

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

**Substantive Order Review Hearing  
Monday 22 April 2024**

Virtual Hearing

**Name of Registrant:** Alexandrina Manuela Tomita

**NMC PIN:** 11G0069C

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – July 2011

**Relevant Location:** Northumbria

**Type of case:** Misconduct

**Panel members:** Sarah Lowe (Chair, Lay member)  
Mandy Tyson (Registrant member)  
Matthew Wratten (Lay member)

**Legal Assessor:** Nicholas Levisieur

**Hearings Coordinator:** Khadija Patwary

**Nursing and Midwifery Council:** Represented by Shabana Fazal, Case Presenter

**Miss Tomita:** Not present and unrepresented

**Order being reviewed:** Suspension order (6 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (12 months) to come into effect at the end of 31 May 2024 in accordance with Article 30(1)**

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Tomita was not in attendance and that the Notice of Hearing had been sent to Miss Tomita's registered email address by secure email on 13 March 2024.

Ms Fazal, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Tomita's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Tomita has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Miss Tomita**

The panel next considered whether it should proceed in the absence of Miss Tomita. The panel had regard to Rule 21 and heard the submissions of Ms Fazal who invited the panel to continue in the absence of Miss Tomita. She submitted that Miss Tomita had voluntarily absented herself.

Ms Fazal submitted that there had been no engagement at all by Miss Tomita with the NMC in relation to this hearing and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Tomita. In reaching this decision, the panel has considered the submissions of Ms Fazal and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Tomita;
- Miss Tomita has not engaged with the NMC and has not responded to any of the emails sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Tomita.

## **Decision and reasons on review of the substantive order**

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 31 May 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 2 November 2023.

The current order is due to expire at the end of 31 May 2024.

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, a registered nurse:*

*1. On 28 February 2022 incorrectly recorded in Patient A's care record:*

- a. that a pressure sore was observed on 14 February 2022;*
- b. that a referral was made to a Tissue Viability Nurse on 21 March 2022;*

*2. Your actions at Charge 1 above were dishonest in that:*

- a. you knew that a pressure sore was not observed on Patient A on 14 February 2022;*
- b. you knew a referral had not been made to the Tissue Viability Nurse on 21 March 2022;*

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

The original panel determined the following with regard to impairment:

*'Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.'*

*In this regard the panel considered the judgment 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.'*

*In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:*

*'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/their fitness to practise is impaired in the sense that S/He/They:*

- 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) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

*The panel found that limbs a) – d) were engaged in this case.*

*The panel finds that patients could have been put at potential risk of harm as a result of Miss Tomita's falsification of patient records. Miss Tomita's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.*

*Regarding insight, the panel considered Miss Tomita's self-referral at both a local level and to the NMC. In determining whether Miss Tomita has taken steps to strengthen her nursing practice and remediate the regulatory concerns, the panel took into account Miss Tomita's reflective statement, as well as the positive testimonials from those that she works with. The panel noted that Miss Tomita had made admissions at an early stage and had demonstrated some limited insight into the regulatory concerns and an understanding that what she did was wrong.*

*The panel considered whether the misconduct in this case is capable of being addressed. It noted that this is the third time that Miss Tomita has come before her regulator, the NMC, and the second instance of dishonesty. The panel determined that it has limited evidence before it to reassure it that Miss Tomita would not act in the future to put patients at an unwarranted risk of harm. The panel was therefore of the view that there is a risk of repetition based on the fact that Miss Tomita has in the past acted dishonestly and is liable to repeat the matters found proved in the future.*

*The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.*

*The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.*

*The panel in determining whether a finding on public interest grounds is required took into account the following:*

*‘ In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

*“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.”*

*The panel determined that a finding of impairment on public interest grounds is required given that the regulatory concerns in this case are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence.*

*The panel considered that there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Miss Tomita's conduct engages the public interest because it had the potential to impede the proper investigation into concerns relating to patient care. This is particularly serious when honesty and integrity are considered by many members of the public as the cornerstones of the nursing profession.*

*In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Tomita's fitness to practise impaired on the grounds of public interest.*

*Having regard to all of the above, the panel was satisfied that Miss Tomita's fitness to practise is currently impaired.'*

The original panel determined the following with regard to sanction:

*'Having found Miss Tomita's 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:*

- *Miss Tomita has previous regulatory findings with the NMC, which include findings of dishonesty*
- *Miss Tomita's falsification of documents had the potential to put patients at a risk of harm*
- *The concerns relate to dishonesty in a clinical setting and were in breach of the duty of candour*
- *This is Miss Tomita's second incident of dishonesty, within a relatively short period of time.*

*The panel also took into account the following mitigating features:*

- *Miss Tomita has admitted the misconduct and has apologised for her actions*
- *Miss Tomita was an inexperienced manager who 'panicked' and had been under pressure*
- *Miss Tomita has shown some insight, reflection and remorse into the regulatory concerns*
- *Miss Tomita has been working without further issue as a nurse, and her employer is aware of the NMC referral.*
- *Miss Tomita self-referred the matter to the NMC and made admissions at an early stage*

*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 given that this is the third time that Miss Tomita has been before her regulator, and it is the second instance of dishonesty.*

*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 Miss Tomita's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Miss Tomita's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the dishonesty 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 placing conditions of practice on Miss Tomita's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:*

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *...*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

*The panel is of the view that there are no practical or workable conditions that could be formulated, given the dishonest nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.*

*Furthermore, the panel concluded that the placing of conditions on Miss Tomita's 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 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;*
- *...*
- *...*

*The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.*

*The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Tomita's case to impose a striking-off order.*

*Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction, which would provide Miss Tomita with the opportunity to further reflect and provide the reviewing panel with full and detailed reflection on these concerns in order for her insight to be better assessed. The panel noted the hardship such an order will inevitably cause Miss Tomita but was of the view that this is outweighed by the public interest in this case.*

*The panel considered that this order is necessary 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.*

*The panel determined that a suspension order for a period of six months was appropriate to mark the seriousness of the misconduct, in light of Miss Tomita's level of insight, her self-referral and her acceptance and cooperation in this case. The panel considered the public interest in returning an otherwise clinically competent nurse to the register.*

*At 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:*

- *An up-to-date reflection focusing on:
  - i. *the importance of accurate patient records*
  - ii. *the impact of Miss Tomita's actions on patients, colleagues, and the nursing profession**
- *Up-to-date testimonials from Miss Tomita's colleagues and current employer with specific reference to Miss Tomita's honesty and integrity in the workplace*
- *Miss Tomita's engagement with the NMC and attendance at any future review hearing'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Miss Tomita's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and proof of posting bundle. It has taken account of the submissions made by Ms Fazal on behalf of the NMC. Ms Fazal provided the panel with the background facts of the case. She also directed the panel to the decision of the original substantive panel.

Ms Fazal submitted that Miss Tomita has not worked as a registered nurse since the suspension order has been imposed on 2 November 2023 and that Miss Tomita has not engaged with the NMC. Ms Fazal submitted that Miss Tomita had not requested for a substantive hearing to take place in which she would have been able to participate however, her case was heard at a substantive meeting. She submitted that Miss Tomita had not provided this panel with any evidence of the things listed by the previous panel. Ms Fazal submitted that there has been no engagement, reflection or evidence of insight from Miss Tomita since the imposition of this order.

Ms Fazal submitted that the position is somewhat worse than what it was at the substantive stage, as Miss Tomita was essentially given a second chance to reflect and provide evidence of her developed insight and provide evidence of reflection and what is currently happening in her life. However, Miss Tomita has chosen not to engage and provide any evidence of this. She submitted that Miss Tomita has not remediated her practice. Ms Fazal submitted that a further suspension order will allow Miss Tomita another opportunity to engage and provide details of her insight and what has occurred since the imposition of the current suspension order.

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 Miss Tomita's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Tomita has limited insight. At this hearing the panel considered that there has been no information since the previous substantive meeting to indicate that Miss Tomita's insight has developed further.

In its consideration of whether Miss Tomita has taken steps to strengthen her practice, the panel took into account that it has not seen any information to suggest Miss Tomita has strengthened her practice, is working in any setting, or undertaken further training. The panel has also not seen any employer testimonials, nor evidence of any further reflective work completed by Miss Tomita.

The original panel determined that Miss Tomita would be highly likely to repeat matters of the kind found proved. Today's panel has heard no new information to suggest that the level of risk has changed since the original meeting. In light of this, this panel determined that Miss Tomita is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

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 Miss Tomita's fitness to practise remains impaired.

## Decision and reasons on sanction

Having found Miss Tomita's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. 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 Miss Tomita's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Tomita's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Miss Tomita's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original meeting and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. Miss Tomita has not engaged with the process, and it is difficult in these circumstances to formulate conditions which might be appropriate or with which she will engage. Therefore, the panel considered that it was not appropriate or practicable to formulate conditions of practice that would adequately address the concerns relating to Miss Tomita's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Tomita further time to fully reflect on her previous dishonesty. It considered that Miss Tomita needs to gain a full understanding of how the dishonesty of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford Miss Tomita adequate time to further develop her insight and take steps to strengthen their practice.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months would provide Miss Tomita with an opportunity to engage with the NMC. 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 31 May 2024 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:

- An up to date reflection focusing on:
  - the importance of accurate patient records
  - the impact of Miss Tomita's actions on patients, colleagues, and the nursing profession
- Up to date testimonials from Miss Tomita's colleagues and any recent employers with specific reference to Miss Tomita's honesty and integrity in the workplace;
- Evidence of continuing professional development that would support safe return to nursing practice; and

- Miss Tomita's engagement with the NMC and attendance at any future review hearing.

This will be confirmed to Miss Tomita in writing.

That concludes this determination.