

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

**Substantive Order Review Hearing**

**16 April 2020**

Virtual hearing

**Name of registrant:** Mihail Cotan

**NMC PIN:** 15A0343C

**Part(s) of the register:** Registered Nurse (Sub Part 1)  
Adult Nursing – 20 January 2015

**Area of Registered Address:** Scotland

**Type of Case:** Misconduct

**Panel Members:** Mary Catherine Rice (Chair, registrant member)  
Sarah Fleming (Registrant member)  
Sadia Zouq (Lay member)

**Legal Assessor:** Sanjay Lal

**Panel Secretary:** Rob James

**Registrant:** Mr Cotan not in attendance nor represented

**Nursing and Midwifery Council:** Represented by Helen Guest, Case Presenter

**Order being reviewed:** Suspension Order (6 months)

**Fitness to Practise:** Impaired

**Outcome:** Striking off order to come into effect at the end of 24 May 2020 in accordance with Article 30 (1)

### **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Cotan 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 Cotan on 12 February 2020 by recorded delivery and first class post to his registered address. The panel also noted that email notification had been sent to Mr Cotan on 24 March 2020.

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 Cotan. 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 Guest, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Guest made an application for the hearing to proceed in the absence of Mr Cotan. She referred to the case of GMC v Adeogba [2016] EWCA Civ162 and submitted that a case should proceed if there is no good reason for it not to. Ms Guest submitted that Mr Cotan has not applied for an adjournment and that adjourning the hearing would provide no useful purpose.

The panel noted that there had been no response from Mr Cotan in relation to the notice of hearing. It noted that Mr Cotan had not replied to the email sent on 24 March 2020

nor the telephone message left on his phone on 15 April 2020. The panel was mindful that Mr Cotan engaged with the NMC prior to the previous review. However, noted that he did not attend the review hearing on 11 October 2019.

Mr Cotan had been sent notice of today's hearing and the panel was satisfied that he was or should be aware of today's hearing and it is of the view that he had chosen to disengage. The panel, therefore, concluded that he had chosen voluntarily to absent himself. The panel had no reason to believe that an adjournment would result in Mr Cotan's attendance. Having weighed the interests of Mr Cotan with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr Cotan's absence.

**Decision and reasons on review of the current order:**

The panel decided to make a striking off order. This order will come into effect at the end of 24 May 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of a substantive order, originally imposed as a condition of practice order by the Conduct and Competence Committee on 25 July 2017 for 9 months. This conditions of practice order was varied and extended for a further 12 months on 24 April 2018. At the third review on 23 April 2019 the conditions of practice order was replaced with a 6 month suspension order. The most recent review panel on 11 October 2019 extended the suspension order for a period of six months. The current order is due to expire at the end of 24 May 2020.

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

The charges found proved, by way of admission, which resulted in the imposition of the substantive order were as follows:

*That you, a registered nurse, while working as a staff nurse at Tyneholm Stables Nursing Home:*

- 1. On 23 November 2015 signed for the administration of a bedtime dose of prescribed risperidone for Resident B but failed to administer the medication to Resident B;*
- 2. (a) On 30 November 2015 placed antibiotic medication prescribed for Resident C in Resident D's drug box;*  
  
*(b) During the night shift of 30 November/1 December 2015 attempted to administer Resident C's prescribed antibiotic medication to Resident D;*
- 3. During the night shift of 18/19 January 2016:*

*(a) At approximately 23.00 hrs on 18 January 2016 administered an unprescribed dose of 25 units of Humalog insulin to Resident A, without consulting the nurse in charge or phoning NHS 24 for advice;*

*(b) Thereafter failed to inform the charge nurse of the incident for approximately 30 minutes;*

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

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

*“The panel considered whether Mr Cotan’s fitness to practise remains impaired. It noted that Mr Cotan had attended his substantive hearing in July 2017. At this hearing, he admitted the charges against him and that his fitness to practise was impaired. The substantive panel found that he had demonstrated some insight and a ‘willingness to learn and return to safe practise’. This level of engagement continued to the first review hearing in April 2018. Mr Cotan attended that hearing and provided that panel with references, testimonials, feedback forms and evidence of training that he had undertaken prior to the imposition of the conditions of practice order. However, that panel decided that as Mr Cotan had not been working as a registered nurse he had yet to demonstrate that he was capable of safe unrestricted practice, and made a finding of current impairment.*

*At the last review hearing in April 2019, Mr Cotan did not attend and did not provide any evidence to the panel of steps taken to remediate his practice in the 12 months since the last review hearing in April 2018.*

*This panel was in a similar situation today. Since the last review hearing in April 2019 there has been no meaningful engagement from Mr Cotan. The only communication received from him was his email of 18 September 2019 in which*

*he stated that he would be attending today's hearing. However, he has not attended in person today. Nor has he provided any written representations for the panel or any evidence of further training, reflection or remediation. Mr Cotan has provided none of the information suggested by the previous panel, such as testimonials, training certificates or evidence of any efforts Mr Cotan has made to keep his nursing skills up to date. It also had no information regarding his current employment situation.*

*In the absence of any evidence of remediation, the panel concluded that Mr Cotan's fitness to practise remains impaired for the reasons identified by the original substantive panel and the subsequent reviewing panels. This panel was of the view that until Mr Cotan can demonstrate that he has addressed the concerns regarding his medicines administration skills, the public would be put at risk by his unrestricted practice.*

*This panel also 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. The panel determined that, in this case, a finding of continuing impairment on public interest grounds also remained necessary to send a message to the profession about the levels of engagement expected from registered nurses with the NMC.*

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

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

*"The panel next considered whether to make a conditions of practice order. It noted, as the substantive panel did, that Mr Cotan's failings related to one identifiable area of his nursing practice, namely medicines management and administration, and that it would be possible to formulate conditions to address this. However, there has been no meaningful engagement with the NMC from Mr Cotan for over a year. The panel had no information about his current*

*employment situation and no reassurances from Mr Cotan that he is currently willing to comply with conditions. In these circumstances, the panel considered that it would be neither appropriate nor proportionate to make a conditions of practice order.*

*The panel therefore moved on to consider the imposition of a further period of suspension. It noted that a suspension order would protect the public for the time it was in force. It would also give Mr Cotan an opportunity to re-engage with the NMC and demonstrate a renewed willingness to remediate his practice.*

*The panel did give consideration to a striking-off order. However it concluded that this would be disproportionate and punitive at this time. The charges found proved against Mr Cotan are, in the panel's view, easily capable of remediation should Mr Cotan wish to do so and are not fundamentally incompatible with ongoing registration. Although Mr Cotan appears to have disengaged with the NMC recently, he originally demonstrated a willingness to learn and address the concerns in his practice. The panel considered that it would be disproportionate at this time to strike off a nurse who had a history of engagement and the potential for remediation.*

*The panel therefore decided that the appropriate and proportionate sanction which would protect the public and satisfy the public interest is a suspension order. The panel noted that Mr Cotan is a relatively newly-qualified nurse at the beginning of his career. The panel wishes to make it clear to Mr Cotan that there is a public interest in restoring good nurses to the register and, if Mr Cotan re-engages with the NMC and takes steps to improve his medicines management and administration skills, there is no reason why he could not eventually return to unrestricted practice. The panel considered that a 6 month suspension order would give Mr Cotan adequate opportunity to re-engage with the NMC, if he chooses to, and demonstrate a renewed commitment to remediating his practice. The panel also considered that this period met the public interest of having any ongoing regulatory concerns dealt with expeditiously.*

*This suspension order will take effect upon the expiry of the existing suspension order, namely at the end of 24 November 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001.*

*Before this new order expires it will be reviewed by another panel. The current panel would encourage Mr Cotan to provide the following to the next reviewing panel to allow it to reach a fully informed and fair decision:*

- *Mr Cotan's attendance at the hearing, either in person or by another method;*
- *documentary evidence of completion of any relevant training courses;*
- *testimonials from recent employers;*
- *evidence of any efforts to keep his nursing skills and knowledge up to date;*
- *any information about Mr Cotan's future intentions as regards his nursing practice."*

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

The panel has considered carefully whether Mr Cotan'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 also taken account of the submissions made by Ms Guest.

Ms Guest outlined the background of the case along with the findings of the substantive and subsequent reviewing panels. Ms Guest submitted that matters have not changed since the previous review in such as matters have not been remediated and so the risk to patients has not been reduced. Ms Guest referred the panel to previous panel's findings that a striking off order had been found to be disproportionate. However, she

submitted that there will come a time when a suspension order is no longer purposeful going forward. Ms Guest referred the panel to the aggravating and mitigating factors found by the substantive panel and also the contextual factors that led to Mr Cotan's misconduct. Ms Guest submitted that none of the recommendations by the previous panel had been fulfilled by Mr Cotan.

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 Cotan's fitness to practise remains impaired.

The panel had regard to the previous review panel's findings and took account of the fact that Mr Cotan did not attend the review hearing in October 2019. It would appear that he has not meaningfully engaged with the NMC since April 2018.

Prior to this hearing and prior to the previous review which took place in October 2019, Mr Cotan has not submitted anything in relation to his insight into his failings or any evidence of an attempt at remediation which he could have undertaken while suspended such as reading or online courses. The panel has no information even as to whether Mr Cotan is currently working in the healthcare sector.

The panel concluded that, due to the lack of any evidence to the contrary, Mr Cotan has not remediated his failings or made any attempt to do so. It took account of what the previous panel had stated would be helpful to this panel and noted that none of these documents had been provided. It further noted that the NMC wrote to Mr Cotan in February 2020 to inform him of the hearing taking place today and that he would need to get in touch if he wished to attend and/or submit any documents he wanted to put before the panel. Mr Cotan has not responded to this letter.

The panel therefore concluded that Mr Cotan's fitness to practise remains impaired 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 Cotan's fitness to practise remains impaired.

### **Determination on sanction**

Having found Mr Cotan'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 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 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 went on to consider replacing the suspension order with a conditions of practice order. It had regard to the fact that Mr Cotan was originally made subject to a conditions of practice order following his substantive hearing in July 2017 and that it had been replaced with a suspension order at the second review of the order in April 2019. It noted that, at that time, Mr Cotan appeared to have made no attempt to comply with the conditions of practice that had been made.

The panel was of the view that no progress or effort is being made by Mr Cotan with regard to re-engaging with the NMC and demonstrating a willingness to comply with conditions. It determined that in the light of this, conditions of practice remain unworkable.

The panel next considered imposing a further suspension order. The panel noted that prior to his misconduct, Mr Cotan was a newly qualified nurse who had provided good testimonials to the substantive panel. However, since then he has failed to show further insight into his previous failings. 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 Cotan from practising as a Registered Nurse 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 Cotan in writing.

That concludes this determination.