

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Meeting**

23 September 2020

Virtual Meeting

| | |
|------------------------------------|---|
| Name of registrant: | Elen Capucine Robert |
| NMC PIN: | 17H0028C |
| Part(s) of the register: | Registered Midwife – August 2017 |
| Area of Registered Address: | France |
| Type of Case: | Lack of Competence |
| Panel Members: | Irene Kitson (Chair, Lay member) Janine Ellul (Registrant member) June Robertson (Lay member) |
| Legal Assessor: | Hala Helmi |
| Panel Secretary: | Caroline Pringle |
| Order being reviewed: | Suspension order (12 months) |
| Fitness to Practise: | Impaired |
| Outcome: | Conditions of practice order (18 months) to come into effect at the end of 7 November 2020 in accordance with Article 30(1) |

Decision on proof of service

The panel considered whether notice of this meeting has been served in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Rules”).

The panel accepted the advice of the legal assessor. The panel noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a notice of hearing or meeting can be sent to a registrant’s registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel noted that notice of this substantive order review meeting was sent to Miss Robert by email to her address on the register on 21 August 2020. The notice informed Miss Robert that her suspension order would be reviewed at a meeting on or after 21 September 2020, unless she asked for the review to take place at a hearing.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this review at a meeting as Miss Robert has not requested a hearing.

Decision and reasons on review of the current order

The panel decided to make an 18 month conditions of practice order. This order will come into effect at the end of 7 November 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 12 month suspension order imposed by a Fitness to Practise panel on 9 October 2019. The current order is due to expire at the end of 7 November 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, between 7 January 2018 and 20 April 2018 failed to demonstrate the standards of knowledge, skill, and judgement required to practise, without supervision, as a band 5 midwife in the Haven Birthing Suite of Poole Hospital in that:

- 1) Shortly after appointment you failed an initial foetal heart monitoring competence test*
- 2) On or about 1 April 2018, you failed to identify a pathological cardiotocograph (CTG)*
- 3) On or about 10/4/2018 you failed to identify and/or escalate a decelerated foetal heartbeat*
- 4) On 16 April 2018 you failed a foetal heart monitoring competence re-test*
- 5) On or about 28 March 2018, in the birthing pool, you failed to recognise and/or adequately monitor and/or escalate an instance of a late deceleration in foetal heartbeat*
- 6) Between 22 March 2018 and 16 April 2018 you failed to achieve the minimal clinical proficiency level of 3 in all specified areas of your Performance Improvement Plan*

AND in light of the above, your fitness to practise is impaired by reason of your lack of competence.'

The original panel determined the following with regard to impairment:

'The panel had regard to the guidance provided by Dame Janet Smith in her Fifth Shipman Report. The panel concluded that on at least one occasion she did put a patient at an unwarranted risk of harm. The panel noted the evidence of Ms 4 where Miss Robert had failed to identify and

interpret a pathological CTG and showed no urgency. She had left the patient alone for three minutes instead of staying with her and pulling the emergency bell for assistance.

The panel noted that Miss Robert has the potential to put patients at an unwarranted risk of harm due to her lack of competence. Miss Robert had her supernumerary period extended, was placed on the PIP and was unable to meet the competencies outlined despite support. Miss Robert was dismissed by the Trust for lack of competence.

The panel next considered whether her failings were potentially remediable with the proper support and training. However, the panel concluded that in the absence of any evidence of insight or remediation, Miss Robert had been unable to demonstrate that she had remediated her practice. The panel received some information that Miss Robert had worked for a short time in France since her dismissal from the Trust, however it had received no evidence that she had taken any steps to remediate her failings or had any insight into them.

Consequently, the panel is of the view that there is a high risk of repetition, if Miss Robert were to return to unrestricted practice, based on the fact that she has not remediated her failings. The panel therefore decided 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. The panel considered that any midwife not practising at the standard required could bring the profession

into disrepute. The panel decided that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Miss Robert's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'...The panel next considered whether placing conditions of practice on Miss Robert'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 is of the view that whilst conditions of practice could be formulated to address the failings identified, Miss Robert is not working in the UK and has not engaged in the NMC process. Consequently, the panel noted that it had no evidence before it to suggest Miss Robert would comply with any conditions and as a result these would be unworkable.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where the following factors are apparent:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*

The panel reminded itself that a striking off order was not available in cases involving lack of competence.

Consequently the panel has concluded that a suspension order is the only appropriate and proportionate sanction.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the level of competence required of a registered midwife.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to protect the public and is otherwise in the public interest.

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:

- evidence of any employment outside of the UK*
- evidence of safe practice in that employment*
- a reflective piece addressing the shortcomings identified by the panel*
- evidence of any CPD targeted at the identified failings'*

Decision on current fitness to practise

The panel considered carefully whether Miss Robert's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined it 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 decision and reasons of the substantive panel in October 2019 and training certificates provided by Miss Robert.

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 Miss Robert's fitness to practise remains impaired. It noted that the substantive panel had no evidence of any insight or remediation from Miss Robert and determined that she posed a high risk of repetition if she were allowed to practise unrestricted.

A letter from Miss Robert, dated 22 October 2019, informed the NMC that [PRIVATE]. She also stated that she had returned to France but did not work in hospitals. Instead, she had worked as a self-employed midwife and intended to return to this once [PRIVATE]. According to Miss Robert, her practice as a self-employed midwife included *'supporting women in their basic gynaecological needs (contraception, pap-smear...), physiological pregnancies and post-partum and pelvic floor re-education.'* Miss Robert also states that, at that time, she was not completing any training due to [PRIVATE] but *'will resume training as soon as possible'* and was on a waiting list for a gynaecology university degree starting *'next fall'*. She also writes that *'in the unlikely event that I should ever have to attend births again, I will do so after the necessary training required on foetal monitoring and more as well as proper companionship'*.

Although Miss Robert has continued to engage with the NMC she has not provided any further update as to her current employment situation.

Miss Robert has provided a number of training certificates for this review hearing. However, the panel noted that these did not address the specific concerns about Miss Robert's competence, namely foetal heart monitoring and escalation. Some of them also pre-date the substantive hearing. Miss Robert has also not provided any other evidence of safe practice or competence in the area of foetal heart monitoring, such as testimonials or references from colleagues.

The panel appreciated that Miss Robert's ability to remediate her competence has been impacted by [PRIVATE]. However, the panel considered that the limited information provided by Miss Robert was insufficient to demonstrate that she has improved her skills as regards fetal heart monitoring.

The panel also noted that, although Miss Robert indicated that she would provide a reflective piece, she has not done so. The panel therefore had no evidence to suggest that Miss Robert's insight has developed since the last hearing or that she has developed a greater understanding of her failings.

The panel determined that, in the absence of remediation and insight, Miss Robert continued to pose a risk of repetition. The panel therefore decided that a finding of impairment continued to be required on public protection grounds.

The panel also agreed with the decision of the substantive panel that a finding of current impairment on public interest grounds was required to maintain public confidence in the midwifery profession and to uphold proper professional standards for members of the profession.

Determination on sanction

Having found Miss Robert'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 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. Taking no further action would not restrict Miss Robert's practice and therefore would not protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered whether to impose a caution order but concluded that this would also be inappropriate for the same reasons, as a caution order would not restrict Miss Robert's practice in any way.

The panel next considered replacing the suspension order with a conditions of practice order. The panel considered that it would be possible to formulate conditions which would protect the public, given that the concerns in this case relate to identifiable areas of Miss Robert's midwifery practice. The panel noted that Miss Robert is not currently practising as a midwife in the UK. However, the panel did not consider that this made conditions of practice unworkable, as any conditions would take effect should Miss Robert return to this country. The panel noted that Miss Robert engaged with the local investigation and, since her substantive hearing, she has engaged with the NMC and expressed a willingness to undergo retraining.

The panel considered whether a suspension order would be appropriate, but decided that this would be disproportionate as public protection could be achieved by a lesser sanction. A suspension order would also limit Miss Robert's ability to remediate her competency.

The panel therefore decided that the appropriate and proportionate sanction, which would protect the public and uphold the public interest, was a conditions of practice order. It decided to impose the following conditions:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role in the UK. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates in the UK.

1. You must not be the sole midwife on duty, or the midwife in charge of any shift.
2. You must not carry out foetal heart monitoring or CTGs unless under the direct supervision of another experienced midwife until you have been assessed and signed off as competent.

3. You must work with a line manager, mentor or supervisor to create a personal development plan (PDP). Your PDP must address:
 - Foetal heart monitoring
 - Use and interpretation of CTGs
 - Recognition and escalation of a deteriorating foetal heartbeat
4. You must meet with your line manager, mentor or supervisor at least once every two weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your PDP.
5. You must send a report from your line manager, mentor or supervisor to the NMC before the next review, discussing the standard of your performance and competence and your progress towards achieving the aims set out in your PDP.
6. You must keep the NMC informed about anywhere you are working by:
 - a. Telling your case officer within seven days of accepting or leaving any employment.
 - b. Giving your case officer your employer's contact details.
7. You must keep the NMC informed about anywhere you are studying by:
 - a. Telling your case officer within seven days of accepting any course of study.
 - b. Giving your case officer the name and contact details of the organisation offering that course of study.
8. You must immediately give a copy of these conditions to:
 - a. Any organisation or person you work for.
 - b. Any agency you apply to or are registered with for work.
 - c. Any employers you apply to for work (at the time of application).
 - d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

e. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

9. You must tell your case officer, within seven days of your becoming aware of:

- a. Any clinical incident you are involved in.
- b. Any investigation started against you.
- c. Any disciplinary proceedings taken against you.

The period of the conditions of practice order will be 18 months. In reaching this decision, the panel bore in mind that Miss Robert is not currently in the UK and [PRIVATE]. 18 months would therefore give her time to return to the UK, if she chooses, find work as a registered midwife and demonstrate compliance with the conditions of practice order.

The conditions of practice order will take effect upon the expiry of the current suspension order, namely at the end of 7 November 2020, in accordance with Article 30(1)(c) of the Nursing and Midwifery Order 2001.

Before the conditions of practice order expires, another panel will review the order. At this review, the panel may revoke the order or allow it to expire, it may continue the order, it may vary any condition of the order, or it may replace the order with a different type of sanction. At that review, the future panel may be assisted by:

- Miss Robert's attendance/engagement;
- A reflective piece from Miss Robert in which she:
 - Looks objectively at her failings and recognises what went wrong;
 - Accepts her responsibility;
 - Demonstrates an understanding of what she would do differently in the future and how she would avoid repeating similar mistakes.

This decision will be confirmed to Miss Robert in writing.

That concludes this determination.