

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

**Substantive Order Review Hearing
Monday 1 November 2021**

Virtual Hearing

Name of registrant: Matija Konjevic

NMC PIN: 16H0157C

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

Area of registered address: Croatia

Type of case: Misconduct

Panel members: Philip Sayce (Chair – Registrant member)
Carla Hartnell (Registrant member)
James Kellock (Lay member)

Legal Assessor: Andrew Reid

Panel Secretary: Vicky Green

Nursing and Midwifery Council: Represented by Gary Dolan, Case Presenter

Mr Konjevic: Not present and not represented in his absence

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking off order to come into effect at the end of 1 November 2021 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

In response to the current COVID-19 crisis, emergency changes were made to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules). The emergency changes allow for the Notice of Hearing (the Notice) to be sent by the Nursing and Midwifery Council (NMC) by email instead of by recorded delivery post. This email must be sent securely to a confirmed email address for the registrant and/or representative.

At the outset of the hearing the panel was informed that Mr Konjevic was not in attendance and he was not represented in his absence. The panel was informed that the Notice had been sent to Mr Konjevic's registered email address on 1 October 2021.

Mr Dolan, on behalf of the Nursing and Midwifery Council (NMC), informed the panel that the Notice of Hearing provided details of the allegations, the time, date and the video conferencing details required to join the hearing. The Notice also included information about Mr Konjevic's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Dolan submitted that the Notice of Hearing was compliant with the requirements of Rules 8 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 the information available, the panel was satisfied that Mr Konjevic had been served with the Notice in accordance with the requirements of Rules 8 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Mr Konjevic

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

Mr Dolan submitted that there had been no engagement at all by Mr Konjevic with the NMC in relation to today's hearing and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel was informed that the NMC case officer sent a follow up email to Mr Konjevic on 27 October 2021 to which he apparently did not respond.

The panel has decided to proceed in the absence of Mr Konjevic. In reaching this decision, the panel has considered the submissions of Mr Dolan 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 Mr Konjevic;
- Mr Konjevic has not engaged with the NMC, on this occasion or in respect of the last review, and has not responded to any of the emails sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case given that it expires at the end of today.

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

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

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

The panel is reviewing the order pursuant to Article 30(1) of 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 October 2019. The previous review panel extended the suspension order by 6 months on 24 March 2021.

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:

1. On or around 11th July 2018 took a controlled drug, namely 50 millilitres of Morphine Sulphate, from ward stock on Rowan Ward, Northampton General Hospital.

2. Your actions at Charge 1 above were dishonest in that you knew the drug belonged to Northampton General Hospital and that you had no right to remove it from ward stock.

***AND** in light of the above, your fitness to practise is impaired by reason of your misconduct.'*

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

'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 Mr Konjevic's fitness to practise remains impaired. The panel noted the serious charges found proved by admission at the original panel. It considered that it had nothing before it to demonstrate that the risk in this case had reduced, or that Mr Konjevic had been making attempts to remediate the concerns raised. The panel considered that Mr Konjevic had not undertaken any of the suggestions made by the previous review panel therefore there was nothing to suggest a change in circumstance since then. It noted with concern the letter dated 30 September 2020 from Brookhaven Healthcare that did not address the regulatory concerns raised, rather quite specific points about Mr Konjevic's communication skills, which the NMC had not raised concern with. The panel also noted that this letter was not addressed to the NMC therefore considered that Mr Konjevic may not have made Brookhaven Healthcare aware of the regulatory concerns raised. It had no information regarding Mr Konjevic's current employment status. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection as it had no information to suggest that Mr Konjevic is fit to practise without restriction.

The panel bore 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 found that Mr Konjevic's fitness to practise remains impaired.'

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

'Having found Mr Konjevic'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 also took into account the NMC's Sanctions Guidance (SG) and bore 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 further action or to impose a caution order, but concluded that this would not be sufficient to protect the public and would be inappropriate in view of the risk to patient safety identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action or to impose a caution order.

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. The panel bore in mind that Mr Konjevic had not engaged with the NMC since September 2020 and it had no information about his current employment status. It also considered that Mr Konjevic had not provided any information to demonstrate remediation since the previous review panel. The panel was therefore not able to formulate appropriate conditions of practice that would adequately address the concerns relating to Mr Konjevic's misconduct.

The panel next considered imposing a further suspension order. It noted that Mr Konjevic had raised concerns with his health at the previous review panel which this panel considered may be a factor in his disengagement, having attended a previous review hearing. The panel determined that, in view of this background and context, a further period of suspension would be appropriate to allow Mr Konjevic further opportunity to reflect and engage with the NMC.

This panel wishes to make it clear that the next reviewing panel will expect to see some tangible evidence of Mr Konjevic's commitment to the nursing profession and strongly advise him to provide the information listed below to the next panel. Should

Mr Konjevic not do this and continue to disengage with the NMC, a future panel reviewing this case may take the view that his disengagement with the NMC warrants a striking off order being imposed. A future panel reviewing this case would be assisted by:

- *Engagement with the NMC*
- *A reflective piece showing insight into your misconduct, using a recognised model*
- *Up to date references/testimonials with particular reference as to your honesty and integrity*
- *Evidence of how you are keeping up to date with nursing practice.’*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Konjevic’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 which included the NMC bundle. It has taken account of the submissions made by Mr Dolan on behalf of the NMC.

Mr Dolan outlined the background of the case and the decisions of the substantive panel and the subsequent reviewing panels. He informed the panel that there has been a continued lack of engagement from Mr Konjevic, and that he has neither addressed the previous panel’s recommendations nor provided any evidence of insight or remediation. Mr Dolan submitted that the charges admitted and found proved at the substantive hearing are serious and relate to dishonesty. He submitted that in the light of Mr Konjevic’s lack of engagement and his failure to provide any evidence of insight and remediation, his fitness to practise remains impaired.

In respect of sanction, Mr Dolan drew the panel's attention to the decision of the previous panel, in particular:

.This panel wishes to make it clear that the next reviewing panel will expect to see some tangible evidence of Mr Konjevic's commitment to the nursing profession and strongly advise him to provide the information listed below to the next panel. Should Mr Konjevic not do this and continue to disengage with the NMC, a future panel reviewing this case may take the view that his disengagement with the NMC warrants a striking off order being imposed.'

He submitted that in the circumstances, given Mr Konjevic's disengagement with his regulator and the seriousness of the charges found proved, a striking off order is the most proportionate sanction to impose at this stage.

The panel 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 Mr Konjevic's fitness to practise remains impaired.

The panel had regard to the recommendations of the previous reviewing panel which were as follows:

'A future panel reviewing this case would be assisted by:

- *Engagement with the NMC*
- *A reflective piece showing insight into your misconduct, using a recognised model*
- *Up to date references/testimonials with particular reference as to your honesty and integrity*
- *Evidence of how you are keeping up to date with nursing practice'*

The panel noted that since the last review hearing Mr Konjevic has not provided a response to the previous panel's recommendations or engaged with the NMC. As a consequence, the panel has no evidence of Mr Konjevic's insight into his misconduct which the panel considered to be serious as it involved abuse of his position of trust in taking a controlled substance for his own use and dishonesty. Furthermore, the panel determined that Mr Konjevic has failed to provide any evidence of any remedial steps he has taken to address his misconduct and the serious breach of standards expected of a registered nurse. In light of the above, the panel determined that there is a risk of repetition of the misconduct and a consequent risk of harm to the public. Accordingly, the panel determined 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 Mr Konjevic's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Konjevic'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 because such a course would not protect the public. 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 Mr Konjevic'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 Mr Konjevic'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 on Mr Konjevic'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. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Konjevic's misconduct. Furthermore, the panel noted that even if workable conditions could be formulated, given Mr Konjevic's pattern of disengagement there was nothing to suggest that he would comply with such an order.

The panel next considered imposing a further suspension order. The panel noted that Mr Konjevic has been subject to a suspension order for two years and since the imposition of the substantive order, there has been a downward pattern of meaningful engagement. The panel was of the view that given the seriousness of the misconduct, considerable evidence would be required to show that Mr Konjevic had full insight into his misconduct and that he no longer posed a risk to the public. The panel considered that Mr Konjevic has been given ample opportunity to engage with the NMC and to provide evidence of insight, remorse and remediation but he has not done so.

The panel noted the decision of the last reviewing panel which made clear its view that his registered status was at risk if he did not engage with his regulator. This panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mr Konjevic from practising in the future and concluded that the only sanction that would

adequately protect the public was a striking-off order. Furthermore, the panel was of the view that given Mr Konjevic's continued disengagement from his regulator, and his failure to provide insight into and remediate his failings, a striking off order would serve the public interest in this case.

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

This decision will be confirmed to Mr Konjevic in writing.

That concludes this determination.