

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

**Substantive Order Review Meeting
Monday, 08 January 2024**

Virtual Meeting

Name of Registrant: Obdulia Vicente Garcia

NMC PIN 05L0043C

Part(s) of the register: Registered Nurse
Adult Nursing – December 2005

Registered Midwife
Midwifery – December 2008

Relevant Location: Oxfordshire

Type of case: Misconduct

Panel members: John Kelly (Chair, lay member)
Nicola Dale (Lay member)
Judith McCann (Registrant member)

Legal Assessor: Charles Conway

Hearings Coordinator: Max Buadi

Order being reviewed: Conditions of practice order (36 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on
27 February 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Garcia's registered email address by secure email on 24 November 2023.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 8 January 2024 and inviting Miss Garcia to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Garcia has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a suspension order for a period of 12 months. This order will come into effect at the end of 27 February 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 29 January 2020. This was reviewed on 20 January 2021, and a conditions of practice order was imposed for 36 months.

The current order is due to expire at the end of 27 February 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 Midwife, on the 20 June 2016 whilst caring for Patient A:

1.1 Failed to request midwifery assistance when patient A was admitted to the delivery suite

1.2 Failed to inform an obstetrician and request immediate review on admission.

1.3 Did not seek assistance from one of the following when you were attempting to conduct a CTG:

1.3.1 Senior midwife;

1.3.2 Doctor;

1.3.3 Registrar level or above

1.4 Failed to start a CTG in a timely manner.

1.5 Failed to interpret the CTG in a timely manner.

1.6 Failed to interpret the CTG correctly.

1.7 Failed to escalate the abnormal CTG to a senior doctor in a timely manner.

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

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

'The panel considered whether Miss Garcia's fitness to practise remains impaired. It noted that Miss Garcia had responded to NMC communication, but did not provide adequate reflection, insight or proof of compliance with her conditions of practice order. It therefore had no evidence of any attempts Miss Garcia had taken to remediate the concerns regarding her misconduct. The panel noted Miss Garcia's training certificate in relation to an Electronic Fetal Monitoring course, but did not

consider this to be an adequate undertaking of training to satisfy the concerns raised. The panel considered that there had been no material change of circumstances since the substantive order review hearing which undermined the previous panel's decision. The panel noted that there was no information before it to suggest Miss Garcia had complied with the conditions of practice order, had taken sufficient steps to remediate her practice or that she had been working safely as a registered midwife since the initial order was imposed. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel bore 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 and that a well-informed member of the public would expect Miss Garcia's practice to be restricted in light of the charges found proved.

For these reasons, the panel finds that Miss Garcia's fitness to practise remains impaired.'

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

'The panel next considered the imposition of a further conditions of practice order. The panel was mindful that any conditions imposed must be measurable, workable and practicable. The panel had regard to the original misconduct in this case and it considered that this remained capable of remediation should Miss Garcia return to practise in the UK as a registered midwife. It considered that the current conditions remain measurable, workable and practicable, and that they would continue to address the specific clinical issues in this case. The panel had regard to Miss Garcia's email to the NMC on 6 January 2021 in which she stated that she does not plan to return to the UK at present and that she may seek to practise as a midwife in France. The panel however considered that Miss Garcia had not ruled out the possibility of returning to the UK entirely, nor had she provided sufficient information to suggest that she will no longer be seeking employment as a registered midwife.

The panel was satisfied that a conditions of practice order is appropriate and proportionate in the circumstances of this case. It considered that the current conditions remain measurable, workable and practicable, and that those conditions would continue to protect the public and satisfy the public interest.

Accordingly, the panel determined, pursuant to Article 30(1) (b) of the Nursing and Midwifery Order 2001, to make a conditions of practice order for a period of thirty-six months, which will come into effect on the expiry of the current order. It considered that this would give Miss Garcia sufficient opportunity to obtain employment subject to the conditions, and to work towards addressing them, in order to remediate her clinical failings. If Miss Garcia is able to satisfy the conditions prior to the expiry of the thirty-six month period, she has the option of requesting an early review of the order.

In accordance with Article 30(1) (a) of the Order the panel therefore decided to extend the current conditions of practice order as follows:

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 ensure that you are supervised by your line manager or nominated deputy any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, another registered midwife when working in that capacity or a registered nurse when working in that capacity*
- 2. You must identify a clinical supervisor to work with you to create a personal development plan (PDP) which addresses the following areas of your practice:*
 - a) Communication and escalating concerns*

b) Conducting and interpreting CTGs

In respect of conducting and interpreting CTGs your clinical supervisor must be a registered midwife.

You must:

- a) Send your case officer a copy of your PDP within 28 days of starting employment.*
 - b) Meet with your clinical supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 - c) Send your case officer a report from your clinical supervisor at least 14 days before any review of this order. This report must show your progress towards achieving the aims set out in your PDP.*
- 3. You must keep us 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.*
- 4. You must keep us 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.*
- 5. You must immediately give a copy of these conditions to:*
- a) Any organisation or person you work for.*
 - b) Any agency you apply to or are registered with for work.*
 - c) Any employers you apply to for work (at the time of application).*
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

- e) *Any current or prospective patients or clients you intend to see or care for when you are working independently*
6. *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.*
7. *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.'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Garcia'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 practice safely, kindly and professionally. 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.

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 Garcia's fitness to practise remains impaired.

The panel bore in mind that the last reviewing panel in 2021 found that Miss Garcia had not provided evidence of insight, strengthened practice or proof of compliance with her conditions of practice order. Additionally, it noted that the last reviewing panel did not have evidence of any attempts Miss Garcia had taken to remediate the concerns regarding her misconduct.

At this meeting the panel found that there has been no material change during the three years since the last review of this substantive order. It had no new information before it regarding current insight, reflection or strengthened practice. The panel also do not have any evidence of Miss Garcia's stated intentions with regards to midwifery or willingness to engage with her regulator.

The panel noted that no evidence had been provided to demonstrate any progress regarding compliance with the conditions of practice order. It therefore did not have any evidence to indicate that the risk identified by the original panel had reduced.

In light of this the panel determined that there remains a risk of repetition of the matters 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 Garcia's fitness to practise remains impaired.

The panel first considered whether to take no action but concluded that this would be inappropriate considering a conditions of practice order had been imposed previously, and 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, and the public protection issues identified, an order that does not restrict Miss Garcia'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 Garcia'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 the continuation of the current conditions of practice order on Miss Garcia's registration would still 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 one of the key considerations for the imposition of a conditions of practice order is the potential and willingness for Miss Garcia to respond positively to retraining. The panel noted that during the three years since the last review, the NMC has not received any information from Miss Garcia demonstrating how she has complied with the current conditions of practice order.

The panel noted that at the last reviewing panel had information to suggest that Miss Garcia resides in France. It also noted that the original panel had information to suggest that Miss Garcia practiced as a midwife in Spain. However, today's panel had no evidence before it of Miss Garcia working in either Spain or France, or any progress she has made with compliance with the current conditions of practice order.

The panel considered that it had no evidence of developing insight, strengthened practice or remediation of the concerns identified. As a result, it was of the view that conditions of practice are no longer workable as it has not seen evidence of a potential willingness to respond positively to retraining.

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 Miss Garcia with an opportunity to engage with the NMC, inform the NMC of her future intentions regarding midwifery and provide evidence of compliance with previous conditions of practice order. It considered this to be the most appropriate and proportionate sanction available.

The panel would like to make Miss Garcia aware that the next reviewing panel of this hearing will consider all available sanctions including a striking off order.

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

- Miss Garcia's engagement with NMC and her attendance, in person, via video link or telephone at the next review hearing;
- A comprehensive reflective piece addressing her reflection on the proven charges in this case;
- Recent references and testimonials from any work undertaken whether it be paid or voluntary;
- Evidence of any study or training undertaken relevant to the identified failings;
- Miss Garcia's intentions relating to her practice.

This will be confirmed to Miss Garcia in writing.