

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

**Substantive Order Review Meeting
Friday 25 March 2022**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Elen Capucine Robert

NMC PIN: 17H0028C

Part(s) of the register: Midwifery - Registered Midwife - August 2017

Area of registered address: France

Type of case: Lack of Competence

Panel members: Anthony Griffin (Chair, Lay member)
Donna Green (Registrant member)
Laura Wallbank (Registrant member)

Legal Assessor: John Donnelly

Hearings Coordinator: Margia Patwary

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 7 May 2022 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Miss Robert was not in attendance and that the Notice of Meeting had been sent to Miss Robert's registered email address on 3 February 2022.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Robert has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 7 May 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of the initial 12 month suspension order on 9 October 2019 and subsequent 18 month conditions of practice order imposed by a Fitness to Practise panel on 23 September 2020. The current order is due to expire at the end of 7 May 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order was as follows:

- 1) *'Shortly after appointment you failed an initial foetal heart monitoring competence test*
- 2) *On or about 1 April 2018, you failed to identify a pathological cardiotocograph (CTG)*
- 3) *On or about 10/4/2018 you failed to identify and/or escalate a decelerated foetal heartbeat*
- 4) *On 16 April 2018 you failed a foetal heart monitoring competence re-test*
- 5) *On or about 28 March 2018, in the birthing pool, you failed to recognise and/or adequately monitor and/or escalate an instance of a late deceleration in foetal heartbeat*
- 6) *Between 22 March 2018 and 16 April 2018 you failed to achieve the minimal clinical proficiency level of 3 in all specified areas of your Performance Improvement Plan*

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

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

'The panel considered whether Miss Robert's fitness to practise remains impaired. It noted that the substantive panel had no evidence of any insight or remediation from Miss Robert and determined that she posed a high risk of repetition if she were allowed to practise unrestricted.

A letter from Miss Robert, dated 22 October 2019, informed the NMC that she had been on maternity leave since April 2019 and would be until autumn 2020. She also stated that she had returned to France but did not work in hospitals. Instead, she had worked as a self-employed midwife and intended to return to this once her maternity leave ended. According to Miss Robert, her practice as a self-employed

midwife included 'supporting women in their basic gynaecological needs (contraception, pap-smear...), physiological pregnancies and post-partum and pelvic floor re-education.' Miss Robert also states that, at that time, she was not completing any training due to her maternity leave but 'will resume training as soon as possible' and was on a waiting list for a gynaecology university degree starting 'next fall'. She also writes that 'in the unlikely event that I should ever have to attend births again, I will do so after the necessary training required on foetal monitoring and more as well as proper companionship'.

Although Miss Robert has continued to engage with the NMC she has not provided any further update as to her current employment situation.

Miss Robert has provided a number of training certificates for this review hearing. However, the panel noted that these did not address the specific concerns about Miss Robert's competence, namely foetal heart monitoring and escalation. Some of them also pre-date the substantive hearing. Miss Robert has also not provided any other evidence of safe practice or competence in the area of foetal heart monitoring, such as testimonials or references from colleagues.

The panel appreciated that Miss Robert's ability to remediate her competence has been impacted by her maternity leave. However, the panel considered that the limited information provided by Miss Robert was insufficient to demonstrate that she has improved her skills as regards fetal heart monitoring.

The panel also noted that, although Miss Robert indicated that she would provide a reflective piece, she has not done so. The panel therefore had no evidence to suggest that Miss Robert's insight has developed since the last hearing or that she has developed a greater understanding of her failings.

The panel determined that, in the absence of remediation and insight, Miss Robert continued to pose a risk of repetition. The panel therefore decided that a finding of impairment continued to be required on public protection grounds.

The panel also agreed with the decision of the substantive panel that a finding of current impairment on public interest grounds was required to maintain public confidence in the midwifery profession and to uphold proper professional standards for members of the profession.'

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

'Having found Miss Robert'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 29 of the Order. The panel also took into account the NMC's Sanctions Guidance 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 action but concluded that this would be inappropriate in view of the risk of repetition identified. Taking no further action would not restrict Miss Robert's practice and therefore would not protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered whether to impose a caution order but concluded that this would also be inappropriate for the same reasons, as a caution order would not restrict Miss Robert's practice in any way.

The panel next considered replacing the suspension order with a conditions of practice order. The panel considered that it would be possible to formulate conditions which would protect the public, given that the concerns in this case relate to identifiable areas of Miss Robert's midwifery practice. The panel noted that Miss Robert is not currently practising as a midwife in the UK. However, the panel did not consider that this made conditions of practice unworkable, as any conditions would take effect should Miss Robert return to this country. The panel noted that Miss Robert engaged with the local investigation and, since her substantive hearing, she has engaged with the NMC and expressed a willingness to undergo retraining.

The panel considered whether a suspension order would be appropriate, but decided that this would be disproportionate as public protection could be achieved by a lesser sanction. A suspension order would also limit Miss Robert's ability to remediate her competency.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Robert'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 had regard to all of the documentation before it and accepted the advice of the legal assessor.

The panel heard and accepted the advice of the legal assessor.

The panel considered whether Miss Robert's fitness to practise remains impaired.

The panel was of the view that there has not been any material change in circumstance since the order was made on 9 October 2019. It had no evidence before it of any steps Miss Robert has taken to strengthen her practice or to address the concerns raised.

The panel noted the limited information from Miss Robert in relation to when she had been working as a midwife in France, providing holiday cover for an independent midwife. The panel noted that this work involved antinatural and postnatal care and did not address the concerns relating to the facts found proved. The panel had little evidence of Miss Robert working as a midwife since she had taken leave in April 2019, and noted Miss Robert had not stated her intention to return to the UK to practice as a midwife. The panel determined that there remains a significant risk of harm to patients. It noted that Miss Robert had not provided any evidence that demonstrated she has strengthened her practice or provided

evidence of insight of the changes found proved. It noted the previous reviewing panel made recommendations for Miss Robert to provide to this panel.

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 Robert's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Robert'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 risk of repetition identified. Taking no further action would not restrict Miss Robert's practice and therefore would not protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered whether to impose a caution order but concluded that this would also be inappropriate for the same reasons.

The panel next considered replacing the current conditions of practice order with a further conditions of practice order, it had no information before to satisfy itself that conditions of practice would be workable due to the lack of engagement from Miss Robert and her location in France. Miss Robert had not provided any indication of her future midwifery plans or willingness to engage with the current conditions of practice order. The panel therefore concluded that a conditions of practice order would be inappropriate.

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 which would protect the public or satisfy the wider public interest.

The panel therefore moved on to consider period of suspension order for six months. It bore in mind that there has been limited engagement from Miss Robert with the NMC since 2019 and she has provided no evidence of efforts made to strengthen her practice or develop her insight into the impact of her actions on the midwifery profession.

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 six months would provide Miss Robert with an opportunity to engage with the NMC and to provide evidence of compliance. It considered this to be the most appropriate and proportionate sanction available. The panel did consider a strike-off but wished to provide Miss Robert with the opportunity to engage.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 7 May 2022 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. However, in light of the lack of meaningful engagement a future panel may seriously consider a strike off as an appropriate sanction.

Any future panel reviewing this case would be assisted by:

- A reflective piece which addresses the impact on patients, colleagues and the wider midwifery profession
- Evidence of training which relates to monitoring fetal wellbeing, in particular cardiotocograph monitoring and Interpretation (CTG), and Intelligent intermittent auscultation
- Evidence of intention to return to the UK to practice midwifery.

This will be confirmed to Miss Robert in writing.