

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

**Substantive Order Review Meeting
Thursday 5 August 2021**

Virtual Meeting

Name of registrant: Mrs Zoila Maria De Oliveira

NMC PIN: 14L0315C

Part(s) of the register: Registered Nurse – Sub Part 1
RN1: Adult – December 2014

Area of registered address: Ipswich

Type of case: Misconduct/Lack of knowledge of English/Lack of competence

Panel members: John Penhale (Chair, Lay member)
Sarah Furniss (Registrant member)
Jennifer Portway (Lay member)

Legal Assessor: Justin Gau

Panel Secretary: Monsur Ali

Order being reviewed: Suspension order

Fitness to practise: Impaired

Outcome: Striking-off order to come into effect at the end of 4 September 2021 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 Mrs De Oliveira was not in attendance and that the Notice of Meeting had been sent on 14 June 2021 to the email address which the Nursing and Midwifery Council (NMC) holds for her.

The panel considered whether notice of this meeting had been served in accordance with the NMC (Fitness to Practise) Rules 2004, as amended (“the Rules”). The panel noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a Notice of Meeting may 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 considered that notice of this meeting was sent to an email address held for Mrs De Oliveira on the NMC register, and that this was sent at least 28 days in advance of the date she was informed the meeting would be considered on or after. The panel noted that Mrs De Oliveira was informed that her suspension order would be reviewed at a meeting on or after 19 July 2021, unless she asked for the review to take place at a hearing.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mrs De Oliveira has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Rules. The panel was also satisfied that it was appropriate to proceed with this review at a meeting, given that Mrs De Oliveira has not requested a hearing.

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 4 September 2021 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 3 May 2019. This was reviewed on 29 April 2020 and the suspension order was extended for a further 12 months. On 21 April 2021 this order was last reviewed and the panel decided to extend the suspension order for another three months. The current order is due to expire at the end of 4 September 2021.

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. *Do not have the necessary knowledge of English to practise safely and effectively. [PROVED]*

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

2. *On 9 June 2017, dispensed the incorrect medication for resident H. [PROVED]*
3. *On 15 June 2017, incorrectly dispensed for resident D, 5mg, 3mg, 1mg and 0.5mg of Warfarin. [PROVED]*
4. *On 15 July 2017,*
 - (a) ...
 - (b) *Did not transfer resident A to her bed, [PROVED]*
 - (c) ...
 - (d) *Did not contact resident A’s family. [PROVED]*

5. *On 4 August 2017, you attempted to feed resident B, whilst she was in a coma. [PROVED]*
6. *On an unknown date, failed to respond appropriately to resident C having a high temperature. [PROVED]*
7. *On an unknown date, failed to preserve resident F's dignity, by allowing her to continue undressing in the lounge. [PROVED]*
8. ...
9. *On an unknown date,*
 - (a) Failed to read resident C's medication chart correctly, [PROVED]*
 - (b) Dispensed for him one paracetamol tablet instead of two, [PROVED]*
 - (c) Failed to explain that the tablet was for his pain. [PROVED]*
10. *On an unknown date, were unable to identify what Nystatin was, and*
 - (a) Did not know what it was used for, [PROVED]*
 - (b) Did not know how to administer it. [PROVED]*

And in light of one or more of charges 2-10 above your fitness to practise is impaired by reason of your misconduct, and/or in the alternative your lack of competence, and/or in the further alternative your lack of knowledge of English. [PROVED]'.

The second reviewing panel on 21 April 2021 determined the following with regard to impairment:

'The panel considered whether Mrs De Oliveira's fitness to practise remains impaired. The panel took into account the charges found proved against Mrs De Oliveira and noted that they were serious, wide ranging and relate to misconduct, lack of knowledge of English and professional competence

issues. It noted that although Mrs De Oliveira has engaged with the NMC, she has not meaningfully engaged in any way since the suspension order was imposed and reviewed nor has she attempted to address how her actions impacted patients and the nursing profession.

The panel took into account that the last reviewing panel found Mrs De Oliveira to have not demonstrated insight into her failings. The panel took into account the correspondence between Mrs De Oliveira and the NMC and was of the view that she appears to have only acknowledged the concerns around her lack of knowledge of English and not her other failings. The panel found that this demonstrates a lack of insight. It also noted that it had no evidence of an up to date English test from Mrs De Oliveira.

This panel noted that the original substantive panel and the reviewing panel found that, while Mrs De Oliveira's misconduct was remediable, her lack of engagement meant that the panel had no evidence of any reflection or remediation. This panel had no new information and is therefore in the same position. This panel noted that Mrs De Oliveira has not taken any steps to remedy the concerns raised about her fitness to practise. It took account of what the previous panel had stated what a future reviewing panel would be assisted by and noted that none of these documents had been provided.

In light of this the panel determined that Mrs De Oliveira is liable in the future to put patients at unwarranted risk of harm and therefore there remains a risk of repetition. The panel was also of the view that in light of the lack of remediation, the public would remain at risk of harm if Mrs De Oliveira was able to practise without restriction. For these reasons, the panel 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 De Oliveira's fitness to practise remains impaired.'

The second reviewing panel on 21 April 2021 determined the following with regard to sanction:

'Having found Mrs De Oliveira'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 this case. The panel was of the view that taking no action would be insufficient to mark the seriousness of the charges. It was also of the view that taking no action would not address the issues around Mrs De Oliveira's lack of knowledge of English. In addition, it would be inadequate to protect the public and address the wider public interest considerations arising from the nature and circumstances of Mrs De Oliveira's failings. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

For the same reasons, the panel considered that imposing a caution order would not mark the seriousness of the charges and the public protection issues identified, an order that does not restrict Mrs De Oliveira's practice would not be appropriate in the circumstances. The panel considered that Mrs De Oliveira's misconduct and lack of competence 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 order on Mrs De Oliveira'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 noted that Mrs De Oliveira's failings are broad and wide ranging. It also noted that Mrs De Oliveira has not meaningfully engaged with the NMC nor has she demonstrated any evidence of insight or remediation. The panel was of the view that Mrs De Oliveira has not demonstrated in any way that she would be willing to comply with conditions of practice should they be imposed and therefore concluded that a conditions of practice order would be unworkable. The panel bore in mind the seriousness of the facts found proved and in light of the misconduct, lack of competence and Mrs De Oliveira's deficiencies in relation to the English language and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was therefore not able to formulate conditions of practice that would adequately address the wide ranging concerns.

The panel considered the imposition of a further period of suspension. The panel considered whether a further period of suspension would serve any useful purpose in all of the circumstances. The panel noted that the misconduct, lack of competence and lack of knowledge of English in this case are serious. It also noted that Mrs De Oliveira has not meaningfully engaged with the NMC, demonstrated any insight or any remediation.

The panel carefully considered whether a striking-off order would be proportionate. It was of the view that Mrs De Oliveira has been given ample opportunity to address the deficiencies in her practice and to improve her English language. However the panel noted that the original panel found misconduct only on charges 5 and 7 and was therefore of the view that at this time a striking-off order would be disproportionate on the basis that the remainder of the charges relate to a lack of competence and a lack of

knowledge of English. The panel sought to highlight that a future reviewing panel will have all sanctions available, including a striking-off order.

The panel concluded that that a further period of suspension would be the appropriate and proportionate response and would afford Mrs De Oliveira adequate time to consider her future in nursing in the UK. It was of the view that a suspension order would allow Mrs De Oliveira further time to meaningfully engage with the NMC and to fully reflect on her previous failings and how her actions impacted patients and the nursing profession. 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 three months. It considered this to be the most appropriate and proportionate sanction available.'

Decision and reasons on current impairment

The current panel has considered carefully whether Mrs De Oliveira'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 decisions and reasons of the previous panels. It also 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 De Oliveira's fitness to practise remains impaired. The panel took into account the charges found proved against Mrs De Oliveira and noted that they were serious, wide ranging and relate to misconduct, lack of knowledge of English and professional competence issues. It noted that Mrs De Oliveira had not been engaging with the NMC in relation to today's meeting and the last contact she made was 19 April 2021 which was prior to the last review meeting.

The panel noted that Mrs De Oliveira has been subject to a suspension order for two years and three months, and there is no evidence to demonstrate that she has made any effort in addressing or remediating the matters found proved. The panel concluded that Mrs De Oliveira had been given sufficient time to produce evidence of her effort to improve her knowledge of English, to address her lack of competence and to demonstrate reflection and insight into her misconduct.

The panel was also of the view that in light of the lack of evidence of any remediation, there remains a real risk of repetition and risk of significant harm to the public. For these reasons, the panel 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 De Oliveira's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs De Oliveira'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 and the public protection issues identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel 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 De Oliveira'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 De Oliveira'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 order on Mrs De Oliveira'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 concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. It determined that, due to Mrs De Oliveira's lack of engagement with the NMC and failure to demonstrate a willingness to remediate her practice, it was not able to formulate conditions of practice that would adequately address the concerns relating to her misconduct, lack of competence and lack of knowledge of English and thereby protect the public.

The panel next considered imposing a further suspension order. The panel had not had sight of any evidence from Mrs De Oliveira that would suggest that she has taken any meaningful steps to improve any of the concerns relating to her misconduct, lack of competence and lack of knowledge of English. This is despite the suggestions and assistance of three previous panels. The panel was of the view that considerable evidence

would be required to show that Mrs De Oliveira no longer posed a risk to the public and she has provided none. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel was of the view that public confidence in the profession could not be maintained if Mrs De Oliveira was not removed from the NMC register and considered that a striking-off order was the only sanction that would be sufficient to protect the public and serve the public interest.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 4 September 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs De Oliveira in writing.

That concludes this determination.