

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

**Substantive Hearing
28 and 29 January 2021**

Virtual Hearing

Name of registrant:	Pelin Iustinian
NMC PIN:	14K0287C
Part(s) of the register:	Registered Nurse – Adult Nursing
Area of registered address:	County Londonderry
Type of case:	Conviction
Panel members:	Michael Murphy (Chair, registrant member) Julie Clennell (Registrant member) Adrian Ward (Lay member)
Legal Assessor:	Fiona Moore
Panel Secretary:	Vicky Green
Nursing and Midwifery Council:	Represented by Claire Stevenson, Case Presenter
Mr Pelin:	Present and represented by Michelle McCullough, Solicitor, BLM Solicitors
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order – 18 months

Details of charge

'That you a registered nurse were:

1. Convicted on the 11th September 2019 of having in your possession a handgun without holding a firearm certificate or otherwise than as authorised by a firearm certificate contrary to Article 3 (1) (a) of the Firearms (Northern Ireland) Order 2004
2. Convicted on the 11th September 2019 of having in your possession ammunition, namely an adapted 8mm blank calibre cartridge without being the holder of a firearm certificate or otherwise than as authorised by a firearm certificate or in quantities in excess of those so authorised contrary to Article 3(2) of the Firearms (Northern Ireland) Order 2004.
3. Convicted on the 11th September 2019 of having in your possession ammunition, namely 56 adapted 8mm blank calibre cartridges without being the holder of a firearm certificate or otherwise than as authorised by a firearm certificate or in quantities in excess of those so authorised contrary to Article 3(2) of the Firearms (Northern Ireland) Order 2004.

In light of the above your fitness to practice is impaired by reason of your convictions as set out in charges 1, 2 and 3 above.'

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

At the outset of the hearing, Ms McCullough, on your behalf, made an application for the whole hearing to be held in private. She submitted that the whole hearing should be heard in private given the nature of the facts and that there will be reference to your health.

Ms Stevenson supported the application in so far as any reference to your health should be heard in private.

The legal assessor reminded the panel of 'The Nursing and Midwifery Council (Fitness to Practise) Rules 2004' as amended (the Rules). 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 rule on whether or not to go into private session in connection with your health as and when such issues are raised. It considered that whilst there may be reference to your health through these proceedings, matters relating to your health are not intrinsically linked to the facts of this case, and could therefore be separated out. The panel noted that the conviction is in the public domain and it was mindful of the public interest in substantive hearings being held in public. The panel therefore decided to go into private when matter relating to your health are raised.

Decision on the findings on facts and reasons

The charges relate to your conviction and, having been provided with a copy of the certificate/memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- '(2) Where a registrant has been convicted of a criminal offence—
 - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'

Having been provided with a copy of the certificate/memorandum of conviction, the panel finds that the facts are found proved in accordance with these Rules. The panel noted that you have also made full admissions to the charges.

Background

Sentencing remarks on facts:

'2nd October 2018 original complainant went to Linenhall car park where his estranged wife was parked. Her new partner was talking to her through the window of her car. The couple's child, child of the estranged husband and wife, was in the car. The complainant approached the car. The defendant, Mr Pelin her new partner, asked the estranged husband to walk with him towards a car- namely a black Mercedes from which Mr Pelin produced a bullet which he used to underpin his suggestion that the estranged husband should leave the couple alone.

The incident was reported to the police and the next day on the 3rd October police located the black Mercedes outside the work place of the estranged wife where Mr Pelin, was also said to work.

Mr Pelin thereafter permitted a fruitless search of his work place locker but asked to go speak to his manager before giving police permission to search his accommodation. He was unsupervised for a short time and during that time he called his co-defendant was at the Lime Tree restaurant where he was working a shift. The Co-Defendant then asked for permission to pop out of work at Lime tree. He was the flat mate of Mr Pelin.

Police then bumped into the co-defendant on the steps as he descended from their accommodation with his coat done up. Seeing the Kitchen door was left open police chased the co-defendant but didn't catch him but later found him leaving a tanning studio. The search was negative but

the co-defendant eventually directed them towards a silver street bin and a council worker helped police open it with a key.

They removed a Tesco bag containing two boxes of ammunition, 42 rounds of it being adapted ammunition, and a black semi-automatic blank firing starting pistol with magazine. The magazine was loaded. There were two boxes of ammunition marked blank slave 8mm. The barrel was not locked. Police found ball bearings in the search of the accommodation.

At interview Mr Pelin said he had bought the pistol as a blank firing gun and had a metal worker adapt it with 10 pounds worth of pipe as he wanted to shoot pellets from it and he accepted that he had asked his house mate to fetch it and hide it. He claimed ignorance of the law. The co-defendant indicated that he had tried to convince Mr Pelin not to retain the pistol and he had been home in Romania for most of September.

The pistol is invoiced to Mr Pelin in a website in August.

Adapted firearm pistol where the purpose was to threaten or maim. The intention of Mr Pelin was to show it to someone with whom he had an issue. Account was taken of clear records of both defendants.'

You received a custodial sentence of 30 months (15 months imprisonment and 15 months on licence).

Submissions on impairment

Having found the charges proved by way of conviction, the panel then moved on to consider whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

In her submissions on the issue of impairment, Ms Stevenson addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Ms Stevenson referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Ms Stevenson referred the panel to the NMC guidance on 'Criminal Convictions and Cautions', which states as follows:

"...If the criminal offending took place in the nurse or midwife's private life, and there's no clear risk to patients or members of the public, then it is unlikely that we'll need to take regulatory action to uphold confidence in nurses and midwives, or professional standards. We'd only need to that if the nurse or midwife was given a custodial sentence (this includes suspended sentences) or the conviction was for a specified offence".

Ms Stevenson submitted that the convictions are serious and raise public protection concerns. She submitted that your actions and convictions had the potential to cause physical and emotional harm. Ms Stevenson submitted that a finding of impairment should be made on public protection grounds.

Ms Stevenson also submitted that a finding of impairment should be made '*to uphold proper professional standards and public confidence in the profession*' and it would be undermined if a finding of impairment were not made on public interest grounds.

Further, Ms Stevenson submitted that a finding of impairment was required to uphold the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of the profession.

Ms McCullough submitted that you accept that your practise is currently impaired as a result of your convictions. She submitted that you admit the charges in relation to the convictions and that you deny any intent to cause violence. Ms McCullough submitted that your full co-operation with the criminal and NMC proceedings demonstrates insight.

Ms McCullough submitted that your actions are remediable. She drew the panel's attention to the probation services assessment in which the repetition of the likelihood of reoffending is deemed to be low. [PRIVATE].

Decision on impairment

The panel considered whether, as a result of the convictions, your fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

The panel has had careful regard to the bundle of documents provided by you which included the following:

- Two reflective statements written by you, one dated 19 December 2018 and the other undated.
- A number of testimonials and references.
- A number of online training certificates including a certificate of training on '*Safe Administration of Medications & Records Management with Simulated Competency*' dated 7 January 2021.
- A letter from a Consultant Chartered Psychologist dated 25 January 2021.
- An offer of employment letter from Mill House for the position of 'Full Time Days Care Assistant' dated 16 December 2020.
- Psychological Assessment Report, assessment date 9 October 2019.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. They must make sure that

their conduct justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement 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.'

Mrs Justice Cox went on to say in Paragraph 76:

'I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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) ...'

The panel finds that limbs a, b and c are engaged in this case, both in terms of your past behaviour, and the likelihood that you will behave in such a way in the future.

The panel considered the nature and the particular circumstances of your behaviour which led to your conviction. The panel considered that whilst your actions did not occur in a clinical setting, your actions and convictions are serious and had the potential to cause both emotional and physical harm to the public.

Given the nature and seriousness of your convictions, the panel determined that you breached fundamental tenets of the nursing profession and you brought the nursing profession into disrepute.

The panel then considered the risk of repetition which included consideration of your level insight, remorse and remediation.

The panel considered whether the conduct that gave rise to the conviction is capable of being remedied and, if so, whether it has been remedied.

In relation to insight, the panel had regard to your reflective statements. Whilst you have expressed remorse for your actions, you failed to demonstrate any recognition of the wider impact of your behaviour on the profession as a whole and the wider public. In possessing a modified firearm and ammunition, the panel considered that you placed the public at unwarranted risk of harm. The panel determined that your insight was limited.

The panel considered that your behaviour raises attitudinal concerns. The panel noted that attitudinal concerns are, in some cases, difficult to remediate. While the panel noted [PRIVATE] ...the comments from the probation services about its view of the likelihood that you will re-offend, it determined that you have not yet demonstrated that you have remediated your behaviour. You are still serving your sentence on licence [PRIVATE]. The panel was therefore of the view that the public remains at risk of harm if you were able to practise without restriction. The panel finds that your fitness to practise is impaired on the ground of public protection.

The panel went on to consider whether the need to uphold proper professional standards and maintain public confidence in the profession would be undermined and the reputation of the profession brought into disrepute if a finding of impairment of fitness to practise were not made. The panel considered that if a member of the public were made aware of all the circumstances of this case, they would expect a finding of impairment on public interest grounds. The convictions are serious and you implicated your flatmate in your crime. Furthermore, you are still serving your sentence on licence. The panel considered that a finding of current impairment was required in order to maintain public confidence in the profession, and in the NMC as a regulator and to uphold proper professional standards. The panel therefore concluded that a finding of impairment was necessary in the public interest.

The panel determined that your fitness to practise is currently impaired by reason of your convictions both on the grounds of public protection and the wider public interest.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that your name has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

You gave evidence under affirmation. In your evidence you told the panel that you understand that your actions and convictions have a great impact on the NMC, the nursing profession, your employer and the residents that were in your care. You said that you deeply regret your actions and bringing shame on the nursing profession. You assured the panel that your actions would not be repeated.

When asked about the impact of your convictions on the reputation of nurses, you said that these could be a cause for concern for the public and the nursing profession in respect of safety and trust. You said that you cannot anticipate how every member of the public would react, and that some people in possession of all of the facts, may understand that it was a simple mistake. You accepted that the convictions would be perceived as bad without having any knowledge of the circumstances which led to your actions.

If you were allowed to practise as a registered nurse you said that you would work hard and that you will not repeat your actions or bring the profession into disrepute.

You told the panel that prior to your convictions there had been no concerns about your practice. You were highly regarded by the residents that you cared for and you feel bad that you could no longer care for them.

You told the panel that you have been honest with your employer and prospective employers about your convictions. You said that if you were allowed to return to practice as a registered nurse, you have an offer of employment from a supportive employer.

[PRIVATE].

In response to questions from the panel, you said that you have kept your nursing skills and knowledge up to date by seeking employment within the care profession, attending training courses and by reading any updates from the NMC. You said that from reading NMC guidance you accept that you have breached the Code but that this will not happen again.

[PRIVATE].

You were asked about when your sentence ends, you informed the panel that your licence ends in April 2022.

Upon re-examination from Ms McCullough, you told the panel that you undertook some voluntary work last year which is currently suspended due to the current pandemic.

Ms Stevenson informed the panel that the NMC considered that the most proportionate and appropriate sanction is a striking off order. She referred the panel to the SG, the NMC guidance on serious cases involving criminal convictions. She drew the panel's attention to a number of cases including *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB), *Bolton v Law Society* [1994] 1 WLR 512 and *Chandrasekera v Nursing and Midwifery Council* [2009] EWHC 144 (Admin).

Ms Stevenson submitted that the convictions, together with the nature and circumstances are extremely serious and call into question the trust, professionalism and integrity of the profession. She submitted that only the most severe sanction reflects the seriousness of the convictions and there is nothing to justify a lesser sanction in these circumstances.

Ms McCullough submitted that you have shown considerable insight and remorse at every stage of the criminal and NMC proceedings. You have served time in prison. Ms McCullough submitted that you have demonstrated honesty, remorse and insight and that you understand the gravity of the impact your convictions have had on the profession.

Ms McCullough submitted that this is an isolated incident and that there have been no previous concerns. [PRIVATE]. Ms McCullough submitted that the judge and probation services determined that it is very unlikely that you will re-offend.

Ms McCullough submitted that you have a good employment history as a nurse in your career spanning five years. No concerns have been raised about your clinical practice and in your references you are described as being caring and of good character. You have been open and honest with prospective employers and, if your practise was no longer restricted, you have an offer of employment as a registered nurse. Ms McCullough submitted that your peers and managers are not concerned about your character or your ability to practise safely as a registered nurse.

Ms McCullough submitted that a conditions of practice order would be the most appropriate and proportionate order. She submitted that such an order would enable you to return to nursing [PRIVATE].

Decision and reasons on 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:

- Your actions placed the public at a risk of emotional and physical harm.
- You involved another in your criminal activity.
- The convictions are extremely serious.
- The offences involved the adaptation of a handgun and an attempt to dispose of it.
- Limited evidence of insight.

- Attitudinal concerns.

The panel also took into account the following mitigating features:

- Guilty plea to charges.
- Early admissions to the facts and impairment.
- Remorse.
- No clinical concerns.
- Previous good character.
- A number of positive references and testimonials about your clinical practice.
- [PRIVATE].

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 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 considered that your convictions were not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. It had regard to the submissions made by Ms McCullough, however, the panel is of the view that there are no practical or workable conditions that could be formulated. The convictions are serious and not clinical in nature. The panel therefore concluded that the concerns cannot be addressed by a conditions of practice order. Furthermore, the panel concluded that the placing of

conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *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.*

Although the instance of misconduct was isolated, the illegal possession of an adapted handgun, and a significant quantity of ammunition is a serious matter with the potential to cause significant emotional and physical harm to the public. You also involved another person in your criminal activity. The panel considered that you do not have full insight into your actions which led to your convictions. [PRIVATE], the panel was of the view that the serious breach of the fundamental tenets of the profession is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife 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?*

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to protect the public, 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.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the

striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Stevenson. She submitted that an interim order is necessary on the grounds of public protection and is otherwise in the public interest to maintain public confidence in the nursing profession and the NMC. Ms Stevenson submitted that an interim suspension order should be imposed for a period of 18 months to cover any appeal period.

Ms McCullough, on your behalf, did not object to this application.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period, and to protect the public and address the public interest considerations of this case.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after you are sent the decision of this hearing in writing.

This will be confirmed to you in writing.

That concludes this determination.