

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

**Substantive Order Review Hearing
Tuesday 26 November 2024**

Virtual Hearing

Name of Registrant: Viorica Dusmanescu

NMC PIN: 15B0226C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing - February 2015

Relevant Location: Bath and North East Somerset

Type of case: Lack of knowledge of English

Panel members: Clive Chalk (Chair, Lay member)
Allwin Mercer (Registrant member)
David Raff (Lay member)

Legal Assessor: Natalie Byrne

Hearings Coordinator: Sophie Cubillo-Barsi

Nursing and Midwifery Council: Represented by Fiona Williams Case Presenter

Miss Dusmanescu: Present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (3 months) to come into effect at the expiry of the current order in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to confirm and extend the current suspension order for three months.

This order will come into effect at the end of 29 January 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the ninth review of a substantive suspension order originally imposed for a period of six months by a panel of the Conduct and Competence Committee on 3 April 2017. This was reviewed by a panel of the Fitness to Practise Committee on 29 September 2017 and the outcome was a further six-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 29 March 2018 and the outcome was a 12-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 21 August 2019 and the outcome was a six-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 8 April 2020 and the outcome was a nine-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 21 December 2020 and the outcome was a 12-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 17 December 2021 and the outcome was a further 12-month suspension order. This was reviewed by a panel of the Fitness to Practise Committee on 15 December 2022 and the outcome was a further 12-month suspension order. A further 12 months suspension order was imposed on 21 December 2023.

The current order is due to expire at the end of 29 January 2025.

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

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

'That you, a registered nurse:

- 1. Do not have the necessary knowledge of English to practise safely and effectively;*

And in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.'

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

'The panel had regard to the results required for the listening (B), reading (B), speaking (B) and writing (C+) elements of the OET. It noted that the following scores equated to grades shown below:

- 200 – 290: C
- 300 – 340: C+
- 350 – 440: B

It considered your most recent OET test results on 11 November 2023 and noted that you had not passed to the required standard. The panel noted that your results had slightly decreased from your previous attempts but was sympathetic to the fact that you had been unwell and had attempted to undertake the test in any event.

The panel also had regard to the two testimonials received on your behalf attesting that you do not have any issues with communication at your place of work. However, the panel was of the view that there was a different standard of communication required by a registered nurse than that of a healthcare assistant. It was therefore of the view that the testimonials were not sufficient, on their own, to satisfy the panel that you should be restored to unrestricted practise.

The panel acknowledged that you have attempted to pass the OET and had achieved elements of the required standards on a number occasions. However, it was of the view that you had not been able to demonstrate that you had the required standard of English to be able to communicate and practise as a nurse to a safe standard.

Having considered all of the above, the panel found that there remains a risk to the public should you be allowed to practise without restriction. It therefore determined 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, so as to maintain public confidence in the nursing profession.

For these reasons, the panel finds that your fitness to practise remains impaired.'

The eighth reviewing panel determined the following with regard to sanction:

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection issues identified in this 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 public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances.

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. It was of the view that as you had not yet demonstrated that you have the required standard of English to practise safely as a nurse, a conditions of practice order would not be appropriate in this case.

The panel considered the imposition of a further period of suspension. It acknowledged that you have come reasonably close in the past to achieving the

required result and have demonstrated a commitment to improving your standard of English. The panel therefore concluded that a further 12 month suspension order would be the appropriate and proportionate order and would afford you sufficient time to prepare and undertake the required test. The panel was mindful that should you achieve the required result before the 12 month suspension period concludes, you would be able to apply for an early review of this order.

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 12 months. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 29 January 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:

- Evidence of you attaining the required level in reading, listening, writing, and speaking, in accordance with the NMC guidance or other evidence that you have achieved the required standard as set out in the 'English language requirements - The Nursing and Midwifery Council (nmc.org.uk)*
- Updated, detailed and signed testimonials attesting to your communication skills in the workplace, in particular relating to communication with patients and colleagues...'*

Decision and reasons on current impairment

The 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 has had regard to all of the documentation before it, including the NMC bundle. You provided the panel with references from two colleagues and email confirmation of a scheduled English language examination on 23 November 2024.

Ms Williams provided the panel with a background to your case. She informed the panel that your registration remains active only by way of your substantive order. Ms Williams submitted that the NMC remain neutral as to your current impairment and that it is a matter for the panel as to whether you now have the necessary knowledge of English. Ms Williams acknowledged that, during your pre hearing discussions, you stated that you had completed an English language test on 23 November 2024. However, she told the panel that the results of that test will not be available for another three weeks. Ms Williams referred the panel to the references from your colleagues and submitted that whilst the references provide contextual information as to your communication skills, essentially it is the test results which the panel require at this time. Ms Williams reminded the panel that, if your fitness to practice was found to be impaired, you could seek an early review of any order imposed today, once those results are received.

You told the panel that you did not receive appropriate support when the concerns were first raised regarding your knowledge of English. However, you told the panel that you have "*tried so hard*" to pass the relevant test, having previously failed to do so. You stated that in November 2024, you retook the test and that you hope for better results. You told the panel that you feel your English language has improved and described how you work alongside doctors, communicating effectively with both nurses and patients.

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 been able to demonstrate that you had the required standard of English to be able to communicate and practise as a nurse to a safe standard. Today's panel was encouraged by the steps undertaken by you in order to improve upon your knowledge of the English language and was assisted by your articulate submissions. The panel had before it two testimonials from colleagues which attest to your ability to communicate effectively within a health care setting. However, the panel had no formal documentation before it, including test results, to suggest that you now have the necessary knowledge of the English language to practise safely. It noted your submission that you completed a English language test in November 2024 but that you await the results. In the absence of those results, the panel determined that there remains a risk to the public should you be allowed to practise without restriction. It therefore determined 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, so as to maintain public confidence in the nursing profession.

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 public protection issues identified in this 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 public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances.

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. It was of the view that as you had not yet demonstrated that you have the required standard of English to practise safely as a nurse, a conditions of practice order would not be appropriate in this case.

The panel considered the imposition of a further period of suspension. Whilst the panel noted the steps undertaken by you in order to demonstrate that you now have the necessary knowledge of English, it did not have any formal documentation in this regard. The panel determined that a further three month suspension order would be the appropriate and proportionate response, which would continue to both protect the public and satisfy the wider public interest. This period will allow you sufficient time to obtain the results from your November 2024 test and provide those results to the NMC. In the event that you pass the test, you will be able to ask for an early review of this order. In the alternative, any results achieved can be considered by a reviewing panel.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 29 January 2025, 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:

- Your attendance at a review hearing;
- Any relevant test results;
- Evidence of any steps undertaken by you to strengthen your knowledge of the English language; and
- Any updated testimonials.

This will be confirmed to you in writing.

That concludes this determination.