

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

**Substantive Order Review Meeting
Thursday 4 April 2024**

Virtual Meeting

Name of Registrant: Stefan Emil Popa

NMC PIN 12K0158C

Part(s) of the register: Registered Nurse, Sub Part 1
Adult Nursing, Level 1 (19 November 2012)

Relevant Location: Devon

Type of case: Misconduct

Panel members: Pamela Johal (Chair, lay member)
Claire Martin (Registrant member)
Robert Marshall (Lay member)

Legal Assessor: Paul Hester

Hearings Coordinator: Zahra Khan

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

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on
14 May 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 Mr Popa's registered email address by secure email on 29 February 2024.

Further, the panel noted that the Notice of Meeting was also sent to the Royal College of Nursing (RCN), who represented Mr Popa at the Substantive Hearing in September 2022 and April 2023, on 29 February 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 2 April 2024 and inviting Mr Popa to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Popa 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 suspension order for a period of 6 months.

This order will come into effect at the end of 14 May 2024 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 conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 20 April 2023.

The current order is due to expire at the end of 14 May 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, on 13 November 2018:

1. *On one or more occasions as set out in Schedule A, you did not administer medication to patients. 3. Patient E – Madopar **[PROVED]***

...

4. *On one or more occasions as set out in Schedule C, you did not and/or did not ensure that relevant clinical information was recorded within the patient records. **[PROVED]***

...

6. *Did not order Glucogel for Patient C or alternatively, you did not record that you had placed an order. **[PARTIALLY PROVED]***

7. *You did not carry out observations for Patient D following a fall or alternatively, did not record your observations. **[PROVED]***

8. *You did not provide an adequate handover to staff in that you:*

a) *Could not remember who one or more of the residents were. **[PROVED]***

...

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 decided that limb a) is engaged in Charges 4 and 7 as patients were put at unwarranted risk of harm. The panel further decided that limbs b.) and c.) are engaged as to the past as you have breached the code and brought the nursing profession into disrepute.

The panel next turned its attention to the case of Cohen v General Medical Council and looked to the future. The panel decided that the misconduct in Charges 4 and 7 is remediable. The panel went on to consider whether there is evidence of the misconduct having been remedied. In this regard, the panel looked for evidence of remorse, insight, and relevant training. The panel, on the evidence which it heard from you, decided that there was no genuine remorse. In considering insight, the panel decided again on the evidence before it that there is no insight into your misconduct and the effect it had upon patients, colleagues, and the public perception of nurses. The panel noted that you have not undertaken any relevant training in relation to your misconduct. In these circumstances, the panel was of the view that there remains a real risk of you repeating your misconduct in the future.

In coming to the above decision that your fitness to practise is currently impaired the panel was conscious of the fact that you have been subject to a referral prior to this case and to a subsequent referral. As regards the previous referral to this case, the panel put that matter entirely out of its mind as there was no finding of fact against you. In respect of the subsequent referral, the panel again noted that there is no finding of fact against you as the matters alleged are still subject to NMC investigation. The only regard the panel had to the subsequent referral was that there is no evidence of you having strengthened your practice since the time of that referral. Consequently, there is no evidence before the panel beyond your evidence in this hearing as to remediation.

The panel therefore decided that a finding of impairment is necessary on the grounds 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 professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired’.

The original panel determined the following with regard to sanction:

‘Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel found and took into account the following aggravating features:

- *Lack of insight into your failings*
- *Lack of remorse*
- *Conduct which put patients at risk of suffering harm.*

The panel also found and took into account the following mitigating features:

- *You admitted some of the charges*
- *It was a busy and difficult shift*
- *You were unwell at the time*
- *No evidence of actual harm*
- *No pattern of misconduct, as this relates only to one shift*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the charges found proved. 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 your 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 your 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 placing conditions of practice on your registration would be a sufficient and proportionate response. The panel is mindful that any conditions imposed must be proportionate, relevant, measurable and workable. The panel took into account the SG, in particular:

- *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;*
- *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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted whilst protecting the public and meeting the public interest in this case.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

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 your case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions 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 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.*
2. *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.*
3. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *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*
4. *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.*

5. *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*

6. *You will send the NMC a report from your current employer, which can be an agency you work through or a place of substantive employment, seven days in advance of the next NMC hearing or meeting.*

7. *You will send your case officer evidence that you have successfully completed training in:*
 - a) *record keeping,*
 - b) *patient documentation*

8. *You must work with your current employer to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and documentation. You must:*
 - a) *Send your case officer a copy of your PDP within a month of commencing employment*
 - b) *Send your case officer a report seven days prior to any review. This report must show your progress towards achieving the aims set out in your PDP*

9. *You must engage with your current employer on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:*
 - a) *Meeting at least monthly to discuss your progress towards achieving the aims set out in your PDP*

The period of this order is for 12 months with a review.

Before the order expires, a panel will hold a review hearing to see how well you have 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:

- *Your continued engagement with the NMC*
- *Your attendance at any review hearing*
- *Evidence of further relevant training*
- *A reflective piece written by you following a recognised model which shows that you understand the effect that your misconduct has had upon patients work colleagues and the public perception of the nursing profession*
- *This reflective piece should also include reflection on your training and your practice going forward*
- *Any up-to-date testimonials or references, especially from other nursing professionals ‘.*

Decision and reasons on current impairment

The panel considered carefully whether Mr Popa’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 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 exercised its own judgement as to current impairment.

The panel had regard to all of the documentation before it, which consisted of the NMC hearing bundle. The panel noted that Mr Popa has not provided any written evidence to this meeting.

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 Mr Popa's fitness to practise remains impaired.

The panel noted that the original panel found that Mr Popa did not demonstrate genuine remorse nor insight into his misconduct and the effect it had upon patients, colleagues, and the public perception of nurses. The original panel also noted that Mr Popa had not undertaken any relevant training in relation to his misconduct and therefore was of the view that there remained a real risk of him repeating his misconduct in the future.

The panel noted that the substantive panel in April 2023 made a finding of impairment. In this regard, it is for Mr Popa today to discharge the persuasive burden that he is no longer currently impaired. Mr Popa has provided no written evidence to this panel. In particular, Mr Popa has not provided this panel with any of the material suggested by the substantive panel so as to assist this panel on the question of current impairment.

The panel noted the NMC's guidance 'Standard reviews of substantive orders before they expire (Reference: REV-3a)' which states that a reviewing panel will consider what has happened to the nurse's practice since the last hearing. In doing this, the panel will take into account whether the nurse has complied with any conditions imposed; does the nurse show insight into their failings or the seriousness of any past misconduct; and whether the nurse has taken effective steps to maintain their skills and knowledge. This panel has no evidence or information from Mr Popa and no material which will undermine the decision of the substantive panel. In short, there is no information whatsoever since the making of the substantive decision in April 2023.

Mr Popa has not demonstrated an understanding of how his actions put patients at a risk of harm, nor demonstrated an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, the panel has no information to suggest how Mr Popa would handle the situation differently in the future. As such, the panel has not seen any evidence to demonstrate that Mr Popa has taken steps to strengthen his practice.

The original panel determined that Mr Popa was liable to repeat matters of the kind found proved. As today's panel has not received any new information, the panel determined that Mr Popa is still liable to repeat matters. 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 Mr Popa's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Popa 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.

The panel 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 Mr Popa'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 Mr Popa's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the serious misconduct. 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 Mr Popa'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 next considered the continuation of the current conditions of practice order. In the panel's view, Mr Popa has been given sufficient opportunity to comply with conditions for a period of 12 months but has not provided any information to the panel which includes whether he has been working at any stage during the order as a registered nurse. In particular, Mr Popa has not provided the panel with any evidence of developed insight or strengthened practice since the imposition of the conditions of practice order on 20 April 2023 and there is no information before it to conclude that Mr Popa is willing to comply with any conditions imposed upon his practice.

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 no longer 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 6 months which would provide Mr Popa with a further opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 14 May 2024 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. At the next review hearing, all sanctions will be open to the panel, including the power of a striking-off order.

Any future panel reviewing this case would be assisted by:

- Mr Popa's engagement with the NMC during the substantive review stage.
- Mr Popa's attendance at any review hearing.
- Evidence of further relevant training including the use of resources as required.
- A reflective piece written by Mr Popa following a recognised model which shows that he understands the effect that his misconduct had upon patients, work colleagues and the public perception of the nursing profession.
- This reflective piece should also include reflection on Mr Popa's training and his practice going forward. This should refer to strategies to minimise stress in the future, their health, and an escalation plan for support from any line manager.
- Any up-to-date testimonials or references, especially from other nursing professionals.

This will be confirmed to Mr Popa in writing.

That concludes this determination.