

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

**Substantive Order Review Meeting
Tuesday, 11 June 2024**

Virtual Meeting

Name of Registrant: Rosalinda Monsanto Sumicad

NMC PIN 03G0966O

Part(s) of the register: RN1, Registered Nurse – Adult (21 July 2003)

Relevant Location: Newcastle

Type of case: Misconduct

Panel members: Bryan Hume (Chair, lay member)
Esther Craddock (Registrant member)
Sabrina Sheikh (Lay member)

Legal Assessor: Nigel Pascoe KC

Hearings Coordinator: Samara Baboolal

Order being reviewed: Suspension order (4 months)

Fitness to practise: Impaired

Outcome: **Suspension order (4 months) to come into effect at the end of 26 July 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Sumicad's registered email address by secure email on 3 May 2024.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 10 June 2024 and inviting Mrs Sumicad to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Sumicad 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).

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on review of the current order

The panel decided to continue the suspension order for a further 4 months. This order will come into effect at the end of 26 July 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 4 months by a Fitness to Practise Committee panel on 27 February 2024.

The current order is due to expire at the end of 26 July 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;

- 1. On 22 October 2019 failed to obtain a prescription for Resident A's docusate sodium after it ran out. **[Proved]***
- 2. On 22 October 2019 failed to handover that Resident A's prescribed docusate sodium had run out. **[Proved]***
- 3. On 8 December 2019 failed to follow PRN protocols after administering insulin to Resident B and/or Resident C. **[Proved]***
- 4. On 8 December 2019 failed to consult a diabetic nurse specialist for advice in relation to Resident B's escalating blood sugar levels. **[Proved]***

The original panel determined the following with regard to impairment:

'The panel finds that residents were put at risk and may have been caused physical and emotional harm as a result of Mrs Sumicad's poor practice and misconduct. Mrs Sumicad's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

*The panel is aware that this is a forward-looking exercise and, accordingly, it went on to consider whether Mrs Sumicad's misconduct was remediable and whether it had been remediated. The panel then considered the factors set out in the case of *Cohen v GMC*.*

Regarding insight, the panel considered that at the local investigation in October 2019, the disciplinary meetings in November 2019 and January 2020, Mrs Sumicad expressed remorse and showed insight into the failings and what she would have done differently if a similar situation were to recur. Mrs Sumicad accepted the mistakes when they were brought to her

attention and Ms 1, in her witness statement, stated that Mrs Sumicad was remorseful and very tearful.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel considered the evidence before it in determining whether or not Mrs Sumicad has taken steps to strengthen her practice. The panel noted that there was no further evidence from Mrs Sumicad regarding any training she had undertaken to strengthen her practice since the incidents in December 2019 and that she has disengaged from the regulatory process. The last contact with the NMC by Mrs Sumicad was on 15 April 2020.

Mrs Sumicad has not engaged with these proceedings. She has not provided an account or explanation of what happened since the local investigation and disciplinary meetings, and neither has she responded to any communications from the NMC other than to say she is no longer in the nursing profession. The panel noted Mrs Sumicad's early admissions in the local investigation and disciplinary meetings, which indicated some acknowledgment of her failings but as she has not engaged, the panel could not determine the level of her current insight.

In light of this, the panel is of the view that there is a risk of repetition. Mrs Sumicad was issued a first and final warning for 12 months concerning medications management failures (Charges 1 and 2) on 22 October 2019. She undertook further training on 12 and 13 November 2019 in medication safety and diabetes awareness. Following this training, further incidents occurred on 8 December 2019 (Charges 3 and 4) in relation to medications and diabetes management. Residents' blood glucose levels were not being monitored in accordance with the protocols. Mrs Sumicad has not worked as a registered nurse since 2020 and there is nothing before the panel today that indicates that Mrs Sumicad has addressed the concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Sumicad's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Sumicad'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:

- Conduct which put patients at risk of suffering significant harm.*
- Errors in respect of Residents B and C occurred in December 2019 following related training undertaken in November 2019.*

The panel noted that Mrs Sumicad was working in an environment where there were systemic and acknowledged failures. Ms 1's witness statement highlighted the following:

'...I do think the culture in the Home contributed to the Nurse's errors as well as the other nurses who were referred to the NMC at the Home.

In light of my experienced [sic] as a nurse and in my role at the time as Operations Manager of the Home, in my professional opinion I firmly believe a culture of complacency had developed in the Home as [Ms 3] was not effectively

managing systems of addressing issues with nurses. I feel that the nurses were caught up in this culture and it impacted on their practise.'

The CQC carried out an inspection at the Home on 7 October 2019 and published its report on 3 December 2019. The following was stated:

- People were at serious risk as medicines were not managed safely. Protocols in place for the safe administration of 'as required' medicines were missing from people's records...*
- People were at risk of receiving medicines in a way they were not prescribed as staff were not following administration guidance...*
- Medicine care plans were not always in place, did not always include 'as required' medicines and not all information was recorded in the medicine risk assessments.*
- Clinical staff did not always follow national guidance or pro-actively mitigate risks to people with regards to medicines.*
- The registered manager and clinical staff took immediate action to address the issues identified but we found that these were not fully addressed.*

The panel considered Mrs Sumicad's comments at the disciplinary meeting on 10 January 2024, when she said

'I was stressed it was very busy and [Ms 4] was shouting at me, three times in one day; I felt bullied, confused and distracted.'

In light of the above the panel took into account the following mitigating features:

- There was a poor culture at the Home, including poor supervision, as set out above in Ms 1's witness statement, the CQC report and Mrs Sumicad's claims at the disciplinary meeting.*
- Mrs Sumicad made informal admissions at the local investigations.*
- Mrs Sumicad apologised at all internal meetings.*

- *Mrs Sumicad had insight into her failings and set out what she would do differently in the future at all internal meetings.*

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 Mrs Sumicad'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 Mrs Sumicad'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 Mrs Sumicad'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 took into account the SG for when a conditions of practice order could be appropriate, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that the poor practice and misconduct in this case is capable of being remedied by training, supervision and assessment. However, in Mrs Sumicad's circumstances there are no practicable or workable conditions that could be formulated, given her disengagement and statement that she has retired from the profession. The panel determined that conditions of practice would not be suitable in this instance.

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;*
- ...*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with her remaining on the register. The panel decided that although there had been a clear breach of fundamental tenets of the nursing profession and a departure from a number of the standards in the Code, Mrs Sumicad's misconduct was capable of remediation. The panel could find no evidence of attitudinal concerns or that there was long lasting general incompetence in Mrs Sumicad's practice. The panel noted that it wasn't a single instance, but the incidents occurred on the same day. There has been no repetition since as she resigned from the Home in January 2020 and has retired from nursing. Mrs Sumicad did have insight at a local level about her conduct. However, she still poses a risk of repeating the behaviour.

The panel was of the view that Mrs Sumicad should be afforded the opportunity to demonstrate that she understands the severity of her acts and omissions to a future reviewing panel. The panel had identified that there was a risk of repetition in the absence of any evidence to the contrary. If Mrs Sumicad does decide that she wants to

return to the nursing profession and can demonstrate sufficient insight and remediation to a future reviewing panel, it could be in the public interest to retain an experienced registered nurse who has had a lengthy career and is capable of delivering safe and effective nursing practice.

The panel was of the view that a suspension order for four months would provide Mrs Sumicad with sufficient opportunity to reengage with the NMC, and to reflect and develop her insight. She would be able to explain to a future panel why she acted in the way that she had, and the impact that it would have had on residents, the Home and the wider nursing profession. She would also be able to comment on what she will do differently if a similar situation arises in the future.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation found, it concluded that a striking-off order would be disproportionate. Whilst the panel acknowledges that suspension may have a punitive effect, it would be unduly punitive in Mrs Sumicad's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order may cause Mrs Sumicad. 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.

The panel determined that a suspension order for a period of four months with a review 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 the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

The panel took into account Mrs Sumicad's email dated 15 April 2020, which stated as follows:

'I would like to inform you that I am not currently working as a nurse in any organisations as I have resigned as a registered nurse from Kenton Manor Care Home effectively January 10,2020. I am not in the process of applying for any nursing roles and I have no longer any intentions of doing so. I am 71 years old now and turning 72 this year. I have decided to retire completely and I have decided to go back home to the Philippines once this COVID situation is over so I can be with my son who us undergoing dialysis. I may come back to the UK once a year to visit my daughter and grandchildren God willing if I am well and able...'

Any future panel reviewing this case would be assisted by:

- A further clear statement of intentions from Mrs Sumicad in relation to any future nursing practice or decision to retire; or*
- A reflective piece and evidence of retraining should Mrs Sumicad wish to return to nursing practice.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Sumicad'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 Mrs Sumicad has not engaged with these proceedings and has not provided any evidence to support that she has sufficiently mitigated the risk of harm and risk of repetition if she were to practise as a nurse without restrictions.

The panel noted that Mrs Sumicad has shown some insight into the charges as she made early admissions. However, there has been no evidence that she has strengthened her practice. The panel also took into account that Mrs Sumicad has not worked as a registered nurse since January 2020, and has not provided any evidence that she is up to date in her training and practice since this time. The panel noted that Mrs Sumicad has retired from being a nurse and has returned to the Philippines. However, the panel determined that there is still a risk of harm to the public as Mrs Sumicad may still return to the UK and work as a registered nurse.

In light of the above, the panel determined that Mrs Sumicad 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 Mrs Sumicad's fitness to practise remains impaired.

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 Mrs Sumicad'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 Mrs Sumicad'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 Mrs Sumicad'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 and concluded 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 Mrs Sumicad's misconduct.

The panel has received information that Mrs Sumicad has been retired for a number of years. In view of this, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel considered the imposition of a further period of suspension. The panel concluded that a short suspension order of 4 months would allow Mrs Sumicad to send an email to the NMC confirming that she wishes to retire from nursing and that her registration be allowed to lapse. The panel found this appropriate considering Mrs Sumicad's long period of working as a nurse and determined that, at this stage, a striking-off order would not be appropriate or proportionate. However, it determined that another reviewing panel may find that after the 4-months, if Mrs Sumicad has still not engaged, a striking-off order could be appropriate and proportionate.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 26 July 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.

This will be confirmed to Mrs Sumicad in writing.

That concludes this determination.