

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

**Substantive Order Review Meeting
Tuesday 27 October 2020**

Virtual Meeting

Name of registrant: Clodualdo Cabia

NMC PIN: 00Y0425O

Part(s) of the register: Registered Nurse – Adult Nursing

Area of registered address: England

Type of case: Lack of knowledge of English

Panel members: Jane Davis (Chair – Registrant member)
Nicola Dale (Lay member)
Hartness Samushonga (Registrant member)

Legal Assessor: Iain Ross

Panel Secretary: Vicky Green

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Striking off order to come into effect at the end of
15 December 2020 in accordance with Article 30
(1)

Decision and reasons on service of Notice of Meeting

In response to the current COVID-19 crisis, emergency changes were made to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules). The emergency changes allow for the Notice of Meeting (the Notice) to be sent by the Nursing and Midwifery Council (NMC) by email instead of by recorded delivery post. This email must be sent securely to a confirmed registered email address for the registrant and/or representative.

The panel noted at the start of this meeting that Mr Cabia was not in attendance and that the Notice had been sent to Mr Cabia's confirmed registered email address on 2 September 2020

The panel took into account that the Notice provided details of the substantive order being reviewed and that the NMC proposed that this review would take place by way of a meeting. The panel noted that if Mr Cabia did not request a hearing then a meeting will go ahead no sooner than 26 October 2020.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Cabia has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. The panel noted that Mr Cabia has not responded to the Notice or requested that this review take place by way of a hearing.

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 15 December 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (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 17 May 2018. This

was reviewed on 29 October 2019 and that reviewing panel decided to impose a 12 months suspension order.

The current order is due to expire at the end of 15 December 2020.

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, a registered nurse,

1. Do not have the necessary knowledge of English to practise safely and effectively.

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

'The panel noted that Mr Cabia had completed and passed the Functional Skills qualification in English at Level 2. However, the panel considered that this was not an NMC recognised test for demonstrating the required knowledge of English to practise safely and effectively as a nurse. The panel noted that within Mr Cabia's conditions of practice order there was a condition requiring Mr Cabia to complete the IELTS or Occupational English Test ("OET"). However, Mr Cabia had not taken the IELTS or OET, and indeed the panel noted the correspondence between the NMC and Mr Cabia's wife, stating that Mr Cabia had returned to the Philippines and had not taken the IELTS due to financial difficulties. The panel noted the financial difficulties raised, but also had sight of a letter sent to Mr Cabia on 16 August 2019 which informed him that the NMC would pay for any IELTS test which he made arrangements to take.

The panel therefore considered that there was no evidence to suggest that Mr Cabia has demonstrated the necessary knowledge of English in order to be capable of safe and effective practice as a nurse. The panel considered that a risk to patients remained if Mr Cabia were permitted to practise as a nurse without

restriction. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 considered that members of the public would expect nurses providing care to patients to have the necessary knowledge of English for safe and effective practice. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator, and to declare and uphold proper standards of performance.'

For these reasons, the panel finds that Mr Cabia's fitness to practise remains impaired.

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

'The panel first considered whether to take no action but concluded that this would be inappropriate in light of the remaining risk identified. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in light of the risk of repetition identified. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a further conditions of practice order. The panel considered that Mr Cabia had failed to comply with the current conditions of practice order. It considered that he had failed to comply with condition 5, requiring him to undertake the IELTS or OET and forward the test results to the NMC. Furthermore, Mr Cabia had not provided a report relating to his use of English in a clinical setting, from his employment at Watford General Hospital, as required by condition 4. The panel considered that Mr Cabia appeared to no longer be engaging with these proceedings, and had not undertaken an NMC approved

English language test since the previous hearing. The panel therefore considered that Mr Cobia no longer demonstrated a willingness to respond positively to retraining.

Given Mr Cobia's lack of engagement with these proceedings and failure to comply with the conditions of practice order, including in taking the required English language test, the panel considered that there was no longer any evidence of willingness or ability on Mr Cobia's part to comply with conditions. The panel concluded that it would not be possible to formulate practicable and workable conditions which would suitably protect the public and satisfy the public interest.

The panel next considered whether to impose a suspension order. The panel considered that a suspension order would protect the public whilst maintaining confidence in the nursing profession and in the NMC as a regulator. The panel considered that a period of suspension would give Mr Cobia further opportunity to undertake an NMC approved English language test in order to demonstrate the necessary knowledge of English for safe and effective practice.

The panel noted that it does not currently have the option to impose a striking-off order at this time, as Mr Cobia has not been subject to substantive orders for a period of two years.

The panel concluded that a suspension order is the only appropriate and proportionate sanction in the circumstances of this case. The panel considered that a period of 12 months would give Mr Cobia sufficient opportunity to undertake the IELTS or equivalent English language test, in order to demonstrate the necessary knowledge of English. If Mr Cobia has undertaken and passed this test to the required standard prior to the completion of the 12 month period, he has the option of requesting an early review.

Under Article 30(1) of the Order this suspension order will come into effect at the expiry of the current order, namely at the end of 15 December 2019.

This order will be reviewed prior to its expiry. The reviewing panel may revoke the order, allow the order to lapse on expiry, extend the order or replace the order with another order.

A future reviewing panel may be assisted by evidence of the following:

- *Mr Cobia's attendance at the review hearing and/or engagement with these proceedings;*
- *The results of any NMC approved English language tests (IELTS or OET);*
- *Testimonials or references from any employment undertaken, whether paid or unpaid.'*

Decision and reasons on current impairment

This reviewing panel has considered carefully whether Mr Cobia'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 Mr Cobia's fitness to practise remains impaired.

The panel noted that since the last review hearing Mr Cobia has not engaged with the NMC or provided any evidence to demonstrate that he has successfully completed a NMC accredited English language test (IELTS or OET). In the light of this the panel determined that Mr Cobia has not demonstrated the necessary knowledge of English in order to be capable of safe and effective practice as a nurse. Accordingly, the panel found that there is a continuing risk to patients if Mr Cobia were permitted to practise as a nurse without

restriction. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 considered that members of the public would expect nurses providing care to patients to have the necessary knowledge of English for safe and effective practice. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator, and to declare and uphold proper standards of performance.

For these reasons, the panel finds that Mr Cabia's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Cabia'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 public protection concerns resulting from Mr Cabia's lack of knowledge of the English language. 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 public protection concerns resulting from Mr Cabia's lack of knowledge of the English language, an order that does not restrict his 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 a conditions of practice order on Mr Cabia'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 noted that a conditions of practice order was imposed by the substantive panel in May 2018. Mr Cabia failed to comply with and satisfy the conditions of practice order and he has not engaged with the NMC since it was imposed in May 2018. The panel therefore determined that a conditions of practice order would not be workable in the circumstances.

The panel next considered imposing a suspension order. The panel noted that Mr Cabia has had ample time to engage with the NMC and to demonstrate that he has the required knowledge of the English language to be able to practise safely. In the panel's view he has shown a flagrant disregard for the NMC as his regulator. The panel was mindful of the public interest in the expeditious disposal of cases. The panel considered that a further period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Mr Cabia 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. The panel therefore directs the registrar to strike Mr Cabia's name off the register.

This striking-off order will take effect upon the expiry of the current suspension order, namely at the end of 15 December 2020 in accordance with Article 30(1).

This will be confirmed to Mr Cabia in writing.

That concludes this determination.