

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

**Substantive Order Review Hearing
Wednesday 20 April 2022**

Virtual Hearing

Name of registrant:	Hermina Macinoiu		
NMC PIN:	14I0505C		
Part(s) of the register:	Registered Nurse – Adult Nursing (September 2014)		
Area of registered address:	Wolverhampton		
Type of case:	Misconduct		
Panel members:	Sue Heads	(Chair, lay member)	
	Beth Maryon	(Registrant member)	
	Allwin Mercer	(Registrant member)	
Legal Assessor:	Marian Gilmore QC		
Hearings Coordinator:	Alice Byron		
Nursing and Midwifery Council:	Represented by Madeleine Deasy, Case Presenter		
Miss Macinoiu:	Not present and unrepresented		
Order being reviewed:	Suspension order (6 months)		
Fitness to practise:	Impaired		
Outcome:	Striking off order to come into effect on 25 May 2022 in accordance with Article 30 (1)		

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Macinoiu was not in attendance and that the Notice of Hearing had been sent to Miss Macinoiu's registered address by recorded delivery and by first class post on 21 March 2022.

Ms Deasy, on behalf of the Nursing and Midwifery Council (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.

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

In the light of all of the information available, the panel was satisfied that Miss Macinoiu 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 Macinoiu

The panel next considered whether it should proceed in the absence of Miss Macinoiu. The panel had regard to Rule 21 and heard the submissions of Ms Deasy who invited the panel to continue in the absence of Miss Macinoiu. She submitted that Miss Macinoiu voluntarily absented herself.

Ms Deasy submitted that, since the substantive hearing, there had been no engagement by Miss Macinoiu 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.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Macinoiu. In reaching this decision, the panel has considered the submissions of Ms Deasy, 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 Macinoiu;
- Miss Macinoiu has not engaged with the NMC since the substantive hearing 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 her 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 it is fair to proceed in the absence of Miss Macinoiu.

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 25 May 2022 in accordance with Article 30(1) of the ‘Nursing and Midwifery Order 2001’ (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 26 October 2020. This was reviewed on 18 October 2021 and a further suspension order for a period of six months was imposed.

The current order is due to expire at the end of 25 May 2022.

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, whilst working at Ryland View Nursing Home on 15 August 2018, you:

1. *Failed to recognise that Resident A was choking;*
2. *[...]*
- 2.1. *[...]*
- 2.2. *[...]*
3. *Failed to remove the obstruction from Resident A's mouth and/or airway;*
4. *Your actions above resulted in a delay of treatment to Resident A;*
5. *Failure to maintain a full and accurate record of events.*

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

The first 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 Miss Macinoiu's fitness to practise remains impaired.

The panel noted Miss Macinoiu's lack of engagement with the NMC since the substantive hearing in October 2020, and as a consequence, it had no information about any development in her insight or attempts to strengthen her practice. It noted that during the substantive hearing, Miss Macinoiu had

indicated that she had returned to Romania, where she would seek employment as a nurse in order to remediate, but no further information about this had been provided. The panel also had regard to the original panel's recommendations as to what may assist future reviewing panels, and concluded that in the absence of any such information, a risk of repetition remained. The panel therefore 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, Miss Macinoiu's lack of engagement meant that a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Miss Macinoiu's fitness to practise remains impaired.'

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

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of its finding of impairment. 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 determined that, due to the seriousness of the charges found proved, an order that does not restrict Miss Macinoiu'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 Macinoiu'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 Miss Macinoiu'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 concluded that although Miss Macinoiu's misconduct could be remediated through conditions of practice, conditions would not be workable in the absence of any information about whether Miss Macinoiu was currently employed as a nurse or her plans to return to the profession, either in the UK or overseas. It therefore determined that whilst a conditions of practice order could adequately protect the public, it would not satisfy the public interest.

The panel considered the imposition of a further period of suspension. It was satisfied that a suspension order would allow Miss Macinoiu further time to reflect on her previous misconduct. The panel determined that a further six month suspension order would be the most appropriate and proportionate response and would afford Miss Macinoiu adequate time to provide any evidence of insight and remediation as recommended by the previous panel.

The panel was satisfied that a striking-off order would be disproportionate at this time, as the concerns about Miss Macinoiu's practice are remediable. However, it noted that the full range of sanctions would be open to future panels for consideration and wished to remind Miss Macinoiu of the importance of engagement with the NMC.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 25 November 2021 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.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Macinoiu'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 Ms Deasy on behalf of the NMC. She provided the panel with a background to the charges found proved at the substantive hearing on 26 October 2020, and the findings of the previous reviewing panel on 18 October 2021.

Ms Deasy submitted that there is no new evidence before the panel today to demonstrate that Miss Macinoiu had taken any steps to remediate the concerns into her practice, nor has she demonstrated any further insight into her misconduct, which the substantive panel found to be limited.

Ms Deasy submitted that Miss Macinoiu has not engaged with the NMC since the substantive hearing in 2020, and therefore the panel has no information before it today to base any new findings in relation to impairment. She said that, in 2018, Miss Macinoiu informed the NMC that she had returned to Romania to work in nursing and improve her skills. Ms Deasy submitted that Miss Macinoiu has not provided any information as to where she is living, whether she is working and whether her skills have improved.

Ms Deasy submitted that a finding of impairment is necessary for public protection and is also in the public interest in maintaining public confidence in the nursing profession and the NMC as regulator in declaring and upholding professional standards. She said that there remains a risk of harm and invited the panel to make a finding of impairment, and impose such sanction as necessary for public protection and in the public interest.

The panel 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 Miss Macinoiu's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that it had no information before it to demonstrate Miss Macinoiu's insight, and considered the insight provided at the substantive hearing to be insufficient. At this hearing the panel heard no new information and determined that Miss Macinoiu's insight remains insufficient

In its consideration of whether Miss Macinoiu has taken steps to strengthen her practice, the panel took into account of the information before it. It considered that the charges found proved were remediable, but had no information before it as to the steps Miss Macinoiu has taken to strengthen her practice. In light of this, the panel could not be satisfied that Miss Macinoiu has taken any such steps.

The last reviewing panel determined that Miss Macinoiu was liable to repeat matters of the kind found proved. Today's panel has received no new information or evidence. In light of this, this panel determined that Miss Macinoiu is still liable to repeat matters of the kind found proved. The panel therefore 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 Miss Macinoiu's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Macinoiu'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 Macinoiu'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 Macinoiu'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 Miss Macinoiu'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 Miss Macinoiu's misconduct.

The panel has not received information about Miss Macinoiu's current employment, or where she currently resides. It further determined that Miss Macinoiu has not engaged with the NMC since the substantive hearing in 2020. In light of this, the panel concluded that

any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Miss Macinoiu has been given the opportunity to provide evidence relating to her insight, remediation and strengthened practice, during the 18 month period of suspension, which she has failed to do. The panel considered that Miss Macinoiu has not shown further remorse for her misconduct. The panel found that Miss Macinoiu had not engaged with her regulator to provide any evidence that her nursing practice 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 determined that it was necessary to take action to prevent Miss Macinoiu 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 the end of 25 May 2022 in accordance with Article 30(1).

This decision will be confirmed to Miss Macinoiu in writing.

That concludes this determination.