

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

**Substantive Order Review Hearing
Thursday 15 December 2022**

Virtual Hearing

Name of Registrant: Manuela Alexandra Sabou

NMC PIN 16J0115C

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

Type of case: Misconduct and Lack of knowledge of English

Panel members: Anthony Kanutin (Chair, registrant member)
Richard Curtin (Registrant member)
Tracy Stephenson (Lay member)

Legal Assessor: John Bassett

Hearings Coordinator: Debbie Olawore

Nursing and Midwifery Council: Represented by Yvonne Ferns, Case Presenter

Ms Sabou: Not present and unrepresented at the hearing.

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect upon expiry of the current order, namely, at the end of 24 January 2023, 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 Ms Sabou was not in attendance and that the Notice of Hearing had been sent to Ms Sabou's registered email address by secure email on 16 November 2022.

Ms Ferns, 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, dates and link to the hearing and, amongst other things, information about Ms Sabou'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 Ms Sabou 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 Ms Sabou

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

Ms Ferns submitted that there had been no engagement at all by Ms Sabou with the NMC in relation to this hearing and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel has decided to proceed in the absence of Ms Sabou. In reaching this decision, the panel has considered the submissions of Ms Ferns 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 Ms Sabou;
- Ms Sabou has not recently engaged with the NMC and has not responded to any of the letters or communications 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 Ms Sabou.

Decision and reasons on review of the substantive order

The panel decided to replace the suspension order with a striking off order.

This order will come into effect upon expiry of the current order in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fifth review of a substantive conditions of practice sanction order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 19 December 2018. The first review was adjourned on 5 June 2020, and on 13 July 2020 this order was extended by a further 6 months. On 16 December 2020, the panel decided to extend the conditions of practice order by a further 12 months. On 14 December 2021, the conditions of practice order was extended by a further 6 months and on 15 June 2022 the fitness to practice Committee imposed a 6 month suspension order.

The current order is due to expire at the end of 24 January 2023.

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,

1) Do not have the necessary knowledge of English to practise safely and effectively. And in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.

2) On 27th of March 2017 did not pain patch on Resident A.

3) On 14th of April 2017 incorrectly administered 6 units of Novo Rapid Insulin to Resident B.

4) On 23rd of April 2017 incorrectly administered 2 units of Novo Rapid Insulin to Resident B.

5) On 6th May 2017 incorrectly administered 10 Milligrams of Zomorph to Resident C.

6) On 2nd June 2017 incorrectly administered two doses of antibiotics to Resident D.

7) On 17th June 2017 failed to provide adequate care to Resident E;

7.1 As you did not administer pain relief to Resident E.

7.2 Closed Resident E's door. And in light of the above, your fitness to practise is impaired by reason of your misconduct'

The fourth 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 Ms Sabou's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Ms Sabou had insufficient insight. At this hearing, the panel noted that there has been nothing put before it to indicate the Ms Sabou has had any further insight into the charges found proved. The panel also noted that there has been no information submitted to the NMC to show that she has continued her studies of English or provided a properly signed examination certificate from a test

provider demonstrating a satisfactory passing of an IELTS exam. The panel determined that Ms Sabou is still currently impaired due to her lack of knowledge of English and also the issues surrounding the finding of misconduct.

In its consideration of whether Ms Sabou has taken steps to strengthen her practice, the panel noted that there has been no change in circumstances, save that there has been a further six months elapsed, and that there had been no effort to demonstrate any strengthening of her practise during that time. In addition, there was no evidence to suggest that Ms Sabou has undertaken any training to maintain her knowledge. The panel determined there was still a significant risk of repetition of the concerns highlighted in charges found proved. And that this together with Ms Sabou failure to complete the IELTS to standard required by the registrar, confirmed the panel the Ms Sabou's practice was still impaired.

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

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

Having found Ms Sabou'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 would not address the risk to patient's safety. 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 public protection issues identified, an order that does not restrict Ms Sabou's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered the continuation of a conditions of practice order. The panel considered that Ms Sabou has not provided any evidence of any engagement with the current conditions of practice, aside from English language courses, since the imposition of the order on 19 December 2018. Ms Sabou has not provided any evidence of monitoring or assessment and there is no information before it to conclude that Ms Sabou is still working to complete the IELTS course.

The panel was of the view the Ms Sabou has had the opportunity over the past three years to show insight, strengthen her practice, and demonstrate proficiency of the English language. The panel considered that Ms Sabou should have been able to demonstrate this over this period of time or explain why it has not been possible up to this point. The panel is concerned that there has apparently been no progress from Ms Sabou over the last three years and four review hearings. The panel also considered in light of the apparent lack of progress on the part of Ms Sabou that it also had an obligation to consider the ongoing costs, which are borne by other registrants.

On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 6 months which would provide Ms Sabou with an opportunity to engage with the NMC, to provide evidence of compliance with previous conditions of practice order and submit documentation, including to demonstrate her proficiency of the English language through a passing score on the IELTS. It considered this to be the most appropriate and proportionate sanction available.

The panel considered whether a striking off order would be the appropriate sanction at this stage, but acknowledged that Ms Sabou has engaged with the proceedings to a limited extent and had previously informed the NMC of some attempts to improve her English language proficiency. The panel determined that a striking off order was not currently proportionate.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 24 July 2022 in accordance with Article 30(1).

Before the end of the sixth month period of this suspension order, another panel will review the order. At that review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Ms Sabou's attendance at the next review hearing either in person or remotely.*
- Documentary proof that Ms Sabou has passed the IELTS exam or an update as to any progress with this.*
- Evidence regarding any further training Ms Sabou has undertaken in relation to her failings as found proved by her admission to the charges (2-7). She will need to send her NMC case officer any certificates she has*

received which shows she has completed these training courses.

- *A reflective essay demonstrating Ms Sabou's understanding of the seriousness of each of her failings, the impact on patients, colleagues and the reputation of the nursing profession and what she would do differently in the future. She will need to send this to her NMC case officer before the next review.*
- *Testimonials/references from any employment she has undertaken, whether paid or unpaid, for example, from her current manager. She will need to send this to her NMC case officer before the next review.*
- *Ms Sabou is strongly advised to contact her NMC case officer or her current employer if she does not understand any of the information included here or what she is expected to provide for the next reviewing panel.*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Sabou's fitness to practise is currently 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 Ferns on behalf of the NMC. She submitted that Ms Sabou's fitness to practise remains impaired as she has not been able to demonstrate remediation. Therefore, the risk of harm to the public identified by the initial

panel remains. She submitted that a finding of current impairment is necessary for the protection of the public.

Ms Ferns referred the panel to the case of *Abrahaem v General Medical Council* [2008] EWHC 183 and submitted that there remains a persuasive burden on Ms Sabou to demonstrate that she has fully acknowledged why her past professional performance was deficient and also to demonstrate that she has sufficiently addressed her past impairment through insight, application, education, supervision, and/or other achievements.

Ms Ferns submitted that Ms Sabou has not provided a reflective statement detailing her understanding of the seriousness of each of her failings and the impact it had on patients and her colleagues and also the reputation of the nursing profession as well as what she would do differently in the future if faced with a similar situation. She also submitted that Ms Sabou has not provided documentary proof that she has passed the IELTS exam to demonstrate proficiency of the English language.

Ms Ferns submitted that the panel's 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 may therefore be of the view that, in this case, there is a finding of continuing impairment on public interest grounds. For these reasons, Ms Sabou's fitness to practise remains impaired.

While recognising it was a matter to be determined by the panel alone, Ms Ferns invited the panel to impose a suspension order for a period of 6 months.

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 Ms Sabou's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Ms Sabou had insufficient insight. At this hearing the panel noted that there has been nothing put before it to indicate that Ms Sabou has had any further insight into the charges found proved. The panel also noted that there has been no information submitted to the NMC to show that she has continued her studying of English or provided a properly signed examination certificate demonstrating a satisfactory passing of an IELTS exam. There is no information regarding any progress, which previous panel have requested.

In its consideration of whether Ms Sabou has taken steps to strengthen her practice, the panel noted that there has been no material change since the last review, Ms Sabou has taken no steps to strengthen her practice, nor produced a reflective statement detailing her understanding of the seriousness of each charge and/or misconduct. The panel noted the finding found proved at charges 3,4 and 7 were serious and involved potential and actual harm to patients. Without any evidence to the contrary the panel considered that there was still a significant risk of repetition if she is allowed to practise. The panel noted that the six months of suspension imposed by the last reviewing panel has not resulted in any engagement or information regarding Ms Sabou's progress or otherwise.

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 Ms Sabous fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Sabou'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 Ms Sabou'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 Ms Sabou'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 Ms Sabou'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 reminded itself that Ms Sabou has previously been subject to conditions of practice orders for a considerable length of time but failed to comply with these conditions. 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 Ms Sabou's misconduct and lack of knowledge of English.

The panel next considered imposing a further suspension order. The panel determined that suspending Ms Sabou has resulted in no further information being received regarding the concerns highlighted in her charges. The panel reminded itself that a registrant has an obligation to engage with the regulator. This matter has continued for four years with no signs of progress. Several panels have indicated the need for Ms Sabou to engage with proceedings and to give information regarding progress, even if that progress was limited. The panel also noted that the burden is on a registrant to demonstrate steps taken towards remediation or strengthening of practice. The public would expect a registrant to engage

with proceedings and would also not expect these proceedings to continue indefinitely without good reason.

Ms Sabou has demonstrated limited insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Ms Sabou 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 Ms Sabou 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.

In reaching this decision, the panel recognised that, in respect of Ms Sabou's not having the necessary knowledge of English, it may make such an order as she has been the subject of a conditions of practice order and a suspension order for a continuous period of more than two years.

The panel recognised that a striking-off order is the most serious sanction available to it and did not impose it lightly. However, by reference to the Sanctions Guidance, it was satisfied that the regulatory concerns in this case and Ms Sabou's failure over the last four years to properly engage with her regulator raised fundamental questions about her professionalism. The panel also considered that public confidence in the nursing profession and in the NMC as a regulator would be undermined if, four years after the substantive order was first imposed, Ms Sabou was given another chance to address the concerns identified in this case, not least her lack of knowledge of English. As such, the panel concluded that striking-off is the only sanction sufficient to protect patients and maintain professional standards.

The Panel wishes to record that the legal assessor brought to its attention the case of *Ahmedsowida v GMC* [2021] EWHC 3466 (Admin) decided after the substantive order was first made in this case. The effect of this decision is that the original panel may have been in error in deciding that proved charges 2, 5 and 6 cumulatively amounted to serious misconduct even though individually they did not. For the avoidance of doubt, the panel makes it clear that, irrespective of the charges 2, 5 and 6, it considers that a striking-off order is appropriate for proven charges 1, 3, 4 and 7.

This striking-off order will replace the current suspension order upon expiry of the current order in accordance with Article 30(1).

This decision will be confirmed to Ms Sabou in writing.

That concludes this determination.