## Nursing and Midwifery Council
### Fitness to Practise Committee
#### Substantive Order Review Meeting
25 March 2020
Virtual Meeting

<table>
<thead>
<tr>
<th>Name of registrant:</th>
<th>Mihaela Timofte</th>
</tr>
</thead>
<tbody>
<tr>
<td>NMC PIN:</td>
<td>13E0245C</td>
</tr>
<tr>
<td>Part(s) of the register:</td>
<td>Registered Adult Nurse (23 May 2013)</td>
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<tr>
<td>Area of Registered Address:</td>
<td>Romania</td>
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<tr>
<td>Type of Case:</td>
<td>Misconduct</td>
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<tr>
<td>Panel Members:</td>
<td>Jane Kivlin (Chair, Registrant member)</td>
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<tr>
<td></td>
<td>Catherine Cooper (Registrant member)</td>
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<tr>
<td></td>
<td>Anne Phillimore (Lay member)</td>
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<tr>
<td>Legal Assessor:</td>
<td>Nigel Mitchell</td>
</tr>
<tr>
<td>Panel Secretary:</td>
<td>Roshani Wanigasinghe</td>
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<tr>
<td>Order being reviewed:</td>
<td>Suspension Order (6 months)</td>
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<tr>
<td>Fitness to Practise:</td>
<td>Impaired</td>
</tr>
<tr>
<td>Outcome:</td>
<td>Suspension Order (12 months) in accordance with Article 30 (1)</td>
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</table>
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 [Fitness to Practise] 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 panel heard and accepted the advice of the legal assessor.

It noted that the letter of notice of this substantive meeting was sent to Ms Timofte’s address on the register by both first class post and recorded delivery on 24 January 2020. Royal Mail “Track and Trace” also confirms that notice was delivered to Ms Timofte’s registered address on 29 January 2020.

The panel bore in mind 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 meeting remotely.

The panel was satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore determined that notice had been served in accordance with the Rules.
Decision and reasons on review of the current order

The panel decided to impose a further suspension order for a period of 12 months. This order will come into effect at the end of 11 May 2020 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 panel on 11 October 2019 for a period of six months. The current order is due to expire on 11 May 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:

\textit{That you, whilst working as a registered nurse:}

1. On or around 1 September 2016, wrote over the top of an entry in Patient A’s daily record chart for the 1 September 2016.

2. [Charge not proved]

3. Incorrectly dated an entry in Patient B’s observations sheet as 4 October 2016, when this should have been recorded as 3 October 2016.

4. [Charge not proved]

5. Signed a controlled drug register to indicate that you had witnessed the administration of Oramorph on 15 December 2016, when you had not.

6. Your actions as described in Charge 5 above were dishonest, in that you signed the controlled drugs register to indicate that you had witnessed the administration of Oramorph, when you knew you had not.
And in light of the above, your fitness to practise is impaired by reason of your misconduct.

The original substantive panel determined the following with regard to impairment:

“The panel considered that Ms Timofte’s misconduct was remediable. The panel bore in mind Ms Timofte’s early admission at the local investigation stage, and her apology and expressions of remorse at that stage. However, in its consideration of whether Ms Timofte has remedied her practice the panel did not have any evidence of remediation beyond this initial admission. Ms Timofte has not engaged with this hearing or provided any evidence of up to date training or reflections relevant to the charges. The panel had regard to the two character references and training certificates submitted in 2018. However, it considered that these training certificates were now out of date not relevant to the issues in this case, and had taken place prior to the incident in question.

Regarding insight, the panel considered the letter from Ms Timofte’s previous representatives at the RCN dated 30 January 2018, which states (in relation to charge 5), “Ms Timofte instructs us that this was a foolish mistake that she deeply regrets and looks to reassure the NMC she will never do again”. The panel considered that this did evidence some remorse and provided the panel with some assurance that the conduct would not be repeated. However, the panel had not been provided with evidence of full reflection into her misconduct. Ms Timofte has not demonstrated an understanding of how her actions put the patient at a risk of harm. Nor has she demonstrated an understanding of why what she did was wrong, and how this impacted negatively on the reputation of the nursing profession. Ms Timofte has not explained how, if placed under the same pressure from a colleague, she would handle the situation differently in the future. Further, her letter of resignation dated 11 January 2017 seeks to minimise her errors which confirms the panel’s view of lack of insight.
The panel also considered that Ms Timofte has still not provided evidence that she recognises that her actions were dishonest, nor has she reflected on the importance of honesty and integrity in the nursing profession. In these circumstances, the panel considered that Ms Timofte, despite showing some remorse, has limited insight into her failings. As a result the panel could not be satisfied that the misconduct would not be repeated in the future, and found that there was a risk of repetition. Accordingly, the panel determined 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. Members of the public and fellow professionals would consider that intentionally falsifying a medical record to cover up a mistake was deplorable. Ms Timofte’s actions have the potential to undermine public trust and confidence in the integrity of nurses in the profession. The panel determined that, in this case, a finding of impairment on public interest grounds was also required.

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

The original substantive panel determined the following with regard to sanction:

“In reaching its decision on sanction, the panel had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. The panel bore 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 careful regard to the Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.
The panel considered the aggravating features to be:

- There was a potential risk of unwarranted patient harm
- A lack of insight and remediation
- The dishonesty occurred in a clinical setting

The panel considered the mitigating features to be:

- Ms Timofte expressed some remorse at the time of the incident and in the letter from the RCN in January 2018
- Testimonials attesting to Ms Timofte’s previous good character. In her oral evidence Ms 2 confirmed that Ms Timofte was personable, professional, and well-liked by colleagues, residents, and their families

The panel had regard to the SG on “Considering sanctions for serious cases: Cases involving dishonesty”, when considering the spectrum of dishonesty. The panel considered the following factors were present:

Most serious cases of dishonesty:
- deliberately breaching the professional duty of candour to cover up when things have gone wrong, especially if it could cause harm to patients

Less serious cases of dishonesty:
- one-off incident
- opportunistic or spontaneous conduct
- no direct personal gain

The panel considered that covering things up when things have gone wrong is very serious. The panel noted that Ms Timofte had worked at the Home for 3 years and was fully aware of the Home’s correct Controlled Drug register procedures. Ms Timofte should have explained to her colleague, who was recently employed at the Home, how to deal with her mistake appropriately in the circumstances. This opportunity for learning for the newly employed nurse was missed. However, the panel considered that the dishonesty was an isolated incident and was spontaneous. Ms Timofte felt pressurised by her colleague to
sign the Controlled Drug register, and succumbed to this pressure. There was no evidence of personal gain. Further, Ms Timofte has had no previous regulatory concerns, and the issues do not appear to be attitudinal in nature. In these particular circumstances, the panel considered that Ms Timofte’s dishonesty was towards the lower end of the spectrum.

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 protect the public, nor be 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 Timofte’s misconduct involved dishonesty and was not at the lower end of the spectrum of impairment and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate, nor protect the public, nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Timofte’s registration would be an appropriate and proportionate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel considered that there were practicable conditions which could address record keeping and medication administration errors. However, conditions of practice would not sufficiently address Ms Timofte’s dishonesty. Furthermore, as a result of Ms Timofte’s lack of engagement, and the absence of any evidence of willingness to comply with conditions, such an order would not be workable in this case. The panel therefore concluded that no useful purpose would be served by a conditions of practice order at this stage.
The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that this sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel determined that, there had been a breach of fundamental tenets of the profession, and dishonesty in a clinical setting is particularly serious. However, the panel has found the dishonesty in this case was at the lower end of spectrum. The panel noted that it had previously found that the misconduct was remediable. It considered that although there is a risk of repetition and lack of insight, given Ms Timofte’s assurance in 2018 that she would not do it again, this risk was at the lower end of the scale.

In these circumstances, the panel considered that the misconduct was not so serious that it is fundamentally incompatible with remaining on the register. The panel considered that a suspension order was the least restrictive sanction necessary in this case. Therefore the panel decided to impose a suspension order with review for a period of 6 months. The panel was of the view that 6 months was appropriate to mark the public interest and the seriousness of the case, and to protect the public. The panel also considered that 6 months would afford Ms Timofte the opportunity to provide evidence of further insight and remediation before any review hearing.
The panel further considered whether a striking-off order would be proportionate in Ms Timofte’s case. Taking account of all the information before it, the panel concluded that it would be disproportionate as the public can be adequately protected, professional standards and public confidence in nurses can be maintained by the imposition of a suspension order. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Timofte’s case to impose a striking off order.

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. Any future panel may be assisted by:

- Ms Timofte’s engagement with the NMC
- A reflective piece demonstrating: an understanding of how her actions put the patient at a risk of harm; an understanding of why what she did was wrong, and how this impacted negatively on the patient, colleagues, and the reputation of the nursing profession; and how, if placed under the same pressure from a colleague, she would handle the situation differently in the future.
- Evidence of up to date training on Controlled Drug medication administration
- Evidence of up to date references from a clinical or non-clinical setting, and/or paid or unpaid work that answer to her character and honesty.

**Decision on current fitness to practise**

The panel considered carefully whether Ms Timofte’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 carried out a comprehensive review of the order in light of the current circumstances. It noted the decision of the last panel, however it exercised its own judgment as to current impairment.
The panel had regard to all of the documentation before it, including the NMC bundle.

The panel 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 Ms Timofte’s fitness to practise remains impaired. The panel was of the view that the misconduct found proved by the substantive panel is easily remediable, however, it noted that Ms Timofte has not engaged beyond the initial admission at the local investigation stage. The panel noted it had no new documentary evidence before it to suggest that her fitness to practice might no longer be impaired and indeed Ms Timofte has not addressed any of the recommendations by the previous panel. It acknowledged that Ms Timofte, despite showing some remorse at the onset, has provided no information to suggest insight into her failings. As a result the panel could not be satisfied that the misconduct would not be repeated in the future, and found that there was a risk of repetition. Accordingly, the panel determined that a finding of impairment is necessary on the grounds of public protection and this being otherwise in the public interest.

**Determination on sanction**

Having found Ms Timofte’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 also took into account the NMC’s Sanctions Guidance (SG) and bore 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.
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 Timofte’s misconduct involved dishonesty and was not at the lower end of the spectrum of impairment and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate, nor protect the public, nor in the public interest to impose a caution order.

The panel next considered whether replacing the current suspension order with a conditions of practice order on Ms Timofte’s registration would be an appropriate and proportionate response. The panel was mindful that any conditions imposed must be practicable, measurable and workable. The panel considered that there were practicable conditions which could address record keeping and medication administration errors. However, as a result of Ms Timofte’s lack of engagement, and the absence of any evidence of willingness to comply with conditions, such an order would not be workable in this case. The panel therefore concluded that no useful purpose would be served by a conditions of practice order.

The panel considered the imposition of a further period of suspension. The SG indicates that this sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. It was of the view that extending the current order is the only appropriate sanction, which would both protect the public and satisfy the wider public interest at this stage. The panel was concerned that it had no evidence regarding remediation. It was of the view that a further period of suspension would afford Ms Timofte the opportunity to reengage with the NMC before the next review hearing and produce evidence of any such remediation. Accordingly, the panel determined to impose a further suspension order for the period of 12 months.
The panel considered that to impose a striking-off order would be disproportionate and overly punitive at this stage, as the public protection and public interest concerns in this case can be met by the imposition of a suspension order.

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. Any future panel may be assisted by:

- Ms Timofte’s engagement with the NMC as her regulator
- A reflective piece demonstrating: an understanding of how her actions put the patient at a risk of harm; an understanding of why what she did was wrong, and how this impacted negatively on the patient, colleagues, and the reputation of the nursing profession; and how, if placed under the same pressure from a colleague, she would handle the situation differently in the future.
- Evidence of up to date training on Controlled Drug medication administration
- Evidence of up to date references from a clinical or non-clinical setting, and/or paid or unpaid work that answer to her character and honesty.

Ms Timofte should be aware that, in the absence of any meaningful engagement by her before the next review of this order the reviewing panel will consider all sanctions available to it. This order allows her an opportunity to gather the evidence needed to demonstrate to a future panel her commitment to nursing and good practice.

This suspension order will be reviewed before it expires, unless Ms Timofte or the NMC requests the order to be reviewed at an earlier date.

This decision will be confirmed to Ms Timofte in writing.

That concludes this determination.