

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

**Restoration Hearing
Monday 26 - Tuesday 27 September 2022
Virtual Hearing**

Name of Applicant: Vilma Carandang

NMC PIN: 03G04000

Part(s) of the register: RN1 - Registered Nurse – July 2003

Relevant location: Wiltshire

Panel Members: Rachel Ellis (Chair, Lay member)
Claire Rashid (Registrant member)
Janine Green (Lay member)

Legal Assessor: Tim Bradbury

Hearings Coordinator: Sharmilla Nanan

Mrs Carandang: Present and not represented

Nursing and Midwifery Council: Represented by Harriet Gilchrist, Case Presenter

Outcome: Application granted subject to the applicant satisfying the NMC's return to practice standards and a conditions of practice order

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

At the outset of the hearing, Ms Gilchrist, on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held in private on the basis that proper exploration of your case involves reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference to your health 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.

The panel determined to go into private session in connection with your health as and when such issues are raised in order to protect your right to privacy.

Determination of application for Restoration to the Register:

This is a hearing of your first application for restoration to the NMC Register. A panel of the Conduct and Competence Committee directed on 25 August 2016 that your name be removed from the register based on its findings with regard to the facts of your case and your impairment. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001 ("the Order"), as at least five years have now elapsed since the date of the striking-off order which came into effect on 10 October 2016.

At this hearing the panel may reject your application or it may grant your application unconditionally. It may grant your application subject to your satisfying the requirements of Article 19(3) and/or it may make a conditions of practice order.

The panel has considered your application for restoration to the Council's Register.

Background

You were employed at Milford House Care Home (the Home) where you worked as a staff nurse. On the nightshift of 2/3 January 2011, you failed to follow the Home's policy and procedures for preparing a syringe driver of midazolam. Ms 1 challenged you as to why you had prepared the medication on your own. You said to Ms 1 "*if you persist I will slap you and in fact I want to slap you right now*" or words to that effect. You were standing an arm's length away from Ms 1 and pointed your finger. A short time later, at the nurse's station you shouted "*out now, out now*" or words to that effect to Ms 1 and pushed her. You admitted in a disciplinary hearing with the Home that you threatened to slap Ms 1 and that you started to prepare the controlled drugs on your own.

You were working concurrently at Newton House, a care home owned by Glenside Manor Healthcare Services Units as a healthcare assistant until you completed competencies to ensure you had the skills to work with high dependency residents. On 20 June 2011 you were transferred to Pembroke Lodge Care Home (the Lodge).

The deputy manager of the Lodge considered your conduct to be unprofessional when you assisted him in hoisting a resident on 22 June 2011. This resident's care plan stated that he should only be hoisted in a forward direction because he was very sensitive to pain when being moved. However, it was alleged that you insisted on doing it sideways which caused the resident distress, and he was calling out in pain during the process. You ignored the instructions of the deputy manager and in the end, he had to seek assistance from another colleague.

On the same day you failed to respond to Resident C, by failing to reposition him when he had restricted breathing. The resident was a high dependency patient as he had no movement in his limbs. A care assistant, saw you in the resident's room staring at him. His head had moved forward, and his breathing was restricted but you failed to do anything to respond. You said to the care assistant, "*his head needs moving*" without moving your gaze. You then left the room, and the care assistant repositioned the resident's head.

On 19 August 2011 you are said to have given Resident D a mug of hot coffee. The resident had a weakness on the left side of her body and there was therefore a risk that

she could spill the coffee and scald herself. The error was drawn to your attention by another staff nurse, but you ignored her and walked away.

On the same day you refused an instruction from Ms 3 to empty the catheter bag of a service user. The resident's catheter bag needed to be emptied before he went for lunch. You failed to do this and were asked again to do it. You said to your colleague who made the request of you that if she wanted you to do anything she would have to ask the person in charge to tell you what needed to be done. This was said loudly in front of family members.

You left two shifts early. On 14 July 2011, you left your shift early after a disagreement with a colleague in a resident's room. On 5 August 2011, you had asked if you could leave early. You were told no and asked to work with two carers. You later approached your colleague and stated that you were going home and walked out before the end of your scheduled shift time at 8pm. In an investigatory meeting with the Lodge, you admitted that you left your shifts early on these occasions.

The panel at the substantive hearing, considered the following charges:

“That you, whilst employed at Milford House Care Home as a Registered Nurse:

1. On 2/3 January 2011:

a) Failed to follow correct procedures for preparing the controlled drug Midazolam in that you prepared the medication and signed the controlled drug book without a second nurse present;

b) In respect of your colleague Ms 1, you;

(i) Shouted at said colleague;

(ii) Threatened to slap said colleague;

(iii) Pushed said colleague.

That you, whilst employed at Pembroke Lodge Care Home as a Registered Nurse:

2. *On or around 22 June 2011, in respect of Resident B, you;*

(a) Did not follow the Care Plan in respect of hoisting Resident B;

(b) Did not follow the instructions of Deputy Manager Ms 2 in respect of hoisting Resident B;

(c) Did not follow the Care Plan in that you permitted Resident B to wet shave himself.

3. *On or around 22 June 2011, failed to provide adequate care to Resident C in that you failed to respond to his needs to be repositioned when he had restricted breathing.*

4. *On 19 August 2011, in respect of Resident D, you;*

(a) Gave or allowed Resident D to be given butter when you knew or ought to have known Resident D was allergic to butter;

(b) Gave or allowed Resident D to be given a hot drink in a mug when you knew or ought to have known that the drink should have been served in a beaker with a lid/'sip cup'.

5. *Left shifts early without authorisation on:*

(a) 14 July 2011;

(b) 5 August 2011.

6. *On 19 August 2011, failed to work effectively as part of a team with colleague Ms 3 by refusing to empty 2 catheter bags.*

And in light of the above, your fitness to practise is impaired by reason of your misconduct."

You attended the substantive hearing which took place between 3 - 7 March 2014. You made admissions to charges 1a, 1bi, 2c, and 5a. The panel found the remaining

charges proved save for charge 4a. The panel found your fitness to practise impaired and imposed a conditions of practice order for 12 months.

The substantive conditions of practice order was reviewed and a 12 month suspension order was imposed on 8 April 2015. On 17 February 2016, the order was reviewed, and the suspension order was extended for 6 months. On 25 August 2016, the reviewing panel decided to impose a striking off order to take effect on 10 October 2016.

The substantive order review panel, on 25 August 2016, determined the following with regard to impairment:

“The panel has considered carefully whether Ms Carandang’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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

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 Ms Carandang’s fitness to practise remains impaired. The panel was of the view that Ms Carandang’s lack of engagement with these proceedings since her substantive hearing, despite the recommendations of the previous panel, demonstrates a potential attitudinal problem. The panel had no information to suggest that Ms Carandang had taken steps to remediate her practice since the substantive hearing and it therefore determined that the risk of repetition remains.

The panel has borne in mind that its primary function was 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 required.

For these reasons, the panel finds that Ms Carandang's fitness to practise remains impaired."

The substantive order review panel went on to determine the following with regard to sanction:

"The panel first considered whether to take no action but concluded that this would be inappropriate.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and the fact that the misconduct in this case is not at the lower end of the spectrum.

The panel next considered a conditions of practice order but, as Ms Carandang is not engaging with these proceedings, the panel could not be satisfied that Ms Carandang would comply with any conditions it imposed. Ms Carandang has provided this panel with no evidence that she would be willing to engage with re-training and so could not formulate any workable conditions.

The panel next considered imposing a further suspension order. The panel noted that Ms Carandang has not shown remorse for her misconduct. Further Ms Carandang has not demonstrated any insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Ms Carandang no longer posed a risk to the public. The panel determined that a further period of

suspension would not serve any useful purpose given Ms Carandang's lack of engagement. The panel was of the view that the public interest would not be adequately served by prolonging Ms Carandang's period of suspension to no purpose.

The panel determined that the original matters found proved, along with Ms Carandang's continued non-engagement, made it incompatible with her continued registration. For these reasons the panel concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order."

Submissions and evidence

The panel took into account the documentary evidence, which included the contents of your application for restoration which you submitted to the NMC, three written references, [PRIVATE].

The panel had regard to the submissions of Ms Gilchrist, on behalf of the NMC, and those made by you.

Ms Gilchrist, on behalf of the NMC, outlined the background of the case and the facts that led to the striking-off order. She referred this panel to the previous panel's decision which resulted in your removal from the NMC's register. Ms Gilchrist referred the panel to the test set out in Article 33(5) of the Order.

You also provided evidence under oath. You stated that nursing is your calling and profession. You informed the panel that you have worked with your current employer for 5 years and 6 months as a care assistant. In that time, you stated that you have demonstrated a high standard and excellent example of how to care for patients. You stated that you informed your manager that you would like to be a senior care assistant which was received positively, and you were promoted the next day on 26 January 2022 to senior care assistant. As a senior care assistant, you delegate tasks to the other carers, lead the team and maintain a high level of patient care. You provided the panel with some examples of care that you give, for example, hoisting patients as required.

You accepted that as you are not a registered nurse some of your caring responsibilities are limited, for example, you cannot change resident's catheters or administer medications independently to patients. You stated that you have worked as a care assistant and that you are now confident to provide a higher level of care, as someone who is responsible to look after patients.

You informed the panel of the mandatory training that you have completed in your role as a senior care assistant and care assistant. You acknowledged that, whilst you may have obtained training certificates following the substantive NMC hearing, [PRIVATE]. Further, you acknowledged that there are gaps in your knowledge as a nurse and noted that your nursing experience was from over 10 years ago. You stated that you have spoken to your manager who said that she was content to provide supervision, training and shadowing from the registered nurses until you are confident and competent.

You stated that you had not approached your current manager for a reference of your current working practices for this hearing and had only asked your previous manager.

You informed the panel of your personal circumstances and health concerns. [PRIVATE]. You said that you did not blame your employer for recording and reporting all of these matters against you to the NMC. You stated that when the NMC imposed the conditions of practice, you did not work as a nurse following this for the whole time. You stated the last time you actively practised as a nurse was in 2012. You stated that despite the difficulties you faced you have learned a lot [PRIVATE].

You stated that your actions outlined in the charges were unprofessional and were unsafe for patients. You said that not collaborating with your team was not fair to patients as it meant that care was not being delivered to a high standard. You also stated that you couldn't believe that you had behaved like that. You noted that members of the public would be angry to learn of your previous conduct as a nurse.

The panel also heard live evidence from two witnesses called on your behalf who provided character references. The two witnesses acknowledged that they had not worked with you in a professional capacity but both stated that based on their personal

knowledge of you and [PRIVATE] they were confident that you were ready to return to nursing.

Ms Gilchrist provided the panel with a background of your case and referred the panel to the relevant pages in the bundle. She submitted that your short statement of why you want to return to nursing does not demonstrate any insight into your past conduct. She also noted that the panel had not heard live evidence from your current employer and stated that it was for the panel to consider what weight to attach to the witnesses it heard from.

Ms Gilchrist referred the panel to the references you provided. She noted that your former manager said that she had no concerns regarding your work practice or your physical and emotional wellbeing. Further, your former manager said *“Wilma was extremely knowledgeable and demonstrated care, compassion and empathy when supporting the residents, their friends and family, and her colleagues. She treated everyone with dignity and respect and could be relied upon to work to high standards and in line with residents’ care plans and company policies and procedures.”*

Ms Gilchrist submitted that it is ultimately a matter for the panel to determine in light of the information before it whether you are suitable to be returned to the NMC register.

You submitted that you are ready to be restored to the NMC register as nursing is your calling. You stated that you are determined to return to nursing and that working as a care assistant was training to prepare you for the next level of tasks. You noted that whilst in your role when you were unwell you told your supervisor. You demonstrated a high standard of care and strove to motivate the care assistant team. You submitted that you have a strong foundation to build your return to the nursing profession and that you are ready to be restored to your profession.

The panel accepted the advice of the legal assessor.

The legal assessor referred the panel to the test provided in Article 33(5) of the Order. Firstly, you must satisfy the panel that you satisfy the requirements of Article 9(2)(a) (approved qualification and prescribed education, training and experience) and Article

9(2)(b) (capable of safe practice). Secondly, you must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2016, you are a *“fit and proper person to practise as a registered nurse”*. The legal assessor advised the panel that it is for you to satisfy the panel of these matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

Decision on the application for restoration

The panel has considered your application for restoration to the NMC register very carefully. It has decided to allow the application, subject to the satisfactory completion of the additional education and training as set out in the NMC return to practice standards, and with a conditions of practice order.

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was upon you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse.

The panel took into consideration your written statement about why you want to return to nursing practice which it noted did not contain information regarding your insight. The panel accepted your oral evidence and was impressed by your evident commitment to return to safe nursing practice and also your candour in acknowledging your previous shortcomings and limitations.

[PRIVATE] The panel was of the [PRIVATE] that you understood why the incidents had been referred to the NMC.

The panel bore in mind that you were previously employed as a care assistant from March 2017, shortly after being struck off the NMC register and that you were promoted to your current role of senior care assistant in January 2022. It noted that you have remained in a care role for a long time.

The panel noted that it did not have a recent reference from your current manager however it took into consideration the reference provided by your former manager which stated:

“Wilma took accountability for her actions and was keen to improve and develop, taking on constructive feedback to facilitate this. She was committed to supporting her colleagues to do likewise and was often put with new staff members to support their induction and act as a mentor. Wilma raised concerns with the appropriate person in the appropriate format and would carry out any requests in a timely manner.

Working with Wilma during the height of the pandemic I was impressed by her sense of duty, her flexibility and her collaboration with others. It was a difficult time for all but she met situations with good humour and even temper, even when others were finding things challenging.

... She has shown a commitment to learning from the events that led to her removal from the register and taken full accountability for her actions when discussing them with me. I personally feel that the Wilma I read about in the transcripts could not be further from the Wilma that I worked with and know. I am confident that she now demonstrates all the characteristics that make a good nurse, and I would not hesitate to employ her.”

The panel took into consideration the mandatory training that you have completed in the sphere of your senior care assistant and care assistant roles. It noted that you have not done any further training as you have considered that it is not appropriate to do so in light of the NMC’s striking off order but that you were content to do training under the supervision of a registered nurse until they were satisfied that you were safe to work on your own.

The panel considered the public interest and public protection concerns related to your return to practice. It noted that under your care, patients had been subject to harm. The panel noted that a fully informed member of the public would be concerned to learn that

you were practising as a registered nurse while you were unwell. However, it noted that a member of the public would also acknowledge you are a currently senior care assistant who is passionate about returning to nursing practice with an awareness of your health.

The panel accordingly directs the Registrar under Article 33(7) and in accordance with Article 33(6) of the Order, to restore your name to the register subject to you fulfilling the specific conditions of practice as to additional education, training and experience as the Council has specified under Article 19(3) of the Order. For this to happen, the panel directs that you must successfully meet the NMC's return to practice standards and pay the prescribed fee.

Upon restoration of your name to the Register your registration will be subject to a conditions of practice order in the following terms:

1. You must notify the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
2. You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
3.
 - a) You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.
 - b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

4. At any time that you are employed or otherwise providing nursing or midwifery services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse of band 6 or above who is physically present in or on the same ward, unit, floor or home that you are working in or on.
5. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance to the NMC at least 14 days before any NMC review hearing or meeting.
6. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance.
7. You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (9) above, to them:
 - a) Any organisation or person employing, contracting with, or using you to undertake nursing work
 - b) Any agency you are registered with or apply to be registered with (at the time of application)
 - c) Any prospective employer (at the time of application)
 - d) Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application)

The period of this conditions of practice order is 24 months. The panel determined that such a period would satisfy the public interest and provide you with sufficient time to satisfy the NMC's return to practice standards, find employment as a registered nurse and demonstrate your safe practice.

This order will be reviewed before its expiry. 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.

You can apply for the order to be reviewed before the expiration of the order if you consider that it is appropriate in the circumstances.

This decision will be confirmed to you in writing.

That concludes this determination.