

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

**Substantive Order Review Hearing
8 January 2021**

Virtual Hearing

Name of registrant:	Giuseppina Filippini
NMC PIN:	16F0159C
Part(s) of the register:	Registered Nurse Adult Nursing – June 2016
Area of registered address:	Italy
Type of case:	Lack of knowledge of English
Panel members:	Catrin Davies (Chair, lay member) Kathryn Smith (Registrant member) James Hurden (Lay member)
Legal Assessor:	Charles Conway
Panel Secretary:	Egiliwebi Obaye
Nursing and Midwifery Council:	Represented by Matthew Kewley, Case Presenter
Miss Filippini:	Not present and unrepresented
Order being reviewed:	Suspension order (3 months)
Fitness to practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 1 February 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Filippini was not in attendance and that the Notice of Hearing had been sent to Miss Filippini's email address on the register on 2 December 2020.

The panel had regard to the screenshot which confirmed Miss Filippini's email address and noted that the Notice of Hearing was sent to that address.

The panel noted that under the recent amendments made to the Rules during the COVID-19 emergency period, notice of a hearing can be sent to an email address held for the registrant on the register, or an email address the registrant has notified to the Nursing and Midwifery Council ("NMC") for the purposes of communication.

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

Mr Kewley, on behalf of the 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 Miss Filippini 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 Miss Filippini

The panel next considered whether it should proceed in the absence Miss Filippini. The panel had regard to Rule 21 and heard the submissions of Mr Kewley who invited the

panel to continue in the absence of Miss Filippini. He submitted that Miss Filippini had voluntarily absented herself.

Mr Kewley submitted that there had been no engagement at all by Miss Filippini with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

Mr Kewley informed the panel that Miss Filippini had previously informed the NMC:

“I no want work never in uk thank you [sic]”

Miss Filippini has provided no written submissions for consideration in her absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Filippini. In reaching this decision, the panel proceeded with due care and caution. It has considered the submissions of Mr Kewley, and the advice of the legal assessor. It has had particular regard to any 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 Miss Filippini;
- Miss Filippini has not engaged with the NMC since the substantive hearing of this matter, and has not responded to any of the correspondence sent to her about this hearing;
- There is no reason to suppose that adjourning would secure Miss Filippini’s 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 Miss Filippini has voluntarily absented herself from attending and it is fair, appropriate and proportionate to proceed in the absence of Miss Filippini.

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 1 February 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 2 October 2018. On 30 September 2019, this substantive order was reviewed and a suspension order for a further period of 12 months was imposed. The reviewing panel on 28 September 2020, imposed a suspension order for a further 3 months.

The current order is due to expire at the end of 1 February 2021.

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 determined the following with regard to impairment:

'The panel bore in mind that, in respect of matters of impairment, there is a persuasive burden on the registrant to demonstrate that they are currently fit to practise.'

There is no information before this panel to suggest that the language concerns in Miss Filippini's case have been addressed; there has been no engagement from Miss Filippini in respect of this matter, and as such no evidence of any steps she has taken to address the regulatory concerns. The panel considered that the matters at issue in this case are remediable, but determined that there is no evidence to indicate that such matters have been adequately remediated – such as, for example, evidence of successful completion of an IELTS or OET assessment, or evidence of training and/or practice in an English-speaking environment.

Miss Filippini has not engaged with the NMC over a prolonged period of time – since 2018 – and the correspondence from that time indicates an intention to no longer work in the United Kingdom.

Taking all the above into account, the panel determined that there has been no material change in the level of risk in this case. As such, Miss Filippini's fitness to practise remains impaired, on grounds of both public protection and public interest.'

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

'The panel next considered whether a conditions of practice order would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. Given Miss Filippini's sustained lack of engagement over a significant period of time, coupled with the lack of evidence to suggest any willingness on her part to engage with a conditions of practice order, the panel had no confidence that Miss Filippini would engage with any conceivable conditions of practice order. Furthermore, given the nature and circumstances of the case, the panel was not able to conceive of any conditions of practice whose implementation would not effectively amount to a suspension order.

The panel considered the imposition of a further period of suspension. Bearing in mind all the information before it, the panel determined that a suspension order is the only appropriate and proportionate sanction in this case, to adequately protect the public and address the wider public interest. A further period of suspension would also provide Miss Filippini with a further opportunity to engage with the NMC

and make attempts to remediate the regulatory concerns in this case, if she so wishes.

The panel noted that a striking-off order is not an available sanction at this review hearing, as Miss Filippini has not been subject to a substantive order for more than two years. However, at the next review of this order, all sanctions (including a striking-off order) will be available to that panel.

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 that to impose a suspension order for the period of 3 months would provide Miss Filippini with a potentially final opportunity to engage with the NMC and to provide evidence of any positive attempts to address the regulatory concerns in this case, namely lack of knowledge of English language. The panel considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely at the end of 1 November 2020, in accordance with Article 30(1).

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:

- *Miss Filippini's attendance;*
- *Any information regarding the steps Miss Filippini has taken to address her lack of knowledge of English; and*
- *Any relevant references and/or testimonials.'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Filippini'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 Mr Kewley on behalf of the NMC. Miss Filippini has provided no written submissions for consideration in her absence.

Mr Kewley submitted that there has been no information provided by Miss Filippini to indicate that she has remediated or is attempting to remedy the concerns relating to her knowledge of English. He informed the panel that Miss Filippini has not engaged with the NMC since prior to her substantive hearing and that there is no material change to show that she has demonstrated insight into her lack of knowledge of English and how this could affect her practice.

Mr Kewley submitted that as Miss Filippini has failed to engage following the initial hearing with the NMC, the panel could conclude that Miss Filippini remains impaired in her knowledge of English.

Mr Kewley informed the panel that as Miss Filippini has now been subject to a substantive order for two years, a striking-off order is now available as a sanction. He submitted that in the absence of there being an expression of interest in remediating the concerns raised, the panel may find it appropriate and proportionate to impose a striking-off order.

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 Filippini's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that there had been no new information before it to suggest that the language concerns in Miss Filippini's case had been addressed nor had there been any evidence to show Miss Filippini's efforts to address the regulatory concerns. In its consideration of whether Miss Filippini has since remedied her knowledge of English, the panel noted that again there has been no information provided by her to undermine the previous finding of impairment. For this reason, the panel concluded that in the absence of information, the potential risk to patient safety cannot be ruled out. Therefore, Miss Filippini's fitness to practise remains impaired, on grounds of both public protection and public interest.

Decision and reasons on sanction

Having found Miss Filippini'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 Miss Filippini'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 Miss Filippini's lack of knowledge of English 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 on Miss Filippini's registration would be a sufficient and appropriate response. The panel was mindful that any conditions

imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the regulatory concerns in conjunction with Miss Filippini's sustained lack of engagement over a significant period of time. Her unwillingness to engage with this process, the panel is of the view that Miss Filippini would not engage with any conceivable conditions of practice. It concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Miss Filippini's lack of knowledge of English.

The panel next considered imposing a further suspension order. The panel noted that Miss Filippini has persistently failed to demonstrate any insight into the issues leading to this referral and has disengaged with the NMC. It is of the view that this has been for a significant length of time. It is also of the view that Miss Filippini has been provided with ample opportunity to provide evidence that she has remedied her knowledge of English and that considerable evidence would be required to show that Miss Filippini no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel considered the persistent lack of engagement with her regulator was serious and that the public would lose confidence in the regulator if it allowed her to remain on the register. The panel determined that it was necessary to take action to prevent Miss Filippini 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 at the end of 1 February 2021 in accordance with Article 30(1).

This decision will be confirmed to Miss Filippini in writing.

That concludes this determination.