

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

**Substantive Order Review Hearing
Thursday, 18 July 2024**

Virtual Hearing

Name of Registrant:	Sidney Villaruel
NMC PIN	05H0864O
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing – Level 1 August 2005
Relevant Location:	Swansea
Type of case:	Misconduct
Panel members:	Paul O'Connor (Chair, lay member) Elaine Biscoe (Registrant member) Gill Mullen (Lay member)
Legal Assessor:	Nigel Mitchell
Hearings Coordinator:	Khatra Ibrahim
Nursing and Midwifery Council:	Represented by Jacqueline Rubens, Case Presenter
Mr Villaruel:	Present and unrepresented at this hearing
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	Suspension order (6 months) to come into effect on 24 August 2024 in accordance with Article 30 (1)

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, the legal assessor and Ms Rubens, on behalf of the Nursing and Midwifery Council (NMC) informed the panel [PRIVATE]. Ms Rubens did not oppose the suggestion that the hearing be conducted in private. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to [PRIVATE], the panel determined to hold the hearing partly in private in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 24 August 2024 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 for a period of 12 months by a Fitness to Practise Committee panel on 24 January 2020. This was reviewed on 8 January 2021, and the conditions of practice order was extended for a period of 18 months. A further hearing was held on 14 July 2022, when the panel decided to further extend the conditions of practice order. A meeting took place on 15 January 2024, and the conditions of practice order was replaced with a suspension order for a period of 6 months.

The current order is due to expire at the end of 24 August 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

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

'That you, a registered nurse,

1. On 27 July 2017,

- a. Did not amend resident B's MAR chart to reflect the reduction in dosage of Levothyroxine from 125 mcg to 100 mcg daily*
- b. Did not get resident B's MAR chart countersigned by another member of staff to confirm the alteration in dosage of Levothyroxine from 125 mcg to 100 mcg daily*
- c. Did not handover information about resident B's dosage change of Levothyroxine from 125 mcg to 100 mcg daily to the night nurse*

2. On 10 & 11 August 2017,

- a. Did not administer Furosemide to resident C*
- b. Indicated on the back of resident C's MAR chart that there was no Furosemide in stock, despite there being a stock of 71 tablets*

3. On 22 August 2017, signed for the administration of ibuprofen gel to resident G but did not administer this to her

4. On 24 August 2017, signed for the administration of Diltiazem to resident C but did not administer this to her.'

The previous reviewing panel on 15 January 2024 determined the following with regard to impairment:

'The panel has considered carefully whether Mr Villaruel'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 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 Villaruel's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Villaruel's had developing insight. At this meeting the panel received no new information and found that Mr Villaruel has not developed his insight since the last review.

In its consideration of whether Mr Villaruel has taken steps to strengthen his practice, the panel acknowledged that given [PRIVATE], Mr Villaruel has not had the opportunity to work as a registered nurse since the imposition of the original order and therefore has not been able to remediate his practice to address the regulatory concerns in his case. The panel also noted that there was no evidence of any contemporary training by Mr Villaruel in the areas of regulatory concern.

The last reviewing panel determined that Mr Villaruel was liable to repeat matters of the kind found proved. Today's panel has received no new information that would decrease the risk of repetition. In light of this, this panel determined that Mr Villaruel 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 Mr Villaruel's fitness to practise remains impaired.'

The previous reviewing panel on 15 January 2024 determined the following with regard to sanction:

'Having found Mr Villaruel'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 Villaruel'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 Villaruel'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 imposing a conditions of practice order on Mr Villaruel's registration would still be a sufficient and appropriate response. The

panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel next considered the continuation of the current conditions of practice order.

The panel noted that Mr Villaruel has not been able to comply with the conditions of practice order since the order was imposed in 2020 due to [PRIVATE].

The panel concluded that a conditions of practice order is no longer practicable in this case as Mr Villaruel is not currently able to return to practice due to [PRIVATE]

The panel strongly considered allowing the order to lapse, however, it noted that there has been no clear indication that you no longer wish to return to practice. In those circumstances, it concluded that this option was not available to the panel at this time.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. The panel also determined that a suspension order for a period of six months would provide Mr Villaruel with an opportunity to consider his options. It considered this to be the most appropriate and proportionate sanction available.

The panel considered the imposition of a striking-off order but concluded that this would be entirely inappropriate and disproportionate in the circumstances of this case.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 24 February 2024 in accordance with Article 30(1).'

Decision and reasons on current impairment

Today's panel has considered carefully whether your 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 had regard to all of the documentation before it, including the NMC bundle, and your own submissions. It has taken account of the submissions made by Ms Rubens on behalf of the NMC. She took the panel through the background of your case and submitted that an order remains necessary to protect the public, to declare and uphold professional standards and to maintain public confidence.

Ms Rubens submitted that the previous panel found that a conditions of practice order was not workable due to your personal circumstances, and determined your misconduct was not so serious to justify a striking off order. She submitted that since the last review, your insight has not been developed, and you are currently not in a position to remediate your practice in relation to the areas of concerns identified at your substantive hearing. She submitted that as a result of this, the previous panel concluded there remains a risk of repetition and there was a finding of continued impairment.

Ms Rubens directed the panel to an on table document before it and submitted that you have previously stated that you wish to return to practice, and [PRIVATE]. She submitted that as evidenced by your attendance today and reading books related to nursing practice, you remain engaged with the NMC's process. She submitted that you remain impaired, as there has been no demonstration of developing insight, and that although it is acknowledged that you have not yet had an opportunity to remediate the identified concerns, there remains a risk of repetition. She submitted that as a result, the panel should consider imposing a further suspension order for a period of 12 months, to allow for some training and reflection and to also allow you to resolve your [PRIVATE]. She submitted a lesser order would not reflect the seriousness of what had occurred in 2017. She submitted that although the NMC are aware of the effects a suspension order will have on you, a suspension order will provide you an opportunity to return to practice safely.

[PRIVATE]

[PRIVATE]. You further told the panel that you have always wanted to be a nurse and wish to return to practice.

You were asked what plans you have on returning to nursing, and you said that if you are permitted to return to practice, [PRIVATE] as you return to work on a phased basis, namely one or two shifts per week to begin with.

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 your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had not developed your insight. At this hearing, the panel took into account your submissions, in which you stated that you acknowledge and recognise that [PRIVATE]. It determined that you had some, but limited insight into the circumstances which led to the regulatory concerns with your practice.

In its consideration of whether you have taken steps to strengthen your practice, the panel acknowledged that [PRIVATE], you have not had the opportunity to work as a registered nurse since the imposition of the original order and therefore have not been able to remediate your practice to address the regulatory concerns in your case. The panel also noted that there was no evidence of any training having been completed in relation to the areas of concerns identified at the substantive hearing.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has received no new information that would decrease the risk of repetition in relation to the concerns of record keeping and medication administration. In

light of this, today's panel determined that you are liable to repeat matters of the kind found proved. Today's panel acknowledged your attendance and engagement with the NMC's process, however there is no new information before it to evidence that the concerns have been remediated. It also took into account that there are fundamental concerns related to your practice, as they were widespread and occurred over a period of time. 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 your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 your 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 your 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. [PRIVATE]

The panel considered the imposition of a further period of suspension. The panel concluded that a further 6 month suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice. It would also give you an opportunity to develop a plan of support, so that you can seek employment as a registered nurse.

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 that a suspension order for a period of 6 months would provide an opportunity to consider options, and what steps you could take in relation to training and remediation. It considered this to be the most appropriate and proportionate sanction available.

The panel further considered whether a striking off order would be appropriate. It determined that taking this action would be disproportionate, as whilst the concerns are serious, they are not sufficiently serious to justify a striking off order. The panel acknowledged your past conduct is remediable, and that it is not fundamentally incompatible with remaining on the register.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 24 August 2024 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.

Any future panel reviewing this case would be assisted by:

- A clear and concise plan detailing the following:
 - [PRIVATE]
 - How you will address the length of time in which you have not been practising as a registered nurse and the implications related to that;
 - What steps you plan to take to return to nursing.

This will be confirmed to you in writing.

That concludes this determination.