

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

**Substantive Order Review Hearing
14 October 2019**

Regus
Forsyth House, Cromac Square, Belfast, BT2 8LA

Name of registrant: Mr Jean Ruxanda

NMC PIN: 13I0016C

Part(s) of the register: Registered Nurse – sub part 1
Adult Nursing – September 2013

Area of registered address: Romania

Type of case: Lack of knowledge of English

Panel members: Barbara Stuart (Chair, Lay member)
Karen Shubert (Registrant member)
Mary Monnington (Registrant member)

Legal Assessor: Marian Killen

Panel Secretary: Max Buadi

Nursing and Midwifery Council: Represented by Zainab Mohamed, Case
Presenter

Mr Ruxanda: Not Present and not represented in his
absence

Order being reviewed: Suspension order (12 months)

Outcome: Striking-off order to come into effect at the end
of 3 December 2019 in accordance with Article
30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Ruxanda was not in attendance and that the Notice of Hearing had been sent to Mr Ruxanda's registered address in Romania by recorded delivery and by first class post on 11 September 2019.

The panel took into account that the Notice of Hearing provided details of the review hearing including the time, dates and venue of the hearing and, amongst other things, information about Mr Ruxanda's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Mohamed, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Ruxanda has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Ruxanda

The panel next considered whether it should proceed in the absence of Mr Ruxanda. The panel had regard to Rule 21(2), which states:

- ‘21.—** (2) *Where the registrant fails to attend and is not represented at the hearing, the Committee—*
- (a) *shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*

- (b) *may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
- (c) *may adjourn the hearing and issue directions.'*

Ms Mohamed submitted that Mr Ruxanda has not made any contact with the NMC since August 2016; has never attended his hearings with the NMC; is currently residing in Romania and has made no request for an adjournment. Ms Mohamed invited the panel to continue in the absence of Mr Ruxanda on the basis that he had voluntarily absented himself.

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 not absolute and 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 Mr Ruxanda. In reaching this decision, the panel has considered the submissions of Ms Mohamed and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ and had regard to the overall interests of justice and fairness to all parties. It noted that

- No application for an adjournment has been made by Mr Ruxanda;
- Mr Ruxanda has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Ruxanda.

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 3 December 2019 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (as amended) (the Order).

This is the third review of a substantive suspension order originally imposed for a period of 12 months by a panel of the Conduct and Competence Committee on 31 May 2017. This was reviewed on 11 June 2018 and the suspension order was extended for a further 12 months. This was reviewed again on 28 May 2019 and the suspension order was extended for a further five months.

The current order is due to expire at the end of 3 December 2019.

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

The charge found proved which resulted in the imposition of the substantive order was as follows:

That you, a registered nurse:

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

And in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.

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

The panel considered that, despite being provided with ample opportunity to engage and to provide evidence of the IELTS test or another NMC-recognised English language assessment, no evidence of this has been received to date.

The panel considered that a lack of knowledge of the English language is remediable. In its consideration of whether Mr Ruxanda has remedied his practice the panel took into account the absence of any evidence before it to reassure it that Mr Ruxanda has been taking any steps to improve his lack of knowledge of the English language. The panel was therefore not satisfied that there has been any new information or evidence submitted since 2016 to alter the previous panel's decision on impairment. In the absence of such evidence, the panel could not be satisfied that Mr Ruxanda currently has sufficient knowledge of English to be capable of effective communication and therefore of safe and effective practice as a registered nurse. There remains a risk of harm to the public if Mr Ruxanda were permitted to practise as a nurse without restriction. Further, the panel bore in mind that the wider public interest includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. It considered that there is a public interest in ensuring that registered nurses are capable of safe and effective communication. It determined that a finding of continuing impairment is necessary both on the grounds of public protection, and in the public interest.

The third 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 enable the public to remain protected and would allow Mr Ruxanda a further opportunity to engage with his regulator, and provide evidence that he has the required level of English to practise safely and competently as a registered nurse in the UK. The panel concluded that a further 5 month suspension order would be the appropriate, proportionate and would afford Mr Ruxanda adequate time to undertake the IELTS, or another NMC-recognised English language assessment or to engage with the NMC to

demonstrate that he is taking steps to improve his knowledge of English to meet the required standards.

Before the end of the period of suspension, another panel will review the order. At the review hearing, the panel may revoke the order, extend the order or may replace the order with another type of order. This panel reminds Mr Ruxanda that a future reviewing panel will have all of the sanctions available to it, including that of a striking-off order. The panel strongly encourages Mr Ruxanda to contact his NMC Case Officer and show a willingness to engage with his regulator. The risk, if he does not do so, is that in the absence of any engagement or any new information demonstrating his willingness to address the issues in this case, the next reviewing panel is likely to give serious consideration to making a striking-off order.

If Mr Ruxanda is able to complete an NMC-recognised English language assessment before the 5 months have elapsed, he may apply to the NMC for an early review of this suspension order.

Decision and reasons on current impairment

The panel has considered carefully whether Mr Ruxanda'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 judgement 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 Ms Mohamed on behalf of the NMC. She submitted that Mr Ruxanda has chosen to disengage with today's proceedings and has not provided any of the information recommended by the previous panel. Ms Mohamed submitted that Mr Ruxanda has not provided any new information or evidence addressing the concerns pertaining to his lack of knowledge of English.

Ms Mohamed submitted that Mr Ruxanda's fitness to practice remains impaired on the same grounds as the last reviewing panel. Ms Mohamed submitted that he has been provided with ample opportunity to prove that his English language skills has improved but has failed to do so.

Ms Mohamed submitted that the panel may consider a more restrictive sanction would be appropriate. However, Ms Mohamed concluded that it is for the panel to decide if Mr Ruxanda's fitness to practice 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 Ruxanda's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Ruxanda had been provided with ample opportunity to provide evidence of the IELTS test or another NMC recognised English language assessment – but had failed to do so. At this hearing, the panel noted that Mr Ruxanda had, again, failed to show any evidence that he had remedied his lack of knowledge of English. The panel noted that his has not engaged with the NMC since May 2016.

The panel had no evidence before it demonstrating Mr Ruxanda's intention to complete the IELTS assessment. It noted that nothing had changed and consequently Mr Ruxanda remains a risk to patients.

In light of this, this panel determined 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 on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mr Ruxanda'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 30 of the Order. The panel heard and accepted the advice of the legal assessor. 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 seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the fact that Mr Ruxanda had not remedied the concerns raised, an order that does not restrict Mr Ruxanda's practice would not be appropriate in the circumstances.

The panel next considered whether a conditions of practice on Mr Ruxanda's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Ruxanda's lack of knowledge of English.

The panel next considered imposing a further suspension order. The panel noted that Mr Ruxanda's has had two years and five months to remedy the concerns raised. Despite this, it noted that there is no evidence before it that Mr Ruxanda has taken the IELTS test and has not demonstrated a willingness to take the test. The panel was of the view that this would be required to show that Mr Ruxanda no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mr Ruxanda 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 striking-off order will take effect upon the expiry of the current suspension order, namely the end of 3 December 2019 in accordance with Article 30(1).

This decision will be confirmed to Mr Ruxanda in writing.

That concludes this determination.