

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

**Substantive Order Review Hearing
Thursday 1 April 2021**

Virtual Hearing

Name of registrant: Manorama Y Kate

NMC PIN: 03F1309O

Part(s) of the register: Registered Nurse
Adult Nursing (June 2003)

Area of registered address: Wirral

Type of case: Misconduct

Panel members: Elizabeth Burnley (Chair, Lay member)
Susan Jones (Registrant member)
Jill Wells (Lay member)

Legal Assessor: Nina Ellin

Panel Secretary: Dilay Bekteshi

Nursing and Midwifery Council: Represented by Kate Hare, Case Presenter

Mrs Kate: Not present and unrepresented

Order being reviewed: Suspension order (3 months)

Fitness to practise: Impaired

Outcome: **Striking off order to come into effect on 7 May 2021 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 Kate was not in attendance and that the Notice of Hearing had been sent Mrs Kate's registered email address on 3 March 2021.

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

Ms Hare, 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 Kate 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 Kate

The panel next considered whether it should proceed in the absence of Mrs Kate. The panel had regard to Rule 21 and heard the submissions of Ms Hare who invited the panel to continue in the absence of Mrs Kate. She submitted that Mrs Kate had voluntarily absented herself.

Ms Hare noted that Mrs Kate had not made an application to adjourn and submitted that there is no reason to suggest that adjourning would secure her attendance at any future hearing. She advised the panel that in addition to the Notice of Hearing on 3 March 2021, the NMC had made further unsuccessful attempt to contact Mrs Kate by email on 9 March

2021. Ms Hare submitted that Mrs Kate had voluntarily absented herself and in these circumstances, the panel should proceed in her absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Kate. In reaching this decision, the panel has considered the submissions of Ms Hare, 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 noted that:

- No application for an adjournment has been made by Mrs Kate;
- Mrs Kate has not engaged with the NMC and has not responded to any of the emails sent to her about this hearing;
- There is no reason to suppose that adjourning the hearing would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Kate.

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 7 May 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the eighth review of a substantive order originally imposed as a suspension order for a period of 5 months by a Conduct and Competence Committee on 12 January 2017. This was reviewed on 8 June 2017 and the order was extended for a further 5 months. This was then reviewed on 16 November 2017 and a conditions of practice order was imposed for a period of 6 months. This was again reviewed on 6 April 2018 and the order was extended for a further 6 months. On 12 October 2018, this order was reviewed and a suspension order was imposed for a period of 4 months. Then on 8 February 2019, this

order was reviewed and a conditions of practice order was imposed for a period of 12 months. On 14 January 2020, a conditions of practice order was extended for a period of 12 months. On 4 January 2021, the panel decided to replace the conditions of practice order with a suspension order.

The current order is due to expire at the end of 7 May 2021.

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, on 20 January 2015:

1. *Upon documenting a deterioration in Resident A's condition at 22:15:*

1.1. failed to check Resident A's blood glucose levels;

1.2. incorrectly recorded on Resident A's MAR chart that you had administered Omeprazole

2. *Between 22:15 and 07:30:*

2.1. did not carry out and/or record any further clinical observations of Resident A;

2.2. did not escalate Resident A for medical advice;

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

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

The panel noted that the last reviewing panel found that Mrs Kate had developing insight, stating that her previous Personal Development Plan (PDP) was "encouraging but it is not completed to the required level to ensure that you are safe to practise without restriction." At this hearing the panel have no new information to suggest that Mrs Kate's insight has developed further. She has not sent to the panel a reflective piece as was suggested at the last review hearing. The panel

acknowledged her written statement to the panel explaining that the PDP will be completed soon.

The last reviewing panel determined that Mrs Kate was liable to repeat matters of the kind found proved. Today's panel has not received any new material information to suggest she has remedied her failings so that they are unlikely to be repeated. In light of this, this panel determined that Mrs Kate has not fully remediated her misconduct and is still 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 Mrs Kate's fitness to practise remains impaired.'

The seventh 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 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 Mrs Kate'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 Mrs Kate'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 imposing a conditions of practice order on Mrs Kate's 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 acknowledged the difficulty that the current COVID-19 pandemic has provided for Mrs Kate in order to comply with certain conditions of practice, but determined that completion of additional training and providing another written reflective piece did not require her to be employed in a registered nursing role. The panel further noted that the last panel made recommendations to assist any future panel to demonstrate that Mrs Kate had remediated concerns regarding her fitness to practise. She has not complied with any of the recommendations.

On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order in this case as it is unlikely that any future imposition of a conditions of practice order would secure Mrs Kate's full engagement. The panel therefore concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate and proportionate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 3 months which would provide Mrs Kate with an opportunity to engage fully and substantively with the NMC.

The panel was of the view that to impose a striking off order would be disproportionate at this time. A striking off order would not be a reasonable response in the current circumstances of this case, at least until Mrs Kate is given a further, perhaps final, opportunity to engage with the NMC, explain how she has remediated her fitness to practise, and set out her future practice intentions.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Kate'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. It has taken account of the submissions made by Ms Hare on behalf of the NMC.

Ms Hare referred the panel to the relevant pages in the NMC bundle, summarising the background facts to the case and the decisions of previous reviewing panels. She submitted that Mrs Kate's fitness to practise remains impaired on the grounds of public protection and a finding of impairment is also otherwise in the public interest.

Ms Hare invited the panel to find that Mrs Kate's fitness to practice remains impaired by reason of her misconduct. She submitted that Mrs Kate had not provided the NMC with any evidence of the concerns being remediated, nor any attempts she was making to do so. Ms Hare submitted that Mrs Kate had not engaged with any of the suggestions from the previous review panel and, in the absence of anything to suggest that the risks identified had reduced, Mrs Kate's practice remains impaired.

With regard to sanction, Ms Hare submitted that anything less than the current suspension order would be inappropriate due to the lack of remediation in this case. She submitted that a strike off order was available as a sanction, however, she submitted that the period since January 2021 was the first time that Mrs Kate has completely disengaged, and was open to the panel to consider allowing a further opportunity to engage.

The panel also had regard to an email sent to Mrs Kate by the NMC dated 9 March 2021 asking her to confirm if she will be attending the hearing to which there had been no reply.

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 Mrs Kate's fitness to practise remains impaired.

The panel noted that there was no evidence to suggest that any action has been taken by Mrs Kate to keep herself up to date with training or comply with any of the suggestions made by the last reviewing panel. It also noted that panel's view that there was very little insight shown by Mrs Kate into the concerns found proved, and there is nothing to suggest today that any new insight has been shown.

The panel noted the previous communications to Mrs Kate and the lack of response to the emails. The panel concluded that since the original order was made, Mrs Kate has taken limited action to remediate the concerns and has not engaged with the NMC in a consistent way, and therefore finds that there remains a risk to the public.

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 Kate's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Kate'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 Mrs Kate'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 Mrs Kate'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 to replace the suspension order with a conditions of practice order. The panel had no evidence before it of any change of circumstances or attempts at remediation since the last review. It concluded that a conditions of practice order would not be practicable or workable, especially given the seriousness of the charges found proved at the substantive hearing and Mrs Kate's lack of engagement with the NMC.

The panel next considered extending the current suspension order. It noted that Mrs Kate had not provided the panel with any evidence showing that she had further developed insight, remediated or had significant and recent plans to remediate her practice. It therefore determined, due to Mrs Kate's disengagement and a lack of evidence to suggest her practice had been (or was in the process of being) remediated, that a further period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Mrs Kate 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 noted that previous reviewing panels made it clear that Mrs Kate's misconduct was capable of remediation and suggested means by which Mrs Kate could have done so. However, Mrs Kate had not provided any of the information that the previous reviewing

panels suggested. The panel also considered that the last review panel had made it clear that a striking off order would be a sanction available to any future reviewing panel. The panel noted Mrs Kate's lack of meaningful and inconsistent engagement and determined that the public interest will be best served by not further prolonging proceedings and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. It also concluded that public confidence in the profession could not be maintained if Mrs Kate were to remain on the register.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 7 May 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs Kate in writing.

That concludes this determination.