

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

**Substantive Order Review Meeting
Friday, 21 July 2023**

Virtual Meeting

Name of registrant: Mr Eric Richard Pushpadas Rajaratnam

NMC PIN: 85F0799E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing (Level 1) – June 1994

Registered Nurse – Sub Part 2
Mental Health Nursing (Level 2) – August 1987

Relevant Location: Greenwich

Type of case: Misconduct

Panel members: Georgie Hill-Jones (Chair, Lay member)
Alison Hayle (Lay member)
Linda Pascall (Registrant member)

Legal Assessor: Fiona Moore

Hearings Coordinator: Margia Patwary

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: Order to lapse upon expiry in accordance with
Article 30, namely the end of 31 August 2023.

Decision and reasons on service of Notice of Meeting

The panel noted at the Notice of Meeting had been sent to Mr Rajaratnam's registered address by recorded delivery and registered email address on 12 June 2023.

The panel took into account that the Notice of Meeting provided details of the review and informed Mr Rajaratnam the meeting would take place on or after 17 July 2023.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Rajaratnam has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

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

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 January 2022. This order was last reviewed on 20 January 2023 when the panel decided to confirm the existing suspension order and extend it for a further six months.

The current order is due to expire at the end of 31 August 2023.

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

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

1. *'On 22 January 2017 failed to adequately manage an emergency situation in that:*
 - a. *You failed to provide CPR to Resident A.*
 - b. *You failed to adequately direct health care staff to assist with the management of the emergency situation.*
 - c. *You failed to provide the attending paramedics an adequate history of treatment you had provided to Resident A.*
 - d. *You failed to ensure Resident A's notes and DNR (Do Not Resuscitate) were immediately available to paramedics on their arrival.*

2. *On 22 January 2017, failed to remain with Resident A throughout an emergency situation when you knew or ought to have known Resident A was suffering breathing difficulty.*

3. *Your actions and omissions in charges 1 and 2 above contributed to the death of Resident A.'*

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

'The panel noted that the original panel found that Mr Rajaratnam had demonstrated a degree of insight into his misconduct. At this hearing, the panel determined that Mr Rajaratnam has not demonstrated any further insight into his actions but has shown an understanding of how his health conditions will impact the public.

In its consideration of whether Mr Rajaratnam has taken steps to strengthen his practice, the panel took into account his health and how that has affected his ability to work as a nurse, which has led to an inability to remediate.

The original panel determined that Mr Rajaratnam is liable to repeat matters of the kind found proved. Today's panel has received no new information that mitigates the risk of repetition. In light of this, this panel determined that Mr Rajaratnam is still 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 Mr Rajaratnam fitness to practise remains impaired.'

The last reviewing panel determined 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 Mr Rajaratnam further time to fully reflect on his previous misconduct. The panel concluded that a further six months suspension order would be the appropriate and proportionate response and would afford Mr Rajaratnam adequate time to further develop his insight and take steps to strengthen 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 would provide Mr Rajaratnam with an opportunity to engage with the NMC and to provide medical evidence. It considered this to be the most appropriate and proportionate sanction available. The panel note Mr Rajaratnam requested voluntary removal from the register but this is not procedurally possible whilst this case is ongoing. The NMC has informed Mr Rajaratnam as to how his registration can lapse and this should be done formally if he wishes so do to before the next review.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Rajaratnam'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.

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 noted that the last reviewing panel found that Mr Rajaratnam had not demonstrated any further insight into his actions. At this meeting, the panel determined that this had remained unchanged. It noted that the last reviewing panel suggested that Mr Rajaratnam provide clinical evidence of his health conditions. However none had been provided.

In its consideration of whether Mr Rajaratnam has taken steps to strengthen his practice, the panel found that there has been no indication of remorse, no reflective statement or evidence of further training, and a lack of insight in relation to the charge found proved. The panel was of the view that the finding of misconduct and impairment found at the time still applies as this panel did not have any new information before it to indicate that these areas have been addressed by Mr Rajaratnam.

The panel further noted that Mr Rajaratnam previously indicated that he has no intention of returning to the nursing profession and that he has not practiced as a registered nurse since 2017.

In light of this the panel determined that Mr Rajaratnam remains 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 Mr Rajaratnam's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Rajaratnam'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 allow the current suspension order to lapse on expiry. In doing so, the panel had regard to the Guidance REV-3h (last updated 24 April 2023).

It noted that the guidance on allowing an order to expire suggests that this outcome may not be appropriate if the nurse or midwife is not engaging with the NMC. The panel noted the telephone note, dated 19 January 2023, in which Mr Rajaratnam stated that he does not think he is fit to return to practise due to his ongoing health issues. The panel further noted Mr Rajaratnam's earlier request for voluntary removal from the register, which is not an option open at this stage in the process.

Taking all of this into consideration, the panel determined that Mr Rajaratnam has made it clear that he does not wish to continue practising as a nurse now or in the future.

The panel had regard to the Guidance, which states that allowing a substantive order to expire may be appropriate where the panel has made a clear finding that the nurse or midwife's fitness to practise is currently impaired. The panel noted that if Mr Rajaratnam were to change his mind about returning to nursing, the Registrar would be made aware of the finding of current impairment and would thus be able to ensure that any ongoing risks to patient safety had been addressed before admission to the register could be considered.

The panel went on to consider whether to impose a caution order but determined that this would serve no useful purpose. Such action would serve to keep Mr Rajaratnam on the register, when he has made it clear that he has no intention to work again as a nurse in the future. The panel considered that imposing a caution order would not protect the public from the outstanding risk, and it would not be in the wider public interest.

The panel considered that a well-informed member of the public would understand that allowing the order to lapse would be the proportionate action to take under these circumstances. The panel determined that the finding of impairment and Mr Rajaratnam's clear position that he will not return to nursing would ensure the public remain protected.

The panel was therefore satisfied that allowing the current suspension order to lapse on expiry would be appropriate and proportionate in the circumstances of this case. This would protect the public, as when the order expires, Mr Rajaratnam's registration would lapse, and he would be removed from the register, thereby preventing him from practising as a nurse. Allowing the order to expire would also satisfy the wider public interest, in that imposing a more restrictive sanction in this case would serve no useful purpose, in circumstances where it would not serve to facilitate Mr Rajaratnam's return to safe and effective nursing practise in the future. The panel was satisfied that allowing the current order to lapse on expiry would maintain public confidence in the nursing profession and in the NMC as a regulator.

Accordingly, the current suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 31 August 2023 in accordance with Article 30.

This decision will be confirmed to Mr Rajaratnam in writing.

That concludes this determination.