

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

**Substantive Order Review Meeting
Tuesday 29 December 2020**

Virtual Meeting

Name of registrant:	Mrs Nahid Nasiri
NMC PIN:	92J0053O
Part(s) of the register:	Registered Nurse - RN 1 Adult Nursing - October 1992
Area of registered address:	Surrey
Type of case:	Misconduct
Panel members:	Chris Morrow-Frost (Chair, registrant member) Amy Noakes (Registrant member) Sadia Zouq (Lay member)
Legal Assessor:	Cyrus Katrak
Panel Secretary:	Catherine Acevedo
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 7 February 2021 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Mrs Nasiri was not in attendance and that the Notice of Meeting had been sent to Mrs Nasiri's registered email address on 16 November 2020.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Nasiri has been served with notice of this meeting 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).

Decision and reasons on review of the substantive order

The panel decided to impose a striking-off order.

This order will come into effect at the end of 7 February 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 9 January 2020.

The current order is due to expire at the end of 7 February 2021.

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, whilst employed as a registered nurse at Woodlands Nursing Home, on 06 August 2017;

1) ...

2) ...

3) *In respect of Resident A, on observing that she had ceased breathing you failed to attempt cardio-pulmonary resuscitation. [found proved]*

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

The original panel determined the following with regard to impairment:

“Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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. In this regard the panel considered the judgement 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”.

Mrs Justice Cox went on to say in Paragraph 76:

"I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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. *has in the past acted dishonestly and/or is liable to act dishonestly in the future".*

The panel finds that limbs a, b and c are engaged in this case. The panel decided that although there was no evidence of actual patient harm, there was the potential to cause serious and unwarranted harm.

The panel acknowledged that Mrs Nasiri was not charged with causing Resident A's death. The panel also considered the document from the Consultant Histopathologist

which states ‘... Resuscitation is unlikely to have been successful’. However the panel considered that Mrs Nasiri could not be aware of the likely outcome of resuscitation at the time Resident A ceased breathing. The panel considered that Mrs Nasiri should have attempted CPR at the point she realised Resident A had ceased breathing in order to try to preserve her life in accordance with the Home’s policy, and in respect of the rights of Resident A’s who did not have a DNAR in place.

The panel decided that Mrs Nasiri’s misconduct brought the profession into disrepute and breached a fundamental tenet by failing to provide a high and appropriate standard of practice and by failing to uphold the reputation of the profession.

With regard to assessing the future and any risk that Mrs Nasiri may pose, the panel considered the questions posited in the case of Cohen, namely whether the misconduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

The panel gave careful consideration to Mrs Nasiri’s oral evidence at the coroner’s inquest, Mrs Nasiri’s response bundle, training completed and positive oral evidence of Ms 2 who described Mrs Nasiri as a highly competent nurse.

The panel noted that this is the first regulatory concern since Mrs Nasiri qualified and registered as a nurse in the UK in 1992. The panel also noted that Mrs Nasiri continued to practise as a registered nurse after the incident until July 2018 when she retired with no other regulatory concerns raised.

The panel carefully considered whether Mrs Nasiri has expressed genuine remorse. The panel found that Mrs Nasiri chose to disengage from the regulatory process and the panel considered that it has nothing before it to show that Mrs Nasiri has expressed remorse at any point since the incident. From the point of Mrs Nasiri’s supervision session with Ms 2 a day after the incident, through to the coroner’s inquest in June 2018, Mrs Nasiri has maintained her position that she made a clinical judgement without any further elaboration and without any apologies.

The panel therefore found that Mrs Nasiri has not expressed any form of remorse.

Regarding insight, the panel found that from the documentary evidence before it that Mrs Nasiri has not shown insight. The panel considered that it did not have any reflective piece from Mrs Nasiri before it. The panel considered that Mrs Nasiri's representative submitted representations on her behalf during the regulatory investigations which stated 'lessons were learned from this incident, any decision she made at the time of the incident was a 'sound and legitimate clinical decision'. However the panel noted that Mrs Nasiri has not elaborated on what lessons she learned and how she would deal with a similar situation in the future. The panel noted that Mrs Nasiri has not provided evidence to demonstrate the effect her actions had or could have had on patients or the family of Resident A. It further considered that Mrs Nasiri has not demonstrated how her actions affected or could have affected her colleagues and the wider profession.

In considering whether Mrs Nasiri has remedied her practice, the panel took into account that there have been no previous concerns regarding her clinical skills. The panel noted that Mrs Nasiri continued to practise as a registered nurse following the incident until July 2018 when she retired, with no further regulatory concerns raised.

The panel considered that the clinical failings identified in this case are serious as it involved the preservation of life. The panel took into account that Mrs Nasiri undertook basic emergency training following the incident. However the panel had no documentary evidence before it on the contents of this training. The panel was of the view that the evidence of training provided was basic and would not have addressed the serious issues involved in this case, namely that Mrs Nasiri was aware of what needed to be done but chose not to do it.

The panel considered Ms 2's evidence that Mrs Nasiri was a very competent nurse who she had worked with in the past and who was capable of performing CPR and that she had good references. Despite this positive reference, the panel considered that Mrs Nasiri had never adequately explained her clinical decision not to attempt CPR in accordance with the Home's Policy.

The panel noted that it had no documentary evidence before it that Mrs Nasiri has attempted to remediate any of her serious clinical failings which involved the preservation of life. The panel is of the view that the serious conduct identified in this case is potentially remediable but, at this stage, it has not been remedied.

The panel is of the view that there is a serious risk of repetition based on the complete lack of insight and complete lack of remediation. The panel 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 because a fully informed member of the public would be troubled by the deficiencies of Mrs Nasiri.

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

The original panel determined the following with regard to sanction:

"Having found Mrs Nasiri'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 panel had regard to the Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Seriousness of conduct and potential consequences if the actions are repeated.
- Lack of insight into failings
- Lack of remediation.

The panel also took into account the following mitigating features:

- Mrs Nasiri's exemplary career as a nurse in the UK over twenty years.
- Positive references from Ms 2.

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 public protection issues identified, an order that does not restrict Mrs Nasiri's practice would not be appropriate in the circumstances. The SG 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 Mrs Nasiri's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Nasiri'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 took into account the SG, in particular:

- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;
- No evidence of general incompetence;
- Patients will not be put in danger either directly or indirectly as a result of the conditions;

- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel considered whether workable conditions of practice could be formulated to address the clinical failings identified in this case since Mrs Nasiri has not elaborated on why these clinical failings occurred in the first instance. In any event, the panel determined that even if conditions of practice could be formulated to address the failings identified, Mrs Nasiri has indicated that she has retired, no longer lives in the UK and she has not engaged in the NMC process since August 2019. Consequently, the panel noted that it had no evidence before it to suggest Mrs Nasiri would comply with any conditions and as a result these would be unworkable.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of repetition of behaviour since the incident;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel decided that, although there had been a clear breach of a fundamental tenet of the profession, and that professional standards need to be upheld and promoted, the public interest is also satisfied by trying to assist a nurse, who otherwise has had an exemplary career, to return to practise.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the fact that Mrs Nasiri continued to practise without any concerns after the incident and the positive references, the panel concluded that it would be disproportionate. Whilst the panel acknowledges

that a suspension may have a punitive effect, it would be unduly punitive in Mrs Nasiri's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order might cause Mrs Nasiri. However this is outweighed by the public interest in this case.

The panel decided that a suspension order for a period of 12 months was appropriate in this case to protect the public and is otherwise in the public interest.

The panel considered that this order is 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

Before 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. This panel will have all sanctions available to it, up to, and including a striking-off order.

Any future panel reviewing this case would be assisted by:

- *Mrs Nasiri's engagement with the NMC*
- *Evidence of any employment outside of the UK*
- *Evidence of safe practice in that employment*
- *Testimonials*
- *A reflective piece addressing the shortcomings identified by the panel*
- *Evidence of any training and CPD targeted at the identified failings".*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Nasiri'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. Whilst it has noted the decision of the last panel, this panel 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.

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 Mrs Nasiri's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Nasiri had disengaged with the NMC and she had not provided any evidence demonstrating insight or remorse or that she had remediated her misconduct.

This panel has received no new information from Mrs Nasiri for this review and was of the view that there has been no material change in circumstance since the substantive hearing other than the passage of time.

The panel is of the view that there is a serious risk of repetition should she return to practice based on the lack of evidence of insight and remediation. The panel 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 because a fully informed member of the public would be troubled by the misconduct.

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

Decision and reasons on sanction

Having found Mrs Nasiri'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 but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would neither protect the public nor be 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 public protection issues identified, an order that does not restrict Mrs Nasiri's practice would not be appropriate in the circumstances. The SG 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 Mrs Nasiri's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the risks identified. The panel concluded that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Mrs Nasiri's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The previous panel were informed that Mrs Nasiri has retired and no longer lives in the United Kingdom. In view of Mrs Nasiri's clear intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted Mrs Nasiri's previous intention of retiring from the profession and moving abroad. Mrs Nasiri has not engaged with the NMC since August 2019 and has not provided any information to this panel. The panel was of the view that considerable evidence would be required to show that Mrs Nasiri 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 Mrs Nasiri 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 7 February 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs Nasiri in writing.

That concludes this determination.