

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

**Substantive Order Review Hearing
Friday 8 December 2023**

Virtual Hearing

Name of registrant:	Mr Clistin Babu
NMC PIN:	20K08300
Part(s) of the register:	Registered Nurse Adult Nursing – November 2020
Relevant Location:	Craigavon, County Armagh
Type of case:	Lack of competence
Panel members:	Mark Gower (Chair, Lay member) Helen Chrystal (Registrant member) Georgina Wilkinson (Lay member)
Legal Assessor:	Tracy Ayling
Hearings Coordinator:	Monsur Ali
Nursing and Midwifery Council:	Represented by Terence Merck, Case Presenter
Mr Babu:	Not present and not represented at the hearing
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30 (1), namely at the end of 16 January 2024

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Babu was not in attendance and that the Notice of Hearing had been sent to Mr Babu's registered email address on 3 November 2023.

Mr Merck, 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 venue of the hearing and, amongst other things, information about Mr Babu'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 Babu 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 Babu

The panel next considered whether it should proceed in the absence of Mr Babu. It had regard to Rule 21 and heard the submissions of Mr Merck who invited the panel to continue in the absence of Mr Babu.

Mr Merck submitted that Mr Babu had voluntarily absented himself. In support of this he referred to emails between an NMC Case Officer and Mr Babu dated 9 October 2023 in which he stated:

*'Thank you for the information.
It is easier for me to block nmc mails than
sending evidence or proofs.'*

I would go with that from now.

Thank you.'

Ms Merck reminded the panel that Mr Babu has not requested an adjournment. He submitted that in light of the evidence outlined above, it is unlikely that an adjournment would secure the attendance of Mr Babu at any future date. He invited the panel to consider the general public interest in the expeditious review of this case.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Babu. In reaching this decision, the panel has considered the submissions of Mr Merck and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Babu;
- Mr Babu has informed the NMC that he does not wish to engage with the process;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- 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 Babu.

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse upon expiry.

This order will come into effect at the end of 16 January 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 12 months by a Fitness to Practise Committee panel on 19 December 2022.

The current order is due to expire at the end of 16 January 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, between approximately September 2020 and August 2021, failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision as follows;

- 1. Did not effectively communicate with colleagues and patients in that you
 - a. Did not introduce yourself to patients when providing treatment;*
 - b. Did not discuss patients with other clinical teams when required;*
 - c. Were unable to participate effectively in staff handovers.**

- 2. Did not prioritise tasks and workload appropriately in that you did not ensure that you booked on to and/or attended all required training courses when asked to do so.*

- 3. Did not demonstrate that you could assess and/or provide care to deteriorating or potentially deteriorating patients in that you;
 - a. On 20 January 2021 did not adequately complete a NEWS Chart for an unknown patient;*
 - b. Could not describe what action you would take on discovering a patient with a high NEWS score or skin break;**

c. On 05 March 2021 could not describe what action you would take when treating a patient with low oxygen level/ how to recognise low oxygen levels

4. Did not demonstrate knowledge and/or competency in use of key documents and/or processes as follows

- a. Repositioning Charts;*
- b. Rounding Charts;*
- c. SALT referral;*
- d. Dietician referral*

5. Did not readily assist patients with personal care

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

The original panel determined the following with regard to impairment:

'The panel finds that patients were put at risk of harm as a result of Mr Babu's lack of competence. Mr Babu's lack of competence had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel noted that Mr Babu asserted that the nursing procedures and policies in Northern Ireland are different from where he had previously practiced in India, which was taking him some time to adjust to. However, the panel were mindful of the fact that whilst practicing in Northern Ireland, Mr Babu had to adhere to the UK and NMC standards.

Regarding insight, the panel considered that Mr Babu's insight was limited. The panel was not clear Mr Babu had a clear understanding of how his actions put the patients at a risk of harm or an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel also considered that the amount of training that Mr Babu had not attended which increased his risk to patient safety and impacted the staff working with him.

The panel also acknowledged Mr Babu has moved back to India and obtained a position as a staff nurse in a hospital and there were no concerns with his practice, however he had only been employed for a very short period at time the NMC received a response from his employer. The panel was also concerned that Mr Babu did not inform his employer, of the ongoing NMC proceedings. Overall, the panel determined that his level of insight was not sufficiently developed.

In its consideration of whether Mr Babu has taken steps to strengthen his practice, the panel noted that Mr Babu did make some improvements to his practice. However, the panel had nothing before it today evidence any relevant training courses Mr Babu has undertaken to strengthen his practice. The panel was also not provided with any reflective piece that addresses the concerns highlighted with Mr Babu's practice and how he intends to move forward with his nursing career.

The panel is of the view that there is a risk of repetition based on Mr Babu's lack of sufficient insight, the numerous, wide-ranging concerns that occurred over a prolonged period of time and that have not yet been addressed. The panel determined that had Mr Babu not been supervised, he had the potential to cause harm to the patients in his care.

The panel therefore 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 determined that, in this case, a finding of impairment on public interest grounds was also required. The public expect nurses to be competent in their practice, fully trained, update to date with their training requirements. This also includes competency in administering medication, record keeping, communication,

both verbal and written as lack of competence in any of these areas, would deter members of the public from receiving care and treatment. Members of the public and their families, must be able to trust nurses while receiving care at all times.

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

The original panel determined the following with regard to sanction:

'The panel took into account the following aggravating features:

- *Repeated errors over a prolonged period, despite support measures being put in place*
- *lack of insight into failings and into what was required of him in his role*
- *conduct which put patients at risk of suffering harm*

The panel also took into account the following mitigating features:

- *Limited insight*
- *Difficult matters in his personal life*

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 wide-ranging concerns, seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Babu'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 Babu'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 placing conditions of practice on Mr Babu'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 that Mr Babu secured a nursing position in India and his employer was unaware of the NMC proceedings and the concerns with his practice. It is of the view that as Mr Babu is no longer based in the UK that there are no practical or workable conditions that could be formulated and more importantly, enforced, given the nature of the charges and circumstances in this case. The panel was also concerned due to Mr Babu's email dated 6 October 2022, that there is the potential he might not comply with any conditions imposed on his practice. Furthermore, the panel concluded that the placing of conditions on Mr Babu's registration would not adequately protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The NMC library states: In cases where the only issue relates to the nurse, midwife or nursing associate's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions

The panel noted the sanction to strike Mr Babu from the register were not available to it at this time.

In all of the circumstances the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Babu. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark 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.

In making this decision, the panel carefully considered the submissions of the NMC in relation to the sanction that the NMC was seeking in this case. However, the panel considered that Mr Babu has expressly stated his intentions not to return to nursing and has disengaged from these proceedings. The panel therefore decided to reject the NMC's sanction bid.

The panel determined that a suspension order for a period of one year was appropriate in this case to mark the seriousness of the misconduct.

At 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:

- Engagement and attendance during future hearings;*
- Evidence of Mr Babu's reflection using a recognised model and any attempts to strengthen his practice, including any relevant training he has undertaken; and*
- His future intentions for nursing.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Babu'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 Merck on behalf of the NMC. He submitted that Mr Babu has already stated that he is not interested in nursing and doesn't feel capable of being a nurse. Mr Babu has told the NMC that he has left nursing and entered music production. Given that Mr Babu is not interested in nursing, does not intend to return to the UK, accepts that he is a threat to the public should he practice as a nurse and has relocated to India, the NMC Guidance states that a finding must be made in such circumstances. Mr Merck submitted that the panel should be satisfied that Mr Babu's registration should be allowed to lapse.

Mr Merck submitted that Mr Babu does not understand the harm caused to the patients as a result of his lack of competence and the impact of his failures upon the nursing profession and the wider public. He submitted that Mr Babu's fitness to practise remains impaired on the same grounds as stated by the previous panel and therefore invited the panel to allow the current order to lapse.

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 Babu's fitness to practise remains impaired.

The panel noted that the original panel found that Mr Babu's insight was limited. That panel was not sure that Mr Babu had a clear understanding of how his actions put the patients at a risk of harm or an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. At this hearing the panel had no new information since the substantive hearing and took a similar view to the previous panel.

The panel noted that Mr Babu no longer wishes to practise as a registered nurse, has relocated to India and does not intend to return to the UK to practice as a nurse. It further noted that Mr Babu acknowledged that he is a threat to the public should he practice as a

registered nurse and therefore has entered the music production industry and left the nursing profession entirely. Based on the evidence before it, the panel determined that a finding of impairment remains 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 Babu's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Babu'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.

In reaching this decision, the panel took into account parts of the NMC Guidance [REV-3h] '*Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place*'. The guidance states:

'In most circumstances nurses, midwives or nursing associates who are subject to a substantive suspension or conditions of practice order, but no longer wish to continue practising, should be allowed to be removed from the register.'

The panel noted that:

- Mr Babu's registration is only active because of the substantive order being in place.
- Mr Babu has decided not to engage with the NMC further.
- Mr Babu, in his email to the NMC on 9 October 2023 stated his clear intention not to return to nursing. The email states '*...I have already written that I have no intention*

to return to nursing practice in any way in UK or in any English supporting countries. I am asking this because I can see NMC is so keen in my case to block me from working as a nurse. Because of possible public safety issues to English citizens. As I am not interested or trying to regain registration(NMC) I see this as a waste of time and human resource from the side of NMC, most importantly it is a mere waste of time from my side as well. So please consider this request and provide me a way to be voluntarily removed from the so called nmc register...'

The panel noted that the public will be protected because the panel has made a clear finding that Mr Babu's Fitness to Practise is currently impaired, and this will be evident to the Registrar should they be required to consider any future application made by Mr Babu to re-join the Register. Furthermore, Mr Babu has relocated to India and has said that he is not practising as a registered nurse, and therefore does not pose a risk to the public.

Accordingly, the substantive suspension order will be allowed to lapse at the end of the current term, namely at the end of 16 January 2024 in accordance with Article 30(1).

This decision will be confirmed to Mr Babu in writing.

That concludes this determination.