

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

**Substantive Order Review Meeting
Tuesday, 28 November 2023**

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

Name of Registrant: Jayson Salvador

NMC PIN 16G0015O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 4 July 2016

Relevant Location: Norfolk

Type of case: Misconduct/Lack of competence

Panel members: Penelope Titterington (Chair, Lay member)
Jillian Claire Rashid (Registrant member)
Robert Fish (Lay member)

Legal Assessor: Gelaga King

Hearings Coordinator: Samantha Aguilar

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on
30 December 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mr Salvador's registered email address by secure email on 20 October 2023. He provided a response by way of an email on 20 October 2023 at 09:02:

'The letter attached is acknowledged. And you may proceed as what is stated in the letter.'

The panel took into account that the Notice of Meeting provided details of the review and that the review meeting would be held no sooner than 20 November 2023 and inviting Mr Salvador to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Salvador has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to extend the suspension order. This order will come into effect at the end of 30 December 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 1 December 2021. This was reviewed on 16 November 2022 when the panel extended the suspension order for a further 12 months.

The current order is due to expire at the end of 30 December 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, between 24 December 2016 and 30 June 2017 failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision as a Band 5 nurse in that you:

1. [...]
2. *On 19 May 2017, moved and repositioned a patient by yourself without first seeking assistance from a colleague, when you knew you were not competent to do so **[proved]***
3. [...]
4. *On 30 June 2017, signed documentation stating that you had undertaken a check in respect of a glucometer when you had not done so **[proved]***
5. *On 30 June 2017, you administered medication intravenously when you when you knew that you had not been assessed as competent to do so **[proved]***

While subject to a Stage 1 formal capability process at James Paget University Foundation Trust and working as a supernumerary nurse, between 5 March 2018 and 31 May 2018 you:

6. *On 5 March 2018 failed to check a patient consent form **[proved]***
7. *On 29 March 2018*
 - a) *failed to check a patient's glucose level **[proved]***
 - b) *having failed to check the patient's glucose level, advised the patient to take Insulin **[proved]***
8. [...]

9. *On 16 May 2018 without consulting with your supervising colleagues, discharged a post-surgical patient when discharge of the patient was not clinically indicated [proved]*

10. *On 31 May 2018*

- a) *failed to follow a prescription to administer a controlled drug to a patient [proved]*
- b) *your failure to follow the prescription resulted in over-administration of the controlled drug with the patient receiving a quantity in excess of that prescribed, over a shorter time period than that which was prescribed [proved]*

While subject to a Stage 2 formal capability process at James Paget University Foundation Trust you:

11. *Failed to meet the objectives set out in your action plan to*

- a) *Recognise and work within the limits of your competency [proved]*
- b) *Demonstrate sustained improvement in the safe administration of medicines [proved]*
- c) *Consistently demonstrate that you were aware of and reduced as far as possible any potential for harm associated with your practice [proved]*

AND your fitness to practise is impaired by reason of your misconduct (charges 1, 2, 3 & 5) and/or your lack of competence (charges 4, 6, 7, 8, 9, 10 & 11).'

The first reviewing panel determined the following with regard to 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 Mr Salvador's fitness to practise remains impaired.

The panel noted that the original panel found that Mr Salvador had insufficient insight and did not address the impact of his actions. At this meeting the panel noted that this had not changed given that it had no new information in relation to evidence of training, or insight into the impact of his actions at the time of the incidents.

In its consideration of whether Mr Salvador has taken steps to strengthen his practice, the panel noted that he has not engaged with the proceedings and has not provided any insight or remediation into his practice.

The original panel determined that Mr Salvador was liable to repeat matters of the kind found proved. It determined that a 12 month suspension order would be sufficient to manage the public interest. Today's panel has received no new information in respect of this finding. It noted that Mr Salvador is living outside of the country and is not engaging with the proceedings. In light of this the panel determined that Mr Salvador is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection given the seriousness of the errors, and the absence of insight and further training.

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 Mr Salvador's fitness to practise remains impaired.'

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

'The panel next considered whether a conditions of practice on Mr Salvador'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 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 Mr Salvador's misconduct, lack of competence and the fact that he is not currently residing in the UK.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Salvador further time to fully reflect on his previous failings. The panel concluded that a further 12-month suspension order would be the appropriate and proportionate response and would afford Mr Salvador adequate time to further develop his insight and take steps to strengthen their practice.

The panel considered a striking-off order, but it determined that given the order was made a year ago, this would be disproportionate and punitive at this stage. However, the panel recommended that Mr Salvador should engage with the NMC in respect of his progress and provide sufficient insight.

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 decided to extend the suspension order for the period of 12 months and this would provide Mr Salvador with an opportunity to engage with the NMC and provide evidence of sufficient insight and strengthened practice. 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 30 December 2022 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:

- *Engagement with the NMC*
- *Attendance at the next review*
- *A reflective statement*
- *Evidence of employment details since the substantive hearing was imposed*
- *References from any current employer*
- *Training undertaken to address the identified deficiencies in practice.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Salvador'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 and the email from Mr Salvador dated 20 October 2023:

'The letter attached is acknowledged. And you may proceed as what is stated in the letter. To give update on my situation, I felt the complexity of my situation being in my home country right now and unable to proceed with plans that can provide improvement on the skills that I lack. I have submitted application locally to be employed in a hospital here in the [PRIVATE] but no

one got back to me at this time. It is still my intention to show the board of nursing that somehow I am doing something on my situation. Right now, I am waiting for an opening to attend some trainings and seminars regarding medication administration and safe nursing.'

The panel heard and accepted the advice of the legal assessor. He reminded the panel that it must consider all the documents presented before it today when making the decision on whether Mr Salvador remains impaired. He told the panel to consider what has happened since the last review. He reminded the panel that Mr Salvador has provided an email with an update of his circumstances.

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 Mr Salvador's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Salvador had insufficient insight. At this meeting, the panel took into account Mr Salvador's email dated 20 October 2023. The panel bore in mind that the charges found proved took place between 2017 and 2018 and there has been no information that was presented before it which provides a material change in his current impairment level. Mr Salvador admitted that he has not been able to comply. However, since the last review Mr Salvador has expressed his intention to work and obtain relevant employment to show the NMC his commitment to return to nursing.

The last reviewing panel determined that Mr Salvador was liable to repeat matters of the kind found proved. Today's panel has noted that he has since engaged with the proceedings to some degree, and he provided an update about his current circumstances. He told the NMC that he is currently not in the UK and is seeking employment at local hospitals in the [PRIVATE] and have shown a willingness to attend further training relating to medication administration and safe nursing practice. However, the panel noted that Mr Salvador has not provided the panel with the material requested by the previous reviewing panel.

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 Mr Salvador's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Salvador's 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 nature and 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 nature and seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Salvador'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 Mr Salvador'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 a conditions of practice on Mr Salvador'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 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 Mr Salvador's misconduct and lack of competence. In addition, Mr Salvador is currently not living in the UK and has not obtained relevant employment to address his impairment. As such, the panel was of the view that conditions of practice would not be appropriate.

The panel considered the imposition of a further period of suspension. It was of the view that a further 12-month suspension order would be the appropriate and proportionate sanction and would afford Mr Salvador adequate time to fully reflect on his previous behaviour, further develop his insight and demonstrate the steps being taken in preparation for a safe return to practise.

The panel considered a striking-off order. However, given Mr Salvador's recent email dated 20 October 2023, re-engaging with the NMC and expressing his future intentions, the panel determined that a striking-off order would be disproportionate at this stage.

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 Mr Salvador with an opportunity to engage with the NMC and to provide evidence of safe practice and training. 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 30 December 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:

- Engagement with the NMC
- Attendance at the next review
- A reflective statement
- Evidence of relevant employment details since the substantive hearing was imposed.
- Information about his intention to return to the UK to work in a healthcare setting.
- References from any current employer
- Training undertaken to address the identified deficiencies in practice.

The next panel will take into consideration the level of engagement with the suggestions listed above.

This will be confirmed to Mr Salvador in writing.

That concludes this determination.