

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

**Substantive Order Review Meeting
Monday 21 August 2023**

Virtual Meeting

Name of Registrant: Libia Arias Garcia

NMC PIN 16G0835C

Part(s) of the register: Registered Nurse – sub part 1
Adult Nurse (level 1) – July 2016

Relevant Location: Haverfordwest

Type of case: Lack of knowledge of English

Panel members: Museji Ahmed Takolia (Chair, Lay member)
Mark Gibson (Registrant member)
Helen Eatherton (Registrant member)

Legal Assessor: Suzanne Palmer

Hearings Coordinator: Chantel Akintunde

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect at the end of 8 October 2023 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 the Notice of Meeting had been sent to Mrs Garcia's registered email address by secure email on 11 July 2023. The panel had regard to the email evidence and the signed witness statement from an NMC case officer confirming this.

The panel took into account that the Notice of Meeting provided details of the review including the time, dates and the fact that this meeting was heard virtually.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Garcia 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).

The panel noted that the previous reviewing panel had recommended that this review be considered at a hearing to allow Mrs Garcia the opportunity to attend. However, the NMC have instead scheduled this case to be reviewed at a meeting. As there appears to have been no noteworthy development in Mrs Garcia's case since the last review, and Mrs Garcia has not indicated in her correspondence with the NMC that she wishes for her case to take place at a hearing on this specific occasion, the panel was content to proceed with its consideration of this case as a meeting.

Decision and reasons on review of the current order

The panel decided to extend the current conditions of practice order. This order will come into effect at the end of 8 October 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fifth review of a substantive conditions of practice order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 7 September 2018. This order was first reviewed on 12 March 2019 when it was extended for a further 18 months.

The order was then reviewed on 1 September 2020 when the conditions were varied, and then extended for a further 12 months. The conditions of practice order was then reviewed on 23 August 2021 and 23 August 2022 when it was extended for a further 12 months on both separate occasions.

The current order is due to expire at the end of 8 October 2023.

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

The charge found proved which resulted in the imposition of the substantive order was as follows:

That you, a registered nurse:

- 1. Do not have the necessary knowledge of English to practise safely or effectively;*

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

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

'The panel has had regard to all of the documentation before it, including the NMC bundle. The panel has had regard to the new information before it, namely:

•Email correspondence from Mrs Garcia including her OET Nursing Examination results which took place on 19 March 2022.

[...]

At this meeting the panel noted the examination results provided by Mrs Garcia. It noted that she taken all four parts of the OET test on the same day and obtained a C in Listening, a C+ in Reading, a C in Speaking and a C in Writing. The panel determined that these test results do not meet the requirements of the NMC.

The panel noted that Mrs Garcia had previously undertaken several IELTS tests, the last of which was in February 2019 when she scored 5.0 also below the requirement for the NMC. The panel also noted that it had not been provided with further testimonials or reflections demonstrating her current English skills as suggested by the previous panel.

In its consideration of whether Mrs Garcia has taken steps to strengthen her practice, the panel took into account that Mrs Garcia has continued with her studies since the last review and has undertaken an English language examination which has not yet met the required pass rate for the NMC. The panel determined that Mrs Garcia is taking steps to strengthen her practice. The panel also noted that Mrs Garcia continues to engage with these proceedings.

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 Mrs Garcia's fitness to practise remains impaired.'

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

'The panel next considered whether imposing a further conditions of practice order on Mrs Garcia's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

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 was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there were no deep-seated attitudinal problems. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Garcia's case.

The panel determined that Mrs Garcia continues to engage and is attempting to strengthen her language skills, therefore a suspension order or a striking-off order would not be proportionate.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 8 October 2022. 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 not work as a Registered Nurse until you have taken the IELTS test (or OET equivalent) and achieved an overall score of 7 or above (or OET equivalent). You must send a copy of your results to the NMC within 7 days of receiving them.

2. You must tell the NMC within 14 days of any nursing 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 of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/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 practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

5. 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 (4) above, to them

1. Any organisation or person employing, contracting with or using you to undertake nursing work

2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services

3. Any prospective employer (at the time of application) where you are applying for any nursing appointment

4. 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 a course (at the time of application).

The period of this order is for 12 months.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Garcia'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 the NMC guidance on English language requirements. It also had regard to all of the documentation before it, including the NMC bundle and the response from Mrs Garcia which included:

- a written statement dated 31 March 2023;
- emails between Mrs Garcia and the NMC dated from 11 June 2023 to 3 August 2023; and
- screenshots showing confirmation of an IELTS written and speaking examination booked for 28 October 2023.

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 Mrs Garcia's fitness to practise remains impaired.

The panel noted that there has been no material development in Mrs Garcia's case since the last review. This is because Mrs Garcia has yet to undertake further IELTS testing and obtain scores that meet the NMC English language requirements. The panel has also been provided with no evidence to indicate any further steps Mrs Garcia has taken to strengthen her practice in her English language since the last review meeting to date, for example, a reflective piece or testimonials from a current/previous employer.

However, the panel accepted the email evidence between Mrs Garcia and the NMC and the screenshots which shows that Mrs Garcia is still willing and actively taking steps to demonstrate her proficiency in the English language. It took account of the fact that Mrs Garcia has booked herself onto a face-to-face IELTS written and speaking examination, which she is due to take on 28 October 2023.

In light of the above, the panel determined that Mrs Garcia has not yet been able to demonstrate that her proficiency in the English language is at the level required to satisfy the NMC's requirements for safe and effective practice. It considered that a restriction on Mrs Garcia's practice therefore remains necessary to protect the public and to uphold professional standards in order to maintain confidence in the profession.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection and on the wider public interest grounds.

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

Decision and reasons on sanction

Having found Mrs Garcia 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 harm associated with an inability to communicate at the level required for safe practice. 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 Mrs Garcia's practice would not be appropriate in the circumstances as it would not

protect the public from the risk of harm identified. The panel decided that it would neither protect the public nor be in the public interest to impose a caution order.

The panel next considered whether imposing a further conditions of practice order on Mrs Garcia's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel could see that Mrs Garcia has continued to demonstrate a willingness to engage with the NMC and prove that she is capable of returning to safe practice. It took into account the fact that Mrs Garcia has an upcoming IELTS booked for 28 October 2023, and that she has requested additional time to enable her to take the examination and receive her results thereafter.

The panel was therefore of the view that a further conditions of practice order is the most appropriate and proportionate sanction in this instance. It determined that such an order, which restricts Mrs Garcia's nursing practice, would continue to prove sufficient in ensuring that the public remained protected and is also otherwise in the wider public interest.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of this case. This is because Mrs Garcia continues to show engagement with the NMC and commitment in her efforts to undertake and pass the IELTS examination.

The panel decided that the following conditions remain 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 not work as a Registered Nurse until you have taken the IELTS test (or OET equivalent) and achieved an overall score of 7 or above (or OET equivalent). You must send a copy of your results to the NMC within 7 days of receiving them.

2. You must tell the NMC within 14 days of any nursing 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 of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/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 practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

5. 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 (4) above, to them

1. Any organisation or person employing, contracting with or using you to undertake nursing work

2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services

3. Any prospective employer (at the time of application) where you are applying for any nursing appointment

4. 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 a course (at the time of application).

The period of this order is for 12 months. The panel considered that this length of time would allow Mrs Garcia sufficient opportunity to undertake the IELTS examinations she has booked, receive her results, secure employment in a healthcare setting and demonstrate her communication skills in the context of safe clinical practice. Should Mrs Garcia receive the required pass mark following her IELTS examination on 28 October 2023, she may request an early review to seek to have either the conditions varied or the entirety of the conditions of practice order reviewed.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 8 October 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Garcia has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- The attendance of Mrs Garcia at a future review hearing;
- A reflective piece on the importance of competence in English in relation to safe nursing practice;
- Any references and testimonials demonstrating Mrs Garcia's use of English in the workplace or as a volunteer; and
- EITHER Completion of the test to the requisite standard OR; Any other evidence of the type mentioned in the Guidance that displays competence in the English language.

This will be confirmed to Mrs Garcia in writing.

That concludes this determination.