to Mr Mocsari registered address on 23 April 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 Mocsari. 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 Miss Cathcart, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

The panel also noted the contents of the email dated 24 April 2019 from Mr Mocsari in which he stated that he would not be attending.

Mr Mocsari had been sent notice of today's hearing and the panel was satisfied that he was aware of today's hearing and it is of the view that he had chosen to voluntarily absent himself. The panel had no reason to believe that an adjournment would result in Mr Mocsari's attendance. Having weighed the interests of Mr Mocsari with those of the

NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr Mocsari'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 14 June 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 Conduct and Competence Committee on 12 May 2017 for 12 months and extended for a further 12 months at the first review hearing on 23 April 2018.

The panel was 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, whilst employed at Rutland Nursing Home, between approximately 26 August 2015 and 6/7 December 2015:

1. On an unknown date in 2015 in relation to Resident B, following a fall sustained by the Registrant, you did not record one or more of the following in the resident's records:
  - a. The resident's vital sign
  - b. The details of the fall
  - c. ...
  
2. In relation to charge 1 above, following Resident B's fall, you did not complete and/or update one or more of the following documents:
  - a. Incident form
  - b. Body mapping

- c. Risk assessment
  - d. Care plan
3. On 24 November 2015, in relation to Resident A, you did not take appropriate action, in that you:
- a. Did not telephone '999' and/or '111' and/or contact a senior member of the team (namely Manager A) for advice and support
  - b. Removed the resident's catheter when you had no experience of catheterisation
  - c. Failed to telephone Manager A for advice after removing the resident's catheter
  - d. Failed to offer the resident pain relief when she complained of pain
  - e. Failed to ensure that a member of staff stayed with the resident
  - f. At around 19:50
    - (i) failed to prioritise handing over to Colleague A that the resident was experiencing abdominal pain and/or swelling
    - (ii) did not handover to Colleague A the reason for removing the resident's catheter

4. On 24 November 2015 failed to record any or all of the following in Resident A's daily progress notes
- a. Sufficient details regarding how the resident was presenting prior to removing her catheter
  - b. What action you took prior to removing the resident's catheter
  - c. The reason for removing the resident's catheter

AND, that you, a Registered Nurse:

5. Do not have the necessary knowledge of English to practise safely and effectively

And/or

6. You have failed to comply with the decision of the chair of the CCC preliminary meeting, held on 2 February 2017. This decision required you to undertake and provide the results of an IELTS assessment within 60 days. This was required to ensure and demonstrate that you have sufficient English to practice safely and effectively.

And as a result of the facts, as set out above, your fitness to practise is impaired by reason of your misconduct in relation to charge(s) 1 to 4 above, and by reason of your lack of knowledge of English in relation to charge(s) 5 and/or 6 above.”

The first reviewing panel on 23 April 2018 determined the following with regard to impairment:

“This panel first considered whether Mr Moscari’s fitness to practise is currently impaired. The panel considered the facts found proved by the panel at the substantive hearing and the reasons for these findings.

The panel had regard to the substantive panel’s findings and took account of the fact that Mr Moscari did not attend his substantive hearing in September 2016. The panel took account of the fact that Mr Moscari now appears to be living in Hungary.

The panel noted the documentation that it was suggested by the substantive panel would assist the panel that reviewed the case. These documents included Mr Mocsari’s completed IELTS assessment with a minimum pass mark of 6.5, A reflective piece demonstrating insight into the effect of his actions on Residents A and B, the impact of his lack of knowledge of English on his nursing practice and his ability to practice safely in the United Kingdom, references and testimonials from any work, paid or unpaid and certificates of any additional training courses attended. The panel had regard to the fact that Mr Moscari had not provided any

of these documents. Further, there was no indication that Mr Moscari planned to take the IELTS assessment at any stage in the future.

The substantive panel had also suggested that Mr Moscari provided evidence that he had kept his basic nursing knowledge up to date. This panel took note of the certificates that Mr Moscari had provided prior to this panel reviewing the case but came to the conclusion that the paperwork did not address the failings that had become apparent prior to the substantive hearing taking place.

This panel noted that it had no clear information in relation to Mr Moscari's current employment status. Overall, it was of the view that there had been no material change since the substantive hearing. It concluded that Mr Moscari's fitness to practise remains impaired on the grounds of public protection and that it is otherwise in the public interest."

The first reviewing panel on 23 April 2018 determined the following with regard to sanction:

"Having decided that Mr Moscari's fitness to practise is impaired, the panel considered what sanction, if any, it should impose in respect of his registration. In reaching its decision on sanction, the panel has considered all the information that has been placed before it.

The panel also took into account the aggravating and mitigating factors that were determined by the substantive panel.

The panel first considered whether to take no action, and thereby allow the current order to lapse, but concluded that this would be inappropriate in view of the risk of repetition identified, seriousness of the case and Mr Moscari's apparent deficiencies in the English language. 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 too would be inappropriate in view of the risk of repetition identified, seriousness of the case and Mr Moscari's apparent deficiencies in the English language. 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 had regard to the fact that Mr Moscari is currently living in Hungary and informed the NMC case officer in an email dated 15 February 2018 that he had no intention to return to nursing practice in the UK. It therefore concluded that it would not be able to formulate appropriate conditions that would protect the public and address the public interest in the case.

The panel went on to consider the continuation of a suspension order. It had regard to the fact that as Mr Moscari had only been under the imposition of a suspension order for a period of 12 months it would not be within its powers to make a striking off order at this stage. It did, however, note that there had been no attempt by Mr Moscari to return to nursing in this country and there was no information that his English language skills had improved to an acceptable level. The panel therefore determined that the continuation of a suspension order for a period of 12 months was the only action that it could take that would protect the public and address the public interest in the case.

This decision will be confirmed to Mr Moscari in writing.

The panel echoed the view of the substantive panel in considering that the following would be of assistance to the next reviewing panel:

- Mr Mocsari's completed IELTS assessment with a minimum pass mark of 7;
- A reflective piece demonstrating insight into the effect of his actions on Residents A and B, the impact of his lack of knowledge of English on his nursing practice and his ability to practice safely in the United Kingdom;
- References and testimonials from any work, paid or unpaid;

- Evidence that Mr Mocsari has kept his basic nursing knowledge up to date; and
- Certificates of any additional training courses attended.”

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

The panel has considered carefully whether Mr Mocsari’s fitness to practise remained currently 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 Miss Cathcart on behalf of the NMC.

Miss Cathcart submitted that there has been no compliance or engagement with the recommendations made by the previous two panels. Further, Miss Cathcart submitted that the restriction on a strike-off order only applied to cases that are solely in regard of health or language concerns. Therefore, she submitted that either a strike-off order or an extension of a suspension order were appropriate sanctions for the panel to impose.

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 Mocsari’s fitness to practise remains impaired.

Regarding Mr Mocsari's insight, the panel noted that the last panel found that Mr Mocsari has demonstrated no insight in regard to his actions.

In its consideration of whether Mr Mocsari had remedied his practice, the panel noted that there was no reflective piece which had been recommended by the previous panel, nor any evidence of Mr Mocsari successfully completing an IELTS test. Further, the last panel determined that Mr Mocsari was liable to repeat matters of the kind found proved. As with the last review, this panel had received no information to assist it.

This panel determined that Mr Mocsari continues to be 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 allegations found proved were serious and a considerable number of breaches of the NMC Code ("the Code") were found.

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 required.

For these reasons, the panel finds that Mr Mocsari's fitness to practise remains impaired.

### **Determination on sanction**

Having found Mr Mocsari'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.

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 imposing a conditions of practice order. The panel noted that Mr Mocsari had not shown remorse for his misconduct. Further, Mr Mocsari had not demonstrated any remediation or insight into his previous failings. The panel was of the view that considerable evidence would be required to show that Mr Mocsari no longer posed a risk to the public. The panel was mindful that the first reviewing panel and the substantive hearing panel had both requested that future panels be shown evidence of remediation of practice, reflective pieces and engagement from Mr Mocsari. There was no evidence to suggest that Mocsari would comply and therefore conditions of practice are unworkable.

Given that there is no engagement from Mr Mocsari, nor any remediation or insight, the panel determined that a further period of suspension would not serve any useful purpose.

The panel determined that due to Mr Mocsari's lack of engagement with NMC proceedings or previous panel recommendations for future panels to be shown professional practice development, the striking-off order was the only appropriate and proportionate sanction. The panel determined that the issues raised were still a concern on grounds of both public protection and the wider public interest, and there was no evidence before it to suggest otherwise.

The panel determined that it was necessary to take action to prevent Mr Mocsari 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 Mocsari in writing.

That concludes this determination.