

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

**Substantive Order Review Meeting
Wednesday, 27 July 2023**

Virtual Meeting

Name of Registrant: Besi Seabela

NMC PIN 03G03110

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nurse – 4 July 2003

Relevant Location: North Yorkshire

Type of case: Misconduct

Panel members: Pamela Johal (Chair, Lay member)
Tracey Chamberlain (Registrant member)
Nicholas Rosenfeld (Lay member)

Legal Assessor: Justin Gau

Hearings Coordinator: Xenia Menzl

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

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect on 30 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 Ms Seabela's registered email address by secure email on 12 June 2023.

The panel took into account that the Notice of Meeting provided details of the review including that this meeting would take place on a date on or after 17 July 2023, 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 Ms Seabela 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 replace the current conditions of practice order with a striking off order. This order will come into effect at the end of 30 August 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 30 July 2021. This was reviewed on 22 July 2022 and that panel varied the conditions of practice which had been imposed for a period of 12 months.

The current order is due to expire at the end of 30 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 12 October 2018, in respect of Resident RP you:*
 - a. *did not suction Resident RP's airway/ tracheostomy;*
 - b. *did not record in the MAR chart the reasons suctioning was not offered or provided to Resident RP.*

2. *On or around 14/15 October 2018,*
 - a. *incorrectly administered one Metformin tablet to Resident PB when he was prescribed two tablets;*
 - b. *did not administer morning medication to Resident JR and/or in the alternative you did not record that medication was administered to Resident JR.*

3. *On 16/17 October 2018,*
 - a. *did not replace the inner tube of Resident RP's tracheostomy;*
 - b. *incorrectly recorded in the MAR chart that the inner tube of Resident RP's tracheostomy had been removed and replaced when it had not;*
 - c. *incorrectly used a saline nebuliser on Resident RP;*
 - d. *...*
 - e. *did not stay with Resident RP;*
 - f. *did not hand over to Colleague A that you used a saline nebuliser on Resident RP.*

4. *On 23 January 2019 you failed a Medication Competency Assessment.*

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

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

'In its consideration of whether Ms Seabela has taken steps to strengthen her practice, the panel took into account that the original panel had no information before it with regard to any steps Ms Seabela may have taken to remediate. This panel was not provided with any evidence of the same from Ms Seabela and had no further information to demonstrate that the concerns about her practice identified by the previous panel have been addressed and were unlikely to reoccur. The panel considered that Ms Seabela has not provided a reflective statement detailing the impact of her failings on patients, colleagues and the profession, or any evidence of insight into her misconduct. It also considered that Ms Seabela has not provided any information such as testimonials, employment references or appraisal documents. The panel considered that it has not been provided with any evidence of training undertaken, or any other material that could satisfy the panel that the concerns in this matter have been addressed. Further, the panel considered that Ms Seabela has not provided any evidence that she has kept her nursing skills up to date.

In light of the lack of evidence of full insight, remorse and strengthened practice, the panel determined that there remains a risk of harm to the public if Ms Seabela was permitted to practise as a nurse without restriction. The panel considered that Ms Seabela has not engaged with the NMC and as a consequence it has not had sight of any information demonstrating that she has made any effort to improve her practice and is now a safe practitioner. The panel therefore concluded that there remains risk of harm to patients and 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 Seabela's fitness to practise remains impaired.'

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

'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 Seabela'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 Seabela'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 imposing a conditions of practice order on Ms Seabela'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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel bore in mind that Ms Seabela's registration fee expired on 31 July 2019, and she would not have been able to work as a nurse from this date.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and no deep-seated attitudinal problems. The panel was of the view that a new, varied conditions of practice order for a period of 12 months would be sufficient to provide Ms Seabela with another opportunity to return to work, for her to provide evidence of compliance, and to display development and strengthened nursing practice. In this case, there are conditions that can 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 Ms Seabela's case given that the incidents occurred over a relatively short period of time in an otherwise long and unblemished period of service.

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 30 August 2022. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

1 '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 work for only one substantive employer and must not undertake ad-hoc agency work as a registered nurse.*
- 2. You must ensure that you are supervised by a registered nurse with a minimum of three years' experience at any time you are working. Your supervision must consist of:
 - a) Working at all times on the same shift as, but not always directly observed by a registered nurse with a minimum of three years' experience.**
- 3. You must undertake training and competency assessment in recordkeeping, medicines management, and send evidence of this to your case officer before the next review.*
- 4. If you are working in an environment which requires you to perform tracheostomy care, you must first undergo specialist tracheostomy care training.*

5. *You must ensure that you are supervised by a registered nurse with a minimum of three years' experience at any time you are administering medications and/or undertaking tracheostomy care until you are deemed competent by your supervisor (as above). You must send evidence from your supervisor of your competency to your case officer before the next review.*

6. *You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about medicines management, tracheostomy care, escalation, recordkeeping and communication with colleagues. You must:*
 - a) *Send your case officer a copy of your PDP by the next review.*
 - b) *Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a report from your supervisor every six months. This report must show your progress towards achieving the aims set out in your PDP.*

7. *You must keep us informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*

8. *You must keep us informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*

9. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any employers you apply to for work (at the time of application).*
 - c) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

d) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

10. You must tell your case officer, within seven days of your becoming aware of:

- a) Any clinical incident you are involved in.*
- b) Any investigation started against you.*
- c) Any disciplinary proceedings taken against you.*

11. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a) Any current or future employer.*
- b) Any educational establishment.*
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions'*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Seabela'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 noted that there has been no documentation from Ms Seabela, nor has engaged with the NMC since the beginning of this process.

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 Seabela's fitness to practise remains impaired.

The panel has had no evidence that Ms Seabela has engaged with the NMC at all for a period of about four years. It noted therefore, there was nothing before the panel to demonstrate that the concerns in this matter have been addressed. Due to this the panel considered that Ms Seabela's practice remains impaired due to the reasons stated by the last reviewing 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.

Decision and reasons on sanction

Having found Ms Seabela 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 Seabela'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 Seabela'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 Ms Seabela'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 has no evidence that Ms Seabela has engaged with the NMC in any way for some time, nor responded to any communication. It concluded, that due to Ms Seabela's disengagement there was no evidence before the panel that the current conditions of practice order have been complied with or that the recommendations of a previous panel that would assist a future panel have been followed, therefore, this panel determined that the current conditions have become unworkable, and are no longer measurable nor proportionate. Given the total lack of engagement, combined with no insight, and no evidence of strengthened practice, the panel determined that a conditions of practice order is no longer appropriate in the circumstances.

The panel next considered imposing a suspension order. The panel noted that Ms Seabela has not provided evidence of remorse for her misconduct nor of any steps taken to strengthen her practice or of any insight into her failings. Further, through her continuous non engagement it is clear that she does not intend to engage with her regulator. The panel noted that registrants have a duty to engage with their regulator and it determined that Ms Seabela's non engagement raised fundamental questions about her professionalism.

In these circumstances the panel determined that a period of suspension would serve no meaningful purpose. The panel determined that it was necessary to take action to prevent Ms Seabela 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. The panel therefore directs the registrar to strike Ms Seabela's name off the register.

The panel determined that the public interest will be best served by not prolonging proceedings with another period of a conditions of practice or a suspension order and

concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel determined that such an order was necessary to maintain public confidence in the profession. Given Ms Seabela's lack of insight, remediation, and engagement there are fundamental concerns regarding her professionalism, which the panel found to be fundamentally incompatible with Ms Seabela remaining a registered professional.

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

This will be confirmed to Ms Seabela in writing.

That concludes this determination.