

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

**Substantive Order Review Hearing
Monday, 25 March 2024**

Virtual Hearing

Name of Registrant: Yasmin Gay Velasquez Marabur

NMC PIN: 02C1423O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – March 2002

Relevant Location: Kent

Type of case: Misconduct

Panel members: Michelle Lee (Chair, Registrant member)
Mary Karasu (Registrant member)
James Hurden (Lay member)

Legal Assessor: Hala Helmi

Hearings Coordinator: Khatra Ibrahim

Nursing and Midwifery Council: Represented by Artis Kakonge, Case Presenter

Ms Marabur: Not Present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 6 May 2024 in accordance with Article 30**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Marabur was not in attendance and that the Notice of Hearing had been sent to Ms Marabur's registered email address by secure email on 19 February 2024.

Ms Kakonge, 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 Ms Marabur'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 Ms Marabur has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Ms Marabur

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

Ms Kakonge submitted that there had been no engagement at all by Ms Marabur with the NMC in relation to these proceedings 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 decided to proceed in the absence of Ms Marabur. In reaching this decision, the panel considered the submissions of Ms Kakonge and the advice of the legal assessor. It had particular regard to 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 Ms Marabur.
- Ms Marabur has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing.
- The panel noted that amongst other communications from the NMC, Ms Marabur had also been emailed the Teams link to attend the hearing on Friday 22 March 2024, preceding the opening of the case, but she did not attend the 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 Ms Marabur.

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 6 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 5 October 2023.

The current order is due to expire at the end of 6 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 while working at [PRIVATE] during the course of a night shift between 17 and 18 December 2018

- 1. Failed to monitor or document Patient A observations between 2:10am and 5:10am*
- 2. Prior to going on your break at 2:10am failed to handover the care of Patient A to the nurse in charge and/or another colleague*
- 3. On discovering that Patient A was unresponsive failed to communicate appropriately with:
 - a) Nurse in charge*
 - b) On call medics**

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:

'The panel found that Patient A was put at an unwarranted risk of harm as a result of Ms Marabur's failure to undertake and record observations and communicate appropriately with her colleagues. The panel had regard to the fact that Ms Marabur recognised that Patient A was unresponsive, but that she had failed to respond appropriately. The panel was of the view that this was compounded by the fact that Ms Marabur knew Patient A needed to be observed regularly and had not done so, and that her nursing assistant colleague, Witness 2, had enquired about Patient A

and been ignored. The panel found that these were failures in providing basic care from an experienced nurse and was satisfied that Ms Marabur had breached a fundamental tenet of the nursing profession and had brought its reputation into disrepute.

The panel was satisfied that the misconduct in this case is capable of remediation. It therefore carefully considered the evidence before it in determining whether or not Ms Marabur had sufficient insight into her failings and had taken steps to strengthen her practice. In considering these aspects, the panel was mindful that Ms Marabur had voluntarily absented herself from these proceedings, not provided any written reflections, evidence of training or current practice, nor evidence of remorse. The panel therefore only had the comments contained in the local interview and her local statement to consider.

Regarding insight, the panel had regard to the local investigation report dated 13 June 2019 which states:

*‘Since the incident, YGM has attended training sessions and spent time with the Critical Care Outreach team to enhance her knowledge and skills. YGM has carried out NEWS2 training since the incident. **See YGM’s training record enclosed in Appendix 17.***

YGM stated during the interview that following this training she would now act differently if she was presented with a similar situation.’

*When questioned, all of the witnesses confirmed that YGM normally works well and escalates concerns about her patients **(line 17, appendix 15)** and **(line 9, appendix 15).***

The panel also had regard to Ms Marabur’s local statement dated 2 January 2019 which states:

‘In Hindsight, I can reflect on my practice whilst looking after this patient. At the first instance, I should have informed all staff of my concerns regarding

patient's condition and put out a MET Call earlier regardless of Doctor's reassurances. I should have informed the trained nurse to continue vital signs/visual assessments every 15-30 minutes and this should have been documented which I neglected to do. I also realise I should have challenged this admission and gained further insight to his condition as feel this was an inappropriate admission to [PRIVATE]'

The panel was of the view that this did show a degree of insight by Ms Marabur as to how her failings had fallen short.

The panel also had regard to the evidence of Witness 1 in that this was not the usual level of practice provided by Ms Marabur. However, she has not provided any explanation for her decision making and poor standard of practice on 18 December 2018. She has not provided to the panel any evidence of reflection on the incidents nor evidence to demonstrate that she recognises why what she had done was wrong or how this impacted negatively on patient safety and the reputation of the nursing profession. Further, the panel has seen no evidence of remorse. The panel has nothing that could assist it to conclude that Ms Marabur's insight had developed beyond admitting during her local investigation interview that she had made some mistakes. It therefore determined that her insight is limited.

The panel next considered whether Ms Marabur had undertaken any relevant training since the incidents. It noted that the local investigation report refers to training and shadowing that Ms Marabur was said to have undertaken. However, the panel was not provided with any documentary evidence for such training nor any reflection from Ms Marabur as to how such training may have strengthened her practice or assisted her in changing her behaviour in the future. Further, the panel had no information regarding how Ms Marabur has been maintaining her nursing practice since the incidents.

In light of Ms Marabur's lack of engagement, limited insight, lack of evidence of remediation and testimonials, the panel therefore concluded that there is a risk of repetition and determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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. It was of the view that members of the public and the nursing profession would be concerned if a finding of impairment in respect of a nurse who failed to provide basic nursing care standards to a vulnerable patient in their care, were not found to be impaired. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore determined that a finding of impairment on public interest grounds is also required.

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

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Ms Marabur'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:

'Conditions may be appropriate when some or all of the following factors are apparent:

- 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 was of the view that there was no evidence of deep-seated attitudinal concerns and that this was an isolated incident over an otherwise unblemished career. The panel acknowledges that it might have been possible to address the concerns identified through a conditions of practice order. However, it was of the view that given the longstanding lack of meaningful engagement by Ms Marabur with the proceedings, the seriousness of the concerns, the absence of information about her present circumstances, and the lack of any evidence of insight into the impact of her failings on patients, colleagues and the public, there are no practical or workable conditions that could be formulated.

Accordingly, a conditions of practice order would not address the risk of repetition and this poses a risk of harm to patients' safety and the public. The panel had no evidence before it to suggest that Ms Marabur has the willingness to comply with any conditions of practice given that there was no documentary evidence of any positive steps she has taken to strengthen her nursing practice nor any information about her current work status.

Consequently, the panel decided that any conditions of practice order would not be workable or appropriate in this case and would not protect the public nor be in the public interest.

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 considered that Ms Marabur's misconduct was a breach of fundamental tenets of nursing practice and had posed a real risk of harm to Patient A. It noted that although Ms Marabur had shown limited insight during the local investigation at the Hospital, there was no evidence before the panel of her reflection on the incident nor evidence to demonstrate any insight as to the seriousness of her actions and the impact of her failings on Patient A and the nursing profession. Furthermore, the panel noted that Ms Marabur did not engage with the proceedings and there was no evidence to show that Ms Marabur has taken any positive steps to strengthen her nursing practice.

Notwithstanding this, the panel noted that this was a single instance of misconduct, there was no evidence of harmful deep-seated personality or attitudinal problems and no evidence of previous concerns raised about her nursing practice. It was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

Balancing all of these factors, the panel determined that a suspension order would be the appropriate and proportionate sanction. It was satisfied that a suspension order for a period of six months would protect the public and address the public interest in this case. It decided that this order is necessary to mark the seriousness of the misconduct, 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 was of the view that a suspension for a period of six months will provide an opportunity to Ms Marabur to engage with the NMC, demonstrate evidence of insight into her failings and any positive steps she has taken to strengthen her nursing practice.

The panel considered whether a striking-off order would be proportionate but, taking account of all the information before it including that this was a single instance of misconduct, the panel concluded that such an order would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Marabur's case to impose a striking-off order.

The panel noted the hardship such an order may cause Ms Marabur. However, this is outweighed by the public interest in this case.

The panel decided that a review of this order should be held before the end of the period of the suspension order.

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.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Marabur'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. It has taken account of the submissions made by Ms Kakonge on behalf of the NMC. She submitted that the NMC's application today is to invite the panel to extend the current suspension order that is currently in place for a period of 6 months. She submitted that the events stemmed from a referral that was made to the NMC on 20 November 2019 and took the panel through a brief background of the case. She submitted that at the substantive hearing, the panel found the following charges proved:

1. *'Failed to monitor or document Patient A observations between 2:10am and 5:10am*
2. *Prior to going on your break at 2:10am failed to handover the care of Patient A to the nurse in charge and/or another colleague*
3. *On discovering that Patient A was unresponsive failed to communicate appropriately with:*
 - a)*Nurse in charge*
 - b)*On call medics'*

Ms Kakonge submitted that the previous panel, found by way of charges proved, Ms Marabur's fitness to practice was impaired, and amounted to misconduct. She submitted that patient A was put at risk of significant harm due to Ms Marabur's failure to undertake and record observations and to appropriately communicate with her colleagues. She also submitted that Ms Marabur has been a nurse for a number of years and holds a significant amount of experience. She submitted that the previous panel found that the failures fell below the basic care expected from an experienced nurse such as Ms Marabur, and that she had breached a fundamental tenet of the nursing profession and brought the reputation of the profession into disrepute. She highlighted to the panel that prior to the NMC referral, there had been no findings of misconduct against Ms Marabur.

Ms Kakonge submitted that before the sanction was imposed, Ms Marabur had shown limited insight into what had occurred and directed the panel to the bundle before it, where it is stated by Ms Marabur by way of a local statement dated 2 January 2019:

'In Hindsight, I can reflect on my practice whilst looking after this patient. At the first instance, I should have informed all staff of my concerns regarding patient's condition and put out a MET Call earlier regardless of Doctor's reassurances. I should have informed the trained nurse to continue vital signs/visual assessments every 15-30 minutes and this should have been documented which I neglected to do. I also realise I should have challenged this admission and gained further insight to his condition as feel this was an inappropriate admission to [PRIVATE]'

Ms Kakonge submitted that through the reflection, Ms Marabur took some responsibility for her failings, noting that she should have informed staff of concerns regarding the patient's condition. Ms Kakonge further submitted that some acknowledgement was given by the registrant to the fact that Ms Marabur completed some training to enhance her knowledge and skills as set out on page 46 of the main bundle:

'...Since the incident, YGM has attended training sessions and spent time with the Critical Care Outreach team to enhance her knowledge and skills. YGM has carried out NEWS2 training since the incident...'

Ms Kakonge submitted that through the imposition of the order currently in place, Ms Marabur has had the opportunity to remediate her misconduct. She also submitted the previous panel evaluated the risk to the public and risk of repetition and it agreed to impose a suspension order of 6 months.

Ms Kakonge submitted that to date, Ms Marabur has not provided any explanation for her decision making, and also did not offer any explanation for her poor standard of practice on 18 December 2018. She submitted the second concern was that Ms Marabur's insight, in the previous panel's view, had not sufficiently developed beyond admitting during the local investigation's interview that she had made some mistakes. She submitted that therefore, in the previous panel's view, her insight was limited.

Ms Kakonge submitted that an order remains necessary, given there remains a risk of repetition. She stated that due to the seriousness of past misconduct, a conditions of practice order, would not be appropriate in this instance. She also submitted that a striking off order would also not be appropriate, given the charges proved. She further submitted that Ms Marabur has not made attempts to engage with the NMC and its processes, and so the only appropriate and proportionate order would be a suspension order for a further six months. She submitted that a suspension order for this period is necessary to protect the public, and to also reduce the risk of repetition. She further submitted that a suspension order is also in the wider public interest to declare and uphold proper standards of conduct and maintain public confidence in the professions and the NMC as regulator.

Ms Kakonge submitted that it is important to ensure Ms Marabur's given a further opportunity to demonstrate remediation, as there is a public interest to return nurses to the profession if possible.

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 Ms Marabur's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Marabur had insufficient insight. At this hearing, the panel had nothing further before it to show that Ms Marabur had developed any insight into the areas the previous panel had identified as being of concern.

The original panel determined that Ms Marabur was liable to repeat matters of the kind found proved. Today's panel had no new information before it to show that Ms Marabur was unlikely to repeat matters proved. In light of this, this panel determined that Ms Marabur 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. In addition to the original basis of impairment, the panel noted Ms Marabur has failed to engage with the NMC as her regulator consistently through the regulatory process or submit any evidence that she has reflected on the matters that brought her before it. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required, as the public's confidence in the NMC would be undermined if it took no action where registrants persistently fail to engage with its investigations into the safety and quality of their practise.

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

Decision and reasons on sanction

Having found Ms Marabur'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. 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 Ms Marabur'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 Ms Marabur'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 Ms Marabur's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. [PRIVATE]. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Marabur's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Marabur further time to fully reflect on her previous misconduct. It considered that Ms Marabur needs to gain a full understanding of how the misconduct 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 6 months suspension order would be the appropriate and proportionate response and would afford Ms Marabur adequate time to further develop her insight and take steps to strengthen their practice.

The panel determined that a striking off order would be disproportionate at this stage. At the next hearing, the reviewing panel will have all options available to it, including a striking off order.

The panel took into account the principle of proportionality and that Ms Marabur will not be able to practice her profession, however the need to protect the public and uphold the public interest outweighed her interest in this regard.

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 6 months would provide Ms Marabur with an opportunity to engage with the NMC, provide further evidence of insight and training. 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 6 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:

- A reflective piece from Ms Marabur, demonstrating any insight into the concerns, any explanation or context of her behaviour, the impact of her conduct on Patient A, public safety and the nursing profession, as well as any steps taken to strengthen her practice in the areas of concern;
- Any information as to Ms Marabur's future nursing career plans;

- Any references or testimonials attesting to Ms Marabur's capability to perform her duties in any paid or unpaid work she may have undertaken since the incident; and
- Ms Marabur's engagement and attendance at any future review hearing

This will be confirmed to Ms Marabur in writing.

That concludes this determination.