

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

**Substantive Order Review Hearing
Wednesday 15 June 2022**

Virtual Hearing

Name of registrant: **Manuela Alexandra Sabou**

NMC PIN: 16J0115C

Part(s) of the register: Registered Nurse - Adult
Nursing 11 October 2016

Relevant Location: Medway

Type of case: Misconduct and lack of knowledge of English

Panel members: Yvonne O'Connor (Chair, Registrant Member)
Sophie Kane (Registrant member)
David Anderson (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Renee Melton-Klein

Nursing and Midwifery Council: Represented by Alban Brahim

Ms Sabou: Not present and not represented

Order being reviewed: **Conditions of practice order (6 months)**

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 24 July 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 Ms Sabou was not in attendance and that the Notice of Hearing had been sent to Ms Sabou's registered address by recorded delivery and by first class post on 17 May 2022.

Mr Brahim, 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 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 Mr Brahim who invited the panel to continue in the absence of Ms Sabou. He submitted that Ms Sabou had voluntarily absented herself.

Mr Brahim referred the panel to an email from Ms Sabou dated 12 June 2022 which stated:

'I will not be attending the review but I confirm that I am happy to go ahead in my absence'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Sabou. In reaching this decision, the panel has considered the submissions of Mr Brahim, the representations from Ms Sabou, 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 informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- 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 and appropriate to proceed in the absence of Ms Sabou.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order.

This order will come into effect at the end of 24 July 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 19 December 2018. This was reviewed on 13 July 2020 whereby the panel determined to vary the conditions of practice order for a period of 6 months. The order was then reviewed on 16 December 2020 and the panel decided to extend the conditions of practice order for a period of 12 months and again on 14 December 2021 and the panel decided to extend the conditions of practice order for a period of six months.

The current order is due to expire at the end of 24 July 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,

- 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 third 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 had regard to the letter which Ms Sabou submitted from the Andreea Berkhout Academy dated 22 November 2021:

"This is to confirm that Ms Manuela Alexandra Sabou attended the IELTS Academic Preparation Course weekly, two times per week, from December 2020 to March 2021. This means 26 classes of 1h30mins +12 IELTS Reading and Listening Mock Tests. During these classes, she practiced grammar and vocabulary for IELTS, her progress being satisfactory, in accordance with the number of classes she participated in. Her level of English was B1 at that moment."

The panel noted that the letter from the Andreea Berhout Academy confirms that Ms Sabou has taken preparation classes for the IELTS and that Ms Sabou took a mock test in which she scored a B1 level. The panel could not establish what the B1 level meant. The panel noted that this score was related to two elements of the IELTS and that there were two other elements namely, writing and speaking that needed to be shown. The panel was not satisfied that the mock test showed that Ms Sabou has successfully passed an IELTS exam or equivalent and therefore she is still currently impaired due to her lack of knowledge of English. The panel noted the requirement under Rule 31 (4A) for a properly signed examination certificate from the test provider demonstrating the satisfactory passing of an IELTS exam. This was not present.

The panel next considered impairment on the grounds of misconduct. The panel noted that Ms Sabou demonstrated very little insight into the charges concerning her nursing practice. The panel noted that Ms Sabou has not sufficiently reflected on the impact of her failings on her patients, her colleagues or the nursing profession. The panel also noted that Ms Sabou's training certificates were not from

accredited establishments and did not fully cover the concerns in the charges in relation to her nursing practice. 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 relation to both Ms Sabou's lack of knowledge of English and her misconduct, 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 by reason of her misconduct.'

The third 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. 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 your practice would not be appropriate in the circumstances.

The panel next considered whether imposing a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel

is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

The panel did consider the imposition of suspension order in this case but decided that it would be disproportionate at this stage. The panel noted that the full range of sanctions, including a suspension order, would be open to a future reviewing panel.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Ms Sabou is engaging with the NMC and has sought to comply with the current conditions of practice order in that she has attended a course of English Language classes. The panel was disappointed that despite the suggestions of the three previous panels Ms Sabou has not provided evidence that she has taken meaningful steps to remediate her misconduct or demonstrated sufficient insight of the impact of her misconduct.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions which could be formulated that would protect patients during the period they are in force.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a varied conditions of practice order for a period of six months, which will come into effect on the expiry of the current order, namely at the end of 24 January 2022. The panel decided to vary the conditions for clarity purposes. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. *You must, before taking up any nursing role, take an IELTS test at a level approved by the NMC and provide evidence of passing that test at the level determined by the Registrar.*
2. *You must tell the NMC with 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
3. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*
4.
 - a) *You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name and contact details of the individual or organisation offering the post, employment or course of study.*
 - b) *You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
5. *At any time that you are employed or otherwise providing nursing or midwifery services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:*
 - (i) *In respect of medicines management working at all times under the direct observation of a registered nurse until assessed as competent in medicines management and thereafter,*
 - (ii) *Working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse who is*

physically present in or on the same ward, unit, floor or home that you are working in or on.

6. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:*
 - (i) *Medicines management*
7. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every week to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan until assessed as being competent in medicines management and thereafter such meetings to be monthly.*
8. *You must forward to the NMC a copy of your personal development plan within 14 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.*
9. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.*
10. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*

11. *You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*

12. *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (11), to them.*

- i. Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work.*
- ii. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services.*
- iii. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment.*
- iv. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

The period of this order is for six months.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Sabou'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 Mr Brahimmi on behalf of the NMC. Mr Brahimmi took the panel through the background of the case, including the outcomes of the previous hearings and Ms Sabou's studies and mock exams in regard to the IELTS test. He submitted that the last review was for six months with the understanding that this would give Ms Sabou time to show her English language competency by passing the IELTS and provide this information to the NMC.

Mr Brahimmi submitted that there is nothing before the panel to show that Ms Sabou has shown any further insight, nor that she has continued to take English language courses or taken the IELTS. He submitted that her fitness to practise is still impaired. Mr Brahimmi noted that this order has been in place for over two years and that a striking off order is available to the panel along with all other sanctions.

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 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.

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 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.

This will be confirmed to Ms Sabou in writing.

That concludes this determination.