

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

**Substantive Order Review Hearing
Tuesday, 5 November 2024**

Virtual Hearing

Name of Registrant: Leonajar Bato Pulido

NMC PIN 01B1675O

Part(s) of the register: Registered Nurse- Sub Part 1
Adult Nursing- 19 February 2001

Relevant Location: London

Type of case: Misconduct

Panel members: Adrian Smith (Chair, lay member)
Elisabeth Fairbairn (Registrant member)
Jane McLeod (Lay member)

Legal Assessor: Neil Fielding

Hearings Coordinator: Stanley Udealor

Nursing and Midwifery Council: Represented by Sahara Fergus-Simms, Case Presenter

Mr Pulido: Not present and unrepresented at the hearing

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 15 December 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Pulido was not in attendance and that the Notice of Hearing had been sent to Mr Pulido's registered email address by secure email on 23 September 2024.

Ms Fergus-Simms, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Pulido's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

Decision and reasons on proceeding in the absence of Mr Pulido

The panel next considered whether it should proceed in the absence of Mr Pulido. The panel had regard to Rule 21 and heard the submissions of Ms Fergus-Simms who invited the panel to continue in the absence of Mr Pulido.

Ms Fergus-Simms invited the panel to consider the principles on proceeding in absence of a defendant as set out in the cases of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5, and *General Medical Council v Adeogba* [2016] EWCA Civ 162.

Ms Fergus-Simms referred the panel to the email to Mr Pulido from his NMC case officer dated 14 October 2024, in which the NMC had enquired about his attendance at this hearing. However, there was no response from Mr Pulido. Ms Fergus-Simms informed the panel that the hearings coordinator had also attempted to contact Mr Pulido via telephone but there was no response from him. She highlighted that although Mr Pulido had attended the last review hearing, he did not attend the substantive hearing. She submitted that there appears to be a pattern of non-attendance by Mr Pulido.

Ms Fergus-Simms highlighted that there has been no correspondence from Mr Pulido to the NMC with respect to any legal representation on his behalf or as to any evidence to be submitted to the panel. She submitted that Mr Pulido has voluntarily absented himself from today's hearing and has not requested an adjournment of this matter. She further submitted that, as this is a mandatory review of the current order which would expire on 15 December 2024, there is a strong public interest in the expeditious review of this case, and it is therefore fair and appropriate for the hearing to proceed in the absence of Mr Pulido.

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

The panel has decided to proceed in the absence of Mr Pulido. In reaching this decision, the panel has considered the submissions of Ms Fergus-Simms and the advice of the legal assessor. It has had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Mr Pulido has not responded to any of the emails sent to him nor telephone calls about his attendance to this hearing;
- No application for an adjournment has been made by Mr Pulido;
- It appears that Mr Pulido has voluntarily absented himself;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- This is a mandatory review of the current suspension order as the order would expire on 15 December 2024 and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair and appropriate to proceed in the absence of Mr Pulido.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for a period of six months.

This order will come into effect at the end of 15 December 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of nine months by a Fitness to Practise Committee panel on 18 May 2023. The order was first reviewed on 2 February 2024 and the suspension order was further extended for a period of nine months.

The current order is due to expire at the end of 15 December 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: All except charge 1c, were found to amount to misconduct.

'That you, a registered nurse whilst employed as a Ward Manager at the Royal Hospital for Neuro- Disability,

1. *inappropriately used confidential information in that you;*
 - c) *on the 18 September 2019 sent to Nurse A information containing details of new recruits to the hospital when you had no authority to do so.*
2. *breached professional boundaries in respect of Nurse A in that you:*

- a) *on 13 September 2019 contacted her via Whatsapp on her personal telephone using your personal telephone when you had no authority to do so;*
 - b) *on 14 September 2019 you contacted her via Whatsapp on her personal telephone using your personal telephone when you had no authority to do so and failed to identify yourself.*
 - c) *between 15 September 2019 and 22 November 2019 on more than one occasion as set out in Schedule A contacted her in a personal capacity when you had no duty or authority to do so.*
3. *breached professional boundaries in respect of Nurse B in that you;*
- c) *between 6 November 2019 and 22 November 2019 contacted her on more than one occasion as set out in Schedule B using Whatsapp in a personal capacity when you had no authority to do so.*
4. *your conduct in charge 3 above was sexually motivated.*

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

Schedule A

15 September 2019

18 September 2019

25 September 2019

Schedule B

6 November 2019

“good morning Amor, it was just a joke. Text me when your in the kitchen so I can say hello to you. I hope you have a productive day. Talk later okay? You too have a great day.”

“Hi How are you? Did you get to Asda? Let me know if you need help with anything?”

8 November 2019

“Hi, how are you? How’s your OSCE preparation”.

9 November 2019

“Good morning Amor, any plans for today”.

11 November 2019

“Hi Amor. It was nice to catch you in the kitchen. I won’t lie I go there to get a glimpse of you. You must be a good cook too! Have a great day.”

12 November 2019

“Good morning Amor. Have a great day also. Maybe catch you in the kitchen again later yeah? Are you cooking tonight? Hmmm...”

16 November 2019

“Good morning Amor have a quiet rest day. I’m sure your still in bed. Hope you finished your knittibg. Is that a therapy? To de-stressed yourself? It was fun to hang out with your group last night”. [sic]

“Good night Amor”.

20 November 2019

“I’ll come, and I miss you or the drinking”.

22 November 2019

“You look busy today, its so hard to get you attention, take it easy”.

“I heard your out tonight. Enjoy central London”.’

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

'The panel considered whether your fitness to practise remains impaired. In making its decision, the panel referred to NMC guidance on Standard reviews of substantive orders before they expire (REV-3a).

The panel noted that the original panel found that you had insufficient insight, together with your lack of engagement and it was of the view that there was a risk of repetition of the conduct found proved.

At this hearing the panel had the benefit of your attendance and hearing from you directly, where you outlined your understanding of the misconduct found proved and what you would do differently in future.

The panel was concerned that you did not fully engage with the previous panel's recommendations by providing a reflective piece and details of the courses that you undertook. The panel considered the evidence you gave regarding the courses was vague and lacking in detail. Further you told the panel that you completed the two courses, whilst you were at your previous employment, however since the imposition of the substantive order, you have not completed any training.

[PRIVATE]. However, it was of the view that you could have been better prepared for the hearing today and demonstrated a more in depth understanding of the impact your actions, namely the abuse of power, the sexual motivation and damage these behaviours would have on the reputation of the profession and the wider public interest.

When questioned during the course of this hearing about how you would handle the situation differently in the future, the panel was not convinced your insight is sufficiently developed and whether you have fully grasped the seriousness of what happened.

The panel considered that your insight is developing, however it was not sufficient for the panel to conclude that you are safe to return to unrestricted practice.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the two courses you stated that you have completed. However, it had no evidence of the completion of the courses, details of the subjects covered or whether you had successfully passed the course. The panel had no further evidence from you to demonstrate any remediation you have undertaken.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel has not heard or received any new information to suggest otherwise. In light of this, this panel determined that you are 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 your fitness to practise remains impaired.'

The first reviewing panel determined the following with regard to 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 considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your

previous failings. It considered that you need to gain a full understanding of the impact of your actions on the nurses involved and how the misconduct of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for.

The panel concluded that a further nine month suspension order would be the appropriate and proportionate response to reflect your continuing journey to reaching sufficient insight and reflection. The duration would also afford you adequate time to further develop your insight and take steps to strengthen their 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 further suspension order for the period of nine months. This duration would also provide you with an opportunity to continue to engage with the NMC, to provide evidence of your reflection, evidence of any recent training courses that you have undertaken, provide testimonials from any work, whether paid or unpaid either in a healthcare setting or not and provide a reflective piece. 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 15 March 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:

- Your attendance at any future NMC review hearings and continued engagement with the NMC;*
- Testimonials in relation to any paid or unpaid work you undertake;*
- Evidence of any recently completed, relevant training; and*

- *A reflective piece addressing your reflection, insight and understanding of why your conduct was wrong, the impact on your colleagues and on the reputation of the wider nursing profession.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Pulido'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. It has taken account of the submissions made by Ms Fergus-Simms.

Ms Fergus-Simms took the panel through the background of the case and referred it to the relevant pages within the bundle.

Ms Fergus-Simms highlighted that the panel would need to consider afresh whether Mr Pulido's fitness to practise remains impaired. She referred the panel to the test set out in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). She submitted that limbs B and C of the Grant test remain engaged in this case.

Ms Fergus-Simms submitted that there was no evidence of adequate reflection, further training or testimonials that have been presented to the panel by Mr Pulido. She submitted that there was no material change in circumstances since the last review hearing and if Mr Pulido had attended today's hearing, he would have had the benefit of providing oral evidence to demonstrate his insight or he could have provided written representations to the panel.

Ms Fergus-Simms highlighted that despite the period of a nine-month suspension order previously imposed on Mr Pulido's nursing practice, he has failed to further strengthen his practice, nor has he complied with the recommendations of the previous reviewing panel. She therefore submitted that Mr Pulido's fitness to practice remains impaired.

Ms Fergus-Simms invited the panel to impose a further suspension order in order to provide Mr Pulido further opportunity to reflect on his misconduct and present evidence of sufficient insight and any steps he has taken to remediate the concerns in this case.

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. It had regard to the NMC Guidance on Standard reviews of substantive orders before they expire (REV-3a).

The panel considered whether Mr Pulido's fitness to practise remains impaired.

The panel took into account that there was no evidence before it to indicate any steps that Mr Pulido has taken to strengthen his nursing practice nor any new information to suggest that he has further developed his insight since the last review hearing. The panel also noted that Mr Pulido has not further engaged with the NMC and there has been no material change in circumstances since the last review hearing. The panel took into consideration that there was no evidence of Mr Pulido's compliance with the recommendations of the previous panel regarding engagement and evidence of testimonials, training and reflection.

In light of this, this panel determined that Mr Pulido is liable to repeat matters of the kind found proved and there remains a real risk of harm to the public (including colleagues). 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. It was of the view that a fully informed member of the public, aware of the seriousness of the misconduct and that Mr Pulido has not taken the necessary steps required to further develop his insight and strengthen his practice, would be very concerned if he were permitted to practise as a registered nurse without restrictions. 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 Pulido's fitness to practise remains impaired on both public protection and public interest grounds.

Decision and reasons on sanction

Having found Mr Pulido'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. It had found that Mr Pulido has failed to demonstrate sufficient insight into the concerns nor strengthened his nursing practice. The panel therefore decided that it would neither protect the public nor be in the public interest to take no further action.

The panel 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 Pulido's nursing 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 Pulido'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 a caution order would neither protect the public nor be in the public interest.

The panel next considered whether a conditions of practice order on Mr Pulido'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 that Mr Pulido's misconduct was not related to deficiencies in his clinical practice. Given the attitudinal nature and seriousness of Mr Pulido's misconduct, the panel was not able to formulate conditions of practice that would adequately address the concerns in this case. The panel therefore concluded that a conditions of practice order would not be appropriate in this case and would not protect the public nor be in the public interest.

The panel considered the imposition of a further period of suspension. It took into account that Mr Pulido had attended the last review hearing, and the last reviewing panel found that his insight is still developing as he had not demonstrated sufficient insight into the seriousness and impact of his misconduct on the nursing profession and the public. Therefore, this panel decided to provide Mr Pulido with further opportunity to demonstrate evidence of sufficient insight into his misconduct and to strengthen his nursing practice. The panel therefore concluded that a suspension order for a period of six months would be the appropriate and proportionate sanction to protect the public and address the public interest in this case.

The panel gave serious consideration to the imposition of a striking-off order, however, it decided that in light of Mr Pulido's attendance at the previous review hearing, it was appropriate to provide a further opportunity for him to engage and a striking-off order would be disproportionate at this stage. However, this sanction may be considered by a future reviewing panel if Mr Pulido's fitness to practise remains impaired.

Accordingly, the panel determined to impose a suspension order for the period of six months. This suspension order will take effect upon the expiry of the current suspension order, namely the end of 15 December 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 reflective piece that demonstrates Mr Pulido's insight into the seriousness and the impact of his misconduct on his colleagues and on the reputation of the wider nursing profession.
- Evidence of any recently completed relevant training in the areas of concern.
- Testimonials in relation to any paid or unpaid work undertaken.
- Mr Pulido's attendance at the next review hearing and his re-engagement with the NMC.

This will be confirmed to Mr Pulido in writing.

That concludes this determination.