

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

**Substantive Order Review Meeting
Monday, 08 July 2024**

Virtual Meeting

Name of Registrant:	Boguslaw 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:	Rachel Robertson (Chair, Lay member) Kathryn Smith(Registrant member) Ray Salmon (Lay member)
Legal Assessor:	Paul Hester
Hearings Coordinator:	Amira Ahmed
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Striking-Off order to come into effect at the end of 27 August 2024 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 3 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 impose a striking off order. This order will come into effect at the end of 27 August 2024 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 suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 30 January 2023. This was reviewed on 14 July 2023 and a further 12 month suspension order was imposed.

The current order is due to expire at the end of 27 August 2024.

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 first reviewing panel determined the following with regard to impairment:

‘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.’

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

'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.'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Bator's fitness to practise is currently 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. The NMC guidance DMA-1 sets out the question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

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 is currently impaired.

The substantive hearing panel that considered the case in January 2023 found that patients were put at risk and could have been caused harm as a result of Miss Bator's misconduct. they also considered Miss Bator's misconduct had breached the fundamental tenets of the nursing profession and brought its reputation into disrepute.

The substantive hearing panel had no evidence before it to suggest that Miss Bator had any insight into her actions. The first reviewing panel did not see any new information to suggest that she had developed any insight or demonstrated remorse.

At this meeting the panel similarly had no new information provided by Miss Bator to suggest that she has developed her insight, nor has she demonstrated remorse.

The substantive hearing panel considered the misconduct was capable of remediation however found there had been no signs of improvement when she was subject to performance proceedings and that panel was not provided with evidence that she has since strengthened her practice. That panel found a risk of repetition. The reviewing panel in July 2023 noted Miss Bator did not provide evidence that she had strengthened her practice.

In its consideration of whether Miss Bator has since taken steps to strengthen her practice, it noted that on 7 December 2022, Miss Bator stated in an email to the NMC *'I'm retired now and I'm not working as a nurse or I'm not thinking to coming back to this job'*. The panel also noted that Miss Bator has previously indicated in an email dated 23 May 2023 that she has retired from her role as a registered nurse. She has not provided evidence of strengthened practice or any intention to return to practising as a nurse to this panel.

The charges found proven are serious and involve breaches of fundamental principles of nursing, which put patients at risk. 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 found a real risk of repetition 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.

On the basis of all the information available to this panel, it was not satisfied that Miss Bator could be relied on to practice kindly, safely and professionally. For these reasons, the panel finds that her fitness to practise is currently 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 heard and accepted the advice of the legal assessor.

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 allow the substantive order to expire in order to allow Miss Bator to be removed from the NMC register. The NMC guidance REV-3h provides this can be achieved if:

'b) the nurse, midwife or nursing associate can indicate at a standard review that they no longer wish to continue practising; the panel will then be invited to let the substantive order expire in order to allow the professional to be removed from the Register.'

The panel noted that Miss Bator had indicated in an email before the substantive hearing that she intended to retire from nursing, and in an email to her NMC case officer prior to the first reviewing panel that she had retired. However, she had not outlined her current intention to this panel nor has Miss Bator invited the panel to allow the order to expire. The panel was therefore not satisfied that this was appropriate.

The panel considered the available sanctions.

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 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 relevant, proportionate, measurable and workable. 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, particularly as she had not addressed such concerns during her employment despite the support provided. Further, given that Miss Bator has not meaningfully engaged with these proceedings, the panel was not satisfied that she would comply with any conditions.

The panel next considered imposing a further suspension order. Miss Bator has not demonstrated any insight during this review period of 12 months into her previous failings. The panel was of the view that considerable evidence would be required to show that Miss Bator no longer posed a risk to the public. The panel noted that the regulatory concerns in this case raise fundamental questions about Miss Bator's nursing practice. It also noted the time period over which the concerns arose and that this was not a single instance of misconduct. The panel took account of the evidence in this case which clearly demonstrates that the standard of care fell well below what was expected of a registered nurse. It also noted that Miss Bator has had a further opportunity since the last review meeting to show whether she has strengthened her practice but has chosen not to do so.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The misconduct is serious and involved a real risk to patients. The panel determined that it is necessary to take action to prevent Miss Bator from practising in the future, to avoid a risk of repetition. The panel concluded that a striking off order is the appropriate sanction to adequately protect the public. The panel

also considered a striking off order to be necessary to ensure public confidence in the nursing profession and was therefore also in the public interest.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 27 August 2024 in accordance with Article 30(1).

This decision will be confirmed to Miss Bator in writing.

That concludes this determination.