

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

**Substantive Hearing
15 - 16 July 2021**

Virtual Hearing

Name of registrant: **Ramona Ale Vasile**

NMC PIN: 16D1125C

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

Area of registered address: Hampshire

Type of case: Conviction

Panel members: Dale Simon (Chair, Lay member)
Emily Davies (Registrant member)
Nicola Dale (Lay member)

Legal Assessor: Michael Hosford-Tanner

Panel Secretary: Megan Winter

Nursing and Midwifery Council: Represented by Helen Guest, Counsel

Ms Vasile: Present and represented by David Claxton,
Counsel, instructed by the Royal College of
Nursing (RCN)

Facts proved by admission: All

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Suspension Order (6 Weeks)**

Interim order: **Suspension Order (18 Months)**

Details of charge

That you a Registered Nurse,

- 1) At the Portsmouth Magistrate's Court on 12 March 2020 were convicted of Theft contrary to sections 1(1) and 7 of the Theft Act 1968 (x3)
[Proved by admission and certificate of conviction]

AND in light of the above, your fitness to practise is impaired by reason of your conviction

Background

The NMC received a referral from Contemplation Homes Limited on 27 June 2019.

It is alleged that you took medication that had been prescribed to residents of three care homes at which you had previously worked, this medication had been due for disposal.

As a result of information received, the police attended your house and when they asked you about stolen medication, you produced a small quantity of stolen medication. You were then arrested for theft. The police had reason to believe that you were in possession of a larger quantity of medication therefore they conducted a search of your home and discovered more medication which had been prescribed to residents from three care homes that you had previously worked at. The majority of the residents who had been prescribed the medication found in your home were deceased or had been moved to other homes.

When interviewed, you maintained that you had never put patients in danger as you had not deprived them of their own medication as the majority of the medication taken belonged to residents who were either deceased or residents who had moved on to another home. It is also suggested that you admitted to sending some of the medication abroad.

On 12 March 2020 you pleaded guilty at the Magistrates Court to three counts of theft of medication from three homes where you worked as a registered nurse over the period from 2016 to 2019. You were fined for those offences.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Claxton, on your behalf, who informed the panel that you made full admissions to the facts in Charge 1 but denied that your fitness to practise was impaired.

The panel was also provided with a copy of the Certificate of Conviction. On the basis of the Certificate of Conviction, as well as your admission to Charge 1, the panel finds the facts of Charge 1 proved.

Submissions on impairment

Having determined its decision on the facts, the panel then moved on to consider, whether on the facts found proved, your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Ms Guest moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

The panel heard from you under affirmation. You told the panel that you took the medication to give to your father and to other family members. At the time, your father had

just arrived in the UK and was looking after your son. You said that you never sent any of the medication to another country, nor did you supply medication to any of your friends.

You told the panel that you admit that you took some medication from Romania with you to the UK. You explained that in Romania it is easy to access the pharmacy and that it is regular practice for citizens to self medicate. You said that you arrived in the UK five years ago and that you were not aware about any strict regulation of medication. You said that you misunderstood from the beginning but that you are now aware of your mistake as a nurse.

You told the panel that you spent two to three weeks writing your reflective piece, however, you said that you have been reflecting over the past two years about what you had done. You said that you are aware that you are guilty but that you are always open and honest about this.

You informed the panel that you have been working in a number of care homes as a senior carer through an agency over the past two years. You explained that the testimonials provided have come from a number of your managers and colleagues throughout this period. You said that you are always open and honest with your employer and your colleagues about your conviction and these proceedings.

In terms of the consequences of your actions, you recognised that taking medication which is not meant for you could result in serious harm. You explained that you are deeply sorry for your actions and that you have no excuse for what you have done. Further, you said that you only understood what you had done was wrong very late on.

You told the panel that, since you were a child, you have dreamt of being a nurse. You said that you enjoy looking after other people, your family and your son. You said that you try to help people as much as you can and are always willing to help with anything, whether it be medical or not.

Since being prosecuted and being brought before your regulator, you said that you have learnt a lot of things. You said that you are now aware that you were wrong and that you find it very hard to be in your position. You told the panel that you have never had any problems with the police or caused any harm to others. You said that you will regret this mistake all your life and that you feel it will have an impact on your future.

Ms Guest submitted that you have in the past and are liable in the future to put patients at an unwarranted risk of harm. Whilst Ms Guest accepted that no actual harm was caused to patients, she submitted to the panel that there was a risk of harm because if you were in the future to repeat your actions, they could result in serious harm to patients.

Ms Guest invited the panel to consider the NMC code and to conclude that you have fallen far below the standards expected, to the point that you were convicted of three charges of theft. She submitted that the damage to the reputation of the profession that you have caused is unquantifiable.

Ms Guest submitted that impairment is an elusive concept and that there is no single definition. However, she encouraged the panel to consider your suitability to remain on the register without restriction.

Ms Guest invited the panel to consider that, through the punishment of the court, you have lost your good character. Further, she invited the panel to consider your suspension order which has meant that you have not been able to work as a registered nurse. She informed the panel that this has caused you financial implications as a single mother.

Ms Guest submitted that this was not an isolated incident but one which occurred in three different establishments over a period of three years. She invited the panel to consider the wider public interest concerns and the need to maintain confidence in the profession by upholding proper standards of conduct. Further, that it should bear in mind what an ordinary and decent person knowing the facts of this case would expect to happen as to a finding of impairment.

Ms Guest submitted that public interest does include bringing back safe and effective nurses into practice when possible. However, she submitted that dishonesty can be difficult and sometimes impossible to remediate.

Ms Guest submitted that there is a lack of reassurance regarding insight and remediation. She therefore invited the panel to find that your current fitness to practise is impaired on grounds of public protection and that a finding of current impairment is also necessary to address the wider public interest and maintain the public confidence in the NMC as a regulator.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

The panel agreed with Ms Guest and was of the view that you breached the following paragraphs of the code:

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

20.4 keep to the laws of the country in which you are practising

It also considered there had been a breach of the following:

18.5 wherever possible, avoid prescribing for yourself or for anyone with whom you have a close personal relationship

In this regard the panel considered the judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel finds that limbs (b), (c) and (d) of the *Shipman* “test” are engaged in this case. It considered that, as your case does not relate to your clinical practice, limb (a) was not engaged.

The panel found that your conduct and conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to the conviction serious.

Regarding insight, the panel considered that you do have some insight. It noted that you made admissions and had demonstrated some understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. You have apologised and demonstrated how you would handle the situation differently in the future. However, the panel was of the view that this insight was still developing and that you were yet to fully understand the consequences of your actions on the public’s confidence in the nursing profession and the NMC as its regulator.

In its consideration of whether you have remedied your actions, the panel took into account that this was a serious conviction which occurred over a period of three years with three different employers. It was troubled by some aspects of your evidence and reflection, particularly where you sought to excuse your conduct by being unaware of the

prescription system in the UK. It was of the view that you were aware of the rules regarding prescribing medication, not only because of your training as a nurse but also because you referred to the need for your father to be registered to a doctor before he could receive medication. The panel also thought that you would have made your employers aware of your actions if you felt that you were entitled to take the medicines concerned. The panel bore in mind that there would be a need for more significant reflection and insight into your actions to show that you have remediated your past conduct. As a registered nurse who is practicing in the UK you are responsible for your own practice and your assertion of lack of awareness of medicines administration procedure would not be a valid excuse and indicates some lack of insight.

The panel found that you have in the past breached fundamental tenets of the nursing profession, and due to your lack of full insight, and remediation, are liable to breach fundamental tenets of the profession again in future.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that, in this case, a finding of impairment on public interest grounds was undoubtedly required. The panel determined that the public would be shocked by your actions, and your actions have brought the profession into disrepute. Not to find you currently impaired would risk, as Cox J explained in *Grant*, the public thinking that you have been acquitted by your regulator in the face of a serious criminal conviction. It would undermine public confidence in the profession, and the NMC as its regulator.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 6 weeks. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Guest informed the panel that in the Notice of Hearing, dated 14 June 2021, the NMC had advised you that it would seek the imposition of a 6 month suspension order if it found your fitness to practise currently impaired.

Ms Guest set out the NMC's position with regard to the aggravating and mitigating features in this case. She submitted that, if the panel were to impose a caution order or no order at all, it would be disproportionate as the behaviour which led to the conviction was serious.

Ms Guest invited the panel to consider the outcome of your criminal proceedings, which resulted in a fine. She acknowledged that the panel may consider a conditions of practice order, however, she submitted that there were no identifiable areas in this case where conditions would be appropriate.

Ms Guest submitted that, when consulting the guidelines which outline when it is thought appropriate to impose a suspension order, there is nothing to suggest that a suspension order would be the appropriate sanction to impose. However, she submitted that each case must be judged on its own merits. Ms Guest acknowledged that there is no evidence

of repetition and that you have shown some insight and taken steps towards remediation. Further, she recognised the difficulties in remediating dishonesty.

Ms Guest submitted that a striking off order would only be appropriate if your conviction was incompatible with remaining on the register. She submitted that to impose such an order would be disproportionate in all the circumstances of this case, given your insight and reflection. Moreover, the public interest would be served in returning otherwise good nurses back into safe practice if the risk of repetition is lessened and therefore should be considered.

Ms Guest invited the panel to consider the case of *Kamberova v NMC [2016] EWHC 2955 (Admin)*. She submitted that the case considers the fact that a previous period of interim suspension may be a relevant factor in determining the appropriate order. Ms Guest informed the panel that you have had an interim suspension order imposed on your registration since 9 August 2019 and invited the panel to take this into account.

Mr Claxton submitted that the gravity of misconduct and wrongdoing should be considered. He submitted that, on one hand, the theft of medication is serious. On the other hand, he submitted that the medication involved were not destined for patients and therefore no patients were deprived of medication. Further, the medication was not of any particular economic value.

Mr Claxton submitted that it is the regulators job to protect the public, however, in this case no actual or indirect harm was caused to patients or the public. He informed the panel that you have no previous criminal convictions, nor have there been any concerns regarding your practice in the past. He submitted that, despite these proceedings, you have remained working in a healthcare environment and shown dedication to your profession.

Mr Claxton invited the panel to consider your prompt admissions in court and to your regulator. He submitted that you have gained significant insight into your failings and that

you are continuing to gain more. Mr Claxton also invited the panel to consider the punitive effect of which your current interim suspension order has had on you, as a single mother whose income has been greatly reduced over an extended period of time.

Mr Claxton submitted that it is in the wider public interest that you return to practicing as a nurse. He submitted that society is in need of nurses right now to play a part in the system in which we all depend.

Mr Claxton invited the panel to impose a long caution order on your practice. He submitted that, while this wouldn't limit your ability to do your job, it would be necessary for you to disclose this to any future employer and therefore cast a shadow on your practice for its duration. He submitted that this would be a salutary reminder of the need to be a beacon of standards, as opposed to someone who undermines them.

Mr Claxton submitted that, if the panel were not minded to impose such an order, it should consider a conditions of practice order. He suggested that the order could include conditions such as further reflective work, a Personal Development Plan (PDP) and further training. He submitted that a further suspension order would be disproportionate as you have been suspended already for a considerable length of time.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following to be aggravating factors in this case:

- Your behaviour amounted to a breach of trust;
- Your conduct was dishonest and resulted in a criminal conviction;
- The offences that you were convicted of spanned a period of three years and involved three different care homes; and
- Medication was used for personal purposes.

The panel considered the following to be mitigating factors of this case:

- No actual harm was caused to patients or the public;
- You engaged fully in the NMC process;
- You engaged early with all authorities;
- You made early admissions before the court and this panel;
- You have shown remorse and developing insight;
- Numerous positive testimonials;
- The stolen items were of low economic value;
- You have worked as a senior carer in healthcare and produced evidence and kept up to date with your nursing skills thereby demonstrating a commitment to your registration as a nurse; and
- There is no evidence of any concerns about your clinical skills.

The panel therefore considered that there was considerable mitigation in this conviction case.

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, an order that does not restrict your 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 your behaviour 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 placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- [...]
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- [...]
- [...]

The panel was of the view that whilst this was not a single incident of theft, the convictions all arose from a particular set of circumstances and concluded that there is no evidence of harmful or deep seated personality or attitudinal problems. It took into account that there have not been any further instances of theft since the incidents and that indeed none had been recorded prior to this. The panel also noted that you have shown remorse and some developing insight and concluded that, whilst there is some risk of you repeating your behaviour, the risk is very low.

The panel was satisfied that in this case, your actions were not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded

that it would be disproportionate. The panel was of the view that a member of the public who was aware of all the context and circumstances in this case would not conclude that a striking off order was the appropriate sanction in this case. Further, they would not have any doubts about your clinical abilities.

The panel considered an important factor in your favour is that you are a competent and useful clinician who can provide useful service to the public.

The panel was of the view that a nurse who was not fundamentally dishonest and with an unblemished professional career could remediate such as to be trusted to act professionally in the future. You have largely demonstrated this in your reflective piece, your evidence to the panel and your actions, especially in your continued valuable work as a carer. The panel determined that it would be contrary to the public interest to remove an otherwise good nurse from the register by way of a striking off order. However, it was necessary, in the public interest, to mark that your misconduct was unacceptable.

The panel had regard to the case of *Kamberova v NMC [2016] EWHC 2955 (Admin)* and took into consideration the fact that your registration has already been suspended for a period of two years, due to an interim suspension order. It took into account that, since the imposition of the interim suspension order, there have been no further concerns relating to your practice. The panel took into account that it has taken much longer than hoped for this case to come to a final hearing, which has been the cause of your long interim suspension.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship which your interim suspension order has already caused and considered the impact of what a further suspension order will inevitably cause you. However, this is outweighed by the public interest in this case, which requires your conviction to be marked by a short further suspension.

The panel considered that a suspension order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Ms Guest in relation to the sanction that the NMC was seeking in this case, to impose a suspension order for 6 months. However, the panel considered that given the period of suspension that you have already been subject to, that a further lengthy suspension order would be unduly punitive.

The panel determined that a suspension order for a period of 6 weeks was appropriate in this case to mark the seriousness of your behaviour.

The panel finds that you have developing insight and has concluded that a review is not necessary.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28 day appeal period and any period of appeal.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to you in writing.