

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

**Substantive Order Review Hearing
Wednesday, 23 August 2023**

Virtual Hearing

Name of Registrant: Valsamma Kunnappallil Tomy

NMC PIN 06F0231O

Part(s) of the register: Adult Nursing (June 2006)

Relevant Location: Bristol

Type of case: Lack of competence

Panel members: Phil Lowe (Chair, registrant member)
Natasha Duke (Registrant member)
Keith Murray (Lay member)

Legal Assessor: Gillian Hawken

Hearings Coordinator: Catherine Acevedo

Nursing and Midwifery Council: Represented by Danielle Byford, Case Presenter

Mrs Tomy: Present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Suspension order (12 months) to come into effect at the end of 4 October 2023 in accordance with Article 30 (1)

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for 12 months.

This order will come into effect at the end of 4 October 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive order originally imposed as a conditions of practice order for a period of 12 months by a Fitness to Practise Committee panel on 3 September 2021. This was reviewed on 28 September 2022 and the panel replaced the conditions of practice order with a suspension order for a period of 12 months.

The current order is due to expire at the end of 4 October 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, whilst employed by University Hospitals Bristol NHS Trust, as a registered nurse, Band 5, between 20 October 2017 and 8 February 2019:

- 1) *Were not able to demonstrate the standards of knowledge skill and judgement required to practice in that you:*
 - a) ...
 - b) ...
 - c) *On 21 October 2017, having been informed that patient BF had abdominal pain and/or suffering from the retention of fluids by a nursing assistant did not take action to reduce the fluids in patient BF's bladder. [Proved]*
 - d) ...

- e) ...
- f) ...
- g) ...
- h) ...

- i) *On or before 5 April 2018 incorrectly identified the responsible consultant team when requesting a blood sample. **[Proved by way of admission]***

- j) *On the 3 July 2018 did not carry out safe and effective medicines management, in that you signed for medication which you had not administered in the morning to (female) patient X. **[Proved]***

- 2) *On 20 December 2017 signed a medication record to indicate that you had administered Enoxaparin (Clexane) when you had not administered the said medication at the time of signing the medication record. MS **[Proved]***

- 3) *On or around 20 December 2017 administered a dose of Enoxaparin when you were uncertain as to whether you had already administered a dose of Enoxaparin in the preceding 24 hours to the same patient. MS **[Proved]***

- 4) *On 28 March 2018 did not administer prescribed Heparin (an anti-coagulant injection) to patient AO. **[Proved by way of admission]***

- 5) ...
 - a) ...
 - b) ...
 - c) ...
- 6)...

AND in light of the above, your fitness to practice is impaired by reason of your lack of competence in relation to one or more of the charges from charge 1 to 4 and/or by

reason of your misconduct in relation to one or more of the charges from charge 5 to 6.”

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

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

The panel noted that the original panel found that you held insufficient insight. At this hearing the panel found that your insight remained poor and revolved around mere acknowledgements that you had made mistakes during the drug administration and to make errors ‘were human’.

The original panel determined that you were liable to repeat matters of the kind found proved. Today’s panel has heard no new information to undermine this, and the panel determined that a finding of impairment on public protection grounds is necessary. You did not provide any evidence that you have addressed the concerns identified by the previous panel by way of insight, reflection, education or 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.

The panel noted that you have not complied with conditions, worked to strengthen your practice nor reflected on the charges found proved in the original case and the regulatory concerns arising from them. It further noted that you do not understand the relevant knowledge and judgement skills which are required of a registered nurse, beyond the technical ability of undertaking certain procedures such as catheterisation. At your substantive hearing you indicated that you were willing to comply with conditions but today you questioned the very necessity of such conditions.

The panel found you have a misplaced confidence in your ability, and you are not prepared to accept when you are wrong, which puts patients at risk. The panel found that you lack competence, and your confidence in your own abilities does not reflect the lack of competence the panel have found which increases risk to patients and the public.

The panel found, therefore that a finding of impairment on public protection is necessary. Additionally, the panel finds that a finding of impairment on the public interest ground is made out. A reasonable and informed member of the public would, in the panel's judgement, be troubled and disturbed to learn that you were permitted to practice without restriction."

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

"The panel next considered the continuation of the current conditions of practice order and determined that it was not sufficient to protect the public. In the one year since the previous hearing, you have not taken any steps to strengthen your practice. The dismissal of both your colleague's feedback around why patient BF was agitated and the previous panel's considered feedback into your failings as 'a difference of opinion' was concerning. Your assertion that you did not need to reflect on your practice alongside your under-developed analytical skills, led the panel to consider that a conditions of practice order would not adequately protect the public and is therefore no longer workable.

On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate sanction which would 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 you with a further opportunity to engage with the NMC,

undertake training and demonstrate reflection on your actions. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 4 October 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:

- *Your attendance at any review hearings.*
- *A written reflective statement (using a recognised model) from you to demonstrate your understanding of the impact of your lack of competence (fluid balance management, understanding indications for urinary catheterisation, safe and effective medicines management including administration and recording and effective communication with colleagues) on patients and their families, the nursing profession and the wider public.*
- *Evidence of what you have done to keep your nursing knowledge and skills up to date.*
- *Testimonials from recent or current employers whether paid or unpaid, whether in or out of a healthcare setting”.*

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 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. It has taken account of the submissions made by Ms Byford on behalf of the NMC. She outlined the background of the case to the panel and submitted that you remain impaired as there has been no material change since the previous review and the suspension order should continue on the same terms.

Ms Byford submitted that the last panel directed that this panel might benefit from a number of factors. Ms Byford submitted that you have attended the hearing. However, you have not provided a reflective statement, nor evidence of how you have kept your knowledge and skills up to date, and you have shown a lack of remorse. She submitted that you have not provided any testimonials from any work setting.

Ms Byford submitted that the last panel felt that you were not prepared to accept what you did was wrong and were not prepared to accept that your actions placed patients at risk. She submitted that the previous panel felt the lack of engagement with the conditions of practice order meant that it was no longer workable and a suspension order would give you a further opportunity to engage and undertake further training.

Ms Byford submitted that progress has not been made since the last hearing and your fitness to practise remains impaired because of the lack of progress and therefore the current order remains necessary on the basis of public protection.

The panel also had regard to your submissions. You said that you think you were communicating very well with colleagues and patients. In relation to medication, you said you will be more careful in future and will improve your knowledge. You accepted you made medication errors. On one occasion you said that that you must have skipped a page in the drug chart and will be more careful with the patient and reading the drugs chart. On another occasion you said a drug was not given by mistake because you had left. In terms of catheterisation, whilst you accepted the patient needed catheterisation, you felt their agitation and restlessness was due to their dementia and not urinary retention.

Although you said you have read online articles to keep your knowledge and skills up to date, you could not reference a single article when asked to by the panel. You said you are willing to undertake any necessary training. You said if you have any doubt regarding

medicines you will check the British National Formulary (the drug book used by the NHS) and if you still do not understand you will ask a colleague, a senior colleague or pharmacy staff to assist you.

You said you would like to be a nurse in a cardiac ward at University Hospital of Bristol, where you previously worked. You confirmed that you have not worked as a nurse for 5 years, so it is not possible for you to get a statement from a current employer. You said that you accept some of your failures demonstrated a lack of competence. When asked why you did not provide a reflective piece for this hearing you said that you know now that you had to write and submit a reflection and you apologised for not providing this for the hearing.

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 noted that the last reviewing panel found that you had insufficient insight. At this hearing, the panel took into account that you accepted some of your failings during your submissions and that patients would have been put at risk of harm by your actions. However, the panel had not been provided with evidence of a written reflection and was of the view that your insight had developed very little since the last review.

The panel also had no evidence that you have undertaken any training or kept your nursing knowledge and skills up to date. The panel took into account that you had not worked for 5 years, and you were unable to provide references or testimonials evidencing your strengthened practice in a care setting.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has heard no new information to undermine this, and it determined that a finding of impairment on public protection grounds is necessary.

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. The panel was of the view that a well-informed member of the public would be concerned if a finding of impairment was not made for a nurse in these circumstances.

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 seriousness of the case. The panel decided that it would not protect the public nor be 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 lack of competence 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 your 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 the lack of insight and development shown since and concluded that a conditions of practice order is not appropriate or proportionate, nor would it adequately protect the public or satisfy the public interest.

The panel considered extending the current suspension order. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice in a healthcare setting in a non-registered role. It would also give you an opportunity to approach past and current health professionals to attest to your good practice, and provide documentary evidence that you have kept up to date with nursing.

The panel was not able to impose a striking-off order at this hearing as you have not been subject to a substantive order for two years or more. The next reviewing panel will have all sanctions available to it, including a striking-off 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. 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 4 October 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:

- Your attendance at any review hearings.
- A written reflective statement (using a recognised model such as Gibbs) from you to demonstrate your understanding of the impact of your lack of

competence (fluid balance management, understanding indications for urinary catheterisation, safe and effective medicines management including administration and recording and effective communication with colleagues) on patients and their families, the nursing profession and the wider public.

- Documentary evidence of what you have done to keep your nursing knowledge and skills up to date.
- Testimonials from recent or current employers whether paid or unpaid, whether in or out of a healthcare setting.

This decision will be confirmed to you in writing.

That concludes this determination.