

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

**Substantive Order Review Hearing
13 March 2020**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Nubia Torres Victoria

NMC PIN: 15A0085C

Part(s) of the register: RN1 – Registered Nurse (sub part 1) Adult
(January 2015)

Area of Registered Address: England

Type of Case: Misconduct/Lack of knowledge of English

Panel members: Ilana Tessler (Chair, lay member)
Linda Tapson (Registrant member)
Jodie Jones (Registrant member)

Legal Assessor: Alain Gogarty

Panel Secretary: Akunna Iwuagwu

Nursing and Midwifery Council: Represented by Helen Guest Case Presenter

Mrs Victoria: Present and represented by Lynn Woolley
(both by telephone)

Order being reviewed: Conditions of practice order (12 months)

Outcome: Conditions of practice order (12 months)
to come into effect at end of 5 April 2020 in
accordance with Article 30 (1)

Decision and reasons on review of the current order

The panel decided to extend the current conditions of practice order for 12 months. This order will come into effect at the end of 5 April 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 1 September 2017. This order was reviewed on 28 February 2019 and the conditions of practice order was varied and continued for a period of 12 months.

The current order is due to expire at the end of 5 April 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:

- 1) *Do not have the necessary knowledge of the English language to practise safely and effectively;*
- 2) *On 18 August 2015 your actions were inappropriate in that you;*
 - a. *Failed to follow instructions to not administer medication;*
 - b. *Failed to carry out patient identification checks before administering medication;*
 - c. *Incorrectly administered to Patient A:*
 - i. *Metformin 500mg;*
 - ii. *Furosemide 20 mgs;*

iii. Ramipril 2.5 mgs;

AND, in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English and/or misconduct.

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

The panel considered whether your fitness to practise remains impaired.

The panel first considered if your practise remains impaired by reason of your lack of English language. It considered you to be credible and sincere in your oral evidence. The panel acknowledged the amount of preparation you have undertaken prior to these proceedings.

The panel bore in mind that your most recent IELTS test was approximately 1 month old, and noted that it was well below the required standard. It considered your oral evidence that you did not like the IELTS test because of the speed in which you are expected to understand and respond. It was of the view that speed of processing English is important to nursing care.

The panel was reassured by the continued support you are receiving from your mentor and your employer, as well as your determination to meet the required IELTS score. Nevertheless, the panel was not satisfied that you currently meet the required level of English required for safe practice.

In light of the circumstances, the panel finds your fitness to practise remains impaired by reason of your lack of English language knowledge.

The panel was mindful that, as the conditions of practice order require you to satisfy condition 1 before being able to satisfy the following conditions, you have been unable to address the misconduct found by the substantive panel and therefore your misconduct has not been remediated at this time.

The panel therefore finds your fitness to practise remains impaired by reason of that misconduct.

The panel had borne 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 the grounds of public protection and public interest is required.

For these reasons, the panel finds that your fitness to practise remains impaired

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

The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order remains sufficient to protect patients and the wider public interest, and would give you the opportunity to remedy the identified failings in your knowledge of English. The panel agreed that Ms Guest's submission that it would be appropriate to vary condition 1 by making it clear that you could satisfy the language requirement by passing either the OET or the IELTS test in line with the current guidance. For these reasons, the panel was satisfied that imposing a suspension order would be disproportionate.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order. The panel was mindful of the amount of time you may require to improve your English language skills, and determined that 12 months was an appropriate amount of time. Should you satisfy condition 1 prior to the expiry of this order, the panel noted that you could request an early review. It therefore decided to vary and continue the following conditions which it considered are appropriate and proportionate in this case:

1. *Before you return to practise as a registered nurse you must successfully undertake and pass an OET or IELTS English language test by achieving the scores/grades set out in the NMC's 'Accepted English language test' guidance, and send a copy of your results to the NMC within 7 days of you receiving them.*
2. *Once you have satisfied condition 1 above and returned to practice as a registered nurse, you must not carry out any element of medicines administration unless supervised by a registered nurse until such time as you have successfully passed a formal, practical assessment in the administration of medication, as required by your employer. You must send a copy of this assessment to the NMC within 7 days of completing it.*
3. *You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
4. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
5.
 - a) *You must within 7 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*
 - b) *You must within 7 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
6. *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (5) above, to them*

1. *Any organisation or person employing, contracting with or using you to undertake nursing work*
2. *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services*
3. *Any prospective employer (at the time of application) where you are applying for any nursing appointment*
4. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).*

Decision on current fitness to practise

The panel has considered carefully whether your 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, including the NMC bundle, an on table bundle, which included a bundle of certificates provided by you. It has taken account of the submissions made by Ms Guest on behalf of the NMC and those made by your representative, Ms Woolley, on your behalf.

Ms Guest drew the panel's attention to conditions 1 & 2 of the current order. She informed the panel that you undertook an IELTS exam on 20 February 2020 and achieved the following results:

- Reading: 6.5;
- Speaking: 5.5;

- Writing: 6.0;
- Listening: 5.5.;
- Overall: 6.0.

Ms Guest submitted that whilst there has been improvement in some areas i.e. in your reading and writing scores, these results regrettably fall significantly below the standard required. She drew the panel's attention to the NMC 'Guidance on registration language requirements'. The requirement for IELTS is an overall grade of '7', and for OET is a grade of at least 'B' in all four categories and she drew the panel's attention to other documentation that can be provided to the NMC as accepted evidence for language requirements. She submitted that you do not have any of the types of accepted evidence specified in the NMC guidance.

Ms Guest submitted that, without satisfying condition 1, you would be unable to satisfy condition 2. On the basis of the information before the panel, Ms Guest submitted that your fitness to practise is still impaired by reason of your misconduct and your lack of knowledge of the English language. Ms Guest submitted that as you have been subject to a conditions of practice order since 2017, a striking off order is now a sanction available to the panel.

Ms Woolley, on your behalf, submitted that there has been significant improvement in your IELTS scores even though you have not reached the required standard at this stage. Ms Woolley highlighted the training you have undertaken in preparation for the language tests. She submitted that you continue to work in a clinical setting albeit not as a nurse and that you continue to update your knowledge of nursing and you have provided certificates in support of this.

In respect of condition 2, Ms Woolley submitted that you are unable to meet this condition until you have met condition 1. However you continue to work as a care assistant in a nursing home and they are willing to employ you as a registered nurse once condition 1 has been met.

Ms Woolley invited the panel to extend the current conditions of practice order to allow you time to undertake a further IELTS exams given the improvement in your results.

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 your fitness to practise remains impaired.

The panel first considered if your fitness to practise remains impaired by reason of your lack of English language knowledge.

The panel considered your most recent IELTS test results and noted that it was still below the required standard. The panel therefore decided that there has been no material change since your last review and as such it finds that your fitness to practise remains impaired by reason of your lack of English language knowledge.

The panel was mindful that, as the conditions of practice order require you to satisfy condition 1 before being able to satisfy condition 2, you have been unable to address the misconduct found by the substantive panel and therefore your misconduct has not been remediated at this time.

The panel therefore finds your fitness to practise remains impaired by reason of that misconduct.

The panel had borne 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 the grounds of public protection and public interest is required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Determination on sanction

Having found your 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, or impose a caution order, 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 or impose a caution order.

The panel next considered the imposition of a conditions of practice order. The panel noted the improvement in your IELTS scores over the years. Nevertheless, the panel was not satisfied that you currently meet the required level of English required for safe practice.

The panel further noted your determination to meet the required IELTS score, your continued support by your current employers and all the training you have undertaken to keep your nursing knowledge up to date. The panel was satisfied that a conditions of practice order remains sufficient to protect patients and the wider public interest, and would give you the opportunity to remedy the identified failings in your knowledge of English and address your misconduct.

For these reasons, the panel was satisfied that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Order, to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order. The panel was mindful of the amount of time you may require to improve your English language skills, and determined that 12 months was an appropriate amount of time. Should you satisfy condition 1 prior to the expiry of this order, the panel noted that you could request an early review.

It therefore decided to continue the following conditions which it considered are appropriate and proportionate in this case:

1. Before you return to practise as a registered nurse you must successfully undertake and pass an OET or IELTS English language test by achieving the scores/grades set out in the NMC's 'Accepted English language test' guidance, and send a copy of your results to the NMC within 7 days of you receiving them.
2. Once you have satisfied condition 1 above and returned to practice as a registered nurse, you must not carry out any element of medicines administration unless supervised by a registered nurse until such time as you have successfully passed a formal, practical assessment in the administration of medication, as required by your employer. You must send a copy of this assessment to the NMC within 7 days of completing it.
3. You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
4. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.
5. a) You must within 7 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

b) You must within 7 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

6. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (5) above, to them
 1. Any organisation or person employing, contracting with or using you to undertake nursing work
 2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services
 3. Any prospective employer (at the time of application) where you are applying for any nursing appointment
 4. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely at the end of 5 April 2020 in accordance with Article 30(1)

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

This will be confirmed to you in writing.

That concludes this determination.