

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

**Substantive Order Review Meeting
Friday 14 July 2023**

Virtual Meeting

Name of Registrant: Boguslawa Zofia Bator

NMC PIN 11A0077C

Part(s) of the register: RN1: Registered Nurse, Adult – January 2011

Relevant Location: Renfrewshire

Type of case: Misconduct

Panel members: Adrian Smith (Chair, Lay member)
Marcia Smikle (Registrant member)
Dale Simon (Lay member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Amie Budgen

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect at the end of 27 August 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 Miss Bator's registered email address by secure email on 5 June 2023.

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 to be 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 Miss Bator 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 current order

The panel decided to confirm and extend the substantive suspension order for 12 months. This order will come into effect at the end of 27 August 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 30 January 2023.

The current order is due to expire at the end of 27 August 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. *On or around 18/19 March 2020 made clinical entries for residents in Nourish (the electronic record keeping system) that were not understandable.*
2. *On 4 April 2020 after resident A was found on the floor failed to:*
 - a. *Check resident A for injuries.*
 - b. *Complete an accident form.*
3. *On 9 April 2020 in respect of resident B failed to:*
 - a. *Check resident B's oxygen saturation level.*
 - b. *Recognise resident B's end of life agitation.*
 - c. *Act on resident B's end of life agitation.*
4. *On 13 April 2020 prepared to administer a 10mg/1ml dose of morphine to resident C instead of the prescribed 2mg/0.2ml dose.*
5. *Sometime between 21 January 2020 and 13 April 2020 in respect of a resident:*
 - a. *Failed to take a blood pressure reading.*
 - b. *Used an armpit only thermometer in the ear.*
6. *Between 21 January 2020 and 13 April 2020 in respect of the residents' care plans:*
 - a. *Failed to make your entries sufficiently detailed.*
 - b. *Failed to document care you had carried out.*
7. *Between 21 January 2020 and 13 April 2020:*
 - a. *Refused to listen to constructive criticism.*
 - b. *Failed to communicate cooperatively and/or constructively with colleagues.*

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Miss Bator's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that patients were put at risk and could have been caused physical and emotional harm as a result of Miss Bator's misconduct. Miss Bator's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that there is no information before it to suggest that Miss Bator has any insight into her actions. The panel considered that Miss Bator was provided with opportunities whilst working at the Home to show insight into her actions and to improve upon them, however this did not happen, and the concerns continued. The panel noted that there is no further information following her employment at the Home from Miss Bator to show evidence of insight into her actions.

However, the panel was satisfied that the misconduct in this case is capable of being addressed. The panel carefully considered the evidence before it in determining whether or not Miss Bator has taken steps to strengthen her practice. The panel took into account that Miss Bator had signed the PDP during her time at the Home, however no signs of improvement were noted following this. The panel did not have sight of any further training documentation to suggest that Miss Bator has taken steps to strengthen her practice.

The panel is of the view that therefore remains a risk of repetition. It determined this because of the repeated actions of Miss Bator found proved in its findings of fact. The panel considered that despite intervention, Miss Bator's actions in failing to document sufficiently and communicate coherently with colleagues continued. The panel also was of the view that the concerns around Miss Bator's ability to listen to constructive criticism and her failure to communicate cooperatively or constructively despite interventions is suggestive of an attitudinal problem which is more difficult to remediate.

It therefore concluded that Miss Bator remains currently unfit to practise. The panel therefore decided that there remains a risk to the public and that a finding of impairment is necessary on the ground of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment is also required on public interest grounds because the actions of Miss Bator were deplorable due to the cumulative nature of the issues identified. The panel determined that an informed member of the public would be concerned about the safety of patients if a registered nurse could not communicate constructively with their colleagues or listen to feedback from them. The panel took the view that the areas for development are so wide ranging that although each individually could be remediated it considered that a whole remediation would be more difficult to address.

Having regard to all of the above, the panel is satisfied that Miss Bator's fitness to practise is currently impaired and that a finding of impairment is necessary also on the ground of public interest.'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Miss Bator's registration would be a sufficient and appropriate sanction. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular it noted that in respect of matters raised regarding a conditions of practice order and whether such an order was appropriate:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel is of the view that whilst there could have been some conditions that could have been formulated to address the clinical concerns, there are other concerns that are not capable of being addressed through a conditions of practice order. The panel determined that because the various concerns occurred over a period of several months during which Miss Bator was provided with additional support through a PDP which she did not adhere to, the panel could not be satisfied that Miss Bator could comply with any conditions imposed nor could it be satisfied that Miss Bator would be willing to respond positively to retraining. The panel further noted that if Miss Bator had shown some evidence of her insight and willingness to remediate in the future, it could have been possible to impose a conditions of practice order, however without such insight and remediation, the panel could not be satisfied that the risk of repetition had been mitigated. It therefore decided that conditions of practice would not protect the public.

Furthermore, the panel concluded that the placing of conditions on Miss Bator's registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel determined that a suspension order would mark the seriousness of the concerns raised against Miss Bator and that it would meet the public interest. It further determined that a suspension order would adequately protect the public. It noted that Miss Bator had informed the NMC that she had retired and no longer wants to work as a nurse. The panel determined that a six-month suspension order would allow Miss Bator sufficient time to inform the NMC of whether she wished to remediate and retrain and pursue her nursing career in the future in order to address the concerns identified if she does intend to continue practising.

The panel went on to consider whether a striking-off order would be a proportionate sanction, but it decided, taking account of all the information before it, and of the aggravating and mitigating factors, that a striking off order would be disproportionate at this point in time. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in Miss Bator's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel decided that this order met the public interest in this case.

The panel considered that a suspension order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of six-months was appropriate in this case to mark the seriousness of the misconduct and to allow sufficient time for Miss Bator to engage with the NMC if she wishes and to show insight and remediation. If Miss Bator fails to engage with the NMC a review panel will most likely consider that her lack of engagement means she does not wish to pursue her nursing career. Miss Bator should indicate to the NMC if she has chosen to permanently retire to assist a future reviewing panel.

At 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 including a striking off order if it deems it necessary.

Any future panel reviewing this case would be assisted by:

- Evidence of remediation through a reflective piece by Miss Bator showing insight into the misconduct found proved and how she proposes to address the concerns raised, particularly regarding her communication skills and her interaction with colleagues, her record keeping and her preparation and administration of medication;*
- Testimonials from colleagues or friends;*
- Any evidence of any relevant training Miss Bator has since undertaken.*

This will be confirmed to Miss Bator in writing.

Decision and reasons on current impairment

The panel has considered carefully whether Miss Bator'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.

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 Bator's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Bator had insufficient insight. At this meeting the panel determined that there had been no new information provided to suggest that Miss Bator has developed her insight, nor has she demonstrated remorse.

In its consideration of whether Miss Bator has taken steps to strengthen her practice, the panel took into account that Miss Bator has indicated in an email dated 23 May 2023 that she has retired from her role as a registered nurse and has not provided evidence of strengthened practice.

The original panel determined that Miss Bator was liable to repeat matters of the kind found proved. Today's panel has received no new information or material change in circumstances to suggest that Miss Bator is no longer liable to repeat such conduct. In light of this the panel determined that Miss Bator remains liable to repetition of the kind found proved, which would place patients at risk of harm. The panel therefore decided that a finding of continuing impairment remains 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 Bator's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Bator'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 that Miss Bator has not provided any new information to suggest that the risk of repetition has been mitigated. 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 Bator'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 Bator'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 order on Miss Bator'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 Bator's misconduct and lack of insight.

The panel has received information that Miss Bator has retired and does not intend to seek work in any health professions. In view of Miss Bator's stated intention not to return to practice in any health profession, the panel considered that a conditions of practice order would not be workable and would serve no useful purpose.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Bator further time to provide the NMC with a completed formal declaration that she has retired and does not wish to return to nursing. Further, it considered that if Miss Bator did wish to continue to work as a registered nurse, she would need to gain a full understanding of how the matters found proved put the profession at disrepute and caused/had the potential to cause patient harm. The panel concluded that a further suspension order of 12 months would be the appropriate and proportionate response. This would afford Miss Bator adequate time to further develop her insight and take steps to strengthen her practice should she wish to, or alternatively, to complete the appropriate documentation to declare her retirement and remove herself from the NMC register.

This suspension order will replace the current suspension order on its expiry in accordance with Article 30(1) at the end of 27 August 2023.

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.

Any future panel reviewing this case would be assisted by:

- Evidence of Miss Bator having completed the necessary formal documentation to declare her retirement and desire to be removed from the NMC register;

OR

- Evidence of remediation through a reflective piece by Miss Bator showing insight into the misconduct found proved and how she proposes to address the concerns raised, particularly regarding her communication skills and her interaction with colleagues, her record keeping and her preparation and administration of medication;
- Testimonials from colleagues or friends;
- Any evidence of any relevant training Miss Bator has since undertaken.

This will be confirmed to Miss Bator in writing.

That concludes this determination.