

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

**Substantive Order Review Hearing
Tuesday, 9 April 2024**

Virtual Hearing

Name of Registrant: Reynaldo Estoque

NMC PIN 00J11490

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse, level 1 (05 October 2000)

Relevant Location: Isle of Man

Type of case: Conviction

Panel members: Carolyn Tetlow (Chair, lay member)
Alison Bielby (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Patricia Crossin

Hearings Coordinator: Eleanor Wills

Nursing and Midwifery Council: Represented by Alexander Findley, Case Presenter

Mr Estoque: Present and represented by Alex Lawson, instructed by Royal College of Nursing (RCN)

Order being reviewed: Suspension order (4 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect on 16 May 2024 in accordance with Article 30 (1)**

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

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

Mr Findley on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the application to the extent that any reference to your health should be heard in private.

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 or by the public interest.

The panel determined to go into private session in connection with your specific health matters and private life as and when such issues are raised, in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order.

This order will come into effect at the end of 16 May 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed as a conditions of practice order for a period of 16 months without review, by a Fitness to Practise Committee panel on 21 February 2022. This was appealed in the High Court on 18 July 2022 by the Professional Standards Authority (PSA). The appeal was dealt with by way of a consent order and as per the wording of that document, a 12-month suspension

order was imposed instead. This was first reviewed on 6 June 2023 where the suspension order was confirmed and extended for a period of six months. The second review took place on 8 December 2023, where the suspension order was confirmed and extended for a further period of four months.

The current order is due to expire at the end of 16 May 2024.

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

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

‘That you, a registered nurse

1. *On 11 May 2021, at the Court of Summary Jurisdiction, sitting at Douglas, Isle of Man, were convicted of the following offence;*
 - a) *Indecent Assault, contrary to section 13 (1) of The Sexual Offences Act 1992.*

And, in light of the above, your fitness to practise is impaired by way of your conviction.’

The second 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 found that you had developing insight. At this hearing, the panel was of the view that your insight has further developed in relation to the impact of your actions on the victim but remains concerned that your prevention strategies require further development.

The panel took into account the live evidence it had heard from you and your line manager, Ms 1. It considered that you explained during your evidence that you

have taken your actions in this incident and the impact on a vulnerable victim very seriously. The panel noted how remorseful you were, how much you have learnt through the training courses you have undertaken, as well as your reflection.

The panel was also of the view that you have demonstrated your developing insight through the training you have done and also the counselling that you have undertaken. You have engaged well in the programme of counselling but have not yet completed the programme. The panel also had sight of the positive testimonials which speak highly of your professionalism and dedication to nursing. The panel also took into account that you have fully engaged with this process, and in particular have fully responded to both recommendations from the previous panel.

However, the panel considered that your insight was still developing in respect of embedding preventative strategies that you could put in place to prevent such an incident happening again. The panel was of the view that for these reasons there was still a risk of repetition and therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

Further, the panel was of the view that a well-informed member of the public would be concerned if you were permitted to return to practise unrestricted at this stage. 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 second 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 fully reflect on your previous failings/conviction. The panel concluded that a further four-month suspension order would be the appropriate and proportionate response and would

afford you adequate time to further develop your insight into preventative strategies to reduce the risk of repetition. It would also give you an opportunity to complete your counselling programme.

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 four months would provide you with an opportunity to continue your engagement with the NMC and to complete your counselling programme that you are currently undertaking, which will help you embed those preventative strategies. 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 16 January 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:

- You continued engagement with the NMC and your attendance at any future review hearing of this order*
- Evidence that you have completed your counselling programme*
- A report from your counsellor detailing the range of preventative strategies you have developed to reduce the risk of recurrence*
- A reflective piece on your preventative strategies and how you have embedded them’.*

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 RCN bundle. It has taken account of the submissions made by Mr Findley on behalf of the NMC and those of Mr Lawson on your behalf.

Mr Findley outlined the background of the case and specifically referred the panel to the following documentation:

- The substantive hearing determination dated 21 February 2022, which includes excerpts of your previous reflections.
- The previous substantive order review hearing determination dated 6 June 2023, which includes the text of the High Court Consent Order dated 18 July 2022.
- The previous substantive order review hearing determination dated 8 December 2023.
- The bundle provided by you which includes the following:
 - References from [PRIVATE] Ms 1, and [PRIVATE] Ms 2, at Salisbury Street Care Home ('the Home'), your employer.
 - References from Colleagues at the Home.
 - A letter from [PRIVATE], Mr 7, setting out what is described as a treatment plan and learning strategies to prevent reoffending.
 - Numerous training certificates in stress management, sexual harassment, and safeguarding.

Mr Findley submitted that you have completed your criminal sentence, which was imposed on 22 June 2021, which was as follows:

'You were sentenced to a Probation Order for 2 years, made subject to a Sex Offender's Notification Requirement for 2 years, given 120 hours of community service, ordered to pay courts costs of £125, and compensation to the victim of £1000.'

However, Mr Findley submitted that this is still a very serious offence being considered by the panel today. Mr Findley referred the panel to the NMC guidance for '*considering sanctions for serious cases*', reference SAN-2, last updated 27 February 2024, and highlighted the following excerpt under the heading '*cases involving sexual misconduct*':

'Sexual misconduct is likely to create a risk to people receiving care and to colleagues as well as undermining public trust and confidence in the professions we regulate. A panel should always consider factors such as the duration of the conduct in question, the professional's relationship or position in relation to those involved and the vulnerabilities of anyone subject to the alleged conduct. Long-term or repeated conduct is more likely to suggest risk of harm, together with conduct involving imbalances of power, cruelty, exploitation and predatory behaviour.'

In relation to the seriousness of the offence Mr Findley submitted that the offence involved an imbalance of power in that the individual was vulnerable, as they were [PRIVATE], and you were in a position of trust, as a Registered Nurse. Mr Findley submitted that the individual was not someone who you knew in your capacity as a Registered Nurse. Further Mr Findley submitted that there was no long-term pattern of this behaviour nor is there any indication that your behaviour was predatory or cruel. Mr Findley therefore submitted that the offence is serious in and of itself, but that the risk of reoffending is relatively low. He submitted that whether it is low enough to justify departing from a suspension order is a matter for the panel.

Mr Findley referred the panel to your reflections, the training and counselling you have undertaken and your numerous positive references. Mr Findley did highlight to the panel that, in both your reflection and the report provided by Mr 7, regarding your counselling sessions, you have set out your strategies to prevent reoffending, but that you have not specifically addressed how you would implement these in practice, if you were to find yourself in a similar situation again. However, Mr Findley did acknowledge that you have developed a greater understanding and knowledge of potential strategies to avoid putting yourself in this kind of situation again.

Mr Findley submitted that, in light of your conviction for indecent assault against a vulnerable individual, that there is inevitably an ongoing risk with regards to your judgment

and ability to uphold the fundamental principles of Nursing albeit that the risk has minimised due to the remedial steps you have undertaken. Mr Findley submitted that you broke the law and touched a vulnerable individual without consent which is incompatible with the standards and conduct expected of a Registered Nurse. Mr Findley therefore submitted that your misconduct is difficult to remediate and that there remains an ongoing risk to the public on the ground of public protection. Further he submitted that there remains a risk to the public confidence and trust in the profession, if you were allowed to practice unrestricted, due to your criminal conviction for sexual misconduct. Mr Findley therefore invited the panel to make a finding that your fitness to practice remains currently impaired.

Mr Findley referred the panel again to the NMC guidance for *'considering sanctions for serious cases'*, reference SAN-2, last updated 27 February 2024, and highlighted the following excerpt under the heading *'cases involving criminal convictions or cautions'*:

'Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.'

Mr Findley therefore invited the panel, if it were to find that you are currently impaired, to impose either another period of suspension or a stringent conditions of practice order.

Mr Lawson on your behalf, submitted by the nature of your conviction that there is going to be an element of continuing impairment but that it is at the discretion of the panel to determine whether you have undertaken enough remedial steps to address the issue of impairment.

Mr Lawson invited the panel to allow the current order to lapse upon its expiry as the most appropriate outcome for today's proceedings. Mr Lawson submitted that if the panel makes a finding of continuing impairment, then he would invite the panel to consider imposing a conditions of practice order.

Mr Lawson informed the panel today, that the previous panel had set out recommendations for you to undertake in order to further develop your insight. Mr Lawson submitted that these recommendations have been met, in that you have provided a further reflection and undertaken relevant training and completed your course of counselling. Mr Lawson submitted that your sentence was imposed in June 2021 and was completed in June 2023. Mr Lawson reminded the panel that it is not their role today to punish you for past wrongdoings and that, although the conviction is serious, you have completed the criminal sentence imposed. Mr Lawson reminded the panel that although you have a conviction for indecent assault that there is no presumption of a suspension order.

Mr Lawson submitted that your further reflective piece demonstrates profound and emphatic remorse and a deeper insight into your failings. Further that you have shown an awareness and acceptance of what you have done and the ramifications of your failings. Mr Lawson informed the panel that you are supported by your colleagues and managers at the Home and referred the panel to the glowing references provided; specifically, he referred to the reference provided by Ms 1, [PRIVATE] at the Home. Mr Lawson submitted that Ms 1 is aware of your failings and continues to support you. Further Mr Lawson submitted that the risk assessments undertaken by Ms 1 do not identify any risk within your current employment.

Mr Lawson referred the panel to the letter from Mr 7, [PRIVATE], dated 18 February 2024, which details seventeen, one to one sessions involving preventative Cognitive Behavioural Therapy strategies. Mr Lawson specifically referred the panel to the following excerpt:

'Reynaldo has consistently and conscientiously attended all therapy sessions with me and has diligently completed homework' tasks set.

In my opinion, Reynaldo is congruent, integral, and honest in his remorse concerning the incident under review and demonstrates a determination that nothing similar will ever happen again. As outlined in this report, I believe that Reynaldo has the tools and strategies, developed during the course of his therapy sessions, to ensure that appropriate boundaries and expectations are always met within a professional or personal situation. Therefore, I believe that it is highly unlikely that there will be a recurrence of the incident under review.'

Mr Lawson referred the panel to the NMC guidance '*considering sanctions for serious cases*', reference SAN-2, last updated 27 February 2024. He submitted that your conviction did not result from an incident which occurred in your clinical practice. Further he submitted that it was a one-off incident, and the likelihood of reoccurrence is low.

Mr Lawson referred the panel to the NMC guidance '*Factors to consider before deciding on sanctions*', reference SAN-1, last updated 27 February 2024. Mr Lawson submitted that your criminal sentence has been completed and there are minimal aggravating features regarding your offence. He submitted that you have no previous history of any misconduct, this was a one-off incident, and that this incident did not occur in your clinical practice. Mr Lawson submitted that there are several mitigating factors in that you have developed insight and evidenced remorse, you have undertaken remedial steps to address the regulatory concerns, you have a supportive employer and, you have demonstrated an understanding of your failings.

When questioned by the panel, Mr Lawson submitted that the training you undertook was all online and the courses were 3/4hours each in length. He submitted that [PRIVATE]. Mr Lawson submitted that you are an unofficial '*ambassador*' for safeguarding at the Home and that this is a role you have taken upon yourself. Mr Lawson submitted that within this role you have trained one new member of staff, made and put-up safeguarding posters in the Home and have explained safeguarding policies to visitors and new admissions to the Home. Mr Lawson submitted that your church pastor is aware of the allegations and that you have apologised for your failings through prayer. Further that as a member of your church community you have increased awareness of safeguarding through signage and policy changes, and you have also explained to colleagues and friends that such behaviour, of that which was found proved, is unacceptable.

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 was of the view that this is a serious offence involving a conviction for indecent assault against a vulnerable individual. The panel bore in mind the NMC guidance '*How we determine seriousness*', reference FTP-3, last updated 27 February 2024. The panel noted that this case involves sexual misconduct which occurred outside of your clinical practice but determined that this is still likely to be serious enough to impair your fitness to practice. The panel referred to the following excerpt of the FTP-3 guidance:

'Sexual misconduct is likely to be serious enough to impair fitness to practise whether the conduct takes place in professional practice or outside professional practice. Sexual misconduct poses risks both to people receiving care and colleagues and can seriously undermine public trust and confidence in our professions.'

The panel took into consideration that the conviction itself directly contradicts the standards and values expected of a Registered Nurse in accordance with the NMC code. The panel noted that the offence involved an imbalance of power in that you, at the time, were in a position of trust, and there was a large age gap between you and the individual. The panel however took into consideration that there have been no issues raised with regards to your clinical practice. The panel noted that this was an isolated incident and that there have been no allegations of a similar nature raised before or since this incident.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. The panel today has received and taken into consideration numerous positive testimonials, supporting your clinical practice, provided by the following individuals:

- [PRIVATE], Ms 1, a Registered Nurse, at the Home
- [PRIVATE], Ms 2, a Registered Nurse, at the Home
- A Colleague, Mr 3, a Registered Nurse, at the Home
- A Colleague, Ms 4, a Registered Nurse, at the Home
- A Colleague, Ms 5, a Senior Healthcare Assistant, at the Home
- A Colleague, Mr 6, a Senior Healthcare Assistant, at the Home

The panel also has before it today, a report from your [PRIVATE], Mr 7 dated 18 February 2024, which included the following excerpt:

'Reynaldo has consistently and conscientiously attended all therapy sessions with me and has diligently completed homework' tasks set.

In my opinion, Reynaldo is congruent, integral, and honest in his remorse concerning the incident under review and demonstrates a determination that nothing similar will ever happen again. As outlined in this report, I believe that Reynaldo has the tools and strategies, developed during the course of his therapy sessions, to ensure that appropriate boundaries and expectations are always met within a professional or personal situation. Therefore, I believe that it is highly unlikely that there will be a recurrence of the incident under review.'

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the additional relevant training you have undertaken, which included:

- Sexual Harassment Training Course dated 8 January 2024
- Sexual Harassment Awareness Training dated 14 January 2024
- Safeguarding of Children dated 17 January 2024
- Safeguarding Adults dated 17 January 2024
- Cognitive Behavioural Therapy dated 17 January 2024
- Stress Management dated 19 March 2024

Further the panel took into consideration the reflective piece written by you dated 11 March 2024, in which you addressed the original incident and demonstrated your resolution to not reoffend by having undertaken remedial steps. The panel noted that the last reviewing panel found that you had developing insight. At this hearing the panel was of the view that you have further demonstrated your developing insight and genuine remorse, it referred to the following excerpts from your reflection dated 11 March 2024:

' I have taken and accepted full responsibility of my actions and I am terribly remorseful'

'..knowing how the impact of the felony I have done to the young person and his family, including also the damage created in public trust on my nursing profession which I have loved for more than 30 years.'

The panel determined that you have met the recommendations of the previous panel, in that you have continued to engage with the NMC and proceedings, you have completed your counselling programme (seventeen sessions) and have provided a report evidencing this to the panel today. Further that you have provided an additional reflective piece. The panel therefore concluded that, in light of your very positive testimonials, the additional training you have undertaken, the counselling you have undertaken, and the corresponding report provided by [PRIVATE] Mr 7, that the risk of repetition has decreased. However, the panel concluded that you have not, within your reflection, demonstrated how you would in practice implement the preventative strategies you have learned, and how you have embedded those strategies into your daily life.

The panel therefore determined that you are still liable to repeat matters of the kind found proved, although it accepted that the risk has reduced since the last review on 8 December 2023. The panel therefore decided that a finding of continuing impairment is necessary on the ground 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. The panel noted that you have fully complied with your criminal sentence and that your sentence was completed in June 2023. The panel took into consideration that your NMC registration has been subject to a suspension order since July 2022; therefore, you have not practised as a Registered Nurse in the last 20 months. However, the panel took into account that you have been working at the Home, as a Senior Healthcare Assistant. The panel however determined that a well-informed member of the public would still be concerned to find that you were allowed to resume practice without restriction, given the time that has elapsed since your conviction and the very serious nature of said conviction involving sexual misconduct of a vulnerable individual.

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 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, 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 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 considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, there has been evidence produced to show that you have developed insight, demonstrated remorse and provided evidence of the steps taken to strengthen your practice, having undertaken training and counselling. Further the panel noted that you have provided several positive references from colleagues and managers from the Home in support of your clinical practice, all of whom were aware of your conviction and these proceedings.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel considered imposing a further period of a suspension but determined that this would be disproportionate in all the circumstances, in light of the following:

- The reduction in the risk you pose to the public
- your further developed insight
- your genuine remorse
- your completion of your course of counselling
- your completion of further relevant training
- your supportive references from your colleagues and managers at the Home.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your employment to Adorn Domiciliary Care Ltd at Salisbury Street Care Home, Isle of Man.
2. You must meet with your line manager/supervisor/mentor on a monthly basis to discuss your involvement with and management of any safeguarding issues you encounter.
3. You must provide the NMC with a report, prior to your next review hearing, from your line manager/supervisor/mentor. This report must detail your monthly discussions as stipulated in condition 3 and further include your development and understanding of safeguarding issues.

4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.

5. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.

6. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

7. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.

- c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for a period of 12 months. The panel determined that this would allow you to adjust to your return to practice as a Registered Nurse. Further it would provide you with sufficient time to reestablish yourself in the role of a Registered Nurse and implement the preventative strategies and skills you have learned.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 16 May 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- A further reflective piece, explaining how your theoretical strategies, which you have developed as a result of your training and counselling, are protective against the possibility of you committing further sexual offences.
- Your continued engagement with the NMC and your attendance at any future review hearing of this order
- Hearing from you regarding your continuing developing insight.
- Up-to-date references.
- Up-to-date evidence of your continuing professional development (CPD)

This will be confirmed to you in writing.

That concludes this determination.