

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

**Substantive Order Review Meeting
Wednesday 7 October 2020**

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

Name of registrant: Marta Franica

NMC PIN: 12I0185C

Part(s) of the register: RN1, Registered Nurse (sub part 1) – Adult
(25 September 2012)

Area of registered address: East Sussex

Type of case: Misconduct

Panel members: Caroline Healy (Chair, registrant member)
Susan Greenwood (Registrant member)
Jan Bilton (Lay member)

Legal Assessor: Nigel Ingram

Panel Secretary: Catherine Acevedo

Order being reviewed: Suspension order (5 months)

Fitness to practise: Impaired

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

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Ms Franica was not in attendance and that the Notice of Meeting had been sent to Ms Franica's registered email address on 23 June 2020.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, date and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Franica has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

In the light of all of the information available, the panel was satisfied that Ms Franica has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 22 November 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive order originally as a conditions of practice order for a period of 12 months by a Fitness to Practise Committee panel on 23 May 2017. The conditions of practice order was extended for a further period of 12 months when it was first reviewed on 18 May 2018. The order was subsequently reviewed on 17 May 2019 and the conditions of practice order was replaced with a suspension order. The order was last

reviewed on 15 May 2020 and the suspension order was extended for a period of 5 months.

The current order is due to expire at the end of 22 November 2020.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

“That you, a registered nurse,

- 1. On or around 15 September 2015 failed to care for resident A’s wound appropriately in that you dressed it and placed a boot on it*
- 2. On or around 15 September failed to appropriately handover Resident A’s wound in that you*
 - a) Documented in the written handover that it was on the right foot instead of on the left foot*
 - b) verbally handed over that it was a different resident to colleague A and colleague B*
- 3. On or around 15 September failed to document the discovery of the wound and the care provided to Resident A in that you did not complete and/or take and/or record*
 - a) An incident form*
 - b) A Care plan*
 - c) A wound observation chart*
 - d) A Body map*
 - e) Photographs*
 - f) Dimensions*

g) A Waterlow assessment

h) A managers report

- 4. Between 23 September 2015 and 30 September 2015 failed to document any follow up of the wound and/or handover the existence of the wound to colleagues*

And your fitness to practise is impaired by reason of your misconduct.”

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

“The panel considered whether Ms Franica’s fitness to practise remains impaired.

The panel noted that the original panel found that Ms Franica had developing insight. However, since that panel heard the case and decided to make a conditions of practice order, it would appear that Ms Franica has disengaged from the NMC process. For these reasons, the panel could only conclude that Ms Franica’s insight has decreased. Ms Franica has failed to provide a reflective piece addressing the areas that the previous reviewing panel considered would be useful and has also shown no signs of remorse for her actions.

The panel was not provided with any evidence that Ms Franica had attempted to remediate her failings by undertaking online learning or reading while under the imposition of a suspension order.

The last reviewing panel determined that Ms Franica was liable to repeat matters of the kind found proved. Today’s panel has received no information that could lead it to a different finding. In light of this the panel determined that Ms Franica remains liable to repeat matters of the kind found proved. The panel 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

determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

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

"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 Ms Franica's practice would not be appropriate in the circumstances. The SG 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 Franica'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 Ms Franica'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 noted that conditions had previously been made that may have assisted Ms Franica in a return to unrestricted nursing had she engaged with them. For reasons unknown to this panel, Ms Franica did not comply with those conditions of practice and the panel had nothing before it that suggested that she would comply with any conditions that were made at this stage. The panel therefore concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Franica further time to fully reflect on her previous failings and make a decision about her future in relation to her nursing

career. The panel noted that the misconduct amounted to one incident and that there were a number of mitigating factors that the original panel took into account. It was of the view that Ms Franica should be given further opportunity to re-engage with the NMC and convince the next reviewing panel that she should be given a chance to return to practice. The panel concluded that a further five month suspension order would be the appropriate and proportionate response and would afford Ms Franica adequate time to further develop her insight and remediation.

The panel went on to carefully consider a striking off order but was of the view that this would be unduly punitive at this time. It took the view, however, that if Ms Franica were to continue not to engage with the NMC, a future panel may find that you are at real risk of being permanently removed from the register.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of five months would provide registrant with an opportunity to engage with the NMC and explain her future intentions. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 22 June 2020 in accordance with Article 30(1).

Before 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 reviewing this case would be assisted by:

- *Ms Franica's participation at the next review.*
- *A written reflective piece addressing:*
 - *Mrs Franica's understanding of the Code;*
 - *Her understanding of her personal accountability as a registered nurse;*

- *The consequences of her misconduct on Resident A, her colleagues and reputation of the nursing profession.*
- *Any testimonials or evidence of any further training or healthcare related experience undertaken by Ms Franica”.*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Franica’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 Ms Franica’s fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Ms Franica had disengaged with the NMC process and concluded that Ms Franica’s insight has decreased. This panel had received no new information from Ms Franica. She has failed to provide a reflective piece addressing the areas that the previous reviewing panels considered would be useful and has also shown no signs of remorse for her actions. The panel was not provided with any evidence that Ms Franica had attempted to remediate her failings.

The last reviewing panel determined that Ms Franica was liable to repeat matters of the kind found proved. Today’s panel has received no information that could lead it to a

different finding. In light of this the panel determined that Ms Franica remains liable to repeat matters of the kind found proved. The panel 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Ms Franica'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 Ms Franica's practice would not be appropriate in the circumstances. The SG 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 Franica'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 Ms Franica'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 noted that conditions had previously been made that may have assisted Ms Franica in a return to unrestricted nursing had she engaged with them. For reasons unknown to this panel, Ms Franica did not comply with those conditions of practice and the panel had nothing before it that suggested that she would comply with any conditions that were made at this stage. The panel therefore concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted that the last reviewing panel took the view that a further five month suspension should be imposed to give Ms Franica the chance to return to practice and she had not taken this opportunity. This panel took into account Ms Franica's complete lack of engagement with proceedings since the substantive hearing and her lack of evidence of insight or remediation into her previous failings. The panel was of the view that considerable evidence would be required to show that Ms Franica no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Ms Franica 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 22 November 2020 in accordance with Article 30(1)

This decision will be confirmed to Ms Franica in writing.

That concludes this determination.