

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

**Substantive Meeting
Thursday 29 August 2024**

Virtual Hearing

Name of Registrant: Florentino III Garcia

NMC PIN: 23B1518O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 17 February 2023

Relevant Location: Kent

Type of case: Conviction

Panel members: Philip John Sayce (Chair, registrant member)
Rosalyn Mloyi (Registrant member)
Alison James (Lay member)

Legal Assessor: Alice Robertson Rickard

Hearings Coordinator: Sharmilla Nanan

Facts proved: Charges 1a and 1b

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Garcia's registered email address by secure email on 25 July 2024. The panel noted that the notice of hearing recited the reasons for this matter being heard at a meeting.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the fact that this meeting was heard virtually, and that the meeting would take place on or after 26 August 2024. It noted that if Mr Garcia had any comments about the information before the panel, he should reply by 23 August 2024.

In the light of all of the information available, the panel was satisfied that Mr Garcia has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Rules.

Decision and reasons for amendment to the charges

The panel of its own volition decided to amend charge 1 to ensure that the charge accurately reflects the evidence.

Original wording:

That you, a registered nurse:

- 1) On 20 July 2023 at Canterbury Crown Court that you were convicted of the following offences

Proposed wording:

That you, a registered nurse:

1) On 20 July 2023 at Canterbury Crown Court you were **sentenced after being** convicted of the following offences

The panel accepted the advice of the legal assessor.

The panel determined that this minor edit to the charges to reflect that it was the sentencing that took place on 20 July 2023 would not prejudice nor cause any injustice to either party.

Details of charge (AS AMENDED)

That you, a registered nurse:

1) On 20 July 2023 at Canterbury Crown Court were sentenced after being convicted of the following offences:

a) On 17 April 2023, being a person aged 18 or over, having on one or more occasions met or communicated with a boy under the age of 16, namely 14 years, not reasonably believing he was aged 16 or over, attempted to meet him and intended to do something to or in respect of him during or after the meeting which, if done, would have involved the commission of a relevant offence as defined in section 15(2)(b) of the Sexual Offences Act 2003, namely engage in sexual activity with a child. Contrary to section 1(1) of the Criminal Attempts Act 1981.

b) Between 11 April 2023 and 18 April 2023 at CANTERBURY in the county of Kent, being a person aged 18 or over, for the purpose of obtaining sexual gratification, intentionally attempted to communicate with [a child], a boy under 16 who he did not reasonably believe to be 16 or over, the communication being sexual. Contrary to section 1(1) of the Criminal Attempts Act 1981.

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

Background

The NMC received a referral from East Kent Hospitals NHS Foundation Trust (“the Trust”) on 24 April 2023.

On the 17 April 2023, the Trust was informed that Mr Garcia had been arrested and charged by Kent police for planning to meet a child for sexual activity.

Mr Garcia appeared before Maidstone Crown Court on 16 May 2023 and pleaded guilty to the offences of attempting sexual communication with a child and attempting to meet a child following grooming.

On 20 July 2023, Mr Garcia was sentenced to 17 months imprisonment in respect of the above-mentioned convictions. He is now the subject of the notification requirements as a convicted sex offender for a period of 10 years. A Sexual Harm Prevention Order has also been imposed for an indefinite period. This order includes prohibitions on contact with children.

Decision and reasons on facts

Charges 1a and 1b concern Mr Garcia’s conviction. The panel considered the certificate of conviction before it, and that the certificate of conviction was not signed or in a familiar format, but it contained all the information (and additional detail) that would be typical of this type of document. The panel was satisfied that this certificate of conviction document had all the information that it requires for its decision making of these charges. The panel also had regard to the judge’s sentencing remarks from the sentencing hearing on 20 July 2023 at Maidstone Crown Court and CPS documentation. The panel noted that there had been no engagement by Mr Garcia in relation to these proceedings. The panel therefore finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the Rules. These state:

- ‘31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*

- (b) *the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Fitness to practise

The panel next considered whether, on the basis of the facts found proved, Mr Garcia's fitness to practise is currently impaired by reason of his conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC made the following representations on impairment

'Sexual offences can have a profound and long-lasting impact on people, and directly conflict with the standards and values set out in the Code.

Whilst no patients were physically harmed, Mr Garcia's serious actions pose a high risk of harm to patients and members of the public...

Mr Garcia's actions have brought the nursing profession into disrepute and can seriously undermine public trust and confidence in our profession. His nursing career was advanced as part of his mitigation before the Sentencing Judge. The Judge rejected this part of the mitigation. Furthermore, safeguarding and protecting

people from harm, abuse and neglect is a key principle embedded throughout our Code. It is submitted that Mr Garcia has breached one of the fundamental tenets of the nursing profession. The seriousness of the convictions is fundamentally incompatible with remaining on the nursing register.

[...]

Although Mr Garcia entered a guilty plea, he has not engaged with the NMC's investigation [...] he has not submitted any reflective piece to fully demonstrate insight and remorse into his actions.

Despite Mr Garcia not working since the conviction, we consider there is a continuing risk to the public due to the nature of the conviction and his lack of full insight.

We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior [sic]. Mr Garcia's [...] acknowledged guilt when he entered a guilty plea for attempting sexual communication with a child, attempting to meet a child following grooming and arranging or facilitating the commission of a child sex offence. Mr Garcia ... "had attended at the agreed location, ready, and fully prepared to commit a far more serious sexual offence."

*Mr Garcia has not demonstrated full insight or remorse due to his non-engagement.
[...]*

The public rightly expect nurses to perform their duties safely and professionally, and as such, the absence of a finding of impairment risks undermining public confidence in the profession.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Garcia's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

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 nurses with their lives and the lives of their loved ones. To justify that trust, nurses must 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/their fitness to practise is impaired in the sense that S/He/They:

- 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) ...'*

The panel found that limbs a, b and c are engaged of Dame Janet Smith's "test".

The panel finds that although the actions that led to the conviction took place outside the work environment, members of the public and patients could have been put at risk harm. Mr Garcia's actions leading to his criminal conviction have breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered whether Mr Garcia's actions were capable of being addressed. The panel bore in mind Mr Garcia held a position of responsibility and trust within society through his role as a registered nurse. The panel took into account that Mr Garcia was convicted of serious sexual offences, which included child grooming, that had the potential to cause harm. The panel determined that Mr Garcia's conduct demonstrated deep seated attitudinal concerns and it concluded that Mr Garcia's criminal offending is difficult to remediate. 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 required. The panel considered the nature of Mr Garcia's criminal convictions, his custodial sentence, that he is on the sex offenders register for the next 10 years and that a Sexual Harm Prevention Order also has been imposed for an indefinite period. The Order includes prohibitions on contact with children. The panel was of the view that informed members of the public and fellow professionals would be extremely concerned to learn that a registrant was allowed to continue practising with no restrictions on their NMC registration given the circumstances of this case. The panel was of the view that public confidence in the profession would be seriously undermined if a finding of impairment was not made in this case.

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

Sanction

The panel considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Garcia off the register. The effect of this order is that the NMC register will show that Mr Garcia has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel heard and accepted the advice of the legal assessor.

Representations on sanction

The NMC made the following representations in relation to sanction:

[...] he [Mr Garcia] has been convicted of two counts of child sex offences thereby not making this an isolated incident. Without any evidence of full insight/remorse, there remains a real risk of repetition and the potential for significant harm to patients and the public.

Mr Garcia entered a guilty plea and subsequently received a criminal conviction for extremely serious sexual offences against children. He has admitted conduct which, by its nature, raises fundamental questions about his ability to uphold the standards and values set out in the Code. It raises both public protection and public interest issues. This conviction is clearly incompatible with remaining on the register. Notwithstanding the seriousness of the conviction in and of itself, public confidence in nurses cannot be maintained if Mr Garcia is not removed from the register. In view of the seriousness of the conviction and Mr Garcia's lack of insight, remorse, and failure to engage with the investigation, it is submitted that a striking off order is the only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.'

Decision and reasons on sanction

Having found Mr Garcia's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG and relevant NMC guidance. It bore in mind that the 'The Code of professional standards of practice and behaviour for nurses 2015' (the Code) and that it is pervasive and extends to all conduct of registrant's lives. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mr Garcia attended a location to commit a far more serious offence.

- Mr Garcia has demonstrated a lack of engagement and insight.

The panel considered that there are no mitigating features in this case.

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 Garcia'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 the conduct underlying Mr Garcia's conviction was not at the lower end of the seriousness spectrum and that a caution order would be inappropriate in the circumstances of the case. 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 Garcia's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore, the panel concluded that the placing of conditions on Mr Garcia's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and represents serious deep-seated personality issues which are difficult to put right. It bore in mind that Mr Garcia's criminal conviction relates to sexual offences and the grooming of children.

The panel also took into consideration the judgement in the case of *Fleishmann* [2005] EWHC 87 and that Mr Garcia has to complete a custodial sentence and has been entered onto the Sex Offender register.

The panel took into account the serious breach of the fundamental tenets of the profession evidenced by Mr Garcia's conviction and that it is fundamentally incompatible with remaining on the NMC register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mr Garcia's actions were very significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Garcia's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Garcia's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of a striking off order would be sufficient in this case.

The panel considered that this order was 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.

This will be confirmed to Mr Garcia in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Garcia's own interests until the striking-off sanction takes effect.

The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC:

'we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.'

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow time for the appeal period before the striking-off order comes into effect.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking-off order 28 days after Mr Garcia is sent the decision of this hearing in writing.

That concludes this determination.