

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

Substantive Order Review Meeting

10 September 2019

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of registrant: Francesco Gatta
NMC PIN: 16C0349C
Part of the register: RN1, Registered Nurse – Adult
Area of Registered Address: Germany
Type of Case: Lack of knowledge of English; Misconduct; and
Lack of Competence

Panel Members: Paul Hopley (Chair, Registrant member)
Florence Mitchell (Registrant member)
Gregory Hammond (Lay member)

Legal Assessor: Marian Gilmore QC
Panel Secretary: Lucy Eames

Order being reviewed: Suspension Order (12 months)
Fitness to Practise: Impaired
Outcome: Striking off order to come into effect at the end
of 19 October 2019 in accordance with Article
30 (1)

Decision on Service of Notice of Meeting:

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended* state:

'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post'*

The letter of notice of this substantive meeting was sent to Mr Gatta's address on the register on 17 July 2019. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that the notice was returned to sender and there has been no response from Mr Gatta in relation to this meeting.

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 19 October 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a suspension order, originally imposed by a Fitness to Practise Committee panel on 19 September 2018 for a period of 12 months. The current order is due to expire at the end of 19 October 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. *Do not possess the necessary knowledge of English to practise safely as a registered nurse.*
2. *Between 8 May 2017 and 25 July 2017 you failed to undertake a language test as required by the Nursing and Midwifery Council.*

That whilst you were employed as a Band 5 Registered Nurse by Southend University Hospital NHS Foundation Trust between 16 May 2016 and 31 December 2016, you:

3. *On 3 August 2016:*
 - 3.1 *Did not check the patient's pH against the pH chart;*
 - 3.2 *Did not know the pH values at which it was safe to feed the patient.*
4. *On 24 September 2016:*
 - 4.1 *Administered IV paracetamol without a second checker;*
 - 4.2 *Administered IV paracetamol without being signed off as competent to administer IV drugs;*
 - 4.3 *...;*
 - 4.4 *Recorded that a patient was alert and orientated when they were not.*
5. *...*
6. *On 3 October 2016:*
 - 6.1 *Did not immediately assist a patient who had disconnected his oxygen;*
 - 6.2 *Reconnected a contaminated IV line to the patient.*
7. *On 27 October 2016:*
 - 7.1 *...;*
 - 7.2 *Did not properly discard medication.*

8. *On 12 November 2016 you were unable to complete admission and care plan paperwork.*

9. *On a date unknown between 14-15 November 2016 you left a sponge in the patient's mouth.*

10. *On a date unknown between 25-26 November 2016 you did not complete one-hourly blood pressure recordings.*

AND in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English set out in charge 1 above and/or your misconduct at charge 2 above and/or your lack of competence or in the alternative your misconduct or in the further alternative your lack of knowledge of English, as set out in respect of charges 3 to 10 above.

The original panel determined the following with regard to impairment:

The panel noted that there was no evidence about any steps Mr Gatta has taken to remedy his practice, his clinical failings or knowledge of English. The panel determined that Mr Gatta has limited insight in relation to the charges found proved.

While the panel is of the view that the misconduct, lack of competence and lack of English knowledge found are remediable, the starting point for any such remediation has to be an acknowledgement of, reflection upon, and insight into the deficiencies in question. The panel noted that Mr Gatta no longer resides in the UK and has moved to Germany. Further, the panel took into account that he has failed to take the IELTS test when directed to do so. Therefore, the panel found that there is no evidence of remediation or reflection by Mr Gatta. As Mr Gatta has not demonstrated that he has remediated his misconduct, lack of competence and has not achieved the required standard of English, the public would remain at risk of harm if he was able to practise without restriction. The panel finds that Mr Gatta's fitness to practise is impaired on grounds of public protection.

The panel went on to consider limb b) of the guidance in Grant and went on to ask itself whether the need to uphold proper professional standards and public confidence in the profession would be undermined and the reputation of the profession brought into disrepute if a finding of impairment of fitness to practise were not made in the circumstances of this case. The panel considered that if a member of the public were made aware of all the circumstances in Mr Gatta's case they would expect a finding of impairment on public interest grounds. The panel therefore concluded that a finding of impairment was necessary in the public interest.

The panel determined that Mr Gatta's fitness to practise is currently impaired by reason of his misconduct, lack of competence and lack of necessary knowledge of English on the grounds of public protection and public interest.

The original panel determined the following with regard to sanction:

Balancing all of these factors, and after having taken into account the aggravating features of this case, the panel determined that the most appropriate and proportionate sanction is that of a suspension order. The effect of this order is that Mr Gatta's name on the NMC register will show that he is subject to a suspension order, and anyone who enquires about his registration will be informed of the order.

The panel considered that this order is necessary to protect the public, to mark the importance of maintaining public confidence in the profession, and to send to the public and the nursing profession a clear message about the standard of care required of a Registered Nurse.

The panel determined to impose a suspension order for the maximum period of 12 months. It considered that this was appropriate in the circumstances of this case to mark the seriousness of the misconduct, the lack of competence and the lack of knowledge of English. This period will also allow Mr Gatta time to reflect further on his conduct, develop full insight into his actions, to re-engage with the NMC and take appropriate steps to remediate his conduct.

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 a striking-off order. Any future panel would be likely to be assisted by:

- *Mr Gatta's attendance at the hearing;*
- *Testimonials from Mr Gatta's employer and/or evidence of working in the health care sector or otherwise;*
- *Evidence of health care related courses undertaken and completed;*
- *Evidence of having undertaken and passed an NMC-approved English language test;*
- *An up to date reflective account relating to the misconduct, lack of competence and lack of English.*

Decision on current fitness to practise

The panel has considered carefully whether Mr Gatta'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.

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 noted that Mr Gatta has not engaged since the NMC since July 2018, in which he stated he wanted his case closed as he no longer wanted to work as a nurse.

The panel noted that Mr Gatta no longer resides in the UK. Further, the panel took into account that there is no evidence that Mr Gatta has complied with any of the previous panel's recommendations. Therefore, the panel found that there is no evidence of remediation or reflection by Mr Gatta and there remains a risk of repetition. As Mr Gatta has not demonstrated that he has remediated his misconduct or lack of competence and has not achieved the required standard of English, the public would remain at risk of harm if he was able to practise without restriction. 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 required.

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

Determination on sanction

Having found Mr Gatta'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 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 or impose a caution order but concluded that these 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 or impose a caution order as they would not protect the public.

The panel considered substituting the current suspension order with a conditions of practice order. However it determined that this would be unworkable and inappropriate given Mr Gatta's lack of engagement.

The panel considered the imposition of a further period of suspension. It was of the view that, although a suspension order would allow Mr Gatta further time to fully reflect on his previous failings, it would serve no useful purpose in this case. The panel noted that Mr Gatta has not engaged with the NMC since July 2018 and did not show remorse or insight into his previous failings. It took into account that Mr Gatta had previously expressed he no longer wished to work as a nurse and this has been further demonstrated through his disengagement and lack of compliance with any of the previous panel's recommendations.

The panel was of the view that Mr Gatta has had sufficient time to change his mind about returning to nursing and take appropriate action if he wished to do so. Furthermore, the panel determined that the wide ranging nature of the original misconduct and Mr Gatta's lack of engagement raise fundamental questions about his professionalism. The panel determined that it was necessary to take action to prevent Mr Gatta 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 Gatta in writing.

That concludes this determination.