

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

**Substantive Order Review Meeting
Tuesday, 14 January 2025**

Virtual Meeting

Name of Registrant: Obdulia Vicente Garcia

NMC PIN 05L0043C

Part(s) of the register: Registered Midwife – RM
(20 December 2008)

Registered Nurse - Adult – RN1
(2 December 2005)

Relevant Location: Oxfordshire

Type of case: Misconduct

Panel members: Des McMorrow (Chair, registrant member)
Sophie Lauren Kane (Registrant member)
Alison Lyon (Lay member)

Legal Assessor: Lucia Whittle-Martin

Hearings Coordinator: Sharmilla Nanan

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of 27 February 2025 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 Garcia's registered email address by secure email on 9 December 2024.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 13 January 2025 and inviting Miss Garcia to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

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

Decision and reasons on review of the current order

The panel decided to impose a Striking-Off order to come into effect at the end of 27 February 2025 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 29 January 2020. This was reviewed on 20 January 2021, and a conditions of practice order was imposed for 36 months. The conditions of practice order was reviewed on 8 January 2024, and the panel decided to replace the conditions of practice order with a suspension order for a period of 12 months.

The current order is due to expire at the end of 27 February 2025.

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 Midwife, on the 20 June 2016 whilst caring for Patient A:

1.1 Failed to request midwifery assistance when patient A was admitted to the delivery suite

1.2 Failed to inform an obstetrician and request immediate review on admission.

1.3 Did not seek assistance from one of the following when you were attempting to conduct a CTG:

1.3.1 Senior midwife;

1.3.2 Doctor;

1.3.3 Registrar level or above

1.4 Failed to start a CTG in a timely manner.

1.5 Failed to interpret the CTG in a timely manner.

1.6 Failed to interpret the CTG correctly.

1.7 Failed to escalate the abnormal CTG to a senior doctor in a timely manner.

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

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

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

The panel bore in mind that the last reviewing panel in 2021 found that Miss Garcia had not provided evidence of insight, strengthened practice or proof of compliance with her conditions of practice order. Additionally, it noted that the last reviewing panel did not have evidence of any attempts Miss Garcia had taken to remediate the concerns regarding her misconduct.

At this meeting the panel found that there has been no material change during the three years since the last review of this substantive order. It had no new information before it regarding current insight, reflection or strengthened practice. The panel also do not have any evidence of Miss Garcia's stated intentions with regards to midwifery or willingness to engage with her regulator.

The panel noted that no evidence had been provided to demonstrate any progress regarding compliance with the conditions of practice order. It therefore did not have any evidence to indicate that the risk identified by the original panel had reduced.

In light of this the panel determined that there remains a risk of repetition of the matters found proved. The panel therefore decided that 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 Miss Garcia's fitness to practise remains impaired.'

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

'The panel next considered whether the continuation of the current conditions of practice order on Miss 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 bore in mind that one of the key considerations for the imposition of a conditions of practice order is the potential and willingness for Miss Garcia to respond positively to retraining. The panel noted that during the three years since the last review, the NMC has not received any information from Miss Garcia demonstrating how she has complied with the current conditions of practice order.

The panel noted that at the last reviewing panel had information to suggest that Miss Garcia resides in France. It also noted that the original panel had information to suggest that Miss Garcia practiced as a midwife in Spain. However, today's panel had no evidence before it of Miss Garcia working in either Spain or France, or any progress she has made with compliance with the current conditions of practice order.

The panel considered that it had no evidence of developing insight, strengthened practice or remediation of the concerns identified. As a result, it was of the view that conditions of practice are no longer workable as it has not seen evidence of a potential willingness to respond positively to retraining.

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 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 12 months would provide Miss Garcia with an opportunity

to engage with the NMC, inform the NMC of her future intentions regarding midwifery and provide evidence of compliance with previous conditions of practice order. It considered this to be the most appropriate and proportionate sanction available.

The panel would like to make Miss Garcia aware that the next reviewing panel of this hearing will consider all available sanctions including a striking off order.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 27 February 2023 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.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss 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 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 Garcia's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that there was no material change during the three years following the imposition of the 36-month substantive conditions of practice order. It had no new information before it regarding Miss Garcia's insight, reflection or strengthened practice. The last reviewing panel also did not have any evidence of Miss Garcia's stated intentions with regards to midwifery or willingness to engage with her regulator.

At today's meeting, the panel took into consideration that Miss Garcia is further removed from her midwifery clinical practice since the original substantive hearing in January 2020. It bore in mind that it had no evidence that Miss Garcia has developed her insight or reflected on the misconduct found at the original hearing, nor did it have any evidence of any steps that Miss Garcia has undertaken to strengthen her midwifery practice, including through any training she has completed. The panel noted that it also did not have any testimonials regarding Miss Garcia's work practices in relation to any paid or unpaid work she has undertaken. The panel bore in mind that Miss Garcia has not meaningfully engaged with the NMC.

The last reviewing panel determined that Miss Garcia was liable to repeat matters of the kind found proved. Today's panel has received no new information and in light of this the panel determined that Miss Garcia remains liable to repeat matters of the kind found proved. The panel therefore decided that 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 midwifery 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 Garcia's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss 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 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 Garcia'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 Garcia'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 on Miss Garcia'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 that Miss Garcia has not recently meaningfully engaged with the NMC process. The panel was not able to formulate conditions of practice that would adequately address the concerns identified. Today's panel has concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. The panel took into consideration Miss Garcia's lack of meaningful engagement in the last four years of these proceedings. The panel took into account that Miss Garcia has not shown remorse for her misconduct nor has she demonstrated any insight into her previous failings or provided any reflection. It had no evidence that she has addressed the issues of concern identified

in her midwifery practice. The panel was of the view that considerable evidence would be required to show that Miss Garcia no longer posed a risk to the public. Further, today's panel bore in mind that it had no information about Miss Garcia's future intentions in relation to her midwifery career. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Miss Garcia 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 27 February 2025 in accordance with Article 30(1).

This decision will be confirmed to Miss Garcia in writing.

That concludes this determination.