

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

**Substantive Order Review Hearing
Friday 11 March 2022**

Virtual Hearing

Name of registrant: Bianca-Elena Popa

NMC PIN: 15E0349C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – May 2015

Area of registered address: Romania

Type of case: Misconduct

Panel members: Peter Wrench (Chair, Lay member)
Julie Clennell (Registrant member)
Georgina Wilkinson (Lay member)

Legal Assessor: Nicholas Levisieur

Hearings Coordinator: Jumu Ahmed

Nursing and Midwifery Council: Represented by Mary Ellen Stewart, Case
Presenter

Mrs Popa: Not present and not represented in the hearing

Order being reviewed: Conditions of practice order (2 years)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (3 years)
to come into effect on 15 April 2022 in
accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Popa was not in attendance and that the Notice of Hearing had been sent to Mrs Popa's registered email address on 10 February 2022.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and the GoToMeeting link of the virtual hearing and, amongst other things, information about Mrs Popa's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Stewart, on behalf of the Nursing and Midwifery Council (NMC), submitted that it 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.

In the light of all of the information available, the panel was satisfied that Mrs Popa has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Popa

The panel next considered whether it should proceed in the absence of Mrs Popa. The panel had regard to Rule 21 and heard the submissions of Ms Stewart who invited the panel to continue in the absence of Mrs Popa. She submitted that Mrs Popa had voluntarily absented herself.

Ms Stewart referred the panel to the RCN letter dated 10 March 2022 which stated:

'Our member will not be attending the hearing nor will she be represented. No disrespect is intended by her non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in her absence. She is keen to engage with the proceedings.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Popa. In reaching this decision, the panel has considered the submissions of Ms Stewart, the representations made on Mrs Popa's behalf, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Popa;
- The RCN, on behalf of Mrs Popa has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- The RCN had also provided written representations for the panel today;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Popa.

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

At the outset of the hearing, the panel took into account the RCN's request for this case be held partly in private on the basis that proper exploration of Mrs Popa's case involves her personal circumstances. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Stewart indicated that she supported the application to the extent that any reference to Mrs Popa's personal circumstances should be heard in private.

The legal assessor reminded the panel that while 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 by the interests of any party or by the public interest.

Having heard that there will be reference to Mrs Popa's personal circumstances, the panel determined to hold the hearing partly in private as and when such issues are raised.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order.

This extension will come into effect at the end of 15 April 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 2 years by a Fitness to Practise Committee panel.

The current order is due to expire at the end of 15 April 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a Registered Nurse, on 14 January 2019, in relation to Resident A:

- 1) failed to take observations of Resident A when her presenting condition meant it would have been clinically appropriate to do so;*
- 2) failed to take observations of Resident A when her family informed you that her presenting condition was, in their experience, abnormal;*
- 3) failed to escalate resident A's care and/or obtain emergency care for Resident A when it would have been clinically appropriate to do so in response to:*

a) *her presenting condition;*

b) *her family's concerns*

4) *failed to record:*

a) *any observations taken in respect of Resident A and/or your reasons for not doing so in light of her presenting condition;*

b) *what action you took to escalate Resident A's care and/or your clinical judgement that escalation was not required*

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 then went on to consider whether Mrs Popa's fitness to practise is currently impaired by reason of her misconduct, which she accepts. The panel endorsed paragraphs 14-25 of the provisional agreement in that it determined that it found Mrs Popa's fitness to practise is currently impaired.

The panel agreed that Mrs Popa had put a resident at unwarranted risk of harm, in the past brought the profession into disrepute and breached fundamental tenets. The panel is of the view that clinical errors in this case are capable of being remedied. However there is insufficient evidence at this time to demonstrate that the clinical concerns raised by this case namely (stroke identification and management) have been adequately addressed. The panel is of the view that, at present, there is a risk of repetition of the misconduct. Therefore, a finding of current impairment is required on public protection grounds. Furthermore a finding of current impairment is also required to declare and uphold proper professional standards and protect the reputation of the nursing profession. The panel agreed

that the need to protect the public, maintain public confidence in the profession, and uphold proper standards would not be served without a finding of impairment.'

The original panel determined the following with regard to sanction:

'Having found Mrs Popa's 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:

- *Serious potential for unwarranted risk of harm;*
- *Registrant dismissed the concerns of her colleagues, the resident's relatives and another resident.*

The panel also took into account the following mitigating features:

- *Acceptance of the charges;*
- *Evidence of remorse.*

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 Mrs Popa's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Mrs Popa's misconduct was not at the lower end

of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Popa's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

- 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 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 Mrs Popa would be willing to comply with conditions of practice.

The panel was of the view that it was in the public interest that, with appropriate safeguards, Mrs Popa should be able to return to practise as a nurse.

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

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Popa's case because these sanctions would be disproportionate in light of the matters stated above. A suspension order would not enable Mrs Popa to demonstrate safe practice as a nurse in a clinical setting. Further, there is a public interest in allowing, where appropriate, a Registered

Nurse, who has shown good insight into remediable failings, to return to practice and demonstrate full remediation.

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

The panel agreed with the CPD that the following conditions are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

*1. You must identify a clinical supervisor to work with you to create a personal development plan (PDP) which addresses the following areas of your practise:
Stroke identification and management*

You must:

- a) Send your case officer a copy of your PDP within 28 days of starting employment as a registered nurse.*
- b) Meet with your clinical supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
- c) Send your case officer a report from your clinical supervisor at least 14 days before any review of this order. This report must show your progress towards achieving the aims set out in your PDP.*

2. 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.*

3. 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.

4. You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.
- b) Any agency you apply to or are registered with for work.
- c) Any employers you apply to for work (at the time of application).
- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
- e) Any current or prospective patients or clients you intend to see or care for when you are working independently

5. You must tell your case officer, within seven days of your becoming aware of:

- Any clinical incident you are involved in.
- Any investigation started against you.
- Any disciplinary proceedings taken against you.

6. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- Any current or future employer.
- Any educational establishment.
- Any other person(s) involved.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Popa's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In

considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, the RCN's written representation and Mrs Popa's letter. It has taken account of the submissions made by Ms Stewart on behalf of the NMC.

Ms Stewart provided a detailed background of Mrs Popa's case to the panel and referred the panel to the relevant documentation.

Ms Stewart submitted that Mrs Popa had provided a letter to the panel informing of her personal circumstances. [PRIVATE].

Ms Stewart referred the panel to the RCN's letter dated 10 March 2022. She told the panel that the RCN had submitted that it was not possible for Mrs Popa to improve her practice as she was not practising.

[PRIVATE]. Ms Stewart submitted that Mrs Popa had expressed a desire to return to practice, but that it is not clear as to what will happen in the future. Ms Stewart invited the panel to impose the order for the maximum period of three years to allow Mrs Popa to be given the opportunity to engage.

Ms Stewart submitted that conditions of practice order is the most appropriate sanction. She submitted that a more serious sanction, namely a suspension order or a striking off order, would be wholly disproportionate. Similarly, a less serious sanction, such as no order or caution order, would also not be appropriate.

Ms Stewart submitted that it will be open to Mrs Popa to request an early review once she has returned to practice and she has, in particular, been able to comply with condition 1.

The panel had regard to the RCN's letter dated 10 March 2022. It stated:

'Our client has not been working as a Nurse since the substantive hearing. [PRIVATE]. She explains in the letter that she is unsure when she might begin practicing as a Nurse again. [PRIVATE].

Since our client has not worked as a nurse, it is submitted that the question of whether the conditions have been complied with is not relevant.

We note that the previous panel thought that our client had shown "good insight." There is, we submit, nothing to indicate that her insight level has changed. It is accepted that our client would not have been able to maintain her skills and practical knowledge in view of the fact that she has not practised as a nurse since the last hearing. However, we submit that there is no sensible basis on which to hold this against her given the reasons why she has not practised.

Overall, we submit that the risk profile has not changed since the conditions of practice were imposed. Accordingly, we submit that any change to the order's terms is not justified. we ask that the panel extend the order for the maximum period, so as to allow our member to practise in accordance with the conditions and to remediate her failings. We note That the substantive panel stated that "there is a public interest in allowing, where appropriate, a Registered Nurse, who has shown good insight into remediable failings, to return to practice and demonstrate full remediation." [sic]

we submit that same consideration applies, such that it is not in the public interest to create any greater restriction on our client's practise, since this would have the effect of creating more friction for our member in obtaining work in healthcare. [sic]

If the Panel is not minded to agree with our submission then we ask that this review be adjourned to the earliest available date to allow our member to be represented and/or attend.'

The panel had regard to Mrs Popa's letter which stated:

[PRIVATE]. At this moment I am not sure if I will return to work in the U.K. as a nurse. i can assure you that i would like to, but regarding the uncertain situation that is unfolding at the moment, i cannot say for sure if i will be able to return. i will definitely let you know if i return to work.' [sic]

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 Mrs Popa's fitness to practise remains impaired.

The panel took into account the RCN's letter and Mrs Popa's letter on her personal circumstances. The panel was of the view that there had been no material change of circumstances since the last substantive hearing. It noted that Mrs Popa had not been practising as a registered nurse since the conditions of practice order was imposed, and therefore, she had not had the opportunity to engage with the conditions. Therefore, the panel was of the view that the concerns identified by the original substantive hearing panel had not been addressed. The panel therefore considered that a risk of repetition remains and that patients would be placed at real risk of harm if Mrs Popa were permitted to practise without restriction. The panel therefore determined that a finding of impairment remains 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 Mrs Popa's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Popa fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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 Mrs Popa's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Popa's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether extending the conditions of practice order on Mrs Popa's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable. The panel noted that due to Mrs Popa's personal circumstances, she had not had the opportunity to engage with the conditions imposed in the last two years. The panel noted that Mrs Popa had a desire to return to nursing practice. It was of the view that Mrs Popa should be afforded the opportunity to engage with the conditions as and when she returns to practice. The panel were satisfied that Mrs Popa's failings were remediable, and that this could be achieved through workable conditions of practice, as the original substantive hearing panel had determined.

In any event, the panel considered the current conditions to be the minimum necessary in order to address the concerns, protect the public and meet the wider public interest. In its view to reduce the scope of the conditions would not be appropriate and would leave the

public at risk given the lack of remediation since the original hearing. The panel was satisfied that the current conditions remained appropriate, workable, practicable and proportionate.

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 Mrs Popa's case because she has not had the opportunity to engage with the conditions of practice order. Further, Mrs Popa had been engaging with the proceedings and keeping the NMC up to date with her personal circumstances. Further, Mrs Popa had expressed her desire to return to the nursing practice.

Accordingly, the panel determined, pursuant to Article 30(1)(a) to extend the current conditions of practice order for a period of three years, which will come into effect on the expiry of the current order, namely at the end of 15 April 2022. It considered that the following conditions remain 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 identify a clinical supervisor to work with you to create a personal development plan (PDP) which addresses the following areas of your practise:
Stroke identification and management

You must:

- a) Send your case officer a copy of your PDP within 28 days of starting employment as a registered nurse.
- b) Meet with your clinical supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.
- c) Send your case officer a report from your clinical supervisor at least 14 days before any review of this order. This report must show your progress towards achieving the aims set out in your PDP.

2. 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.

3. 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.

4. You must immediately give a copy of these conditions to:

a) Any organisation or person you work for.

b) Any agency you apply to or are registered with for work.

c) Any employers you apply to for work (at the time of application).

d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

e) Any current or prospective patients or clients you intend to see or care for when you are working independently

5. You must tell your case officer, within seven days of your becoming aware of:

- Any clinical incident you are involved in.
- Any investigation started against you.
- Any disciplinary proceedings taken against you.

6. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- Any current or future employer.
- Any educational establishment.
- Any other person(s) involved.

The period of this order is for three years to give Mrs Popa the opportunity to engage with the conditions of practice order as and when she returns to the nursing practice.

The panel noted that if Mrs Popa's circumstances change and she returns to nursing practice, Mrs Popa can request an early review.

This extension of the conditions of practice order will take effect at the point at which the current conditions of practice order would otherwise have expired, namely the end of 15 April 2022 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 Mrs Popa has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Mrs Popa's continued engagement with the NMC; and
- Once Mrs Popa returns to practice, evidence of engaging with the conditions of practice order that addresses the concerns identified in her practice.

This will be confirmed to Mrs Popa in writing.

That concludes this determination.