

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

**Substantive Order Review Hearing**

**Tuesday 2 June 2020**

Virtual Hearing

<b>Name of registrant:</b>	Tsvetanka Miteva
<b>NMC PIN:</b>	16E0300C
<b>Part(s) of the register:</b>	Registered Nurse (Sub Part 1) Adult Nursing – 5 May 2016
<b>Area of registered address:</b>	Bulgaria
<b>Type of case:</b>	Lack of Competence / Lack of knowledge of English / Misconduct
<b>Panel members:</b>	Andrew Harvey (Chair, lay member) Lorna Taylor (Registrant member) Jill Wells (Lay member)
<b>Legal Assessor:</b>	Ian Ashford-Thom
<b>Panel Secretary:</b>	Christine Iraguha
<b>Nursing and Midwifery Council:</b>	Represented by Dulcie Piff, Case Presenter
<b>Mrs Miteva:</b>	Not present and unrepresented
<b>Order being reviewed:</b>	Suspension order (12 months)
<b>Fitness to practise:</b>	Currently impaired
<b>Outcome:</b>	<b>Striking-off order to come into effect at the end of 10 July 2020, in accordance with Article 30 (1)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mrs Miteva was not in attendance and that the Notice of Hearing had been sent to Mrs Miteva's registered email address on 28 April 2020, being the email address that Mrs Miteva has notified, and used in communications with the council, in terms of Rule 34 (1) (c) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mrs Miteva's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Piff, 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 Mrs Miteva has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of Mrs Miteva to maintain an effective and up-to-date registered address.

## **Decision and reasons on proceeding in the absence of Mrs Miteva**

The panel next considered whether it should proceed in the absence of Mrs Miteva. The panel had regard to Rule 21 and heard the submissions of Ms Piff who invited the panel to continue in the absence of Mrs Miteva. She submitted that Mrs Miteva had voluntarily absented herself.

Ms Piff submitted that there had been no engagement at all by Mrs Miteva with the NMC in relation to these proceedings and all previous hearings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

Ms Piff drew the panel's attention to a series of telephone notes from the NMC case officer dated 4 May 2020, 11 May 2020 and on 28 May 2020 making contact with Mrs Miteva, all attempts were unsuccessful. She submitted that the NMC has made reasonable efforts to contact Mrs Miteva.

She informed the panel that following the recent events of the Covid-19 pandemic, and in line with the government advice to avoid travel and social contact, the NMC have made provision to hold this hearing virtually and all relevant details were sent to Mrs Miteva.

Ms Piff submitted that the current order is due to expire at the end of 10 July 2020. Further, she submitted that it's a mandatory review and also in the public interest to proceed.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Miteva. In reaching this decision, the panel has considered the submissions of Ms Piff, the correspondence by the NMC case officer to Mrs Miteva and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Miteva;
- Mrs Miteva has not engaged with the NMC and has not responded to any of the letters or emails sent to her about this hearing;
- Mrs Miteva has not provided the NMC with details of how she may be contacted other than her registered address;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case

The panel has decided to proceed in the absence of Mrs Miteva. In reaching this decision, the panel has considered the submissions of Ms Piff, the collection of telephone notes between the NMC and Mrs Miteva, and the advice of the legal assessor. It has had particular regard to the overall interests of justice and fairness to all parties.

The panel noted that Mrs Miteva should have been aware of today's hearing and that, if was, she had chosen not to participate. The panel was satisfied that the NMC had made all reasonable efforts to get Mrs Miteva to participate with today's hearing. The panel had no reason to believe that an adjournment would result in Mrs Miteva's attendance. Having weighed the interests of Mrs Miteva with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Mrs Miteva's absence.

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

### **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 10 July 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order, originally imposed by a Fitness to Practise panel on 8 June 2018 for a period of 12 months. This was reviewed on 28 May 2019 when the order was extended for a further period of 12 months.

The current order is due to expire at the end of 10 July 2020.

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, between 20 May and 17 June 2016 at Rutland Care Village (“the Home”) failed to demonstrate the standards of knowledge, skill and judgment required to practise without supervision as a band 5 nurse in that you:*

1. *On one or more occasions:*

a. *Were unable to state what normal oxygen saturation and normal respirations were.*

***[Found proved]***

b. *Were unable to perform urinalysis without support.*

***[Found proved]***

c. *Were unable to take blood sugar without support.*

***[Found proved]***

d. ...

***[No case to answer]***

e. *Did not dispose of used gloves in the clinical waste.*

***[Found proved]***

f. *Incorrectly documented skin tears as ulcers in patient notes.*

***[Found proved]***

g. *Copied what had been written previously in care plans [and/or daily notes].*

***[Found proved]***

h. ...

***[No case to answer]***

*On an unknown date:*

2. *In relation to Patient A*

a. i. *Failed to act on exceptionally low blood pressure of Patient A.*

***[Found proved]***

ii. *Did not communicate the exceptionally low blood pressure of Patient A to the other nurse on duty.*

***[Found proved]***

b. *Tried to change Patient F’s stoma bag at 10am as opposed to 4pm.*

**[Found proved]**

- c. *Indicated that you wished to check Patient G's sacrum whilst the patient was in the dining room.*

**[Found proved]**

- d. *Placed Temazepam in the cupboard of the wrong patient.*

**[Found proved]**

- e. *Did not document Temazepam received in the controlled drugs book.*

**[Found proved]**

3. *On 20 May 2016:*

- a. *In relation to Patient C:*

- i. *Attempted to apply a new dressing without removing the dirty dressing.*

**[Found proved]**

- ii. *Did not plan to do a 15 minute soak of the wound.*

**[Found proved]**

- b. *Offered Patient D tea when she was losing consciousness.*

**[Found proved]**

4. *On 24 May 2016:*

- a. *Did not tell Patient E what you were doing when changing her leg dressing.*

**[Found proved]**

- b. *Offered a colleague who had collapsed tea when colleagues were trying to put them in the recovery position.*

**[Found proved]**

5. *On 7 June 2016:*

- a. *Did not assess Patient B for injury following their fall.*

**[Found proved]**

- b. *Did not conduct any observations whilst Patient B was on the floor.*

**[Found proved]**

- c. *Attempted to get Patient B up from the floor without using a hoist as required.*

**[Found proved]**

6. *Did not pass the Home's medication assessment.*

***[Found proved]***

7. *Were unable to complete tasks as set out in the Home's nursing preceptorship and assessment booklet.*

***[Found proved]***

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

*That you, a registered nurse:*

8. *Do not have the necessary knowledge of English to practise safely and effectively;*

***[Found proved]***

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

*That you, a registered nurse, between 13 October 2016 to date:*

9. *Failed to cooperate with an NMC investigation in that you did not complete an IELTS assessment when requested to do so;*

***[Found proved]***

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

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

*This panel has had regard to all of the documentation before it. A key question for the panel today was what had changed since the substantive hearing in June 2018. On the face of it, Mrs Miteva has not engaged with the NMC at all. She has not*

*provided any evidence of remediation, nor has she expressed any interest in addressing her lack of competence or her misconduct.*

*The panel also 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 and 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. In the absence of any evidence of remediation there is a real risk of repetition and, as a consequence of significant harm to patients. The panel further determined that public confidence in the nursing profession would be severely undermined if a finding of impairment were not made in a situation where a nurse has been deemed to lack the necessary competence and knowledge of English to adequately perform her role, has not taken steps to remedy her practice or improve her language skills and has failed to cooperate with her regulator.*

*The panel noted that Mrs Miteva had been given clear suggestions by the previous panel, however, she has not provided any information to evidence that she has taken any actions to remedy the deficiencies identified by the substantive hearing in June 2018. The panel further noted that Mrs Miteva has not engaged with the NMC or the regulatory process. As such, the panel was of the view that there is no material change in Mrs Miteva's circumstance and therefore she has not addressed the concerns relating to her language, competence and misconduct. The panel determined that there was no information before it upon which it could be satisfied that Mrs Miteva's fitness to practice is no longer impaired. A finding of current impairment is therefore made on the grounds of public protection and otherwise in the public interest.*

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

*In relation to sanction, the panel first considered whether it would be appropriate to conclude this case without taking any further action. It 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.*

*Next, it considered whether a caution order would be appropriate in the circumstances. The panel considered that Mrs Miteva's lack of competence, lack of knowledge of English and misconduct were not at the lower end of the spectrum as indicated in the Sanctions Guidance criteria and concluded that a caution order would be inappropriate in view of the seriousness of the case, nor would a caution order protect the public. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.*

*The panel then went onto consider whether placing conditions of practice on Mrs Miteva's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be relevant, proportionate, workable and measurable. The panel considered that there was evidence of general incompetence in this case, and it would therefore be difficult to formulate conditions which would address all of the deficiencies in Mrs Miteva's practice. The panel could also not formulate conditions which would allow Mrs Miteva to practise safely, given her lack of knowledge of English. Furthermore, Mrs Miteva has not engaged with the NMC and the panel had no information to suggest that she would be willing to comply with any conditions imposed upon her registration. It therefore concluded that conditions of practice would not be practical, workable or appropriate. In addition, the panel determined that conditions of practice would not adequately address Mrs Miteva's misconduct nor satisfy the public interest.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. It concluded that a suspension order would be the appropriate and proportionate sanction in this case. The panel considered that this order is necessary to protect the public, and maintain public confidence in the regulator by sending a clear message about the standard of performance and conduct required of a registered nurse.*

*The panel determined that a suspension order for the maximum period of 12 months was appropriate in this case to mark the seriousness of Mrs Miteva's failings. It will also give her a further opportunity to engage with the NMC, take*

*steps to improve her nursing performance and English language skills, and develop her insight.*

*The panel noted that this order will prevent Mrs Miteva from working as a registered nurse in the UK and, as a result, she may suffer financial hardship. However, the panel considered that this possibility is outweighed by the public interest in this case.*

*The panel also considered whether it would be appropriate to impose a striking-off order in Mrs Miteva's case. The panel noted that it was not possible to strike a nurse from the NMC register on the basis of lack of competence or lack of knowledge of English until that nurse had been subject to a substantive sanction of either conditions of practice or suspension for a minimum of two years. Therefore, the panel could only make a striking-off order in this case if it decided that Mrs Miteva's misconduct was sufficiently serious to justify such an order. The panel was of the view that failing to cooperate with an NMC investigation was a serious matter. However, it did not consider that Mrs Miteva's misconduct was so serious as to be fundamentally incompatible with ongoing registration. It was also mindful of its duty to act proportionately, and impose the least restrictive sanction which would adequately protect the public. In these circumstances, the panel considered it would be disproportionate to strike Mrs Miteva from the register at this stage.*

*The panel therefore decided to impose a suspension order. The length of this order is twelve months, to allow Mrs Miteva a further opportunity to engage with the NMC and demonstrate a commitment to remediating her failings and attend a future hearing.*

*This suspension order will take effect upon the expiry of the current suspension order, namely at the end of 10 July 2019, in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001.*

*The next reviewing panel may be assisted by:*

- *Mrs Miteva's attendance at any future hearing, either in person or remotely, by telephone or video link;*
- *evidence of training in the areas of lack of competence identified in this case;*
- *evidence that Mrs Miteva has passed the International English Language Testing System (IELTS) assessment at the required level (which can be taken overseas);*
- *a written reflective piece demonstrating insight into Mrs Miteva's clinical failings, the risks these posed to patients, how she would act differently in the future, and the importance of complying with the requirements of the NMC and the regulatory process.*

### **Decision and reasons on current impairment**

The panel has considered carefully whether Mrs Miteva'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 which included the decision of the substantive panel and the last review panel and several items of correspondence to Mrs Miteva from the NMC case officer in relation to this hearing. It has taken account of the submissions made by Ms Piff on behalf of the NMC.

Ms Piff outlined the background of the case to the panel, along with the relevant documents. She submitted that there has been no engagement from Mrs Miteva throughout the NMC proceedings. She informed the panel that Mrs Miteva has not provided any evidence of remediation, nor has she expressed any interest in addressing her lack of competence or her misconduct and neither has she taken any evidence of undertaking any test regarding her lack of knowledge of the English language, as requested by the NMC. Ms Piff submitted that the risk to the public still remains. She informed the panel that Mrs Miteva had not yet been subject to a suspension order for more than two years and that, therefore, the panel could only consider a strike off order in respect of the matter of misconduct.

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 Miteva's fitness to practise remains impaired.

The panel had regard to the substantive hearing decision, as well as the subsequent review involved in this case.

The panel considered the misconduct, lack of competence and lack of knowledge of English found proven in respect of Mrs Miteva's was serious.

The panel noted that prior to this hearing and prior to the previous review which took place in May 2019, Mrs Miteva has not demonstrated insight into her failings and has not provided any evidence of attempts at remediation. The panel observed that the clinical failings and lack of knowledge of English are remediable if Mrs Miteva had engaged and shown willingness to address the concerns.

The panel noted that the last reviewing panel found that Mrs Miteva had not demonstrated any insight in the regulatory concerns identified at the substantive hearing. At this hearing the panel had no information or evidence before it that showed any insight into Mrs Miteva's failings as there had been no communication over the length of the NMC process.

In its consideration of whether Mrs Miteva has remedied her practice, the panel took into account that the original panel in June 2018 and the review panel in May 2019 had no evidence of any remediation before it. At today's hearing, the panel received no new evidence of any further remediation.

The last panel determined that Mrs Miteva remained liable to repeat matters of the kind found proved. This panel has received no evidence or new information that would allow it to make a finding any different to that. The panel also noted that Mrs Miteva had not

fulfilled her obligation to the regulator to keep her contact details up to date having had its attention drawn to an inactive email address.

This panel noted that the findings against Mrs Miteva are significant and wide-ranging including fundamental nursing practise. The panel concluded that, due to the lack of any evidence to the contrary, Mrs Miteva has not remediated her failings. However, Mrs Miteva has taken no action to evidence any insight or remediation in relation to the concerns. The panel therefore concluded that a finding of continuing impairment, due to Mrs Miteva's lack of competence and misconduct, 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 Mrs Miteva's fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found Mrs Miteva'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 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 Miteva's practice would not be appropriate in the circumstances. The panel considered that Mrs Miteva'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 a conditions of practice on Mrs Miteva'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 could also not formulate conditions which would allow Mrs Miteva to practise safely, given her lack of knowledge of English. Furthermore, Mrs Miteva has not engaged with the NMC and the panel had no information to suggest that she would be willing to comply with any conditions imposed upon her registration. It therefore concluded that conditions of practice would not be practical, workable or appropriate. In addition, the panel determined that conditions of practice would not adequately address Mrs Miteva's misconduct nor satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted that a further suspension order was the only remaining sanction in respect of the proven charges that related to lack of competence and lack of English language. However, in relation to the misconduct element of the charge all sanctions were available. In the panel's view, given the significant time period that has elapsed with Mrs Miteva's lack of engagement or evidence of cooperating with the NMC, this has increased the seriousness of the misconduct. Therefore, in the panel's view, a further suspension order would not be appropriate.

The panel determined that it was necessary to take action to prevent Mrs Miteva from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest is a strike off order and decided to make such an order.

Given Mrs Miteva's misconduct in failing to cooperate with the NMC investigation by taking the International English Language Testing System (IELTS) test, together with her persisting failure to engage and show any willingness to do so, the panel concluded that the point had now reached at which her misconduct was fundamentally incompatible with

continued registration. The panel were satisfied that any resulting hardship to Mrs Miteva was outweighed by the need to protect the public and uphold the public interest, and accordingly that such a sanction was proportionate.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 10 July 2020 in accordance with Article 30(1).

This decision will be confirmed to Mrs Miteva in writing.

That concludes this determination.