

**Nursing and Midwifery Council**

**Fitness to Practise Committee**

**Substantive Hearing**

**19 June 2019 & 30 September 2019**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

|                                       |   |
|---------------------------------------|---|
| <b>Name of registrant:</b>            | Cristian Moraru   |
| <b>NMC PIN:</b>                       | 14K0455C  |
| <b>Part(s) of the register:</b>       | Registered Nurse – Sub Part 1<br>(19 November 2014)   |
| <b>Area of Registered Address:</b>    | England   |
| <b>Type of Case:</b>                  | Conviction  |
| <b>Panel Members:</b>                 | Jacqueline Mitton (Chair, lay member)<br>Manjit Darby (Registrant member)<br>Razia Karim (Lay member) |
| <b>Legal Assessor:</b>                | Lucia Whittle-Martin  |
| <b>Panel Secretary:</b>               | Sophie Cubillo-Barsi  |
| <b>Registrant:</b>                    | Not present and not represented   |
| <b>Nursing and Midwifery Council:</b> | Represented by Sylvia Mclean  |
| <b>Facts proved:</b>                  | Charge 1  |
| <b>Fitness to practise:</b>           | Impaired  |
| <b>Sanction:</b>                      | Striking off order  |
| <b>Interim Order:</b>                 | Interim suspension order – 18 months  |

**Details of charge:**

That you, a Registered Nurse:

1. Were convicted on 18<sup>th</sup> July 2014 of an offence of rape in the Court of Turin, Italy  
**Charge found proved**

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Moraru was not in attendance and that written notice of this hearing had been sent to Mr Moraru's registered address by recorded delivery and by first class post on 10 May 2019.

The panel was provided with copies of an email sent by the NMC to the National Crime Agency, dated 22 March 2019, asking for confirmation that Mr Moraru was currently detained in prison and for his full prison address. The panel was also referred to a response from the National Crime Agency, dated 1 April 2019, confirming that Mr Moraru was detained in prison in Vercelli, Italy, and providing details of that address.

The panel took into account that the notice letter sent to Mr Moraru's registered address provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Moraru's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Mclean submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor who referred the panel to the Rules, specifically Rule 34 (1) which states:

"34.—(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at—

- (a) her address in the register; or
- (b) where this differs from, and it appears to the Council more likely to reach her at, her last known address, the registrant's last known address."

When questioned in relation to Rule 34 (1), Ms Mclean reminded the panel that it is Mr Moraru's duty to change his address on the WISER register should he wish to do so. She stated that the NMC cannot change a registrant's address of its own volition. Ms Mclean submitted that in accordance with Rule 34 (1) (b), the NMC had considered whether it appeared more likely that the notice of hearing would reach Mr Moraru at his last known address, namely the prison where he was currently held, but had concluded that it would be wrong to send the notice to him at that location because he had been unwilling to disclose this address himself and there were data protection issues. She confirmed that the NMC had chosen not to contact him at that address.

The panel was satisfied that the NMC had sent notice of the hearing to Mr Moraru's registered address, in accordance with Rule 34 (1) (a), and that the NMC had acted reasonably in its consideration of whether it was more likely that the notice would reach Mr Moraru if it was sent to the prison address.

In those circumstances, the panel was satisfied that Mr Moraru has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

### **Decision on proceeding in the absence of the Registrant**

The panel next considered whether it should proceed in the absence of Mr Moraru.

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
  - (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Ms Mclean referred the panel to a 'Response to Notice of Hearing' form, sent by Mr Moraru's lay representative, Ms 1, which indicated that Mr Moraru would not be attending the hearing, did not want to apply for a postponement and wished for the hearing to proceed in his absence. Ms Mclean further referred the panel to an email from Mr Moraru's representative, dated 12 June 2019, confirming that there were no 'final documents' that they wished to submit prior to the hearing. Ms Mclean submitted that there was no reason to believe that an adjournment would secure Mr Moraru's attendance on some future occasion. She invited the panel to continue in the absence of Mr Moraru.

The panel accepted the advice of the legal assessor who advised the panel regarding the cases of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5* and *GMC v. Adeogba [2016] EWCA Civ 16*.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "*with the utmost care and caution*" as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Mr Moraru. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mr Moraru;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- the charges relate to events that occurred in 2012;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Moraru in proceeding in his absence. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the totality of the circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Moraru.

### **Decision and reasons on application under Rule 19**

Ms Mclean informed the panel that a written request had been received by the NMC to hold the entirety of this hearing in private because of the potential distress publicity would cause Mr Moraru's family. The application was made pursuant to Rule 19 of the Rules.

Ms Mclean adopted a neutral stance in this regard.

The legal assessor reminded the panel that Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public. Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

The panel considered the written submissions in relation to the potential distress which may be caused by not holding the hearing in private. However, the panel noted that information regarding Mr Moraru's conviction is already in the public domain. The panel also noted that the general principle is that hearings should be held in public. In light of

this, the panel was satisfied that the public interest outweighs the interests of any third party.

### **Decision and reasons on application pursuant to Rule 31**

The panel heard an application made by Ms Mclean under Rule 31 of the Rules to allow the following documentation into evidence:

- A letter from the Italian Judicial Authorities to National Crime Agency dated 20 June 2018, containing a European Arrest Warrant and official translation;
- Notification from the High Court of refusal to grant permission to appeal against extradition;
- A UK Extradition Order; and
- An email from the Crown Prosecution Service to the NMC dated 24 January 2019.

This documentation was unsupported by any witness statement.

In the preparation of this hearing, the NMC had sent to Mr Moraru the relevant documentation. Ms Mclean submitted that the documentation is fair and relevant in relation to these proceedings.

The panel heard and accepted the legal assessor's advice. She advised that in accordance with Rule 31 of the Rules, evidence, either in oral or documentary form, may be admitted in evidence but that this is subject to the requirements of relevance and fairness. She reminded the panel that there was no witness statement producing the exhibits in this case, and referred the panel to the factors set out in the case of *Thornycroft v. NMC [2014] EWHC 1565 (Admin)*.

The panel gave the application serious consideration. The panel had no information before it to undermine the authenticity of this documentation, which emanated from

judicial and legal authorities. Further, there was nothing before the panel to support the suggestion raised by Mr Moraru that the official translation within the documentation might be incorrect. In these circumstances, it came to the view that it would be fair and relevant to accept into evidence the documentation as applied for.

## **Background**

The NMC received information from the UK's Extradition Unit, confirming that Mr Moraru had been convicted of an offence of rape in Italy on 18 July 2014. Mr Moraru was sentenced to six years and ten months imprisonment. Mr Moraru was extradited to Italy on 28 December 2018.

On 11 September 2012, Mr Moraru was the nurse on duty at the care home, Villa Augusta (the Home). Patient A was suffering from 'Type II Bipolar Disorder with Depressive Episodes' and was therefore vulnerable. After having administered Patient A's medication, Mr Moraru administered an additional dose of medication, at her request, in order to help her sleep. It is alleged that at 02:00, Mr Moraru entered Patient A's room, where she and another patient was sleeping. Against Patient A's will, Mr Moraru allegedly caressed and kissed Patient A, fondling her breasts and vagina. It is alleged that Mr Moraru lowered Patient A's pyjama bottoms, blocked her against the wall and penetrated her vagina, ejaculating inside and outside. Mr Moraru allegedly ordered Patient A to not 'say a word'.

## **Decision on the findings on facts and reasons**

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Ms Mclean.

The panel heard and accepted the advice of the legal assessor.



The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the registrant was convicted as alleged.

The panel has drawn no adverse inference from the non-attendance of Mr Moraru.

The panel considered charge 1 and made the following findings:

**Charge 1:**

1. Were convicted on 18<sup>th</sup> July 2014 of an offence of rape in the Court of Turin, Italy.

**This charge is found proved.**

After considering the documentation before it, which had been provided by judicial authorities confirming Mr Moraru's conviction, the panel was satisfied on a balance of probabilities that Mr Moraru was convicted, on 18 July 2014, of an offence of rape in the Court of Turin.

**Submission on impairment:**

Ms Mclean invited the panel to take the view that Mr Moraru's actions that led to his conviction amount to a breach of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2008* ("the Code"). She then addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Ms Mclean referred the panel to the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory*

*Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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. ...

Ms Mclean submitted that the first three limbs of the test are engaged in this case. She submitted that Mr Moraru's actions can only be considered as the 'gravest kind', inflicting physical and emotional harm to a patient in his care, during the course of his employment. Ms Mclean submitted that a member of the public would be shocked by Mr Moraru's conviction and deterred from using the services of a registered nurse, thus bringing the nursing profession into disrepute and breaching a fundamental tenet of the profession.

Ms Mclean submitted that the nature of the offence demonstrates a deep seated attitude. She further submitted that Mr Moraru's conduct was not easily remediable. Ms Mclean reminded the panel that it had no evidence before it of any remediation, insight or remorse demonstrated by Mr Moraru. In light of this, Ms Mclean submitted that the risk of repetition is high in this case. She invited the panel to make a finding of impairment on both public protection and public interest grounds.

The panel heard and accepted the advice of the legal assessor.

### **Decision on impairment**

The panel next went on to decide whether as a result of his conviction Mr Moraru's 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

The panel determined that the first three limbs of the test are engaged in Mr Moraru's case. It found that Mr Moraru has harmed a patient, breached a fundamental tenet of the profession and brought the profession into disrepute. The panel is of the view that the serious offence committed by Mr Moraru is not remediable and that there is real risk of repetition in Mr Moraru's case. 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 determined that, in this case, a finding of impairment on public interest grounds was also required. The panel concluded that members of the public would be shocked and concerned should a finding of impairment not be made in light of the serious nature of the conviction.

## **Determination on Interim Order**

Before adjourning the hearing, the panel has considered the submissions made by Ms Mclean that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings. The panel also decided an interim conditions of practice order would insufficient to meet the seriousness of the case and that it was therefore both appropriate and proportionate to impose an interim suspension order.

The period of this order is for 18 months.

That concludes this determination.

## **Resumption of hearing – 30 September 2019**

### **Decision on Service of Notice of Hearing**

Ms Mclean told the panel that the NMC had been informed by Ms 1 on 3 July 2019, that Mr Moraru's registered address had changed and that Mr Moraru was not in attendance today. Written notice of this hearing had been sent to Mr Moraru's amended registered address by recorded delivery and by first class post on 1 August 2019. That notice was delivered and signed for on 7 August 2019, alongside the printed name of 'Moraru'.

Ms Mclean submitted that the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor who referred the panel to the Rules, specifically Rule 34 (1) which states:

"34.—(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at—

(a) her address in the register; or

(b) where this differs from, and it appears to the Council more likely to reach her at, her last known address, the registrant's last known address."

The panel took into account that the notice letter sent to Mr Moraru's registered address provided details of the time, date and venue of the hearing and, amongst other things, information about Mr Moraru's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

The panel was satisfied that the NMC had sent notice of the hearing to Mr Moraru's amended registered address, in accordance with Rule 34 (1) (a), and that the NMC had acted reasonably in deciding that it would be inappropriate to serve Mr Moraru with

notice of today's hearing at his last known address (in a prison in Italy) because he had been unwilling to disclose that address and there were data protection issues.

In those circumstances, the panel was satisfied that Mr Moraru has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

### **Decision on proceeding in the absence of the Registrant**

The panel next considered whether it should proceed in the absence of Mr Moraru.

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
  - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
  - (c) may adjourn the hearing and issue directions.

Ms Mclean invited the panel to proceed in Mr Moraru's absence.

Ms Mclean informed the panel that despite Ms 1 and Mr Moraru having been informed of the date when the hearing would resume, no further communication had been received from Mr Moraru regarding his attendance at today's hearing. Ms Mclean said that the NMC had received an email from Ms 1, the registrant's lay representative, stating:

“If I can come I will, but I will let you know once another date has been confirmed.”

However, the NMC had not received any further communication from Ms 1.

Ms Mclean submitted that there was no reason to believe that an adjournment would secure Mr Moraru’s attendance on some future occasion and invited the panel to continue in the absence of Mr Moraru.

The panel accepted the advice of the legal assessor who advised the panel regarding the cases of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5* and *GMC v. Adeogba [2016] EWCA Civ 16*.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “*with the utmost care and caution*” as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Mr Moraru. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones* and also to the overall interest of justice. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mr Moraru;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- the charges relate to events that occurred in 2012;
- there is a strong public interest in the expeditious disposal of the case.

In the totality of the circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Moraru.



### **Determination on sanction:**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Moraru off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. 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 Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Ms Mclean invited the panel to impose a striking off order. She referred the panel to what, in the NMC’s view, are aggravating factors in Mr Moraru’s case. She submitted that there were no mitigating factors. Ms Mclean submitted that Mr Moraru’s behaviour was so deplorable that only permanent removal would sufficiently protect the public and address the public interest concerns in this case.

The panel considered the following to be aggravating factors:

#### **Aggravating**

- Mr Moraru’s offence occurred whilst he was on duty as a registered nurse;
- The victim was a vulnerable patient who suffered from significant mental health problems; and
- The offence occurred at 02.00, whilst Patient A was under the influence of a sedative medication administered by Mr Moraru at the patient’s request.

The panel determined that there were no mitigating factors in Mr Moraru’s case.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Moraru’s actions and subsequent conviction were not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mr Moraru’s registration would be a sufficient and appropriate response. It was of the view that there are no practical or workable conditions that could be formulated, given the serious nature of Mr Moraru’s criminal behaviour. Furthermore the panel concluded that the placing of conditions on Mr Moraru’s registration would not adequately address the seriousness of this case and would not uphold the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The conduct which led to Mr Moraru’s conviction was a significant departure from the standards expected of a registered nurse. The panel was of the view that his serious breach of the fundamental tenets of the profession is fundamentally incompatible with him remaining on the register. Mr Moraru has not demonstrated any insight into his behaviour as evidenced by Mr Moraru’s letter to the NMC, dated 16 February 2019, in which he states:

“I have been fighting this allegation since 2012, it is now in the process of being dealt with at the European Court.”

In light of all the information before it, the panel determined that in this particular case, a suspension order would not be a sufficient, appropriate or proportionate sanction.

Given the gravity of Mr Moraru's crime, the harm caused to a vulnerable patient and the significant abuse of trust, the panel concluded that to allow Mr Moraru to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Further, the panel was mindful of the principle set out in the case of *CHRE v (1) GDC (2) Fleischman [2005] EWHC 87* that, where a practitioner has been convicted of a serious criminal offence, he should not be permitted to resume his practise until he has satisfactorily completed his sentence.

The panel has concluded that nothing short of a striking off order would be sufficient in this case.

The panel considered that this order was necessary to protect the public, to maintain public confidence in the profession, and send a clear message about the standard of behaviour required of a registered nurse.

## **Determination on Interim Order**

The panel next considered the submissions made by Ms Mclean that an interim order should be made to allow for the possibility for an appeal to be made and determined, on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the striking-off order 28 days after Mr Moraru is sent the decision of this hearing in writing.

That concludes this determination.