

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

**Substantive Order Review Hearing**

**17 January 2020**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

|                                       |   |
|---------------------------------------|---|
| <b>Name of registrant:</b>            | Miss Anna Yanai Kadandara   |
| <b>NMC PIN:</b>                       | 80B1084E  |
| <b>Part(s) of the register:</b>       | Registered Nurse – sub part 1<br>Adult Nursing (22 November 1983)<br>Registered Midwife (20 April 1993)       |
| <b>Area of Registered Address:</b>    | England   |
| <b>Type of Case:</b>                  | Misconduct  |
| <b>Panel Members:</b>                 | Susan Hurds (Chair, Lay member)<br>Lynne Grundy (Registrant member)<br>Razia Karim (Lay member)               |
| <b>Legal Assessor:</b>                | Paul Housego  |
| <b>Panel Secretary:</b>               | Anjeli Shah   |
| <b>Miss Kadandara:</b>                | Not present and not represented   |
| <b>Nursing and Midwifery Council:</b> | Represented by Richard Webb, Case<br>Presenter  |
| <b>Order being reviewed:</b>          | Suspension Order for 6 months   |
| <b>Fitness to Practise:</b>           | Impaired  |
| <b>Outcome:</b>                       | Striking-off Order to come into effect at the end<br>of 24 February 2020 in accordance with Article<br>30 (1) |

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Kadandara was not in attendance and she was not represented in her absence.

The panel was informed that the notice of this hearing was sent to Miss Kadandara on 18 December 2020 by recorded delivery and first class post to her registered address.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (“the Rules”).

## Proceeding in absence

The panel then considered proceeding in the absence of Miss Kadandara. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Mr Webb, on behalf of the Nursing and Midwifery Council (“NMC”). The panel accepted the advice of the legal assessor.

Mr Webb, on behalf of the NMC, referred the panel to attempts made by an NMC case officer to contact Miss Kadandara to enquire as to whether she would be attending this hearing. An email was sent to Miss Kadandara to this effect on 15 January 2020. The NMC case officer also telephoned Miss Kadandara on 16 January 2020, on her home number and mobile number listed on the NMC register. It was recorded that the home number did not ring, and the mobile number made the “same sound as calls to UK phones which are abroad”. Mr Webb submitted that there was a possibility that Miss Kadandara may be out of the country.

Mr Webb submitted that Miss Kadandara had not responded to the notice of hearing or any attempts to contact her. He referred the panel to the case of *Adeogba v GMC* [2016] EWCA Civ 162 and submitted that there is a burden on all regulated professionals to engage with their regulator. Mr Webb invited the panel to take into account that the public protection concerns remain live in this case, and that the substantive order, to which Miss Kadandara is subject, is due to expire in February 2020 and needs to be reviewed. He submitted that there had been no request for an adjournment and that there was nothing to suggest that an adjournment would result in Miss Kadandara’s engagement or attendance at a future hearing. In these circumstances, Mr Webb invited the panel to proceed in the absence of Miss Kadandara.

The panel had regard to the information before it, noting that attempts had been made to contact Miss Kadandara to find out whether she would be attending today’s hearing.

Miss Kadandara had not responded to such correspondence and the panel noted that she had not been engaging with these proceedings. The panel noted that it is Miss Kadandara's responsibility to keep the NMC updated with her contact details. This is a review hearing and Miss Kadandara would be aware that it is due. Miss Kadandara had not requested an adjournment and the panel did not consider that there was any information to suggest that an adjournment would result in her attendance at a hearing on a future date. The panel considered that Miss Kadandara had voluntarily absented herself from this hearing. The panel had regard to the public interest in the expeditious disposal of these proceedings and the fact that today's hearing was a mandatory review of a substantive order which was due to expire at the end of 24 February 2020. In these circumstances, the panel determined to proceed in the absence of Miss Kadandara.

## **Decision and reasons on review of the current order:**

The panel decided to impose a striking-off order. This order will come into effect at the end of 24 February 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the fourth review of a substantive order. On 24 October 2016 a panel of the Conduct and Competence Committee imposed a conditions of practice order for 18 months. The first review panel of the Fitness to Practise Committee imposed a further conditions of practice order for 12 months on 13 April 2018. At the second review on 3 May 2019 a suspension order for six months was imposed. At the third review on 11 October 2019 the suspension order was extended for three months. The current order is due to expire at the end of 24 February 2020.

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

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

*That you, a Registered Nurse working at Bermondsey Spa Medical Practice on 12 May 2015:*

- 1. Were dismissive of Patient A’s symptoms;*
- 2. ...*
- 3. Did not obtain consent before carrying out a procedure on Patient A;*
- 4. Did not explain the procedure to be performed to Patient A;*
- 5. Informed Patient A that you would not perform a further swab;*

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

*“The panel noted that since the imposition of the suspension order for six months, Miss Kadandara has not engaged with the NMC.*

*The panel noted from the notice of meeting that Mr Kadandara was given until 7 October 2019 to provide any written evidence she would like it to take account of at this review meeting. However, the panel had no evidence provided to it by Miss Kadandara as she did not respond to this request.*

*In light of this, the panel had no new information before it to allay the concerns identified by the second reviewing panel at the last substantive order review hearing. It had no evidence to suggest that Miss Kadandara had developed her insight further, or attempted to remediate her misconduct. It did not have any current testimonials or correspondence from Miss Kadandara outlining what steps she was taking in an attempt to return to safe and effective nursing practice. Miss Kadandara has not worked as a registered nurse since October 2016.*

*The panel was satisfied that it had no new information to demonstrate that Miss Kadandara no longer posed a risk to patient safety. Therefore, the panel considered there to be a real risk of repetition of the misconduct found proved, together with a risk of harm to patients in Miss Kadandara’s care, should she be permitted to practise as a registered nurse without some form of restriction.*

*In the absence of significant and pertinent new information, the panel determined that a finding of continuing impairment is necessary on the grounds of public protection.*

*The panel bore in mind the overarching objective of the NMC: to protect, promote and maintain the health, safety and well-being of the public and patients and the wider public interest which 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 determined that as Miss Kadandara had not yet taken a thorough and systematic approach in response to*

*the suggestions of the second reviewing panel, in these circumstances, a finding of continuing impairment on public interest grounds is required.*

*For these reasons, the panel finds that Miss Kadandara's fitness to practise remains impaired on the grounds of public protection and public interest."*

The third reviewing panel went on to determine 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 Miss Kadandara further time to fully reflect on her misconduct. Despite detailed guidance from the second reviewing panel, this panel had no new information before it to demonstrate that Miss Kadandara had addressed the concerns identified, and that she possessed comprehensive insight. However, the panel determined that a further opportunity should be given to Miss Kadandara to provide an indication on her future intentions in regards to the nursing profession. The panel noted that the concerns identified are remediable, and that it would be possible for Miss Kadandara to return to the nursing profession at some point in the future, should she remediate the concerns identified. The panel would encourage Miss Kadandara to engage with this process should she want to return to nursing.*

*The panel concluded that a further three month suspension order would be the appropriate and proportionate response which would afford Miss Kadandara adequate time to further develop her insight and provide evidence of remediation.*

*The panel considered striking Miss Kadandara's name off the register, but concluded that this sanction would be disproportionate at this stage. In the absence of the substantive and urgent reassurance sought by this panel, a reviewing panel may deliberate on this matter further. The panel noted that this matter could not continue indefinitely.*

*A future reviewing panel may be assisted by:*

- *A further reflection*

- *Evidence of any training, online or otherwise, and other information as to how Miss Kadandara has kept her skills and knowledge up to date*
- *Evidence of Miss Kadandara's further intentions in relation to a nursing/midwifery career, or if she decided against pursuing a career in nursing/midwifery evidence to show that she does not intend to return to practice."*



## **Decision on current fitness to practise**

This panel has considered carefully whether Miss Kadandara'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it. It took account of the submissions made by Mr Webb, on behalf of the NMC.

Mr Webb submitted, on behalf of the NMC, that Miss Kadandara had not engaged with these proceedings since the previous review hearing. He submitted that there had been no new information, including no evidence of further insight and remediation. Mr Webb submitted that the risks identified by the previous panel remain present at today's hearing and therefore invited the panel to make a finding of current impairment.

Mr Webb submitted that Miss Kadandara had not provided any confirmation of her intentions regarding practising as a nurse. He therefore submitted that taking no action would not be appropriate, nor would imposing a conditions of practice order. Mr Webb submitted that a minimum of a further suspension order was required. He invited the panel to consider the utility of this option in light of Miss Kadandara's continued disengagement with these proceedings. Mr Webb submitted that it may be that a striking-off order is the appropriate sanction, although this was a matter for the panel.

The panel 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 Kadandara's fitness to practise remains impaired.

The panel considered that there had been no new information since the previous review hearing. Whilst the previous panel had provided Miss Kadandara with clear recommendations as to what a future reviewing panel would be assisted by, Miss Kadandara had not complied with those recommendations. Miss Kadandara appeared to have completely disengaged with the NMC's proceedings. Given that there had been no further evidence of insight and remediation, the panel considered that there was nothing to demonstrate that Miss Kadandara no longer presents a risk to patients. The panel therefore determined that a finding of impairment remains 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 in the NMC as a regulator and upholding proper standards of conduct and performance. The panel considered that in light of Miss Kadandara's continued disengagement with these proceedings, and the fact that she has not provided any evidence of remediation and further insight, a finding of impairment also remains necessary on public interest grounds.

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

## **Determination on sanction**

Having found Miss Kadandara'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 also took into account the NMC's Sanctions Guidance ("SG") and bore 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 remaining risk identified. Taking no action would not restrict Miss Kadandara's practice. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the remaining risk identified. Imposing a caution order would not restrict Miss Kadandara's practice. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that Miss Kadandara's original failings had been considered remediable by previous panels who had decided to impose conditions of practice orders. However, Miss Kadandara had failed to comply with conditions. Miss Kadandara had failed to meaningfully engage with these proceedings for a considerable length of time. The panel therefore considered that there was no evidence to suggest that Miss Kadandara would be able or willing to comply with conditions of practice. Because Miss Kadandara's shows no evidence of wishing to engage with the process, the panel determined that it would not be possible to formulate practicable and workable conditions which would protect the public and satisfy the public interest.

The panel next considered whether to impose a further suspension order. The panel noted that the two previous reviewing panels had imposed periods of suspension, providing Miss Kadandara the opportunity to engage with these proceedings and to provide evidence of fulfilling clear and detailed recommendations to demonstrate further insight and any steps taken to remediate her practice. Those panels had also provided Miss Kadandara with the opportunity to provide clear information regarding her future

intentions in relation to the nursing. Miss Kadandara had failed to respond to any of these recommendations. Furthermore, she continued to disengage with these proceedings, including not responding to any communication from the NMC. In these circumstances, the panel considered that a further period of suspension would serve no useful purpose. The panel considered that it would not be in the wider public interest to continue these proceedings and impose a further period of suspension when there was no evidence to suggest that this would facilitate Miss Kadandara's engagement and the facilitation of her return to safe and effective practice. The panel determined that it was necessary to take action to prevent Miss Kadandara from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Miss Kadandara in writing.

That concludes this determination.