

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

**Substantive Order Review Hearing
Thursday 29 July 2021**

Virtual Hearing

Name of registrant: Niamat Schwarz

NMC PIN: 75U3979E

Part(s) of the register: Registered Nurse – Sub Part 2
Adult – 7 June 1976
Registered Nurse – Sub Part 2
Mental Health – 15 November 1978
Registered Nurse – Sub Part 1
Adult – 23 December 2004

Area of registered address: Essex

Type of case: Misconduct

Panel members: Anne Owen (Chair, Registrant member)
Anna Ferguson (Registrant member)
Georgina Foster (Lay member)

Legal Assessor: Andrew Reid

Panel Secretary: Jennifer Morrison

Nursing and Midwifery Council: Represented by Katie Doherty, Case Presenter

Mrs Schwarz: Not present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect at the end of 7 September 2021 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 Mrs Schwarz was not in attendance and that the Notice of Hearing had been sent to Mrs Schwarz's registered email address on 28 June 2021.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mrs Schwarz's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Doherty, 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.

In the light of all the information available, the panel was satisfied that Mrs Schwarz 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 Mrs Schwarz

The panel next considered whether it should proceed in the absence of Mrs Schwarz. The panel had regard to Rule 21 and heard the submissions of Ms Doherty who invited the panel to continue in the absence of Mrs Schwarz.

Ms Doherty submitted that Mrs Schwarz had been served with notice of this hearing in accordance with the applicable Rules, and that the Notice established the panel's powers to proceed in her absence. She submitted that all reasonable efforts had been made by the NMC to check whether Mrs Schwarz had received the Notice, without acknowledgement from Mrs Schwarz. Ms Doherty submitted that it was in the public interest to proceed with today's hearing, and that there was no reason to believe that an adjournment would secure Mrs Schwarz's attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Schwarz. In reaching this decision, the panel has considered the submissions of Ms Doherty 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 Mrs Schwarz;
- Mrs Schwarz has not engaged with the NMC since January 2021 and has not responded to numerous attempts by the NMC to contact her about this hearing;
- There is no evidence to indicate that Mrs Schwarz's absence is anything other than voluntary;
- There is no reason to suppose that adjourning would secure Mrs Schwarz's 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, appropriate and proportionate to proceed in the absence of Mrs Schwarz.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking-off order.

This order will come into effect at the end of 7 September 2021 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 ('the Order').

This is the fourth review of a substantive order originally imposed as a conditions of practice order by a Conduct and Competence Committee panel on 6 August 2015. The order was subsequently changed to one of suspension and is due to expire at the end of 7 September 2021.

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:

1. *'On 24 November 2011, in relation to Detainee A, you:*
 - 1.1. *did not make and / or record any attempt to obtain the detainee's prescription for Novomix insulin;*
 - 1.2. *did not conduct and / or record the following observations when you reviewed him / her at approximately 13:30:*
 - 1.2.1. *blood pressure*
 - 1.2.2. *pulse*
 - 1.2.3. *saturation levels*
 - 1.2.4. *respiratory rate*
 - 1.2.5. *detainee's general presentation.*
2. *On the nightshift of 29/30 November 2011, administered Dihydrocodeine 30mg to Detainee B when you should not have done so.*
3. *On 30 November 2011, in relation to Detainee C, you:*
 - 3.1. *did not refer him/her to the mental health team;*
 - 3.2. *did not put him/her on constant watch / supervision;*
 - 3.3. *did not complete the Custody Healthcare Assessment Plan ("CHAP") appropriately in that you incorrectly recorded in the action plan that Detainee C was not at risk from Self Harm.*
4. *On 23 December 2011, in relation to Detainee D, you:*
 - 4.1. *did not conduct and / or record the following observations of Detainee D within four to six hours of your initial assessment at approximately 04:50 and/ or 06:05:*

- 4.1.1. *blood pressure*
- 4.1.2. *pulse*
- 4.1.3. *saturation levels*
- 4.1.4. *respiratory rate*
- 4.1.5. *blood glucose*
- 4.1.6. *detainee's general presentation;*

4.2. ...

4.2.1. ...

4.2.2. ...

5. *On 19 January 2012, in relation to Detainee E, you:*

5.1. *did not conduct appropriate observations within four to six hours of your initial assessment at approximately 21:00;*

5.2. ...

5.3. *did not record the alcohol withdrawal score during the night shift.*

6. *On 19 January 2012, did not appropriately assess and/ or record and/ or communicate Detainee F's alcohol dependency.*

7. *On 19 January 2012, in relation to Detainee G, you:*

7.1. *did not conduct and / or record any observations of Detainee G within four to six hours of your colleagues review of Detainee G at approximately 18:42;*

7.2. *did not conduct and / or record a blood glucose test reading of Detainee G when you reviewed him / her at approximately 05:55:*

7.3. *did not treat Detainee G for withdrawal from Benzodiazepines in that you did not administer 10mg Diazepam to Detainee G.*

8. ...

9. *Between 20 and 23 January 2012, did not conduct and/or record the following observations of Detainee I when you reviewed him/her at approximately 03:59:*

9.1. *blood pressure*

9.2. *pulse*

9.3. *respiratory rate*

9.4. *blood glucose*

9.5. *detainee's general presentation*

9.6. ...

10. ...

10.1. ...

...'

The reviewing panel of 27 January 2021 determined the following with regard to impairment:

'The panel noted that the 9 August 2018 reviewing panel found that Mrs Schwarz had limited insight. As a result of Mrs Schwarz's lack of engagement, the 5 February 2020 reviewing panel had no new information to consider. Today's panel noted that Mrs Schwarz had provided information about online training she had undertaken, a literature review, character references and a letter to the panel. However, the panel noted with concern that none of the information provided was of relevance to the specific clinical failures identified in Mrs Schwarz's practice. The panel also noted Mrs Schwarz's statement that 'my reflective piece that I submitted in 2015 remains unchanged as I really did reflect sincerely at the time of the original hearing', and considered that a lack of further reflection in the five years since the original hearing suggested that Mrs Schwarz's insight had not developed since this time.

The last reviewing panel determined that Mrs Schwarz was liable to repeat matters of the kind found proved. Today's panel has received no new information to suggest that the risk of repetition had diminished. In the light of this, this panel determined that Mrs Schwarz 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 Mrs Schwarz's fitness to practise remains impaired.'

The reviewing panel of 27 January 2021 determined the following with regard to sanction:

'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 Mrs Schwarz'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 Mrs Schwarz'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 Mrs Schwarz's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable, and should not be so onerous as to be tantamount to a suspension. The panel gave regard to the difficulties Mrs Schwarz had apparently experienced in obtaining a place on a Return to Practice course and employment at a facility willing to provide her with supervision, as required by the previous conditions of practice order. The panel was of the view that it may be challenging for Mrs Schwarz to secure a place on a Return to Practice course with restrictions to her practice in place, and that in the light of the severe pressures on health and social care services during the ongoing COVID-19 pandemic, employers may not have the capacity to adequately supervise Mrs Schwarz. The panel was therefore not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Schwarz's misconduct.

The panel considered the imposition of a further period of suspension. It noted Mrs Schwarz's recent, albeit limited engagement and was of the view that a suspension order would allow Mrs Schwarz further time to fully reflect on her previous failings and to undertake recent, relevant training in the areas of clinical concern. The panel concluded that a further six month suspension order would be the appropriate and proportionate response and would afford Mrs Schwarz adequate time to further develop her insight and remediation. It would also give Mrs Schwarz an opportunity to approach past and current health professionals or educational establishments to attest to her honesty, integrity and willingness to remediate her practice since the substantive hearing.

The panel considered imposing a striking-off order, but was mindful of the registrant's late submission, in which she expressed a desire to return to nursing. The panel therefore determined that a striking-off order would be disproportionate, and that a suspension order would be 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 six months, which would provide Mrs Schwarz with an opportunity

to engage with the NMC and to provide evidence of compliance with recommendations made by this panel. It considered this to be the most appropriate and proportionate sanction available.'

Decision and reasons on current impairment

This panel has considered carefully whether Mrs Schwarz'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 the documentation before it, including the NMC bundle and evidence of the NMC's attempts to contact Mrs Schwarz since the date of the last substantive order review hearing. It has taken account of the submissions made by Ms Doherty on behalf of the NMC. Ms Doherty outlined the background to the case and the outcomes of previous review hearings. She submitted that Mrs Schwarz faced 10 separate charges relating to a wide range of patient care concerns at the original substantive hearing on 5 August 2015, and that all but two of the charges found proved amounted to misconduct, with the original panel finding that these failings called into question Mrs Schwarz's fitness to practice.

Ms Doherty submitted that following the substantive hearing, Mrs Schwarz stated that she found the regulatory process to be lengthy, painful and represented a learning curve for her. She further submitted that at the time, the original panel found that Mrs Schwarz had provided some insight into how she could improve her practice in the future, and an 18-month conditions of practice order was imposed. However, at the first review hearing on 9 August 2018, that panel found that whilst Mrs Schwarz had taken some training courses related to the charges found proved, she had not provided evidence of how she had applied her learning to practice, as she had not been employed as a nurse. That panel determined that her misconduct remained remediable and that she continued to develop her insight, and imposed a further 18-month conditions of practice order. That panel also

removed the condition that required Mrs Schwarz to undertake a Return to Practice course.

Ms Doherty submitted that at the second review hearing on 5 February 2020, Mrs Schwarz did not attend and was not represented. She had not engaged with the NMC since before the date of her last review 18 months previously. That panel imposed a suspension order for 12 months.

Ms Doherty submitted that the reviewing panel of 27 January 2021 found that Mrs Schwarz had failed to engage over the previous 12 months, with the exception of a last-minute written submission to the panel stating that the COVID-19 pandemic was preventing her from gaining a place on a Return to Practice course. Mrs Schwarz also had provided evidence of training and references, but the reviewing panel noted that the training was irrelevant to the identified areas of clinical concern. That panel further noted that Mrs Schwarz had failed to provide any information about her insight or remediation, and imposed a six-month suspension order with recommendations as to what might assist a future panel, making it clear to Mrs Schwarz that her attendance and ongoing engagement was necessary and that future panels would have all options available to them, including a striking-off order.

Ms Doherty submitted that Mrs Schwarz had not made any contact with the NMC since 27 January 2021, when the NMC sent her the most recent panel determination. She further submitted that Mrs Schwarz did not respond to the NMC's email of 15 February 2021 regarding Return to Practice course providers, or to multiple phone calls and emails in July 2021 regarding her attendance at today's hearing. Ms Doherty submitted that the NMC endorsed the original substantive panel's finding of impairment. She further submitted that sanction was a matter for today's panel to decide, and whilst it may determine it appropriate to give Mrs Schwarz a final opportunity to engage with the NMC, the panel has the power to direct Mrs Schwarz's removal from the register due to the length of time she has been subject to restricted practice along with her consistent disengagement from the regulatory process since January 2021.

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 Mrs Schwarz's fitness to practise remains impaired.

The panel noted that Mrs Schwarz had provided no evidence since the last hearing that she had attempted to comply with the clear recommendations of that panel. It had not seen any evidence of a change in Mrs Schwarz's circumstances or of any developments in her remorse, insight or attempts to remediate her practice. Therefore, the panel concluded that the risk of repetition had not diminished, and 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 noted that a member of the public would expect a registrant to have taken steps to address identified concerns about her practice and to engage with her regulator, and determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Schwarz'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 Mrs Schwarz'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 Mrs Schwarz'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 Mrs Schwarz'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 concluded that as Mrs Schwarz has not been substantively engaging with the NMC, it was not able to formulate workable conditions of practice that would adequately address the concerns relating to Mrs Schwarz's misconduct.

The panel next considered imposing a further suspension order. The panel noted that Mrs Schwarz has not shown remorse for her misconduct and has demonstrated only limited insight into her previous failings.

The panel noted that Mrs Schwarz has been subject to two conditions of practice orders and two periods of suspension over the past six years, and that the two previous reviewing panels had made clear and unequivocal recommendations as to what may assist future panels in assessing Mrs Schwarz's ability to return to safe practice. It was satisfied that over this time, Mrs Schwarz had provided minimal information about the development of her insight and attempts to remediate her practice, and had failed to substantively engage with the NMC for a considerable amount of time. The panel was of the view that considerable evidence would be required to show that she no longer posed a risk to the public. It took into account the impact that the COVID-19 pandemic may have had on the ability of Mrs Schwarz to remediate her practice, but noted that Mrs Schwarz's failure to comply with conditions of practice and recommendations of previous panels predated the pandemic.

The panel noted that the previous reviewing panel had imposed a suspension order as a result of late engagement from Mrs Schwarz, and had made it clear to Mrs Schwarz that future panels would have all sanction options available to them. It noted that Mrs Schwarz had not engaged at all since the date of the last hearing, and determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs Schwarz from practising in the future. It concluded that, in the absence over the last five years of a clear commitment from her to return to unrestricted practice, supported by evidence of appropriate actions taken by her, the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 7 September 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs Schwarz in writing.

That concludes this determination.