

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

**Substantive Order Review Hearing
Friday 21 January 2022**

Virtual Hearing

Name of registrant:	Marito N Balanag
NMC PIN:	02H0897O
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – (August 2002)
Area of registered address:	London
Type of case:	Misconduct
Panel members:	Ian Comfort (Chair, lay member) Jodie Jones (Registrant member) Stacey Patel (Lay member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Charis Benefo
Nursing and Midwifery Council:	Represented by Khurram Karim, Case Presenter
Mr Balanag:	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 1 March 2022 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 Mr Balanag was not in attendance and that the Notice of Hearing had been sent to Mr Balanag's registered email address on 20 December 2021.

Mr Karim, 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 link to the virtual hearing and, amongst other things, information about Mr Balanag's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Balanag 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 Mr Balanag

The panel next considered whether it should proceed in the absence of Mr Balanag. The panel had regard to Rule 21 and heard the submissions of Mr Karim who invited the panel to continue in the absence of Mr Balanag. He submitted that Mr Balanag had voluntarily absented himself.

Mr Karim referred the panel to the email from Mr Balanag dated 20 December 2021 which stated:

'Sorry Sir, i can not attend the hearing. [sic]'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Balanag. In reaching this decision, the panel has considered the submissions of Mr Karim, the representations from Mr Balanag, 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:

- The NMC has taken all reasonable steps to notify Mr Balanag of this hearing;
- No application for an adjournment has been made by Mr Balanag;
- Mr Balanag has informed the NMC that he has received the Notice of Hearing and confirmed that he did not intend to attend;
- There is no reason to suppose that adjourning would secure his 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 Mr Balanag.

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 1 March 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 29 January 2021. This was reviewed on 27 July 2021 when a suspension order was imposed for a further period of six months.

The current order is due to expire at the end of 1 March 2022.

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 11 October 2018:

- a) Failed to give four out of five prescribed tablets of Cholecalciferol to Patient A*
- b) cut a Glicazide tablet to achieve a smaller dosage using a method*

- i) where you could not be confident the dosage arrived at would be the same as what you intended to achieve*
- ii) which was unhygienic*

2) Your conduct as alleged in charge 1a) above was dishonest in that you maintained that you had administered five tablets of Cholecalciferol to Patient A when in fact you had only administered one.

3) On 15 October 2018:

- a) Failed to administer doses of... Lansoprazole as prescribed to Patient C*
- b) Failed to act on or escalate concerns about a diabetic patient having a blood glucose level of 19.8 prior to handover to Colleague A*

AND, your fitness to practise is impaired by reason of your misconduct.'

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

Registered 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 registered nurses with their lives and the lives of their loved ones. To justify that trust, registered 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 fitness to practise is impaired in the sense that s/he:

- 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 considered all of the limbs above to be engaged, both as to the past and to the future.

The panel had found patients in your nursing care to have been exposed to an unwarranted risk of harm, some more so than others. It had also found you to have breached fundamental tenets of the nursing profession, including by acting dishonestly, and it found you to have brought the reputation of the nursing profession into disrepute by virtue of your acts and omissions.

The panel noted that your misconduct occurred in the workplace environment and related to your clinical nursing practice, as well as your professional conduct and behaviour. It noted that your acts and omissions were not a single instance of misconduct, and that these were serious concerns that lasted over the course of one week at the Hospital, Specifically in respect of medication management and administration, there was a pattern of poor nursing practice. This was also taken into context with the fact that there had been a previous regulatory finding of misconduct at an NMC hearing approximately one month before these new concerns arose, involving concerns of a similar clinical nature.

The panel considered you to have only demonstrated limited insight in relation to the charges found proved. It was aware that you had admitted some of the charges at the outset of the hearing, but noted that you did not advance any submissions in respect of whether your acts and omissions amounted to misconduct in relation to any of the charges found proved. From the limited account you provided during oral evidence at the facts stage of this hearing, it determined that you had not fully understood or appreciated the extent of your acts and omissions, nor had you reflected on the impact your conduct had on patients, colleagues, the nursing profession or the wider public as a whole. You did not explain to the panel what you would have done differently if faced with a similar set of circumstances in future. The panel also did not find you to have displayed any remorse for your misconduct.

The panel noted that whilst the clinical concerns identified in this case are capable of remediation, in principle, dishonesty is often more difficult to remediate as it could be suggestive of a more deep-seated attitudinal issue.

The panel acknowledged the training courses you have undertaken in an attempt to rectify some of the areas of concern and in keeping your nursing practice up to date. It noted that of particular relevance was the training you had completed in relation to life support, medication awareness, medication handling, as well as infection and prevention control.

The panel also had regard to the positive testimonial that was provided by a Senior Charge Nurse at Aberdeen Royal Infirmary in June 2020, in which it was stated that: "Marito is an extremely hard working and caring nurse who worked well on his own and as part of the ED team. He is a very competent nurse who was able to adapt to the ever changing pace in the Emergency Department. His time keeping was excellent and he had no sick time with us. During his short time in ED he very quickly became a valued and respected member of the ED team."

Nonetheless, the panel determined that the training you have undertaken did not fully address the misconduct identified and, as such, there were remaining public protection concerns which needed to be managed should you continue working as a registered nurse.

The panel determined that there is very little evidence before the panel to demonstrate that you have fully remediated your misconduct, or developed a significant amount of insight into the concerns identified.

In light of all the above, the panel had insufficient evidence before it to allay its concerns that you may currently pose a risk to patient safety. It considered there to be a risk of repetition of the incidents found proved and a risk of significant harm to patients in your care, should adequate safeguards not be imposed on your nursing practice. Therefore, the panel 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect 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 also considered there to be a high public interest in the consideration of this case. It was of the view that a fully informed member of the public would be significantly concerned by the panel's findings on facts and misconduct, with particular regard to dishonesty. It concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that your fitness to practise as a registered nurse is currently impaired.'

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

'The panel considered whether Mr Balanag's fitness to practise remains impaired. The panel noted the serious charges found proved at the substantive hearing. It considered that it had nothing before it to demonstrate that the risk in this case had reduced, or that Mr Balanag had been making attempts to remediate the concerns raised. The panel considered that Mr Balanag had not undertaken any of the suggestions made by the previous review panel therefore there was nothing to suggest a change in circumstance since then. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection as it had no information to suggest that Mr Balanag is fit to practise without restriction.

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.

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

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

Having found Mr Balanag'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 further action, but concluded that this would not be sufficient to protect the public and would be inappropriate in view of the risk to patient safety identified and 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 Mr Balanag'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 Mr Balanag'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 order would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that Mr Balanag had not engaged with today's hearing and it had no information

about his current employment status. It also considered that Mr Balanag had not provided any information to demonstrate remediation since the previous panel. The panel was therefore not able to formulate appropriate conditions of practice that would adequately address the concerns relating to Mr Balanag's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Balanag further time to fully reflect on his previous misconduct.

The panel gave serious consideration to imposing a striking off order. However, it decided that this would be disproportionate at this stage in the proceedings and that Mr Balanag could be given additional time to engage with the NMC and remediate his 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 six months which would provide Mr Balanag with an opportunity to engage with the NMC and develop his insight and remediation. The panel 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 1 September 2021 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.

This panel wishes to make it clear that the next reviewing panel will expect to see some tangible evidence of Mr Balanag's insight into his misconduct and of his commitment to the nursing profession. It strongly advises him to provide the information listed below to the next panel. Should Mr Balanag not do this and continue to disengage with the NMC, a future panel reviewing this case may take the view that his disengagement with the NMC and lack of evidence of remediation

and insight warrants a striking off order being imposed. Any future panel may be assisted by evidence of:

- *Attendance and engagement with the NMC.*
- *A reflective piece using a recognised model (E.g. Gibbs) demonstrating development of your insight into the misconduct identified.*
- *Any training undertaken to address the areas of concern, as well as any other professional development in order to keep your nursing skills up to date.*
- *Any up to date testimonials, whether in paid or unpaid employment.*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Balanag'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 Mr Karim on behalf of the NMC. He provided a background to the case. Mr Karim referred the panel to the email from the NMC Case Officer to Mr Balanag dated 13 October 2021 which informed him that the next substantive review would be by way of hearing as the previous panel on 27 July 2021 had recommended that:

'Any future panel may be assisted by evidence of:

- *Attendance and engagement with the NMC.*
- *A reflective piece using a recognised model (E.g. Gibbs) demonstrating development of your insight into the misconduct identified.*
- *Any training undertaken to address the areas of concern, as well as any other professional development in order to keep your nursing skills up to date.*

- *Any up to date testimonials, whether in paid or unpaid employment.'*

The NMC Case Officer explained to Mr Balanag in the email:

'Once a panel has requested your attendance, I cannot then schedule your review for a meeting. So I will go ahead and list it for a hearing and send you a notice in due course.'

Mr Karim submitted that Mr Balanag has not engaged with the NMC, nor attended the hearing today despite the email from the NMC Case Officer. He informed the panel that Mr Balanag has not provided a reflective piece, evidence of training or testimonials as recommended by the previous reviewing panel on 27 July 2021.

Mr Karim submitted that Mr Balanag's fitness to practise remains impaired and invited the panel to consider the imposition of a further period of suspension at the minimum.

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 Mr Balanag's fitness to practise remains impaired.

The panel noted the serious charges found proved at the substantive hearing. It was of the view that Mr Balanag had breached the duty of candour by lying after making a drug error. The panel considered that Mr Balanag's dishonesty, as well as his failure to engage with the NMC proceedings suggests that there is an ongoing attitudinal problem and a subsequent risk of repetition of matters of the kind found proved. It took into account that Mr Balanag has not demonstrated any insight, taken action to strengthen his practice or undertaken any of the recommendations made by the previous review panel. The panel therefore determined that there has been no material change in circumstances since the order was imposed on 29 January 2021. The panel 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 Mr Balanag's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Balanag'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 Mr Balanag'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 Mr Balanag'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 Mr Balanag'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 hearing. It noted that Mr Balanag has

not engaged with the NMC to provide evidence of insight or strengthened practice, nor has he attended the hearing today. It also had no information about his current employment status. The panel concluded that a conditions of practice order requires a registrant to demonstrate that they would comply with any conditions imposed, which Mr Balanag has failed to do. It therefore determined 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 Mr Balanag's misconduct.

The panel next considered imposing a further suspension order. The panel noted that Mr Balanag has not shown remorse for his misconduct. Further, Mr Balanag has demonstrated a persistent lack of insight into his previous failings. The panel took into account that Mr Balanag was well aware of the previous panel's decision and was clearly informed by the NMC Case Officer of the importance of attending this hearing. However Mr Balanag still chose not to engage with previous panel's recommendations or attend this hearing. The panel was of the view that Mr Balanag's lack of engagement is unacceptable. It noted that considerable evidence would be required to show that Mr Balanag no longer posed a risk to the public, which he has failed to provide.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances and would not be in the public interest. The panel determined that Mr Balanag's continued practice is inconsistent with being on the register and decided that it was necessary to take action to prevent Mr Balanag from practising in the future. The panel concluded that 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 1 March 2022 in accordance with Article 30(1).

This decision will be confirmed to Mr Balanag in writing.

That concludes this determination.