

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

**Substantive Order Review Hearing
Thursday, 28 November 2024**

Virtual Hearing

Name of Registrant: Dominika Aleksandra Kuehn Stachurska

NMC PIN 20B0014C

Part(s) of the register: Registered Midwife
Midwifery – 5 February 2020

Relevant Location: Fife

Type of case: Lack of competence

Panel members: Tracy Stephenson (Chair, lay member)
Rachel Jokhi (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Graeme Dalglish

Hearings Coordinator: Khatra Ibrahim

Nursing and Midwifery Council: Represented by Eilish Lindsay, Case Presenter

Mrs Stachurska: Not present and represented by Christie Wishart,
instructed by Thompson’s Solicitors

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 2 January 2025 in accordance with Article 30 (1)**

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

[PRIVATE]

Decision and reasons on review of the substantive order

The panel decided to impose a further six-month suspension order.

This order will come into effect at the end of 2 January 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 1 December 2023.

The current order is due to expire at the end of 2 January 2025.

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 midwife, between March 2020 and May 2023 failed to demonstrate the standards of knowledge, skill, and judgment required to practise without supervision as a band 5 midwife, in that you;

- 1) ...
- 2) *Around 28 March 2020 were unable to;*
 - a) *Perform basic Postnatal Examinations.*
 - b) *Use a CTG;*
 - c) *Translate a CTG tracing.*
- 3) *Around 7/8 April 2020;*
 - a) *Were unable to perform a urinalysis;*

- b) Did not understand the significant of a urinalysis;*
 - c) Were unable to palpate a fundus;*
 - d) Were unable to recognise the significance of enquiring about lochia.*
- 4) On an unknown date, failed to check a baby's fontanelle.*
- 5) Around 10 April 2020 were unable to demonstrate knowledge in areas of;*
 - a) Bladder care;*
 - b) Lochia;*
 - c) Fundus/Uterine Involution;*
 - d) Breastfeeding;*
 - e) Urinalysis;*
 - f) CTG Trace;*
 - g) Maternal/Baby observations.*
- 6) Were unable to successfully complete a Supported Improvement/Action Plan implemented on 30 April 2020.*
- 7) On 21 May 2020, were unable to print policies for further teaching/learning sessions.*
- 8) Around 19 June 2020;*
 - a) Were unable to communicate adequately with mothers when conducting postnatal checks;*
 - b) Would not ask mothers if their body was hurting during postnatal checks;*
 - c) Were unable to respond to/escalate abnormal observations;*
 - d) Were unable to demonstrate sufficient knowledge around medication management/administration.*
- 9) On or around 25 June 2020;*
 - a) were unable to demonstrate knowledge of the presenting part after performing an abdominal palpitation;*
 - b) calculated an incorrect infusion rate for a 1000ml bag over 8 hours.*

10) *On or around 17 May 2020;*

- a) *Inaccurately instructed a bottle-feeding mother to express her breasts to relieve discomfort.*
- b) *Failed to adequately examine the legs of an unknown patient;*
- c) *Demonstrated poor communication skills in that you;*
 - i) *Did not introduce yourself to one or more patients;*
 - ii) *Did not enquire if one or more patient's, required medication.*
- d) *Attempted to administer paracetamol to an unknown patient who had already been administered Co-codamol;*
- e) *For an unknown patient failed to identify;*
 - i) *An elevated pulse of 110/122bpm;*
 - ii) *Oxygen saturation of 93%;*
- f) *Failed to adequately escalate a baby suffering a fit, in that you;*
 - i) *Used words to the effect 'the baby is doing that thing again';*
 - ii) *Did not respond to Colleague A's request for information/assistance;*
 - iii) *Walked in the opposite direction.*

11) *On an unknown date were unable to explain how you would escalate a mother/patient with low blood pressure*

12) *Around June/July 2020 failed to demonstrate an understanding of;*

- a) *Palpitations;*
- b) *Hyperemesis;*
- c) *Antenatal checks.*

13) ...

14) ...

15) ...

16) ...

And in light of the above your fitness to practise is impaired by reason of your lack of competence.

The original panel determined the following with regard to impairment:

The panel then went on to consider whether your fitness to practise is currently impaired. Whilst acknowledging the agreement between yourself and the NMC, the panel exercised its own independent judgement in reaching its decision on impairment.

In respect of lack of competence, the panel determined that your clinical skill levels are unacceptable and would put patients at risk of harm if you were allowed to practise without restriction which you demonstrated with your actions in respect of the charges.

In this respect, the panel endorsed paragraphs 46 to 52 of the provisional CPD agreement in respect of lack of competence.

The panel then considered whether your fitness to practise is currently impaired by reason of lack of competence.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

‘The question that will help decide whether a professional’s fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”

If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

The panel determined that your fitness to practise is currently impaired as your actions breached fundamental tenets of the profession, pose an ongoing risk to

patient safety and would be deemed deplorable by the public. In this respect the panel endorsed paragraphs 53 to 64 of the provisional CPD agreement.

The original panel determined the following with regard to sanction:

'The panel next considered whether placing 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. The panel took into account the SG, 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;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to 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 there are no practical or workable conditions that could be formulated given the wide-ranging clinical concerns in this case and the panel's finding that you are currently impaired by reason of your lack of competence. The panel also took into consideration that you placed patients at risk of harm over the course of three years which, despite support and mentoring, was not addressed and has not been remediated.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

Considering these factors, the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction to protect the public, meet the public interest, and give you the chance to decide how you would like to move forward with your career.

The panel was mindful the hardship such an order will inevitably cause you. 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 midwife.

The panel determined that a suspension order for a period of 12 months was appropriate in this case.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Stachurska'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 Lindsay, on behalf of the NMC. She took the panel through the background of the case and the previous panel's decision. She submitted that the current suspension order should be extended, and that the previous panel took account of the aggravating factors, including deficiencies in knowledge, and skills relating to fundamental areas of Mrs Stachurska's practice. She submitted that these concerns occurred over a period of three years and had not been sufficiently addressed despite her employer providing significant support and training.

Ms Lindsay submitted that in regard to mitigation, the previous panel considered that Mrs Stachurska has remained fully engaged with both her employer and the NMC. She submitted that Mrs Stachurska had made admissions to a number of charges in relation to her lack of competency. She also submitted that the previous panel determined that there were no practicable or workable conditions that could be formulated, given the wide-ranging clinical concerns and the finding was that Mrs Stachurska was impaired due to lack of competence. She further submitted that despite the support provided, the concerns were not addressed and has not been remediated since. She submitted that the previous panel determined that in placing conditions of practice on Mrs Stachurska's practice, this would not adequately address the seriousness of the concerns and would therefore not protect the public.

Ms Lindsay submitted that since the substantive hearing, Mrs Stachurska has not commenced any further employment, and she has not yet undertaken any continued professional development, which would strengthen her practice. [PRIVATE]. She submitted that in regard to the current suspension order, that it is for the panel to determine the next step and referred the panel to its powers under Article 30.

Ms Lindsay referred the panel to the case of *Abraham v GMC and* submitted that there is a persuasive burden on Mrs Stachurska today to fully acknowledge why her past misconduct was inappropriate. She submitted that this can still be done through insight, education, supervision, and/or other achievements. She submitted that it is for Mrs Stachurska to

satisfy the panel that she has sufficiently addressed the findings of the original hearing. She also submitted that given she has not undertaken any steps to strengthen her practice, it cannot be said that Mrs Stachurska has discharged the burden. She further submitted that it appears that there has no change in circumstance since the substantive hearing, and that the concerns are serious.

Ms Lindsay referred the panel to the NMC's guidance "REV-3a", and submitted that the previous panel indicated any future reviewing panel would be assisted by the following:

- Evidence of professional development in form of training certificates;
- References from your employer; and
- A reflective piece

Ms Lindsay submitted that it is for the panel to determine whether Mrs Stachurska has shown developed insight, and if the concerns have been addressed. She submitted that since the last hearing, Mrs Stachurska has not demonstrated any insight, given the lack of information before today's panel. She submitted that due to the current suspension order, Mrs Stachurska has not been able to demonstrate strengthening of practice, and that the burden has not been discharged.

Ms Lindsay submitted that in regard to sanction, given the seriousness of the case, no further action or a caution order would not be appropriate or proportionate. She submitted that in terms of a conditions of practice order, this would also be inappropriate, as Mrs Stachurska has not demonstrated the willingness to address the findings. She also submitted that any conditions imposed by the panel would not be appropriate, proportionate or workable and would not mitigate the risks identified. She further submitted that conditions would not suitably address the public protection and public interest aspects. She submitted a further period of suspension would allow Mrs Stachurska further time to comply with the non-binding recommendations that may assist a reviewing panel.

Ms Lindsay submitted that in regard to a further suspension order, this would be appropriate and proportionate given the level of insight and lack of remediation and would also maintain public confidence.

Ms Lindsay referred the panel to the guidance REV-3e and submitted that a striking off order would be inappropriate in this case.

[PRIVATE] and is due to return to work as a Band 2 Healthcare Assistant (HCA) in March 2025. She submitted that Mrs Stachurska has acknowledged the limitations in her practice, and that the concerns raised relate to a lack of competency, particularly in her midwifery practice. She informed the panel that Mrs Stachurska has made the decision that practising as a midwife may no longer be appropriate for her, as her dual qualification from Poland is more akin to that of a nurse. She submitted that Mrs Stachurska's plan is to complete a Return to Practice course, in order to qualify as a nurse. She submitted that in order to do this, Mrs Stachurska could not remain suspended, as she would not be able to complete this whilst suspended, as she would require some supervised hours on the ward.

Ms Wishart submitted that a conditions of practice order could be formulated to limit Mrs Stachurska's practice to nursing, while also protecting the public. She submitted that Mrs Stachurska is currently stuck for choices due to the suspension, but that she understands the NMC has concerns regarding her midwifery practice. She submitted that Mrs Stachurska also understands that the panel may share the same concerns, and therefore she cannot practise unrestricted. She further submitted that a conditions of practice order would allow Mrs Stachurska to demonstrate that she is able to practise safely whilst subject to strict conditions. She submitted that if the panel are not with her on conditions, a short period of suspension would allow Mrs Stachurska further time to reflect on the findings.

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 Mrs Stachurska's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Stachurska had insufficient insight. At this hearing, the panel had no new information before it to demonstrate Mrs Stachurska

had developed full insight into the findings, nor has she strengthened her practice since the last substantive hearing. It acknowledged that Mrs Stachurska had accepted her lack of competence by way of the Consensual Panel Determination (CPD), and is considering moving away from midwifery practice, and it determined that she had shown some insight in that regard. However, the panel was of the view that due to the lack of information before it today, including the absence of a reflective statement, it could not conclude that she has adequately reflected on the findings and developed full insight since the imposition of the suspension order.

The panel further noted the difficulties Mrs Stachurska has experienced in her previous employment, in that despite the support, she did not achieve the competencies required. The panel determined that the risk of harm and repetition remains, as the ongoing concerns have not been sufficiently addressed.

The original panel determined that Mrs Stachurska was liable to repeat matters of the kind found proved. Today's panel received no new information to evidence that the risks and concerns have sufficiently been mitigated. In light of this, this panel determined that Mrs Stachurska remains 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 Stachurska's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Stachurska'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 and the risks identified. 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 Stachurska'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 Stachurska'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 Stachurska'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 gave due consideration to Ms Wishart's conditions of practice proposal to enable Mrs Stachurska to complete a Return to Practice course in nursing. However, the panel was not able to formulate workable and realistic conditions of practice that would adequately address the concerns relating to Mrs Stachurska's practice.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Stachurska further time to fully reflect on her previous failings. The panel concluded that a further six-month suspension order would be the appropriate and proportionate response and would afford Mrs Stachurska sufficient time to develop her insight. It would also give Mrs Stachurska an opportunity to look into

the feasibility of entering a Return to Practice course in nursing and identify the level of supervision she would receive in that setting.

The panel determined 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 a period of six months to provide Mrs Stachurska an opportunity to address the risks identified. 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 2 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:

- A detailed reflective piece focusing on the previously admitted charges and her future career plans;
- Evidence of professional development, including any online training;
- What level of supervision a Return to Practice course in nursing will give her whilst undertaking the course; and
- Any relevant references and/or testimonials.

This will be confirmed to Mrs Stachurska in writing.

That concludes this determination.