

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

**Substantive Order Review Hearing  
4 May 2020**

Nursing and Midwifery Council  
Virtual Hearing

**Name of registrant:** Mamusu Theresa Diorgu

**NMC PIN:** 83Y0469E

**Part(s) of the register:** Registered Nurse – Sub Part 2  
Adult Nursing – April 1986

Registered Nurse – Sub Part 1  
Adult Nursing – October 2007

Registered Midwife – July 2009

**Area of registered address:** London

**Type of case:** Misconduct

**Panel members:** Barbara Stuart (Chair, lay member)  
Michael Duque (Registrant member)  
Sarah Tozzi (Lay member)

**Legal Assessor:** Mark McEvoy

**Panel Secretary:** Ruth Bass

**Nursing and Midwifery Council:** Represented by Siobhan Caslin, Case  
Presenter

**Mrs Mamusu Theresa Diorgu:** Not present and unrepresented

**Order being reviewed:** Suspension order (12 months)

**Outcome:** Strike – off order to come into effect at the end  
of 12 June 2020 in accordance with Article 30  
(1)

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

The panel was informed at the start of this hearing that Mrs Diorgu was not in attendance and that the Notice of Hearing had been sent to Mrs Diorgu's registered address by recorded delivery and by first class post on 9 March 2020. In light of the current Covid-19 pandemic, Mrs Diorgu was also sent an email on 26 March 2020 informing her that the hearing would now be heard virtually.

The panel had regard to the Royal Mail 'Track and Trace' printout which showed the Notice of Hearing was delivered to Mrs Diorgu's registered address on 10 March 2020. It was signed for in the name of 'DIORGU'.

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

Ms Caslin, 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 Diorgu has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

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

The panel next considered whether it should proceed in the absence of Mrs Diorgu. The panel had regard to Rule 21(2), which states:

**'21.—** (2) *Where the registrant fails to attend and is not represented at the hearing, the Committee—*

- (a) *shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
- (b) *may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
- (c) *may adjourn the hearing and issue directions.'*

Ms Caslin invited the panel to continue in the absence of Mrs Diorgu on the basis that she had voluntarily absented herself. Ms Caslin referred the panel to another email sent to Mrs Diorgu dated 30 April 2020, asking if Mrs Diorgu would be attending the hearing. Ms Caslin informed the panel that there had been no response from Mrs Diorgu, and no request for an adjournment. Ms Caslin reminded the panel that the current order was due to expire at the end of 12 June 2020, and submitted that, due to ongoing public protections concerns, there was a strong public interest in ensuring the matter is reviewed today.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R. v Jones (Anthony William)*, (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Diorgu. In reaching this decision, the panel has considered the submissions of Ms Caslin, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Diorgu;
- Mrs Diorgu has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The expiry of the order is at the end of 12 June 2020; and
- There is a strong public interest in the expeditious review of the case.

The panel noted that Mrs Diorgu had been contacted by the NMC on 3 separate occasions and had not responded. The panel was satisfied that Mrs Diorgu had voluntarily absented herself from these proceedings. In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Diorgu.

### **Decision and reasons on review of the current order**

The panel decided to impose a strike-off order. This order will come into effect at the end of 12 June 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 6 November 2017. This was reviewed on 22 November 2018 and the suspension order was extended for a further 6 months. The order was reviewed again on 15 May 2019, and the suspension order was extended for a further period of 12 months.

The current order is due to expire at the end of 12 June 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, whilst employed as an Agency Nurse, at the Prince George Duke of Kent Court Care Home:*

*1. On 14 February 2015 failed to provided adequate care in that you:*

*1.1 At approximately 12:00 hours failed to investigate, adequately or at all, Resident A’s high blood sugar in that you:*

*1.1.1 failed to take observations of vital signs; and/or*

*1.1.2 failed to obtain a urine sample.*

*1.2 Failed to escalate the fact that Resident A had high blood sugar levels to a doctor or on-call manager:*

*1.2.1 at approximately 12:00 hours; and/or*

*1.2.2 at approximately 18:00 hours; and/or*

*1.2.3 at approximately 20:00 hours.*

*2. On 14 February 2015 failed to provide an adequate handover to the night nurse in that you;*

*2.1 Failed to inform the night nurse that Resident A’s blood sugar had been high during your shift.*

*2.2 Failed to advise the night nurse to observe Resident A during her shift.*

*2.3 Failed to advise the night nurse to escalate any concerns to the doctor or on-call manager.*

*3. On 15 February 2015 failed to provide adequate care in that you:*

*3.1 Failed to escalate the fact that Resident A had high blood sugar levels to a doctor or on-call manager:*

3.1.1 at approximately 13:30 hours; and/or

3.1.2 at approximately 19:20 hours.

4. During a night shift commencing 16 February 2015 failed to provide adequate care in that you:

4.1 Failed to escalate Resident A's observation results at 21:30 hours to the on-call doctor or on-call manager.

4.2 Failed, when Resident A presented as having a high temperature at 21:30 hours, to follow handover instructions to contact the emergency doctor.

4.3...

4.4 Failed to escalate Resident A's observation results at 06:15 hours to the on-call doctor or on-call manager.

4.5 Commenced a handover meeting instead of immediately going to assess Resident A despite being told he was unwell and/or appeared to be unconscious".

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

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

*The panel noted that the actions that led to your referral were serious and considered that your failure to properly assess a deteriorating patient remains a significant risk. You had failed to demonstrate sufficient insight into how you would identify deterioration in a patient which is a basic and fundamental nursing skill.*

*The panel recognised the steps you have taken to remediate the concerns raised and accepted that you are genuinely remorseful. However, the panel was of the*

*view that before it there was not sufficient evidence to suggest and assure it that you have demonstrated insight and remediated adequately. In particular, you have not completed any formal training in management of diabetic patients. You have shown only partial insight into the very serious concerns raised in this case about identifying and acting on the signs of a deteriorating patient. Furthermore, you have not provided the panel with direct testimonials about your current standard of patient care from your present employer.*

*The panel considered that there remains a risk of repetition of substandard care on account of the failure to fully develop insight and the lack of evidence of remediation. The panel therefore determined that there is a significant risk towards patient protection.*

*Whilst there have been some positive developments such as your expressions of remorse, the panel needs more assurance that you are able to remedy the concerns so that you can practice safely.*

*The panel therefore determined that a risk of repetition remains in this case and concluded that a finding of continuing impairment is necessary on the ground of public protection.*

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

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

*The panel considered the imposition of a further period of suspension. It was of the view that a further suspension order would allow you time to fully reflect on your previous failings and take the necessary steps to develop your insight and fully remediate. Such steps, the panel considered, are:*

- (1) Training in the care of patients with diabetes,*
- (2) Training in recognising and care of a deteriorating patient*
- (3) Obtaining positive testimonials showing that you are working safely in a healthcare setting, and*

*(4) Further reflection on the impact of your actions on the patient, his family, your colleagues, and the profession, and how any future reviewing panel could be satisfied that you would not fail in the basic levels of nursing care again.*

*The panel had regard to the mitigating factors found by the previous panel in coming to their decision, regarding the appropriate sanction in this case. The panel considered that none of the lesser sanctions would sufficiently protect the public and therefore a further period of suspension is necessary. It was of the view that this would be sufficient to protect the patients under your care and allow you time to remediate your practise and further reflect on the issues raised. The panel concluded that a further 12 months of suspension would afford you sufficient time to further develop your insight and remedy your clinical failings and demonstrate you are capable to return to safe practise.*

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

The panel has considered carefully whether Mrs Diorgu'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. It has noted the decision of the last panel. However, it has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, namely the NMC bundle. It has taken account of the submissions made by Ms Caslin on behalf of the NMC. Ms Caslin informed the panel that no information had been received from Mrs Diorgu. She submitted that in the absence of any evidence of insight or remediation, Mrs Diorgu's fitness to practise remained impaired on public protection grounds. Ms Caslin further submitted that Mrs Diorgu's fitness to practise was also impaired on public interest grounds due to her failure to engage with her regulator in a meaningful way, following specific recommendations from the last reviewing panel.

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 noted that the last reviewing panel found that Mrs Diorgu had insufficient insight and suggested that she take the following steps to demonstrate insight and remediation;

- ' (1) Training in the care of patients with diabetes,*
- (2) Training in recognising and care of a deteriorating patient*
- (3) Obtaining positive testimonials showing that you are working safely in a healthcare setting, and*
- (4) Further reflection on the impact of your actions on the patient, his family, your colleagues, and the profession, and how any future reviewing panel could be satisfied that you would not fail in the basic levels of nursing care again.'*

At this hearing the panel noted that no information had been received from Mrs Diorgu with regard to the suggested steps, or at all. It therefore had no evidence of insight or remediation before it to address the concerns that had been identified with her practice. The panel found that there had been no material change of circumstances since the last substantive order review to undermine the previous panel's decision. The panel therefore determined that Mrs Diorgu was liable to repeat matters of the kind found proved. It therefore decided that a finding of continuing impairment 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 reminded itself of the principle in *Abraham v GMC [2008] EWHC 183* that in practical terms there is a persuasive burden on the practitioner at a substantive order review to demonstrate that he has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement has sufficiently

addressed the past impairments. The panel noted that Mrs Diorgu had not engaged with her regulator, despite having been given very clear direction as to what was required. The panel therefore 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 Diorgu's fitness to practise remains impaired.

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

Having found Mrs Diorgu'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 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 public protection concerns identified and 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 Diorgu's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether conditions of practice on Mrs Diorgu'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 in light of Mrs Diorgu's remaining lack of insight into her misconduct. Further, the panel had regard to Mrs Diorgu's failure to engage with her regulator and the

suggestions made by the last reviewing panel. It was of the view that there was no evidence to suggest that Mrs Diorgu would be willing to engage with conditions of practice in any event.

The panel next considered imposing a further suspension order. The panel noted that, at this hearing, Mrs Diorgu has not demonstrated any insight into her previous failings. The panel therefore determined that, in these circumstances, a further period of suspension would not serve any useful purpose. Prior to this hearing Mrs Diorgu has had some 30 months now to demonstrate sufficient insight and remediation into her misconduct which resulted in the death of a patient, and has failed to do so, despite having received clear direction as to what is required. The panel noted that there had been some engagement from Mrs Diorgu in the past. However, in light of her total non-engagement since the last review hearing the panel had no reason to believe that Mrs Diorgu would engage proactively in the future. In these circumstances, the panel determined that it was necessary to take action to prevent Mrs Diorgu 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 12 June 2020 in accordance with Article 30(1).

This decision will be confirmed to Mrs Diorgu in writing.

That concludes this determination.