

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

**Substantive Order Review Hearing
Wednesday 20 November 2024**

Virtual Hearing

Name of Registrant: Jayson Salvador

NMC PIN 16G00150

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 4 July 2016

Relevant Location: Norfolk

Type of case: Misconduct/Lack of competence

Panel members: Caroline Rollitt (Chair, lay member)
Jessica Read (Registrant member)
Gary Trundell (Lay member)

Legal Assessor: Graeme Dalglish

Hearings Coordinator: Salima Begum

Nursing and Midwifery Council: Represented by Elizabeth Hartley, Case Presenter

Mr Salvador: Not present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of 30 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 Salvador was not in attendance and that the Notice of Hearing had been sent to Mr Salvador's registered email address by secure email on 21 October 2024.

Ms Hartley, 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, venue of the hearing and, amongst other things, information about Mr Salvador'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 Salvador 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 Salvador

The panel next considered whether it should proceed in the absence of Mr Salvador. The panel had regard to Rule 21 and heard the submissions of Ms Hartley who invited the panel to continue in the absence of Mr Salvador. She referred the panel to the NMC bundle, where it had an email from Mr Salvador informing the NMC on 19 November 2024, he was unable to attend due to [PRIVATE]

Email from Mr Salvador on 19 December 2024:

'Sorry for the late response. I will not be attending the said virtual hearing for the reason that [PRIVATE].'

The panel accepted the advice of the legal assessor who referred them to the NMC guidance and the case of *Adeogba v GMC* [2016] EWCA Civ162.

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

- No application for an adjournment has been made by Mr Salvador.
- Mr Salvador has confirmed via email he will not be able to join due to [PRIVATE].
- Mr Salvador has not indicated he would attend a future hearing and has not attended previous hearings.
- There is no reason to suppose that adjourning would secure his attendance at some future date; 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 to proceed in the absence of Mr Salvador.

Decision and reasons on review of the substantive order

The panel decided to impose a striking off order.

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

This is the third review of a substantive order: the original panel imposed a suspension order on 1 December 2021. On that occasion, the Fitness to Practise Committee ("FtPC") panel decided to impose a suspension order for 12 months. This was reviewed on 16 November 2022, when the suspension order was extended for 12 months. A further review was held on 28 November 2023, where the panel decided to impose a further suspension order for 12 months.

The current order is due to expire at the end of 30 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:

'That you, between 24 December 2016 and 30 June 2017 failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision as a Band 5 nurse in that you:

1. [...]
2. *On 19 May 2017, moved and repositioned a patient by yourself without first seeking assistance from a colleague, when you knew you were not competent to do so **[proved]***
3. [...]
4. *On 30 June 2017, signed documentation stating that you had undertaken a check in respect of a glucometer when you had not done so **[proved]***
5. *On 30 June 2017, you administered medication intravenously when you knew that you had not been assessed as competent to do so **[proved]***

While subject to a Stage 1 formal capability process [PRIVATE] and working as a supernumerary nurse, between 5 March 2018 and 31 May 2018 you:

6. *On 5 March 2018 failed to check a patient consent form **[proved]***
7. *On 29 March 2018*
 - a) *failed to check a patient's glucose level **[proved]***
 - b) *having failed to check the patient's glucose level, advised the patient to take Insulin **[proved]***

8. [...]

9. *On 16 May 2018 without consulting with your supervising colleagues, discharged a post-surgical patient when discharge of the patient was not clinically indicated [proved]*

10. *On 31 May 2018*

a) *failed to follow a prescription to administer a controlled drug to a patient [proved]*

b) *your failure to follow the prescription resulted in over-administration of the controlled drug with the patient receiving a quantity in excess of that prescribed, over a shorter time period than that which was prescribed [proved]*

While subject to a Stage 2 formal capability process [PRIVATE] you:

11. *Failed to meet the objectives set out in your action plan to*

a) *Recognise and work within the limits of your competency [proved]*

b) *Demonstrate sustained improvement in the safe administration of medicines [proved]*

c) *Consistently demonstrate that you were aware of and reduced as far as possible any potential for harm associated with your practice [proved]*

AND your fitness to practise is impaired by reason of your misconduct (charges 1, 2, 3 & 5) and/or your lack of competence (charges 4, 6, 7, 8, 9, 10 & 11).'

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

'The panel noted that the last reviewing panel found that Mr Salvador had insufficient insight. At this meeting, the panel took into account Mr Salvador's email dated 20 October 2023. The panel bore in mind that the charges found proved took

place between 2017 and 2018 and there has been no information that was presented before it which provides a material change in his current impairment level. Mr Salvador admitted that he has not been able to comply. However, since the last review Mr Salvador has expressed his intention to work and obtain relevant employment to show the NMC his commitment to return to nursing.

The last reviewing panel determined that Mr Salvador was liable to repeat matters of the kind found proved. Today's panel has noted that he has since engaged with the proceedings to some degree, and he provided an update about his current circumstances. He told the NMC that he is currently not in the UK [PRIVATE] and have shown a willingness to attend further training relating to medication administration and safe nursing practice. However, the panel noted that Mr Salvador has not provided the panel with the material requested by the previous reviewing panel.

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 Salvador's fitness to practise remains impaired.'

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

'The panel considered the imposition of a further period of suspension. It was of the view that a further 12-month suspension order would be the appropriate and proportionate sanction and would afford Mr Salvador adequate time to fully reflect on his previous behaviour, further develop his insight and demonstrate the steps being taken in preparation for a safe return to practise.

The panel considered a striking-off order. However, given Mr Salvador's recent email dated 20 October 2023, re-engaging with the NMC and expressing his future

intentions, the panel determined that a striking-off order would be disproportionate at this stage.

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 would provide Mr Salvador with an opportunity to engage with the NMC and to provide evidence of safe practice and training. 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 30 December 2023 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Salvador'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 Hartley. She provided a background on the case, highlighting several key points. She noted that the first reviewing panel found Mr Salvador lacked sufficient insight or evidence of actions to address his failings. Furthermore, Mr Salvador has not engaged in the proceedings. During the second review in 2023, Mr Salvador stated he had applied to work [PRIVATE] and was awaiting training, but he was unable to proceed with improving his skills. Despite this, no information has been provided to demonstrate any actual remediation of his failings, and [PRIVATE]. Ms Hartley emphasised that the suspension order should remain in place, as Mr Salvador has not met the persuasive burden of fully acknowledging his past actions and failures. There is no evidence to suggest he has taken steps to remediate the concerns raised. Additionally, he has failed to provide the necessary information, making the continuation of

the suspension order essential. Ms Hartley urged the panel to consider the public interest in their deliberations, and in the absence of Mr Salvador, she proposed that the option of striking him off the register be considered.

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 Mr Salvador's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that:

'At this meeting, the panel took into account Mr Salvador's email dated 20 October 2023. The panel bore in mind that the charges found proved took place between 2017 and 2018 and there has been no information that was presented before it which provides a material change in his current impairment level. Mr Salvador admitted that he has not been able to comply. However, since the last review Mr Salvador has expressed his intention to work and obtain relevant employment to show the NMC his commitment to return to nursing.'

At today's hearing, the panel took into consideration, whether Mr Salvador has taken steps to strengthen his practice and develop sufficient insight. It took into account the need for public protection and assessed whether there remains a risk associated with Mr Salvador, should he return to practise. It noted that there is no evidence from Mr Salvador to demonstrate any strengthening of his practice, no testimonials have been provided, no reflective pieces, nor has he submitted any training records or development plans to demonstrate strengthening of his practise. This raises significant concerns about the potential risk to the public regarding his ability to practice safely. In relation to his misconduct and lack of competence, Mr Salvador breached professional standards and has failed to engage with the NMC, other than notifying them of his non-attendance at hearings. This lack of engagement extends to his two previous reviews with the NMC. Without any information to provide assurance, the panel cannot be certain that such

failings would not be repeated in the future. From a public interest perspective, Mr Salvador continues to have insufficient level of engagement addressing the misconduct and practise concerns, allowing him to return to practice, would be of grave concern to the wider public.

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 required.

The last reviewing panel determined that Mr Salvador has not engaged with the proceedings. Today's panel has not received any new information. In light of this, this panel determined that Mr Salvador is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary also on the grounds of public protection.

For these reasons, the panel finds that Mr Salvador's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Salvador'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.

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 Salvador'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 Salvador'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 Mr Salvador'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 sufficiently or adequately address the concerns relating to Mr Salvador's misconduct and lack of competence.

The panel next considered imposing a further suspension order. The panel noted Mr Salvador has not practised as a registered nurse since 2018 and has been under a suspension order since December 2021. His level of engagement with the NMC has been very limited. He has demonstrated minimal insight into his failings and has not shown any remorse. Furthermore, there is no evidence of professional progress, and his continued presence on the register adds no value as a registered nurse. While the suspension order was originally imposed to protect the public, and provide Mr Salvador an opportunity to strengthen his practice, he has chosen not to take advantage of this, despite being given several opportunities to do so.

The panel considered the challenges he faces, [PRIVATE], [PRIVATE]. However, these issues have only arisen in the recent month, and he has had over a year since the last review to provide evidence of progress. His lack of engagement has made it difficult to demonstrate any meaningful effort toward remediation of his fitness to practice.

Further, Mr Salvador has not demonstrated any insight into his previous failings. The panel was of the view that considerable evidence would be required to show that Mr Salvador no longer posed a risk to the public.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. It also reviewed the recommendations from the last reviewing panel, which had clearly outlined steps Mr Salvador could take to demonstrate progress. These included:

‘Any future panel reviewing this case would be assisted by:

- *Engagement with the NMC*
- *Attendance at the next review*
- *A reflective statement*
- *Evidence of relevant employment details since the substantive hearing was imposed.*
- *[PRIVATE] to work in a healthcare setting.*
- *References from any current employer*
- *Training undertaken to address the identified deficiencies in practice.’*

Despite being aware of these recommendations, Mr Salvador has failed to provide any such information. While he has cited environmental challenges, the panel noted that there were other avenues available for him to utilise, but he has chosen not to do so. Given the length of time since his last review and the lack of effort to address the concerns, the panel determined that the suspension order is no longer proportionate. He has been afforded ample opportunities to engage and demonstrate progress, yet he has not provided the necessary evidence to assist the panel in this review.

The panel determined that it was necessary to take action to prevent Mr Salvador from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 30 December 2024 in accordance with Article 30(1).

This decision will be confirmed to Mr Salvador in writing.

That concludes this determination.