

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

**Substantive Order Review Hearing
Wednesday 09 September 2020**

Virtual Hearing

Name of registrant: Ungureanu Vasile-Catalin

NMC PIN: 14K0527C

Part(s) of the register: Registered Adult Nurse
(November 2014)

Area of registered address: Kent

Type of case: Misconduct

Panel members: John Vellacott (Chair, Lay member)
Lucie Moore (Registrant member)
Alice Rickard (Lay member)

Legal Assessor: Oliver Wise

Panel Secretary: Christine Iraguha

Nursing and Midwifery Council: Represented by Shabana Fazal, Case
Presenter

Mr Vasile-Catalin: Present and unrepresented

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Currently Impaired

Outcome: **Conditions of practice order (12 months)
to come into effect at the end of 18 October
2020 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to vary the current conditions of practice order.

This order will come into effect at the end of 18 October 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fifth review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee on 17 March 2017. This order was reviewed on 9 March 2018 when it was extended for 12 months. On the 15 March 2019, 9 September 2019 and 10 March 2020 it was reviewed and extended for 6 months.

The current order is due to expire at the end of 18 October 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, a registered nurse:

1. *On the night shift of 6 - 7 September 2015, having been made aware that Resident A had fallen:*
 - a. *Used an inappropriate technique to lift Resident A and/or lifted Resident A when it was not clinically justified to do so;*
 - b. *Did not carry out an adequate assessment of Resident A;*
 - c. *Did not contact a medical practitioner and/or emergency services;*
 - d. **NOT PROVED**
2. **NOT PROVED**

And, in light of the above, your fitness to practise is impaired by reason of your misconduct.'

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

'The NMC had known in advance that you were not going to be in the country and arranged for you to attend by video link. However, you had difficulty accessing your computer and so participated by telephone.

The panel has considered carefully whether your fitness to practise is currently 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, including the NMC bundle. It has taken account of the submissions made by Mr Rye on behalf of the NMC. You did not submit any documentation to the panel but you did give evidence by telephone. You told the panel that you wished to give evidence on affirmation. The panel heard and accepted the advice of the legal assessor who referred it to Rule 31. The panel determined that the evidence you give would be relevant and in all the circumstances it would be fair to hear this evidence by telephone. This application was not opposed by the NMC.

Mr Rye outlined the background and the chronology of the case to the panel, along with the relevant documents. He informed the panel that no documents have been provided to prove that you had asked for a report and a personal development plan from your line manager as per your conditions. He invited the panel to consider whether the conditions of practice have been breached. He submitted that your current fitness to practice remains impaired and the risks identified previously still remain. He submitted that you have been unable to satisfy the conditions that have been imposed on your practice and your current

fitness to practice remains impaired. He invited the panel to continue the current conditions of practice order.

You attended via telephone and took the affirmation. You informed the panel that you worked for BUPA care home in Ashford since the end of August 2019 until you resigned on 18 February 2020 due to a family emergency in Romania. You informed the panel that you plan to return to the BUPA care home on your return to the UK. You informed the panel that you have not engaged with your personal development plan during this review hearing although you started that process with your line manager prior to the last review. You have not provided a report from your line manager for the panel today. You said that you had asked your manager for the report but because it was a busy time at the home the report was never provided. You informed the panel that you will do everything you can on your return to complete and provide the required paperwork. You said that you would like to do your best for the NMC and that you are very sorry for what had happened.

You invited the panel to lift the conditions of practice order. You asked the panel to give you an opportunity to prove that you can practise safely. You stated that you are not a danger to the public and you would like to carry on your practice as a nurse in the UK. You stated that in the last four years no concerns have been raised concerning your practice. You informed the panel that you aim to continue improving your practise as a nurse and that you have undertaken further training. You said that you have fulfilled all your duties and responsibilities as a nurse.

You informed the panel that your probation period was extended in January 2020 for a couple of months because you were taken ill, had personal difficulties and that is reason why your personal development plan was not completed.

The panel heard and accepted the advice of the legal assessor.

The panel had regard to your evidence. It noted that you have not provided sufficient evidence to demonstrate compliance with the conditions of practice. It

observed that no report has been provided by your line manager neither have you provided evidence of engagement with your personal development plan that demonstrates you can practise safely as requested by the previous panel. The panel therefore determined that your fitness to practise remains impaired.

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.

In its consideration as to whether you have remedied you practice, the panel took into account your evidence and observed that you have not completed your probation period, you have not provided a report from your line manager and your personal development plan has not been completed.

The panel determined that until you have demonstrated full remediation you remain liable to repeat the matters found proved, in this case, a finding of current impairment is necessary on the grounds of public protection.'

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

'Having found your 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 your practice would not be appropriate in the circumstances. The panel considered that your 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 imposing a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you have not fully complied with the conditions of practice order but you are engaging with the NMC and are willing to comply with the conditions imposed.

The panel was of the view that a further conditions of practice order is sufficient to protect patients noting as the original panel did that there was no evidence of general incompetence nor deep seated attitudinal problems. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of six months, to allow you enough time to fully comply with the conditions, which will come into effect on the expiry of the current order, namely at the end of 18 April 2020. It decided to continue the current conditions which it considered are appropriate and proportionate in this case:

1. *At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of, another registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on. This condition is to remain in place until such time as your line manager, mentor or supervisor is satisfied that you are safe to practise without supervision, at which time this condition can cease and your line manager, mentor or supervisor is to report this fact to the NMC.*

2. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:*
 - a. *the management of falls of elderly and vulnerable residents*
 - b. *the assessment of vulnerable patients*
 - c. *the escalation of concerns*

3. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) fortnightly in the first month and thereafter at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*

4. *In the event that you obtain alternative employment, you must forward to the NMC a copy of your personal development plan within 28 days of the date on which you take up that appointment.*

5. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC prior to any NMC review hearing or meeting.*

6. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.*
7. *You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer*
8. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
9. (a) *You must within 7 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*

(a) *You must within 7 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
10. *You must immediately tell the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at 1 to 9 above, to them:*

(a) *Any organisation or person employing, contracting with, or using you to undertake nursing work.*

(b) *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.*

(c) Any prospective employer (at the time of application) where you are applying for any nursing appointment.

(d) Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).

The period of this order is for six months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 18 April 2020 in accordance with Article 30(1)

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Attendance at the next review hearing.'*

Decision and reasons on current impairment

This panel has considered carefully whether your 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, your references and submissions. It has taken account of the submissions made by Ms Fazal on behalf of the NMC.

Ms Fazal outlined the background of the case to the panel, along with the relevant documents. She reminded the panel of the findings of the previous panel where it determined that you had not provided sufficient evidence to demonstrate compliance with the conditions of practice order. You had not provided the previous panel with a report from your line manager or evidence of engagement with your Personal Development Plan that demonstrated you could practise safely. Ms Fazal reminded the panel that you are willing to comply with the conditions of practice order and you have engaged with the NMC.

Ms Fazal referred the panel to the references provided. She said that no other concerns have been raised since the original failings. She submitted that progress has been limited since the previous review hearing although you have provided reasons for this. She stated that the position still remains the same and that you have not complied with the conditions of practice order to remediate and show safe practice. She said that you are willing to comply with the conditions of practice order if you can secure a permanent role.

Ms Fazal informed the panel that the testimonials and references show that you a good nurse. However, she submitted that you have not yet remediated the failings in your practice, therefore a risk of repetition remains. She invited the panel to find that your fitness to practise remains impaired and submitted that it is a matter for the panel's professional judgement as to whether an order remains necessary.

You informed the panel that you tried with your previous employer BUPA care home to complete a Personal Development Plan (PDP) [PRIVATE]. You had completed three months of the PDP. You said that you admitted your mistake and you have learnt from it as a result. You stated that you have continued to improve your nursing skills in the last four years, avoided the previous mistakes and no concerns have been raised with the NMC. You told the panel that you would like another opportunity to continue working and that in the last month you have secured employment with Aplus Care Agency (the Agency) caring for patients with coronavirus, applied all the techniques and procedures required as well as followed all assessments.

You told the panel that you remain employed with the Agency but the manager would not provide you with PDP because the manager is not a nurse. You stated that you work in different care homes and at all times you work alongside another nurse, or a manager, or another deputy manager when you are on duty.

You asked the panel to take into consideration that in the last four years no concerns have been raised. You stated that you have been trying to secure permanent employment and you are asking for a chance to do this. The panel was informed that you have moved from town to town looking for a permanent role but no home was willing to take you on with the conditions of practice order even though you have good references and positive feedback. You said that you love your job and would love to continue working.

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 your fitness to practise remains impaired.

The panel took into account your submissions and references. It noted that to your credit you have continued to engage with the NMC, you remain willing to comply with the conditions of practice in order to address the concerns and you apologised for the mistakes and for your misconduct. It observed that you have been working within the nursing environment. The panel noted the positive comments from the Agency you have been working with although it does not state whether they are aware of the NMC concerns and proceedings.

The panel observed that it has been some five years since the original concerns but you remain unable to comply with the conditions of practice order to remediate the

concerns. It noted that you have not provided a PDP or report from your line manager as required by the order.

The panel acknowledged that you have struggled to comply with the conditions of practice due to the fact that you do not have permanent employment. However, it observed that you could have done more to demonstrate the ways in which you have remediated your previous failings, such as providing a detailed reflection of what you have learnt from your previous mistake and how you have adapted and improved your practice. The panel did not consider that you have demonstrated remediation of the areas of concern.

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

Decision and reasons on sanction

Having found your 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 your practice would not be appropriate in the circumstances. The panel considered that your 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 imposing a further or varied conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you are willing to comply with the current conditions of practice order but have found it difficult to do so due to your current employment status.

The panel was of the view that a further and varied conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and no deep seated attitudinal problems. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 18 October 2020.

The panel acknowledges that you have been unable to obtain permanent employment and you are currently undertaking agency work. It has therefore varied the conditions to enable you to comply with the conditions whilst seeking permanent employment.

The panel considered the following varied conditions to be appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also,

'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. At any time that you are employed or otherwise providing nursing services including for an agency, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of, another registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on.
2. You must create a Personal Development Plan designed to address the concerns about the following areas of your practice:
 - a. the management of falls in elderly and vulnerable patients
 - b. the assessment of vulnerable patients following an accident or injury
 - c. the escalation of concerns regarding patients' conditions.
3. You must keep a reflective practice profile. The profile will detail every case where you undertake or assist with:
 - a. the management of falls in elderly and vulnerable patients
 - b. the assessment of vulnerable patients following an accident or injury
 - c. the escalation of concerns regarding patients' conditions

It must:

- set out the nature of the care given
- be signed each time by the supervisor on your shift
- contain feedback from your supervisor on how you gave the care

You must send your case officer a copy of the profile 14 days before the next review hearing.

4. You must meet with your line manager, mentor or supervisor (or their nominated deputy) fortnightly in the first month and thereafter at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan.
5. In the event that you obtain alternative employment, you must forward to the NMC a copy of your Personal Development Plan within 28 days of the date on which you take up that appointment.
6. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC prior to any NMC review hearing or meeting.
7. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.
8. You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer
9. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.
10. (a) You must within 7 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

(b) You must within 7 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

11. You must immediately tell the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at 1 to 9 above, to them:

(a) Any organisation or person employing, contracting with, or using you to undertake nursing work.

(b) Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.

(c) Any prospective employer (at the time of application) where you are applying for any nursing appointment.

(d) Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).

The period of this order is for 12 months. This will allow time for you to gain employment and meaningfully evidence compliance with the conditions of practice order.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 18 October 2020 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- You providing your Personal Development Plan,
- You providing testimonials from a line manager or supervisor that details your current work practice,
- You providing your reflective practice profile,
- You providing any other evidence to show your compliance with the conditions of practice order, and
- Your attendance at the next review hearing.

This will be confirmed to you in writing.

That concludes this determination.