

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

**Substantive Order Review Hearing
Friday, 17 November 2023**

Virtual Hearing

Name of Registrant: Alben Karagyozova

NMC PIN 14G0434C

Part(s) of the register: Registered Nurse (Sub Part 1)
Adult Nursing – July 2014

Relevant Location: Kent

Type of case: Misconduct / Lack of knowledge of English

Panel members: Dave Lancaster (Chair, Lay member)
Catherine Devonport (Registrant member)
Georgina Wilkinson (Lay member)

Legal Assessor: Hala Helmi

Hearings Coordinator: Sabrina Khan

Nursing and Midwifery Council: Represented by Ed Carey, Case Presenter

Miss Karagyozova: Present and represented by Sharmistha Michaels,
instructed by the Royal College of Nursing (RCN)

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (9 months) to come into effect at the end of 27 November 2023 in accordance with Article 30 (1)**

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

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

Mr Carey, on behalf of the Nursing and Midwifery Council (NMC) made no objection to the application.

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 and or otherwise in the public interest.

The panel determined to go into private session in connection with your health and that of a family member as and when such issues are raised.

Decision and reasons on review of the substantive order

The panel decided to confirm and extend the current suspension order for a period of nine months following the expiry of the current order.

This order will come into effect on the expiry of the current order in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the ninth review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 July 2017. The order was reviewed on 16 August 2018, 27 February 2019, 17 July 2019, 16 January 2020 and 21 July 2020, and on each occasion, was extended for six months. On 18 January 2021, the panel decided to extend the suspension order for a period of 9 months. The order was

reviewed on 19 October 2021 and then on 19 October 2022, and on both the occasion the suspension order was extended for a period of 12 months.

The current order is due to expire at the end of 27 November 2023.

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

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

'That you, a Registered Nurse, whilst working at Ashley Gardens Care Centre

- 1. On 24 July 2015 inappropriately disposed of one or more sharps in a refuse bin and not in the sharps bin*
- 2. ...*
- 3. ...*

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

In addition to the above,

That you, a registered nurse:

- 4. Do not have the necessary knowledge of the English language 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 last 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 your fitness to practise remains impaired.

The panel agreed that the only live charge being considered today is Charge 4. In August 2018, the first reviewing panel found that Charge 1 was a single isolated incident, and that you had demonstrated sufficient insight and your fitness to practise was no longer impaired in this regard; a conclusion with which this panel agrees.

The panel noted that the last reviewing panel found that you had not met the required standard of English Language requirements. At this hearing the panel took account of your efforts to pass the required English language tests in September 2022. In its consideration of whether you have taken steps to strengthen your practice, the panel considered your employment at the pharmacy to improve your spoken English, and at the care home to maintain your clinical skills. The panel took account of your continued engagement with your studies and your determination to achieve the required level of English.

The last reviewing panel determined that there was an ongoing risk to the public as you had not achieved the required score in the NMC approved language tests. Today's panel has heard and received some new information provided by you regarding your OET examination results and a testimonial from your employer at the pharmacy, however your examination results are not sufficient to meet the NMC's English language requirements. In light of this, this panel determined that your fitness to practise remains impaired due to your not having the required level of English necessary for you to practise safely and effectively. The panel therefore decided that a finding of continuing impairment is necessary on the ground of public protection. The panel also finds that your fitness to practise is impaired on

grounds of public interest as the public would expect that a nurse should be able to communicate effectively.

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.

For these reasons, the panel finds that your fitness to practise remains impaired..'

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

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of the concerns 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 due to the public protection and public interest issues identified, such an order 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. The panel bore in mind that you have still not achieved the required standard of English and there could be no workable conditions of practice for that.

The panel are of the view that you are trying hard to achieve the required results as detailed in your reflective statement, and that you are taking steps to remain engaged in a healthcare setting by working at a pharmacy and care home. [PRIVATE].. The panel considered that you have been

trying to achieve the required English Language standard for some time and the financial impact this has had on you.

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 complete your studies and achieve the standards required in the English language tests. The panel took into account [PRIVATE] and concluded that a further twelve month suspension order would be the appropriate and proportionate response and afford you adequate time. If you are able to pass an NMC recognised English language test before the next scheduled review, you can request an early review.

The panel was of the view that a striking off order was unnecessary and disproportionate.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 27 November 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.

This will be confirmed to you in writing.

That concludes this determination.'

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, and the documents provided today by you. It has taken account of the submissions made by Mr Carey on behalf of the NMC and those made by Ms Michaels on your behalf.

Mr Carey provided the panel with the background facts of the case and directed them to the relevant pages in the NMC bundle. He also directed the panel to the review decisions of previous panels. Mr Carey said that you had satisfactorily remediated the previous misconduct charge in respect of appropriate disposal of sharps. The English language competency was the issue that remains under consideration today.

Mr Carey referred the panel to your Occupational English Test (OET) results in relation to the examinations you sat on 30 September 2023. He submitted that unfortunately you failed to meet the requisite English language requirements. Mr Carey acknowledged that you have exceeded the required standard in writing, however, the speaking, listening and reading components were below the required standard.

Mr Carey referred the panel to the most up to date guidance of NMC from June 2023 where in Article 9 it states:

'The necessary knowledge of English means knowledge of English which is necessary for the safe and effective practise of nursing in the United Kingdom.'

Mr Carey submitted that it is mandatory to follow the guidance to allow consistent and fair treatment to all registrants and ensure public safety.

Mr Carey submitted that your fitness to practise remains impaired, as identified by the previous panel, as you have not attained the requisite English language test level required by the NMC. He submitted that there is no material change since the approach taken on the previous eight reviews to allow the appropriate disposal on this occasion. He added that an interim conditions of practice order will not sufficiently protect the public and so he invited the panel to extend the current order.

Ms Michaels outlined your 13 years of experience as a nurse in Bulgaria and stated that your language issue was a narrow matter. She submitted that although you have again attempted to meet the standard by attempting an OET test on 30 September 2023, you failed to meet the required standard. You are currently working in a pharmacy and have also worked as a healthcare assistant in a learning disability care home. However, due to a suspension order imposed on your practise you have been unable to gain employment in roles affiliated with nursing, such as care assistant roles or dental nursing roles.

Ms Michaels submitted that you are a dedicated individual who has an unwavering determination to go back to your nursing career and your journey to pass the OET exam has not been easy. She highlighted that you have made progress through your various attempts, and you do have the potential to eventually succeed and meet the required standards.

Ms Michaels informed the panel that you had undertaken classes which were self-funded to prepare for your language competency exam. She submitted that this is putting a financial pressure on you as you are being paid minimum wage in your current role. She referred the panel to the reference from your current employer, where you have been working for two years and which described you as *'trustworthy and professional'*. Ms Michaels submitted that you had no concerns raised about your English language capabilities in your role at the pharmacy.

[PRIVATE]

Ms Michaels informed the panel that you have undertaken the British citizenship test and achieved Grade 5 in the spoken English element, passing with distinction. In light of all the circumstances, she submitted that it would be possible to formulate practicable and workable conditions which would enable you to return to practice and serve to protect the public and the reputation of the profession.

You made submissions to the panel and stated that you wish to go back to practise as a nurse in a GP practice or a surgery rather than other clinical roles like a care assistant. You assured the panel that your English is improving.

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 not met the required standard of English Language requirements. At this hearing the panel took account of your efforts to pass the required English language tests in September 2023. In its consideration of whether you have taken steps to strengthen your practice, the panel considered your employment at the pharmacy to improve your spoken English. The panel took account of your continued engagement with your studies and your determination to achieve the required level of English.

The last reviewing panel determined that there was an ongoing risk to the public as you had not achieved the required score in the NMC approved language tests. Today's panel has heard and received some new information provided by you regarding your OET examination results and a testimonial from your employer at the pharmacy, however your examination results for all the components are not sufficient to meet the NMC's English language requirements.

The panel noted that you had exceeded the standards for the writing component and were within half a mark of the speaking component of the OET exam. However, the scores for reading and listening fell far short of the required standard set by the NMC. The panel noted that you have passed an English proficiency test for your British citizenship. However, it bore in mind that the standard of English required for this test is different to that required by the NMC guidance and the standard required of a practising nurse.

The panel considered the NMC's Guidance on registration language requirements (June 2023). It took into account paragraph 4 and 5 which state:

'Types of evidence we will accept

4. You must demonstrate competence in:

4.1. reading;

4.2. writing;

4.3. listening, and

4.4. speaking.

5. We will consider the evidence we receive against the following criteria:

5.1. whether it is recent, objective and independent

5.2. whether it clearly demonstrates that you can read, write, communicate and interact with patients, service users, relatives and healthcare professionals effectively in English as a nurse, midwife or in a role comparable to that of a nursing associate and

5.3. whether we can readily verify it'

The panel took into account that these provisions are in addition to the paragraphs in the guidance which deal with the English language test result such as the OET. The panel examined all the evidence before it, including your bundle of documents. However, it was not satisfied from the material before it that there was evidence which fulfilled the criteria in paragraph 4 and 5 as set out above. Despite being suspended from practice, paragraph 5.2 envisages that a registrant can demonstrate the required standard of English language while working in a non-registered role in a healthcare setting or similar. There was no such evidence before the panel.

In light of this, this panel determined that your fitness to practise remains impaired due to your not having the required level of English necessary for you to practise safely and effectively. The panel therefore decided that a finding of continuing impairment is necessary on the ground of public protection. The panel also finds that your fitness to practise is impaired on grounds of public interest as the public would expect that a nurse should be able to communicate effectively.

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.

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 concerns 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 due to the public protection and public interest issues identified, such an order 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. The panel considered the risks in relation to your English speaking, reading and listening skills. The panel explored what the potential risks would be in a nursing environment, without proficient levels of English. The panel considered the following examples from the fitness to practise library guidance (Reference: FTP-2e) as potential risks if you were allowed to practice as a nurse without the required level of English in speaking, listening and reading:

- *poor handover of essential information about patient treatment or care to other health professionals because of an inability to speak English.*
- *serious failure(s) to give appropriate care to patients because of an inability to understand verbal or written communications from other health professionals (or patients themselves).*
- *drug error(s) caused by a failure to understand or inability to read prescriptions.*

The panel considered conditions involving supervision but decided that such supervision will need to be direct and constant in order to manage the potential risks presented by these language deficits.

As you have still not achieved the required standard of English the panel determined that there could be no workable conditions of practice to mitigate for the risks identified.

The panel considered the imposition of a further period of suspension. It was of the view that a nine-months suspension order would allow you further time to complete your studies and achieve the standards required in the English language test. The panel considered that it will be disproportionate to order the maximum 12 months, with nine-months reflecting the hard work you have already undertaken with regard to your English language. The panel was of the view that a suspension order will protect the public from the potential risks identified and uphold the public interest in this case.

The panel took into account your personal circumstances and concluded that a further nine-month suspension order would be the appropriate and proportionate response and afford you adequate time to provide evidence addressing these concerns. If you are able to pass an NMC recognised English language test before the next scheduled review, you can request an early review.

The panel considered proportionality in coming to this decision and took into account that you will be prevented from practising and earning an income from your profession. However, the panel concluded that the need to protect the public and uphold the public interest outweighs your interest in this regard.

The panel was of the view that a striking off order was unnecessary and disproportionate.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 27 November 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:

- Evidence of passing the English language competency test to meet the required standards of the NMC.
- Other evidence as outlined in the NMC's revised guidance.

This will be confirmed to you in writing.

That concludes this determination.