

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

**Substantive Order Review Hearing
Thursday, 2 May 2024**

Virtual Hearing

Name of Registrant: Nanette Combatir Florida

NMC PIN 02H1104O

Part(s) of the register: RN1: Registered Nurse – (sub part 1)
Adult – Level 1 – August 2002

Relevant Location: Bury

Type of case: Misconduct

Panel members: Richard Weydert-Jacquard (Chair, registrant member)
Amanda Revill (Registrant member)
Asmita Naik (Lay member)

Legal Assessor: Dr Marian Gilmore KC

Hearings Coordinator: Eidvile Banionyte

Nursing and Midwifery Council: Represented by Rosie Welsh, Case Presenter

Mrs Florida: Present and represented by Nicholas Kennan, instructed by the Royal College of Nursing (RCN)

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (9 months) to come into effect on 17 May 2024 in accordance with Article 30 (1)**

Decision and reasons on application for hearing to be held in private

[PRIVATE]

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order.

This order will come into effect on 17 May 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first effective review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 19 October 2023. This was first listed for a review on 8 April 2024 however the hearing was adjourned due to your health.

The current order is due to expire at the end of 16 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, whilst employed at Fairfield General Hospital;

1) ...

2) ...

3) ...

4) *On or around 16 August 2017, inaccurately recorded Patient E's intentional rounding log to indicate that;*

- a) ...
 - b) *Patient E had declined skin care checks*
- 5) ...
- 6) *Your actions in charge 4 b) were dishonest, as you knew Patient E had not declined skin care checks, but you sought to represent that they had.*
- 7) *On or around 26 July 2018;*
- a) *Did not wear Personal Protective Equipment, namely an apron when administering IV Omeprazole to Patient A.*
 - b) ...
 - c) ...
 - d) *Incorrectly flushed the cannula with 0.9 % Saline 50ml following the administration of IV Omeprazole to Patient A.*
 - e) *Did not record that you had incorrectly flushed the peripheral cannula with Saline 50 ml in Patient A's notes.*
 - f) *Did not document/monitor Patient A's fluid intake and urine output on an hourly basis.*
- 8) *On or around 27 July 2018, incorrectly recorded Patient A's NEWS score as green.*
- 9) *On or around 27 July 2018;*
- a) ...
 - b) *Failed to offer Patient B a skin care check at 14:00*
 - c) *Inaccurately signed Patient B's rounding log to indicate that he had declined a skin care check at 14:00.*
 - d)
 - (i) ...
 - (ii) ...
 - (iii) ...
 - e) ...

10) *Your actions in charge 9 c) above were dishonest as you knew Patient B had not declined a skin care check at 14:00, but you sought represent that they had.*

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, your 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 your misconduct. Your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel also found that you had acted dishonestly. The panel found all four limbs of the Grant test are engaged in relation to your past conduct.

The panel had regard to the principles set out in the case of Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin) and considered:

- Whether the concerns identified in your nursing practice were capable of remediation;*
- Whether they have been remedied and;*
- Whether there was a risk of repetition of a similar kind at some point in the future.*

In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether you had provided evidence of insight and remorse.

The panel was mindful that there are two distinct types of concerns in this case; clinical concerns and dishonesty concerns. The panel considered the three limbs set out in Cohen individually for the clinical concerns and dishonesty charges.

Regarding the clinical concerns identified in your practice, the panel determined that these are capable of remediation. It determined that whilst you have provided some evidence of training these were not specific to the areas identified within the charges and therefore of limited value in demonstrating a strengthening of your practice. It noted that there are more relevant and appropriate courses that could have been completed to adequately address the clinical concerns in this case. The panel noted that you made admissions to some of the clinical concerns at the time of the incidents. However, it also noted that you sought to blame this on work pressures and your personal circumstances rather than take ownership of your failings. The panel therefore determined that whilst you have shown some remediation, the clinical concerns have not been fully remedied and so there is a risk of repetition at some point in the future.

The panel then considered the dishonesty concerns in this case. It determined that dishonesty concerns are serious, and the panel had regard to the NMC Guidance DMA-1 and DMA-7 with regards to dishonesty. The panel noted that the dishonesty charges in this case relate to an incident which occurred in August 2017 and another in July 2018, 11 months apart. The panel noted that whilst dishonesty concerns are difficult to remediate, they are capable of remediation. The panel noted that there is no evidence of any repetition of such dishonest conduct of this nature since 2018. However, the panel determined that despite the fact that you have shown remorse, your insight into the seriousness and implications of your dishonesty is limited.

Whilst it recognised your early admissions when challenged during the Trust investigation, the panel determined that you have not taken ownership of the dishonesty concerns, nor have you shown how your actions would have affected patients, fellow colleagues, or the wider public. In light of this, the panel determined that the dishonesty concerns have not been remediated and, mindful that you Mr repeated this behaviour previously, it could not be satisfied that you are highly unlikely to repeat conduct of a similar nature at some point in the future. The panel therefore found all four limbs of Grant are engaged with regard to your future behaviour.

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.

The panel considered the concerns together and determined that there is a risk of repetition of both clinical and dishonesty concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In relation to the 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 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 took into account the following aggravating features:

- *Conduct both in relation to clinical concerns and dishonesty which put patients at risk of suffering harm;*
- *Two separate incidents of dishonesty within an 11-month period; and*
- *Lack of ownership into failings, including the impact of your actions on patients, fellow colleagues, and the wider public.*

The panel also took into account the following mitigating features:

- *Early admissions and apologies.*

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 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 appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It noted that there were clinical concerns in this case that could be addressed through

retraining. However, the panel had regard to the fact that the concerns in this matter also related to dishonesty and you have demonstrated limited insight into your dishonest conduct. The panel was therefore of the view that there are no practical or workable conditions that could be formulated, given your failure to address the dishonesty elements of this case. The panel concluded that the placing of conditions on your registration would not adequately protect the public and meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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;*
- ...*
- ...*

The panel found that the concerns in this case included two instances of misconduct due to dishonesty, although these were some time apart and not continuous. There was no evidence of deep-seated personality or attitudinal problems. It took into account that you have demonstrated limited insight into your failings and there is a consequent risk of repetition. However, the panel noted that you have practised as a nurse for five years since the incidents with no Mr repetition and therefore determined that there was no evidence of a significant risk of repetition.

The panel also had regard to the NMC's guidance on 'seriousness' and 'cases involving dishonesty' (Reference: SAN-2). The panel noted that not all dishonesty was equally serious, and the more serious type of dishonesty will call into question

whether a nurse should be allowed to remain on the register. In respect of the guidance, the panel was of the view that the following were applicable to this case in respect of dishonesty:

- *‘ ...*
- *...*
- *vulnerable victims*
- *...*
- *direct risk to patients*
- *...*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain’.*

The panel took into account that you did not complete the records for Patient E and Patient B to indicate that you had completed skin checks when you had not, but your dishonesty related to the reason why the checks were not undertaken. It also noted that each incident occurred in isolation although they were 11 months apart. In this regard, whilst the panel acknowledged that there was some risk of harm to patients, it considered that this was reduced by the fact that your colleagues would have been aware that these checks were not completed. The panel considered that there was no direct personal gain to you and considered that your conduct was not premeditated. Having regard to the above, the panel did not consider your dishonesty as the most serious category.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would

be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

The panel considered that this 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 standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of six months with a review was appropriate in this case to mark the seriousness of the misconduct.

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.

Any future panel reviewing this case would be assisted by:

- A reflective statement using a recognised model of reflection addressing the panel's findings on misconduct, including both clinical failings and dishonesty;*
- Evidence of any completed training and associated assessments that relate to and address the regulatory concerns in this case;*
- Comprehensive character references or testimonials; and*
- Attendance and engagement at a future hearing.'*

Decision and reasons on current impairment

The panel has considered carefully whether your 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 and the bundle you have provided for this hearing. It has taken account of the submissions made by Ms Welsh on behalf of the NMC and also the submissions made by Mr Kennan on your behalf.

Ms Welsh outlined the brief background to the case. She submitted that it was for the panel to determine whether you have met the recommendations made by the previous panel and whether you have taken effective steps to maintain your skill and knowledge. She referred the panel to the reflective piece and training certificates provided by you.

She submitted that a striking off order may be disproportionate at this stage, however, it was for the panel to decide.

You gave evidence under oath.

You confirmed that you have written your reflective piece by yourself. You also confirmed that you are originally from the Philippines and your first language is Filipino, English being your second language.

You advised the panel about the [PRIVATE]. You further explained that at this time, you [PRIVATE]. [PRIVATE].

You confirmed that you will be more conscientious and will check more in order not to make mistakes, to document everything properly and to write notes accurately. You further explained to the panel that you will create a personal development plan, set your goals and plan actions, and reflect on your learning from these as they relate to your nursing practice. You also suggested that you are open to receiving supervision.

You accepted that you have previously been dishonest, felt ashamed and agreed that nurses must be honest. You agreed that your dishonesty could have an impact on patients, colleagues, the community in general and the wider public. You said that your dishonesty could cause harm to patients, and they could lose confidence in you. You

explained that if you were again to make a mistake, you would tell the truth and apologise, and that integrity was important.

You explained to the panel that you will do further training if it is available as well as personal development regarding the issues of dishonesty. You will adhere to the NMC codes, values and procedures and if ever in doubt, you will consult your colleagues.

In answering questions from Ms Welsh, you confirmed that you wrote your reflective piece using the NMC's advice on how to write a reflective piece that you found online.

In answering further questions regarding various training courses you have undertaken, you explained what you have taken away from this training and how you would put this learning into practice.

You confirmed that in order to manage your workload, you will plan and prioritise as necessary, [PRIVATE].

In answering the panel's questions, you said that the general public would not trust you when it comes to their care if they knew you were dishonest, and that honesty was a fundamental part of nursing. You further said that you would like to sit down with a manager to create a personal or professional development plan. You further said that you thought it would be helpful for you to have a mentor to meet with once a month or every few months in order to discuss how you were doing and to review your practice.

In her closing submissions, Ms Welsh indicated that it was the matter for the panel to consider impairment and whether they were persuaded that you have addressed the previous failings.

The panel also had regard to the closing submissions from your representative Mr Kennan.

He submitted that after the allegations, you worked for five years as a registered nurse and that during that time you demonstrated good behaviour and safe practice, which is an indication that you can practice properly, professionally, and safely.

[PRIVATE].

He further submitted that you have taken CPD training in venepuncture and cannulation, in personal protective equipment, in documentation and record keeping, and also in pressure area care, and that these were all relevant to the identified clinical failings in terms of the documentation and record keeping. He reminded the panel that you emphasised the importance of being honest in making patient records.

Mr Kennan submitted that whilst the sanction given to you was an appropriate one, he emphasised that the original panel identified that this was at the lower end of the scale in terms of dishonesty.

[PRIVATE].

Mr Kennan submitted that you would be an effective nurse if you were to be returned to practice with or without conditions, and that you have yourself noted some conditions that you would be happy to be subject to.

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 your fitness to practise remains impaired.

The panel noted that the original panel found insufficient insight.

The panel was of the view that you have shown good insight into your failings and have taken steps to strengthen your practice. However, the panel considered that since undertaking these measures you have not yet been tested in clinical practice as a nurse. The panel was aware following your answers to the panel's questions, that you appeared to share this sentiment and that you wished to have a period of supervision to help ensure

you do not repeat the same mistakes. The panel further noted that you have demonstrated a sense of ownership over your failings and misconduct.

The panel further considered that you have shown good insight into your dishonest conduct and in particular, the impact of that conduct on patients, colleagues and the public perception of the nursing profession. Consequently, the panel agreed that it is not likely that you would behave dishonestly in a clinical practice in the future again. The panel noted that whilst dishonesty is often more difficult to remedy, your dishonesty has been at the lower end of the spectrum and therefore able to be remedied. The panel determined that you were able to demonstrate the remediation of your dishonest conduct due to your written reflections and the oral testimony under examination today.

The panel noted that you had 5 years of unimpaired practice following the allegations, however, your clinical skills have not yet been tested since the charges were found proved and since you have provided your reflections.

The panel took into account the relevant training courses and testimonials you have provided, [PRIVATE].

The panel consequently determined that you remain impaired on the grounds of public protection due to the ongoing concerns around your clinical misconduct and because you have not yet been tested in the clinical setting practising as a nurse, following the steps you have taken to remediate.

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 not required. The panel was of the view that a member of the public who was fully informed of the facts of the case and who had a sight of your remediation thus far, would on the balance of probabilities consider that the public interest would not be engaged in this matter.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 took into account the following aggravating features:

- Conduct in relation to clinical concerns which puts patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- Early admissions and apologies.
- Evidence of developed insight into your failings.
- Further evidence of training you have undertaken.

The panel first considered whether to take no action but concluded that this would be inappropriate in order to ensure public safety.

It then considered the imposition of a caution order but again determined that, due to 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 next considered whether imposing a conditions of practice order on your 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you are engaging with the NMC and are willing to comply with any conditions imposed and have yourself suggested that you would benefit from supervision and further training.

The panel was of the view that a conditions of practice order is sufficient to protect patients. In this case, there are conditions that could 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 your case because the public interest was served by the previous suspension order. Furthermore, the panel was of the view that imposing a suspension order would be incompatible with its earlier view that you needed to demonstrate how you were tested in a clinical setting.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 9 months, which will come into effect on the expiry of the current order, namely at the end of 16 May 2024. It decided to impose the following conditions which it considered 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 limit your nursing practice to one substantive employer which can be an agency provided that any placement is for a

minimum period of 6 months.

2. You must provide monthly reports from a senior nurse, focusing on:
 - a) Your record keeping and clinical documentations.
 - b) IV drug administration.
 - c) Infection prevention control.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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

The period of this order is for 9 months.

This conditions of practice order will take effect upon the expiry of the current suspension order, on 17 May 2024 in accordance with Article 30(1).

Before the end of the period of the order, 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.

In addition to the monthly reports from a senior nurse, which form part of this order, a future panel reviewing this case would be assisted by:

- Your continuing engagement with the NMC proceedings.
- Updated testimonials, including from your current manager.

This will be confirmed to you in writing.

That concludes this determination.