

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

**Substantive Order Review Hearing
Thursday 21 December 2023**

Virtual Hearing

Name of Registrant: Viorica Dusmanescu

NMC PIN: 15B0226C

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

Relevant Location: Bath and North East Somerset

Type of case: Lack of knowledge of English

Panel members: Andrew Harvey (Chair, lay member)
Kathryn Smith (Registrant member)
Keith Murray (Lay member)

Legal Assessor: Michael Bell

Hearings Coordinator: Ruth Bass

Nursing and Midwifery Council: Hena Patel, Case Presenter for the NMC

Miss Dusmanescu: Present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Suspension order extended for 12 months, to come into effect on 29 January 2024 in accordance with Article 30 (1)

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 29 January 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the eighth review of a substantive suspension order originally imposed for a period of six months by a panel of the Conduct and Competence Committee on 3 April 2017. This was reviewed by a panel of the Fitness to Practise Committee on 29 September 2017 and the outcome was a further six-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 29 March 2018 and the outcome was a 12-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 21 August 2019 and the outcome was a six-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 8 April 2020 and the outcome was a nine-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 21 December 2020 and the outcome was a 12-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 17 December 2021 and the outcome was a further 12-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 15 December 2022 and the outcome was a further 12-month suspension order.

The current order is due to expire at the end of 29 January 2024.

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

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

'That you, a registered nurse:

1. *Do not have the necessary knowledge of English to practise safely and effectively;*

And in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.'

The seventh reviewing panel determined the following with regard to impairment:

'The panel considered whether your fitness to practise remains impaired.

The panel noted that the last reviewing panel had found that some of your English language test scores were improving.

At this hearing the panel had regard to the continued gradual improvement in your test scores, and that you had previously met the minimum standard required by the NMC in two out of the four necessary domains when you last sat the OET. The panel also had regard to the three positive references provided on your behalf.

Today's panel has received some new information, in the form of your last set of language-test results and three positive references. However, the panel has not received evidence that you have passed the necessary English language test to the level required by the NMC in order to practice safely and effectively. The panel noted the importance to safe and effective nursing of record-keeping and of being able to read and understand complex written and verbal instructions. The panel also noted that there is a risk to patients where a nurse is not able to read and write to the required standard. 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.'

The seventh reviewing panel determined the following with regard to sanction:

'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 prepare for and to take the required English language test. The panel concluded that a further 12-month suspension order would be the appropriate and proportionate response and would afford you adequate time to prepare for, take, and pass the required test.

The panel determined therefore that a further extension to the current suspension order is the appropriate order which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to extend the current suspension order for a further period of 12 months to give you the opportunity to provide evidence that you have met the level of English language skills required by the NMC in order to be able to practise safely.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (NMC) has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and your Occupational English Test (OET) results and testimonials.

The panel has taken account of the submissions made by Ms Patel on behalf of the NMC. She submitted that there was no evidence before the panel to suggest that your fitness to practise was no longer impaired.

Ms Patel took the panel through the chronology of your test results dating back to 2016 and submitted that you had not met the required standards required by the NMC. She referred to the on-table papers which set out your most recent results as follows:

'OET TEST RESULTS- 17-12-2022

Speaking- 380

Listening -300

Writing -320

Reading -240

OET TEST RESULTS: 10-06-2023

Speaking-350

Listening -330

Reading -280

Writing -280

OET TEST RESULTS: 11-11-2023

Writing- 270

Listening-210

Reading-330

Speaking 320'

Ms Patel submitted that your most recent results had "*slipped slightly*" from what you had achieved in 2022.

Ms Patel submitted that there was no evidence to demonstrate that you had met the NMC's requirement to practise safely. She informed the panel that you have been working in a healthcare assistant role for a number of years and suggested that the

standard of English required to fulfil a role as a nurse may be more complex than that required of a healthcare assistant role. Ms Patel submitted that the onus was on you to show that you have the necessary knowledge of English to practice safely and effectively, and that this burden had not been met. She submitted that there is a risk to patients were you to be allowed to practise as a nurse without restriction. She further submitted that a well informed member of the public would be shocked if you were allowed to do so.

Ms Patel referred the panel to the NMC guidance '[English language requirements - The Nursing and Midwifery Council \(nmc.org.uk\)](https://www.nmc.org.uk/standards/standards-for-english-language-requirements)' and stated that the panel could consider supporting supplementary evidence in making its decision. However, she submitted that, in light of your most recent results having fallen below the standard you were able to obtain in 2022, the panel could not be satisfied that your fitness to practise is not impaired, and as such a finding of impairment should be made.

Ms Patel submitted that a suspension order was the appropriate order. She invited the panel to make a suspension order for a period of 12 months to give you an opportunity to practise and pass the required test. She submitted that, in light of your cooperation with the NMC, your keenness and determination to practise as a nurse and references attesting to your work, a striking off order would not be appropriate given the progress you have been making with your standard of English.

The panel also had regard to your submissions. You informed the panel that you were disappointed that you did not pass the language test. You stated that you were unwell at the time you took the test, but decided to take the test as you did not want to waste the money you had paid to sit the test and hoped that you would pass it "*with a bit of luck*". You stated that you wanted to bring more evidence that you could speak English, but now understood that you needed to pass the test. You submitted that you were going to prepare for the test, continue to improve your English and take the test next year.

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 had regard to the results required for the listening (B), reading (B), speaking (B) and writing (C+) elements of the OET. It noted that the following scores equated to grades shown below:

- 200 – 290: C
- 300 – 340: C+
- 350 – 440: B

It considered your most recent OET test results on 11 November 2023 and noted that you had not passed to the required standard. The panel noted that your results had slightly decreased from your previous attempts but was sympathetic to the fact that you had been unwell and had attempted to undertake the test in any event.

The panel also had regard to the two testimonials received on your behalf attesting that you do not have any issues with communication at your place of work. However, the panel was of the view that there was a different standard of communication required by a registered nurse than that of a healthcare assistant. It was therefore of the view that the testimonials were not sufficient, on their own, to satisfy the panel that you should be restored to unrestricted practise.

The panel acknowledged that you have attempted to pass the OET and had achieved elements of the required standards on a number occasions. However, it was of the view that you had not been able to demonstrate that you had the required standard of English to be able to communicate and practise as a nurse to a safe standard.

Having considered all of the above, the panel found that there remains a risk to the public should you be allowed to practise without restriction. It therefore determined 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, so as to maintain public confidence in the nursing profession.

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 public protection issues identified in this 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 public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances.

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. It was of the view that as

you had not yet demonstrated that you have the required standard of English to practise safely as a nurse, a conditions of practice order would not be appropriate in this case.

The panel considered the imposition of a further period of suspension. It acknowledged that you have come reasonably close in the past to achieving the required result and have demonstrated a commitment to improving your standard of English. The panel therefore concluded that a further 12 month suspension order would be the appropriate and proportionate order and would afford you sufficient time to prepare and undertake the required test. The panel was mindful that should you achieve the required result before the 12 month suspension period concludes, you would be able to apply for an early review of this order.

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. 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 29 January 2024 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:

- Evidence of you attaining the required level in reading, listening, writing, and speaking, in accordance with the NMC guidance or other evidence that you have achieved the required standard as set out in the ['English language requirements - The Nursing and Midwifery Council \(nmc.org.uk\)](#)

- Updated, detailed and signed testimonials attesting to your communication skills in the workplace, in particular relating to communication with patients and colleagues.

This will be confirmed to you in writing.

That concludes this determination.