

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

**Substantive Order Review Hearing
Tuesday, 15 September 2020**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant: Mrs Angela Tudorache

NMC PIN: 16H0341C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – August 2016

Area of registered address: Romania

Type of case: Lack of knowledge of English

Panel members: Helen Potts (Chair, Lay member)
Pauleen Pratt (Registrant member)
Angela O'Brien (Registrant member)

Legal Assessor: Adrienne Morgan

Panel Secretary: Ruth Bass

Nursing and Midwifery Council: Represented by George Hugh-Jones, Case
Presenter

Mrs Angela Tudorache: Not present and unrepresented

Order being reviewed: Suspension order (6 months)

Outcome: Strike off order to come into effect at the end of
25 October 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 Tudorache was not in attendance and that the Notice of Hearing had been sent to her email address, as recorded on the Register, on 17 October 2020.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date, virtual hearing link and, amongst other things, information about Mrs Tudorache's right to attend virtually, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Hugh-Jones, 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 Tudorache 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 Tudorache

The panel next considered whether it should proceed in the absence of Mrs Tudorache. The panel had regard to Rule 21 and heard the submissions of Mr Hugh-Jones who invited the panel to continue in the absence of Mrs Tudorache. He told the panel that there has been no application for an adjournment by Mrs Tudorache, and submitted that she had voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Tudorache. In reaching this decision, the panel has considered the submissions of Mr Hugh-Jones and the advice of

the legal assessor. It has had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It concluded that:

- Mrs Tudorache had voluntarily absented herself from these proceedings
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious review of the case.

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 25 October 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (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 23 March 2018. This was reviewed on 9 April 2019 and a further suspension order was imposed for a period of 12 months. The suspension order was reviewed again on 14 April 2020 and extended for a further 6 months.

The current order is due to expire at the end of 25 October 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.*

And in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.

The second reviewing panel, on 14 April 2020, determined the following with regard to impairment:

The panel noted that there had been no engagement by Mrs Tudorache with the NMC since 2017. It further noted that the NMC had offered to pay for Mrs Tudorache English language test, and that this offer had not been taken up. There was no evidence before the panel to indicate that Mrs Tudorache had taken any steps to improve her English language skills. The panel therefore had no evidence of insight or remediation before it to conclude that Mrs Tudorache had the necessary skills in English, required for safe practice. It therefore determined that there remains a risk to the public should Mrs Tudorache be allowed to practise without restriction.

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 Mrs Tudorache's fitness to practise remains impaired.

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

The panel determined to impose a suspension order. It noted that a suspension order is the only available sanction left, given that Mrs Tudorache has not been suspended for a continuous period of 2 years as of today, and as such cannot be struck off the Register at this stage. It determined that a further period of suspension would provide Mrs Tudorache with an opportunity to engage with the process and take the required English language test. The panel was satisfied that a

suspension order was appropriate and would continue to both protect the public and satisfy the wider public interest.

Accordingly, the panel determined to impose a suspension order for a period of 6 months. The panel considered this period appropriate taking into account the current Covid -19 pandemic and the logistical complications which may affect Mrs Tudorache taking the required test.

Decision and reasons on current impairment

The panel today has considered carefully whether Mrs Tudorache'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; namely the NMC bundle. It has taken account of the submissions made by Mr Hugh-Jones on behalf of the NMC. He told the panel that, prior to the previous hearing in April 2020, the NMC had offered to pay for Mrs Tudorache to undertake the required English language test, but that this offer had not been taken up. He informed the panel that there has been no evidence of engagement from Mrs Tudorache or evidence of an English language test having been taken since the date of the last review hearing. He reminded the panel that Mrs Tudorache has been the subject of a suspension order for the past 2 years, and as such, a strike off order was now available for the panel to consider. Mr Hugh-Jones said that the NMC's position was neutral.

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 behaviour.

The panel considered whether Mrs Tudorache's fitness to practise remains impaired.

The panel had regard to the fact that there has been no engagement from Mrs Tudorache since October 2017. It therefore had no evidence before it to conclude that she has taken any steps to improve her English language skills or that she does now have the required standard of English to practise safely and effectively as a nurse. The panel noted that at the time Mrs Tudorache undertook the International English Language Testing System test, in October 2017, her score fell well below the score deemed by the NMC to constitute evidence that a registrant has the necessary knowledge of English for the safe and effective practice of nursing in the UK.

In light of this, this panel determined that there remains an unwarranted risk of harm to the public should Mrs Tudorache be allowed to practise without restriction. The panel considered that effective communication in English is central to safe and effective practice. 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 was satisfied that the public would have an expectation that all registered nurses communicate effectively whilst delivering care. It 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 Tudorache's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Tudorache'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 issues identified. 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 the public protection issues identified, an order that does not restrict Mrs Tudorache'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 a conditions of practice order on Mrs Tudorache'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 that there has been no engagement from Mrs Tudorache since October 2017, and no information as to whether her English language proficiency has improved. It therefore was unable to formulate conditions of practice that would adequately address the concerns relating to Mrs Tudorache's lack of knowledge of English and 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. It had regard to the fact that due to the Covid -19 pandemic, Mrs Tudorache would not have had an opportunity to undertake the required English language test. However, the panel considered that the previous reviewing panel in April 2020 had given Mrs Tudorache a further opportunity to improve her English language skills and produce evidence of her efforts in doing so. Mrs Tudorache has made no effort to engage with the NMC or update the NMC with regard to her current level of English. The panel therefore determined that a further period of suspension would not serve any useful purpose.

The panel considered section 7.5 of The Code: Professional standards of practice and behaviour or nurses, midwives and nursing associates, which states '*you must... be able to communicate clearly and effectively in English*'. The panel had regard to the fact that the NMC had offered to pay for the cost of the required English language test, and that Mrs

Tudorache has neither responded to that offer nor made any contact with the NMC, since October 2017, to update it with regard to her English language proficiency. In light of Mrs Tudorache's failure to respond to, or engage with, her regulator as required, or provide evidence that her knowledge of the English language is at the required level to practise safely, the panel determined that it was necessary to take action to prevent her 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 25 October 2020 in accordance with Article 30(1).

This decision will be confirmed to Mrs Tudorache in writing.

That concludes this determination.