

**Nursing and Midwifery Council  
Fitness to Practise Committee  
Restoration Hearing  
Thursday 24 June 2021**

Nursing and Midwifery Council  
Virtual Hearing

**Name of Applicant:** Mr Rony Cuevas Aposaga

**NMC PIN:** 04L0441O

**Part(s) of the register:** Registered Nurse – Sub part 1  
Adult – December 2004

**Area of Registered Address:** London

**Panel Members:** Gregory Hammond (Chair, lay member)  
Mark Gibson (Registrant member)  
June Robertson (Lay member)

**Legal Assessor:** Gerard Coll

**Panel Secretary:** Parys Lanlehin-Dobson

**Mr Aposaga:** Present and represented by Catherine Stock

**Nursing and Midwifery Council:** Represented by Michael Smalley

**Outcome:** Application granted subject to the completion  
of a return to practice course

## **Determination of application for Restoration to the Register:**

This is a hearing of your first application for restoration to the Nursing and Midwifery Council ("NMC") register.

A panel of the Conduct and Competence Committee directed on 18 January 2013 that your name be removed from the register based on its findings with regard to the facts of your case and impairment. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001 ("the Order"), as at least five years have now elapsed since the date of the striking-off order.

At this hearing the panel may reject your application or it may grant your application unconditionally. It may grant your application subject to your satisfying the requirements of Article 19(3) and it may make your restoration subject to a conditions of practice order.

## **Background**

You were employed as a band 5 staff nurse on the Burns Unit within the Division of Medicine and Surgery at Chelsea and Westminster Hospital NHS Foundation Trust (the Trust) on 28 June 2011.

It was alleged that in October 2011 you obtained personal details of female patients, from the patients' record at the Trust with a view to contacting them for reasons not relating to their care.

A complaint was initially received from Patient A on 31 October 2011 and an investigation meeting was conducted by the Trust on 1 November 2011. During this meeting, you admitted that you had obtained Patient A's phone number from the Trust's record and had sent numerous text messages to her. When asked if you had texted any other patient, you advised the Trust that you did not. However, whilst the meeting was held, another complaint was received from Patient B who alleged that you had sent her a text message also.

Following the complaint from Patient B, another investigation meeting was conducted by the Trust on 24 November 2011 with you. During the investigation meeting, you admitted that you had sent a text message to Patient B as well.

A disciplinary hearing was held on 15 December 2011 by the Trust and you were summarily dismissed for gross misconduct.

The matter was referred to the Metropolitan Police – Tower Hamlets (the Police) by the Trust on 2 December 2011 and you were cautioned on 6 January 2012 for harassment.

The panel of the Conduct and Competence Committee at the substantive hearing on 18 January 2013 considered the following charge:

*'That you, as a registered nurse,*

- 1. On 6 January 2012 received a caution for pursuing a course of conduct in relation to two patients under your care which amounted to harassment contrary to S.2(1) & S.2(2) of the Protection from Harassment Act 1997.'*

You admitted to the charge and the panel at the substantive hearing therefore found the charge proved. It went on to determine the following with regard to impairment:

***'Decision on impairment***

*The panel found that your current fitness to practice is impaired.*

***Reasons***

*The panel next considered, on the basis of the matters found proved, whether Mr Aposaga's fitness to practise is currently impaired by reason of his misconduct.*

*In reaching its decision, the panel has had regard to all the evidenced before it. The panel heard and accepted the advice of the legal assessor.*

*The legal assessor referred the panel to the cases of Roylance v General Medical Council [1999] UKPC 16, and explained that whilst misconduct was not defined, it was described in this case as a word of general effect involving some act or omission which falls short of what would be proper in the circumstances.*

*The panel was reminded that not every falling short of what would be proper in the circumstances, and not every breach of the Code, would be sufficiently serious that it could properly be described as misconduct. However, the Code makes it clear that failure to comply with the Code may bring a registrant's fitness to practise into question and endanger their registration.*

*The panel has exercised its own judgement in determining the issue before it. In considering Mr Aposaga's fitness to practise the panel reminded itself of its duty to protect patients and its wider duty to protect the public interest which includes the declaring and upholding of proper standards of conduct and behaviour, and the maintenance of public confidence in the profession and the regulatory process.*

*The panel considered that on the facts found proved in charge 1 Mr Aposaga's had breached the following standards from the NMC's publication, 'the Code: Standards of conduct, performance and ethics for nurses and midwives' (May 2008) (the Code) including the preamble which states:*

*The people in your care must be able to trust you with their health and wellbeing  
To justify that trust, you must:*

- be open and honest, act with integrity and uphold the reputation of your profession.*

*And the following paragraphs:*

*5 You must respect people's right to confidentiality.*

*6 You must ensure people are informed about how and why information is shared by those who will be providing their care.*

*20 You must establish and actively maintain clear sexual boundaries at all times with people in your care, their families and carers.*

*49 You must adhere to the laws of the country in which you are practising.*

*57 You must not abuse your privileged position for your own ends.*

*61 You must uphold the reputation of your profession at all times.*

*Accordingly, the panel has had careful regard to the context and circumstances of the matters found proved and Mr Aposaga's admitted wrong doing in receiving a caution. Given the nature of the facts found proved, the panel found that Mr Aposaga's actions fell far short of the standards expected of a registered nurse. In addition he breached patient confidentiality for personal gain.*

*The panel was of the opinion that Mr Aposaga's behaviour and actions towards the patients amounted to serious misconduct. Mr Aposaga had abused his position of trust by inappropriately contacting two patients outside the course of his duties as a registered nurse. Mr Aposaga also inappropriately retrieved contact information for these patients from patient's records without authorisation and/or permission from the patients. Accordingly, the panel determined that Mr Aposaga's behaviour amounted to serious misconduct.*

*The panel then considered the issue of impairment. In reaching its decision, the panel has considered the serious misconduct found proved and all the evidence adduced by 18 the NMC. Whilst the panel is clear that, at the time of the allegations, Mr Aposaga's fitness to practise was impaired, it reminds itself that the test for impairment is whether he is currently impaired. Whilst fitness to practise is not defined, the panel was nevertheless assisted by the test set out at paragraph 76 of Grant (CHRE and (1) NMC, (2) Paula Grant [2011] EWHCb927 (Admin). It reads as follows:*

- a. has [the nurse] 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 [the nurse] in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has [the nurse] in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession...*
- d. [...]*

*The panel also considered the need to protect patients and its wider duty to protect the public interest which includes the declaring and upholding of proper standards of conduct and behaviour, and the maintenance of public confidence in the profession and the regulatory process.*

*The panel is satisfied that Mr Aposaga's fitness to practise is currently impaired because of his serious misconduct which fell below the standard to be expected of a registered nurse. As Mr Aposaga has shown no insight or remorse, given no apology, has shown no remediation and he has not engaged with the NMC. Therefore the panel has concluded that there is a risk of repetition.*

*The panel were of the opinion that Mr Aposaga's serious misconduct clearly brought the nursing profession into disrepute. Mr Aposaga has breached a fundamental tenet of the nursing profession, in failing to act with honesty and integrity; which is the bedrock of public confidence of the profession. The panel*

*considered 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 circumstances of this case. The panel was in no doubt that it would. The panel has determined that in the light of its responsibility to maintain confidence in, and uphold the reputation of, the profession, it finds current impairment of Mr Aposaga's fitness to practise.*

*For all the reasons outlined above, the panel has determined that Mr Aposaga's current fitness to practice is impaired by reason of his misconduct.'*

The substantive panel went on to determine the following with regard to sanction:

#### ***'Decision on sanction***

*The panel decided to impose a striking off order.*

#### ***Reasons***

*The panel heard and accepted the advice of the legal assessor and took into account the guidance set out in the NMC's Indicative Sanctions Guidance for panels of the Conduct and Competence Committee (June 2012) (ISG). It had regard to the principle of proportionality, weighing the registrant's interests against the public interest. It took account of the mitigating and aggravating factors in the case. The panel bore in mind that the purpose of a sanction was not to be punitive, although it might have that effect, but was intended to protect patients or to be the wider public interest. The wider public interest included maintaining public confidence in the professions and the NMC as regulator and declaring and upholding proper standards of conduct and behaviour. The panel approached the question of which sanction, if any, to impose, by considering the least severe sanction first and moving upwards.*

*The panel first considered whether to take no action. It considered that this would be wholly inappropriate because such a course would not adequately reflect the nature and seriousness of Mr Aposaga's actions and would therefore not protect the public interest.*

*The public interest includes not only the protection of patients, but also the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.*

*The panel then considered whether to impose a caution order. A caution order does not restrict a nurse's ability to practise. The panel concluded that such an order would not be an appropriate or proportionate sanction given the facts, serious misconduct and impairment. It would also be an insufficient sanction to maintain public confidence in the profession and the regulatory process.*

*The panel therefore went on to consider a conditions of practice order. Such an order is appropriate when for example there are identifiable areas of a registrant's practice in need of retraining. This is not the case here. This matter involves Mr Aposaga's behavioural and attitudinal issues which are not easily remedied. The panel had no evidence before it to show Mr Aposaga's had taken any steps to remedy his failings. It also had no information about what he was doing now. The panel concluded that it could not draft conditions which would be practicable, workable or enforceable. In any event, a conditions of practice order would not adequately reflect the gravity of Mr Aposaga's serious misconduct and impairment found.*

*The panel next considered imposing a suspension order. A suspension order is intended to convey a message to the registrant, the profession and the wider public regarding the gravity of unacceptable and inappropriate behaviour, but which, in the particular circumstances of a case, falls short of being fundamentally incompatible with continued registration. A period of suspension can also serve to provide a practitioner with an opportunity to reflect on their*



*misconduct and to take action to commence the process of rehabilitation. Mr Aposaga was in a position of trust and he abused this position for his own ends. Mr Aposaga clearly crossed professional boundaries. The panel had no information before it that he had insight into his actions or shown any evidence of remorse or remediation. The panel also noted that Mr Aposaga's conduct was misleading and that he caused distress to the patients by inappropriately sending text messages to them. It is against this background that the panel concluded that a suspension order would not be sufficient to protect the public or to maintain confidence in the profession and the regulatory process.*

*Having determined that a sanction is necessary, and having excluded all the lesser sanctions as insufficient, the panel determined that the only proportionate and appropriate sanction, sufficient to protect the public and maintain confidence in the profession, is a striking off order.*

*The Panel noted that the ISG states:*

*“A Striking Off Order is likely to be appropriate where the behaviour involves:*

- a serious departure from the relevant professional standards*
- an abuse of [the nurse's] position*
- an abuse of trust”*

*In the panel's judgement, all of the above apply. The panel considers that Mr Aposaga's misconduct is fundamentally incompatible with continued registration. In reaching this conclusion, the panel had regard to the nature and gravity of his misconduct, the absence of evidence of any meaningful insight or remorse, the risk of repetition, and the need to maintain public confidence in the profession. The panel therefore directs that Mr Aposaga's name be removed from the NMC Register. He may not apply for restoration until five years after the date that this decision takes effect.'*

## Submissions and evidence

The panel took into account the documentary evidence before it, including the contents of your application for restoration, three written references, your reflective document and the decision from the substantive hearing. The panel took account of the submissions made by Mr Smalley, on behalf of the NMC, and those made by Ms Stock on your behalf.

Mr Smalley, on behalf of the NMC, outlined the background of the case and the facts that led to the striking-off order being imposed. He referred this panel to the previous panel's decision which resulted in your removal from the NMC's register, and referred to that panel's determination with regards to misconduct, impairment and sanction imposed. Mr Smalley also referred the panel to the NMC's published guidance, Deciding on applications for restoration Reference: APP-2a [2020], in relation to these proceedings. He reminded the panel that it would need to consider the following, in reaching its decision on your application for restoration to the register:

- *the extent to which the applicant has demonstrated insight and remediation into the concerns which led to the striking-off order (using the guidance on remediation and insight),*
- *the period of time since being struck off and any previous restoration application,*
- *the applicant's employment history since they were removed from the register,*
- *the efforts the applicant has made to keep up to date with professional practice,*
- *taking into account the above factors, whether the applicant would be able to practise safely as a nurse, midwife or nursing associate in the future, and*
- *whether, in the context of the concerns that led to the previous striking-off order, public confidence in the nursing or midwifery professions would be undermined if the applicant was restored to the register. There is a spectrum of concerns which lead to a nurse, midwife or nursing associate being struck off the register. At one end, some cases may be just serious enough to end in a striking-off order. At the other, there may be cases which are so serious that it may be difficult to see how the nurse, midwife or nursing associate could ever be restored to the register.*

Having considered the above Mr Smalley submitted that the NMC's position in respect of this application was neutral.

Ms Stock provided the panel with the details and circumstances relating to the proven charge and the caution order. [PRIVATE]

[PRIVATE]

Ms Stock submitted that you have deep regret about your actions. She said that you were, and still are, apologetic and remorseful for your behaviour. It was her submission that since your strike off you have reflected on your actions and she referred the panel to your reflective statement, in which you said the following:

*"...I am extremely sorry for what I have did and for breaching their confidentiality and for breaching professional boundaries.*

[PRIVATE]

*14. Looking back, I do not recognise the person that I became, and I realise I acted in a very immature and selfish way.*

[PRIVATE]

*17. I am terribly sorry and apologise deeply to my wife, my family, the patients involved and to my colleagues for behaving in such a dishonourable and disreputable way.*

*18. It was an unpleasant and difficult experience for everyone involved and it has taken me a long time to accept what I did and to try and make amends and move on with my life.*

*19. I apologise to the patients for making them feel the way they did. It is something of deep regret to me.*

[PRIVATE]

Ms Stock told the panel that you have insight into the impact of your actions on the patients and colleagues [PRIVATE]. She said that you have taken all the necessary steps towards remediation and that you are also committed to returning to practise. She told the panel that you are currently working as a Healthcare Assistant (HCA) at The Chiswick Nursing Centre and have undertaken training to address the concerns raised in the charge found proven, in particular a CPD in Probity and Ethics, and Safeguarding.

Ms Stock also referred the panel to one of the three references submitted as part of your application, dated 18 June, from your line manager, who is also a registered nurse and is aware of the reasons you were struck off.

Ms Stock submitted that taking your level of insight, remediation and commitment to the healthcare profession into account, there is a low to zero risk of the conduct that led to the strike off being repeated.

[PRIVATE]

Mr Smalley told the panel that he did not have any further comments to make regarding the evidence submitted and the submissions from Ms Stock but reminded the panel of its obligation to consider the protection of the public and the public interest when reaching its decision about your application.

The panel accepted the advice of the legal assessor, who referred to the test set out in Article 33(5) of the Order. Firstly, you must satisfy the panel that you meet the requirements of Article 9(2) (a) (approved qualification and prescribed education, training and experience) and Article 9(2) (b) (capable of safe practice). Secondly, you

must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2013, you are a “fit and proper person to practise as a registered nurse”. The legal assessor advised the panel that it is for you to satisfy the panel of these matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

### **Decision on the application for restoration**

The panel has considered your application for restoration to the NMC register carefully and has decided to grant the application subject to your successful completion of a return to practice course.

In reaching its decision the panel has had regard to the NMC’s written guidance on Restoration, namely documents APP- 2a – Deciding on Applications for Restoration and APP - 2b – Powers of the Fitness to Practise Committee at a Restoration hearing, both dated January 2020. The panel recognised its statutory duty to protect the public as well as to maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was upon you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse.

The panel first considered whether you are a fit and proper person. In this respect, the panel had regard to the circumstances in which you were struck off the register in 2013, and the background to these matters as explained by Ms Stock.

The panel acknowledged that you did not provide oral evidence at this hearing and it did consider the difficulty of speaking about such a sensitive matter in your life. The panel had regard to the evidence submitted as part of your application and considered that your reflective statement demonstrated a well-developed understanding of the impact of your actions on patients, colleagues, members of the public and the reputation of the nursing profession. The panel considered that Ms Stock’s submissions were consistent with your written reflective statement in which you were apologetic and regretful. The

panel was of the view that you have sufficient insight and understanding of how your personal circumstances at the time impacted on your clarity of thinking and decision making. The panel concluded that your remorse was genuine and formed as a result of your developed insight.

The panel has considered that since your striking-off order was imposed, you have worked hard to demonstrate trustworthy behaviour. It had regard to your current role as a HCA and the training sessions you have undertaken. It acknowledged your commitment to the healthcare professions and considers that your current role is a position of great responsibility, trust and integrity in protecting the rights of individuals in your care. The panel was satisfied that the issues which led to the striking-off order had been remediated and was therefore satisfied, given your level of insight and remediation, that there was a minimal risk of similar behaviour recurring in the future.

The panel was reassured by the references provided and the submission from Ms Stock that you had learnt from everything that had occurred, and that if you were ever facing personal challenges in the future, you would not seek to breach patient confidentiality. The panel was satisfied that you have learned a salutary lesson and noted and accepted your determination that you would not repeat such behaviour again.

In light of these factors, the panel was satisfied that you are a fit and proper person to practise as a registered nurse.

The panel went on to consider whether you would be capable of safe and effective practice. The panel considered whether you satisfied the requirements of Article 9(2), namely an approved qualification, prescribed education, training and experience and capability of safe practice.

The panel noted that it has been over five years since you last practised as a nurse. During this time, you put into place structures to enable you to move on from the situation you faced in 2013, as well as gaining perspective and developing insight and remediation. Since removal from the register you have undertaken training to ensure and upkeep the requisite skills of a HCA. The panel considered that your role as a HCA

is relevant to the healthcare professions and has involved maintaining and developing skills and qualities that are transferable to the role of a nurse. The panel had regard to the certificates you have provided, which evidence the online training courses you have undertaken as part of your efforts to keep up to date with developments in the nursing profession and to keep your clinical knowledge and skills up to date. You have completed courses on Safeguarding, Phlebotomy and other clinical skills. The panel considered that you would be capable of safe and effective practice once you have completed a Return to Practice course.

The panel had regard to the need to maintain public confidence in the nursing profession and in the NMC as a regulator. It considered whether public confidence would be undermined if you were restored to the register. The panel considered that a striking-off order was made in 2013. Since then, there has been no repetition of similar conduct and the panel noted that you have made positive changes, where you have learnt from your mistakes, and are now entirely clear about your responsibilities as a nurse, in terms of upholding the standards of the profession. The panel is of the view that you also recognise the trust that members of the public, patients and relatives place in nurses to act with high standards and integrity.

The panel considered that members of the public, aware of the full circumstances leading to the striking-off order being imposed and everything that has occurred since, would be satisfied that the fitness to practise process had been rehabilitative. Your removal from the register has served to give you time and space to develop and demonstrate full insight and remediate your failings. The panel therefore considered that the public interest has been served. The panel further accepted your commitment to the nursing profession. Finally, the panel bore in mind that your clinical skills and abilities as a nurse were not in question or relevant to the behaviour which resulted in your police caution. In light of all these factors, the panel considered that public confidence in the nursing profession and in the NMC as a regulator would not be undermined if you were restored to the register.

The panel is therefore satisfied that you are a fit and proper person, who would be capable of safe and effective practice, and has determined to grant your application for restoration.

In determining whether to grant your application for restoration, the panel bore in mind that you have not practised as a registered nurse since 2011 and that you no longer meet the requirements for registration with the NMC on this basis. The panel noted that the core of the charge which led to the striking-off order did not involve clinical concerns. The panel was therefore satisfied that this case does not require the imposition of a conditions of practice order. However, given your length of time out of practice, and in the panel's view, your need for further education, training and experience, the panel did not consider that granting your application unconditionally would be sufficient to protect members of the public and satisfy the public interest.

The panel determined to grant your application subject to you satisfying the requirements for additional education or training or experience as set out in the NMC's return to practice standards. It noted that this would involve either completing a test of competence or undertaking a return to practice course. The panel was not satisfied that a test of competence would be sufficient in addressing any shortcomings, due to the length of time out of nursing practice and the developments which have undoubtedly occurred within the nursing profession during this time. The panel considered that you would benefit from a structured programme, with a mixture of theoretical knowledge and practical experience, to facilitate your return to safe and effective practice. The panel considered that this would be met by the completion of a return to practice course.

The panel therefore determined to allow your application for restoration subject to your completion of a return to practice course that you will have to identify and source, paying the prescribed fee which satisfies the requirements of Article 19(3) and Article 33(7) (a).

That concludes this determination.

This decision will be confirmed to you in writing.