

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Meeting

6 August 2020

Virtual Meeting

Name of registrant: Zenaida Ordono

PIN: 03L01570

Part(s) of the register: Registered Nurse (Sub Part 1) Adult Nursing
(December 2003)

Area of registered address: Middlesex

Type of case: Conviction

Panel members: Philip Sayce (Chair, registrant member)
Lorraine Shaw (Registrant member)
Jennifer Portway (Lay member)

Legal Assessor: Ian Ashford-Thom

Panel Secretary: Melissa McLean

Facts proved: 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Service of Notice of Meeting

The panel considered whether notice of this meeting had been served in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules').

The panel accepted the advice of the legal assessor. The panel noted that the current Rules (as amended due to the Covid-19 pandemic) allow for notice to be sent by email to a registrant's email address, as held on the NMC register.

The panel noted that notice of this substantive meeting was sent to Ms Ordone by email to her address on the NMC register on 30 June 2020. The notice informed Ms Ordone that a panel of the Fitness to Practise Committee would hold a meeting to consider her case on or after 4 August 2020. The panel took into account that the Notice of Meeting provided details of the charge, date and that this meeting would be held virtually.

The panel accepted the advice of the legal assessor.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served 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). The panel was also satisfied that it was appropriate to proceed with this case at a meeting.

Details of charge

That you, a registered nurse:-

- 1) Were convicted on 1 April 2019 at Bodmin Magistrates Court of assaulting Resident A by beating her contrary to Section 39 of the Criminal Justice Act 1988

AND in light of the above, your fitness to practise is impaired by reason of your conviction.

NMC statement of case

Within the documents provided to the panel was the NMC's "Statement of Case". This document set out the background of this matter and the NMC's case in relation to each of the charges. It read as follows:

'Facts

1. *The registrant qualified as a nurse and entered the NMC register on 4 December 2003, she appears on the register as RN1 – Registered Nurse, Adult. No previous concerns have been raised about the registrant with the NMC.*
2. *At the relevant time the registrant was employed as a registered nurse at Hillcrest House, East Looe, Cornwall and had worked there since 28 August 2014.*
3. *The registrant was working on the dementia unit on the night shift of 19 July 2018. Whilst caring for a resident with advanced dementia, who was being verbally abusive, the registrant smacked the resident's head and then struck her across the face, causing the resident's lip to bleed. The registrant was dismissed for gross misconduct on 31 July 2018.*
4. *There was a police investigation during which the registrant was interviewed. She admitted causing the injury but claimed that it was accidental. She was subsequently summonsed for common assault of the resident.*
5. *On the 1 April 2019 at Bodmin magistrates court the registrant was found guilty after trial and was sentenced to a Community Order with one requirement of 150*

hours unpaid work to be carried out by 31.01.20. She was ordered to pay the victim £100 compensation, a victim surcharge of £85 and £770 costs.

6. *By virtue of rule 31(2) of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 the certificate of conviction completed by a competent officer of the Court shall be conclusive evidence of that conviction and the findings of fact upon which the conviction is based shall be admissible as proof of those facts.'*

Decision on the findings on facts and reasons

The panel bore in mind that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel carefully considered all the documentary evidence contained in the NMC bundle.

The panel accepted the advice of the legal assessor.

The charge concerns Ms Ordone's conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31. - (2) Where a registrant has been convicted of a criminal offence -**
- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and**
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.**
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'**

Decision and reasons on impairment

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Ms Ordono's fitness to practise is currently impaired by reason of Ms Ordono's conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel next went on to decide if as a result of the conviction, Ms Ordono's fitness to practise is currently impaired.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d) ...

The panel found that Ms Ordono's actions engage limbs a to c of the Grant judgment in that her actions involving assault causing injury to a vulnerable resident are serious and put patients at unwarranted risk of harm, and bring the profession into disrepute. The panel noted that Ms Ordono was convicted of a serious violent offence resulting in injury to Resident A. The panel also noted that Resident A was a vulnerable patient who has dementia. Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

The panel considered that Ms Ordono's conduct and her conviction amount to a serious departure from the accepted standards and proper behaviour expected of a registered nurse. *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates 2015* requires that nurses act with honesty and integrity at all times. The panel determined that the specific sections of the code that Ms Ordono has breached are;

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively...

...

1.5 respect and uphold people's human rights

...

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

The panel determined that the conduct which led to Ms Ordone's conviction breached fundamental tenets of the nursing profession and brought it into disrepute.

Ms Ordone's actions resulted in a serious criminal conviction and the panel was of the view that the nature of her conduct is such that it may not be easily capable of remediation. The panel noted that Ms Ordone has not provided any evidence of remediation, such as a reflective statement. Accordingly, it cannot be said that the conduct is highly unlikely to be repeated. The panel took into account her responses dated 11 August 2019 where she demonstrates some acknowledgement of her convicted conduct. However the panel determined this did not amount to evidence of meaningful insight, or remorse. The panel noted that Ms Ordone has had limited engagement with the NMC proceedings.

In light of the lack of insight, remorse and remediation, the panel is of the view that there is a risk of repetition and risk of significant harm to patients and the public. It therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was required. It was of the view that a

member of the public would be shocked to discover that a Registered Nurse's fitness to practise was not found to be impaired after a panel had been informed of the details of a conviction that involved assault causing injury to a vulnerable resident.

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

Decision and reasons on sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Ms Ordone off the register. The effect of this order is that the NMC register will show that Ms Ordone has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Having found Ms Ordone's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel first considered whether to take no action but concluded that this would be wholly 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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered that Ms Ordone's misconduct was not at the lower end of the spectrum and that a caution order would be wholly inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public

interest to impose a caution order which would allow Ms Ordone to continue to practise as a nurse without restriction.

The panel next considered whether placing conditions of practice on Ms Ordone's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the conviction in this case and the lack of engagement and insight. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Ms Ordone's registration would not adequately address the seriousness of this case given that she assaulted a vulnerable patient causing injury and would not protect the public or meet the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel was of the view that the serious breach of the fundamental tenets of the profession evidenced by Ms Ordone's actions is fundamentally incompatible with Ms Ordone remaining on the register.

The panel took into account that Ms Ordone physically assaulted a resident whilst on duty, causing the resident to bleed. Ms Ordone later sought to explain her behaviour as accidental. The panel also noted that Ms Ordone has not provided any evidence of mitigation nor has she demonstrated any insight or remorse since the incident happened. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Ms Ordono's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Ordono's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Ordono's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining 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.

This will be confirmed to Ms Ordono in writing.

Decision and reasons on interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in Ms Ordone's own interest until striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The panel therefore imposed an interim suspension order for a period of 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Ms Ordone is sent the decision of this hearing in writing.

That concludes this determination.