

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

**Substantive Order Review Hearing
14 December 2022**

Virtual Hearing

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| Name of Registrant: | Michail Petrovas |
| NMC PIN | 15B0208C |
| Part(s) of the register: | RN1: Adult nurse (9 February 2015) |
| Relevant Location: | Plymouth |
| Type of case: | Misconduct/Lack of competence/Lack of knowledge of English |
| Panel members: | Rachel Cook (Chair, lay member) Linda Jane Tapson (Registrant member) Zaiada Bibi (Lay member) |
| Legal Assessor: | Christopher McKay |
| Hearings Coordinator: | Parys Lanlehin-Dobson |
| Nursing and Midwifery Council: | Represented by Yvonne Ferns, Case Presenter |
| Mr Petrovas: | Present and not represented |
| Order being reviewed: | Suspension order (12 months) |
| Fitness to practise: | Impaired |
| Outcome: | Suspension order (12 months) to come into effect on 3 January 2023 in accordance with Article 30 (1) |

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension of practice order.

This order will come into effect at the end of 3 January 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 3 December 2021.

The current order is due to expire at the end of 3 January 2023.

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, whilst employed as a registered nurse at 'Meadowside & St Francis Care' between August 2016 and August 2019, failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision in that you;

- 1. Around August 2016 were subject to demotion from the role of registered nurse for 6 months due to concerns about your clinical practice*
- 2. Around August 2017 were subject to demotion from the role of registered nurse due to concerns about your clinical practice*
- 3. On 22 February 2019, did not take appropriate action on discovering Resident A had passed away*
- 4. On 01 March 2019, administered a dose of Amlodipine medication to Resident B, which was additional to their prescription*
- 5. On 17 April 2019, administered Colomycin medication to Resident C via a PEG rather than the prescribed route (nebuliser)*

6. *On or around July 2019, collected a urine sample from Resident D otherwise than in accordance with correct clinical technique*
7. *Around May 2019, administered a dose of antibiotic medication to Resident E, which was in addition to their prescription*

And, in relation to Charge 1-7 above, your fitness to practice is impaired by way of your lack of competence.

That you, a registered nurse,

8. *On an unknown date, following your actions in Charge 7 above, you concealed the error by not reporting it/taking appropriate follow up steps*
9. *Your actions at Charge 8 above were dishonest because they were motivated to avoid potential disciplinary action*

And, in relation to Charge 8-9 above, your fitness to practice is impaired by way of your misconduct.

That you, a registered nurse, do not have the necessary knowledge of English to practise safely and effectively as demonstrated by

10a) Your inability to communicate adequately verbally with professional colleagues and/or families and/or

10b) Your failure to achieve a level 7 or above certification for the 'Speaking' element of your IELTS test

And, in relation to Charge 10 above, your fitness to practice is impaired by way of your lack of knowledge of English.'

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the lack of competence, misconduct and lack of knowledge of English, 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. 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 Resident E, by your own admission, was caused physical harm, which the panel considered was a result of your lack of competence and misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that you made admissions to charges 1 to 7 and in an email to the NMC dated 11 November 2021 accepted that you are impaired by way of lack of competence and lack of knowledge of English. However, the panel considered that you lacked insight into your misconduct and the consequences of being dishonest to the patient and your colleagues. The panel considered that your statement states that you are not a dishonest person, but considered that you have not shown an understanding of the impact of your actions on confidence in the nursing profession.

The panel was satisfied that the lack of competence, misconduct and lack of knowledge of English in this case are capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not you have remedied your practice. The panel took into account that you have now provided evidence that you passed the speaking element of the IELTS test in September 2021 (scoring 7.5), but noted that you did not reach the required standard for the writing element (scoring 6.0). The panel also noted that you are completing a clinical training course in Greece. The panel considered that it has not had sight of any clinical training

certificates or assessments you have completed, and further noted that you stated you have not completed any learning to improve your English language skills. The panel also noted, notwithstanding the difficulties presented by remote hearings, that you found, at times, it difficult to make yourself understood during the hearing.

The panel is of the view that there is a risk of repetition of all three aspects based on your lack of insight into your misconduct and the lack of information about remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 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:

- *You made multiple errors over a prolonged period of time. This was despite supervision and support provided by the Home.*
- *Ms 1 stated that there was no sustained improvement in your competence.*
- *Your actions put patients at risk of harm.*
- *The Home offered you additional support which you did not accept.*
- *You have demonstrated little or no remorse for your actions.*
- *You deliberately concealed your error.*

The panel also took into account the following mitigating features:

- *You made full admissions to charges 1 to 7.*
- *The dishonesty was a single instance.*
- *Your dishonesty was discovered because you told Ms 1 of your error.*
- *You cooperated fully with the Home's investigation.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. 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, the public protection issues identified, and the lack of remediation, 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 due to the concerns about your lack of competence, misconduct and lack of knowledge of English, this case 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. 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;*
- Potential and willingness to respond positively to retraining;*
- 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 is of the view that there are no practical or workable conditions that could be formulated, given the wide-ranging and serious nature of the charges in this case. The panel determined that as your insight is still developing, particularly in relation to dishonesty, conditions of practice would not be sufficient to protect the public. The panel considered that there are identifiable areas of your practice in need of retraining and assessment. The panel considered that there is evidence of general incompetence, and noted that the concerns spanned a prolonged period of time and were wide-ranging. The panel noted that you stated you recognise you need to complete further training, but considered that you did not fully engage with extra training, particular around communication, that was offered by the Home.

The panel concluded that conditions of practice would not sufficiently protect the public or mark the seriousness of the charges found proved.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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;*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel considered that whilst the concerns about your lack of competence and lack of knowledge of English were wide-ranging and took place over a prolonged period, there is only one incident of misconduct. The panel considered that there is no evidence of harmful deep-seated personality or attitudinal problems. The panel noted that you have not worked as a nurse in the United Kingdom since the incident, but considered that there is no evidence of repetition of the misconduct. The panel considered that your insight is limited, but developing, and considered that there is a substantial risk of you repeating the behaviour found proved. However, the panel considered that it had found your conduct capable of remediation. Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction as it would protect the public, maintain the public interest and give you the opportunity to strengthen your practice.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, including that the dishonesty appears to be a one off incident, the panel concluded that it would be disproportionate. The panel was satisfied that in this case, the single instance of misconduct was not fundamentally incompatible with remaining on the register. 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 noted the hardship such an order will inevitably cause you. However this is outweighed by the public interest in this case.

The panel considered that a suspension 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 12 months was appropriate in this case to mark the seriousness of the misconduct and to give you sufficient time to address the concerns.

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 on your conduct and the implications of it;*
- *Any evidence of strengthening of your practice;*
- *Evidence you have improved your knowledge of English;*
- *Evidence that your communication has improved, for example evidence of training around communication in a clinical setting such as an Occupational English Test (OET) in clinical communication or similar;*
- *Evidence that you have completed training in relation to the duty of candour;*
- *Evidence that you have kept up to date with recent nursing policy and practice;*
- *Evidence of training completed relating to medication administration, for example an online course; and*
- *References from any employer or education provider relating to healthcare.'*

Decision and reasons on current impairment

This 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 written and oral evidence before it. Ms Ferns made submissions on behalf of the NMC. She submitted that your fitness to practise remains impaired and you have not been able to demonstrate remediation. Therefore, the risk of harm to the public identified by the initial panel remains. Ms Ferns submitted that a finding of current impairment is necessary for the protection of the public.

Ms Ferns referred the panel to the case of *Abrahaem v General Medical Council [2008] EWHC 183 (Admin)* and submitted that there remains a persuasive burden on you to demonstrate that you have fully acknowledged why your past professional performance was deficient and also to demonstrate that you have sufficiently addressed your past impairment through insight, application, education, supervision, and/or other achievements. She reminded the panel that the previous panel on 3 December 2021 provided "a helpful steer" to you in their list of recommendations.

Ms Ferns told the panel that you have provided:

- A reflective statement on your conduct and the implications of it;
- Evidence that you have completed training in relation to the duty of candour;
- Certificate of completion of clinical training

Ms Ferns told the panel that you have not provided:

- Any evidence of strengthening of your practice;
- Evidence you have improved your knowledge of English;

- Evidence that your communication has improved, for example evidence of training around communication in a clinical setting such as an Occupational English Test (OET) in clinical communication or similar;
- Evidence that you have kept up to date with recent nursing policy and practice;
- References from any employer or education provider relating to healthcare.

She submitted that you have not gained full insight as you are unable to comprehend how as a registered nurse, your actions would be viewed by the public as a representative of the nursing profession and how the public view of the nursing profession would be damaged as a result of your misconduct.

With regard to the IELTS tests she submitted that knowledge of English and communication is a very important requirement of a registered nurse and also being able to articulate and communicate properly at all times. Ms Ferns submitted that you have yet to provide evidence that your knowledge and communication of English has improved.

Ms Ferns submitted you have not shown any evidence of strengthening your practice as you are not currently employed in the healthcare sector in Greece. You returned to Greece in September 2020 and started the Clinical Course in November 2020 which lasted 18 months and was a full-time course.

Ms Ferns reminded the panel 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 may therefore be of the view that, in this case, that a finding of continuing impairment on public interest grounds is also required and for these reasons, your fitness to practise remains impaired. She submitted that there is no information to undermine the previous panels finding that your practice is currently impaired.

Ms Ferns invited the panel to confirm the suspension order.

The panel also had regard to your oral evidence.

You told the panel that you returned to Greece in in September 2020. You said that you undertook a course in clinical training in Greece 5 days a week for 18 months and completed the course in May 2022. You told the panel that your priority at the moment is to seek employment in Greece, ideally in the health sector but if this is unattainable you would consider working in other sectors. You told the panel that you think this would help improve your knowledge of the English language.

You said that you accept that it is a requirement to pass the IELTS test and have done some self-studying online, and that you would like to retake the test no matter the outcome of today's hearing.

You told the panel that you do not consider yourself fit to practise in the UK at the moment, stating that you feel *'not fully competent to work'*.

In response to questions from Ms Ferns you said that your misconduct in relation to the extra administration of antibiotics could result in side effects for the patient. You said that your misconduct could have led to a loss of trust in the profession from members of the public and would have an impact on the entire working relationship. You said that the public would be disheartened.

You said that from your perspective, it was a combination of factors that led you to act in that manner and a lack of self-control. You went on to say that your actions should not affect the public perception of the profession. You said that you definitely feel remorse for your actions. You said that you understand the consequences of your actions for all those involved and that you would definitely not act in the same manner under any circumstances.

You said that you did not have a lack of knowledge of English, but it was a lack of mental clarity and the inability to communicate and express yourself clearly at the time of the incidents. You said that regardless of this you would like to develop your English language by taking the test.

You said that you have not provided references for today's hearing because you thought it would be '*indecent*' and '*improper on my part*', to ask former colleagues or employers for a reference while you are suspended.

In response to panel questioning, you said that you want to do the IELTS course no matter what, but you are trying to find employment in Greece first.

You went on to say that if you were a member of the public and were made aware of case of this kind, you personally would not cast a judgement on the nursing profession, as a whole based on one individual's mistakes.

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 that you had insufficient insight. At this hearing the panel considered that you have developing insight. The panel had regard to your reflective statement and considered that you have expressed genuine remorse for your actions and this remorse was amplified during your oral evidence. However, the panel was of the view that despite repeated questioning from the panel, you are yet to demonstrate insight into how as a registered nurse, you are a representative of the nursing profession, and as such, that your actions would have an impact on the reputation of the profession.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the duty of candour training you completed. It also noted that you undertook a clinical training course in November 2020 to May 2022 in Greece, where you would like to find employment. The panel were not provided with detail of this course and whether it addressed the concerns raised in the charges found proved on 3 December 2021. The panel also noted that you are yet to undertake and pass the IELTS test. As well

as not providing evidence of the content of the clinical training course, you have not provided any reflections following this training about what you have learnt. Taking into account all the above, the panel formed the view that you have not taken the necessary steps to satisfactorily strengthen your practice as a registered nurse.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel was of the view that there has been limited progress made by you since the original hearing, despite the previous panel recommendations. In light of this, today's panel determined that a risk of repetition of the charges found proved, remains in this case. 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 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 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 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to your misconduct, lack of competence and lack of knowledge of English.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice. It would also give you an opportunity to gain evidence to attest to your honesty, clinical ability and knowledge of English in your workplace assignments since the substantive hearing. It considered that you also need to evidence your full understanding of how the actions of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for.

The panel went on to consider a striking-off order but noted the SG: *"Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register? Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?"*

It decided that it was not the only sanction which would be sufficient to protect patient's, members of the public, maintain professional standards and uphold public confidence in the profession. The panel took into account your continued engagement, developing insight and the training courses you have completed.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to 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 you with an opportunity to continue to engage with the NMC and any further recommendations put forward. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 3 January 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.

Any future panel reviewing this case would be assisted by:

1. A written reflection demonstrating:

- Your understanding of the impact of your misconduct, lack of competence and lack of knowledge of the English language on patients, colleagues, and the reputation of the profession
- How you have strengthened your practice, with specific reference to all the areas of your nursing practice outlined in the charges found proved and what you would do differently should you find yourself in a similar position.

2. Evidence of training relating to medication administration.

3. References or testimonials from any employer or education provider, detailing an outline of the syllabus and the level of your attendance and engagement.

4. Evidence that your communication has improved, for example evidence of training

around communication in a clinical setting such as an Occupational English Test (OET) in clinical communication or similar;

5. Evidence that you have kept knowledge up to date regarding nursing practice;

6. Your continued engagement in these proceedings including your attendance at a review hearing (virtual attendance is sufficient).

This will be confirmed to you in writing.

That concludes this determination.