

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

**Substantive Order Review Hearing
30 Wednesday 2024**

Virtual Hearing

Name of Registrant: Ionut Aurelian Necula

NMC PIN: 11A0018C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – January 2011

Relevant Location: Kent

Type of case: Misconduct

Panel members: Geraldine O'Hare (Chair, Lay member)
Sally Thomas (Registrant member)
Matthew Wratten (Lay member)

Legal Assessor: Alain Gogarty

Hearings Coordinator: Antonnea Johnson

Nursing and Midwifery Council: Represented by Bibi Ihuomah, Case Presenter

Mr Necula: Not present and not represented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order extended for a period of 12 months**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Necula was not in attendance and that the Notice of Hearing had been sent to Mr Necula's registered email address by secure email on 30 September 2024.

Ms Ihuomah, 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 Necula'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 Necula 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 Necula

The panel next considered whether it should proceed in the absence of Mr Necula. The panel had regard to Rule 21 and heard the submissions of Ms Ihuomah who invited the panel to continue in the absence of Mr Necula. She submitted that Mr Necula had voluntarily absented himself.

Ms Ihuomah referred the panel to the documentation in the proof of service bundle which includes a notice of hearing sent to Mr Necula's email address on 30 September 2024. She also referred the panel to an email from Mr Necula dated Tuesday 29 October 2024 which stated:

'I'm not attending thanks.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Necula. In reaching this decision, the panel has considered the submissions of Ms Ihuomah 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 Necula;
- Mr Necula has sent an email to the NMC indicating he would not be attending;
- 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 Necula.

Decision and reasons on review of the substantive order

The panel decided to extend the existing conditions of practice order for a period of 12 months.

This order will come into effect at the end of 12 December 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 9 November 2024.

The current order is due to expire at the end of 12 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:

Charge 1a

“That you, a registered nurse, on 5 September 2019 in relation to Resident A, failed to:

a) Record in the care notes that he was suffering from expectorate phlegm post cough.” [proved].

Charge 1b

“On 5 September 2019 in relation to Resident A, failed to:

b) Record observations for temperature and/or pulse and/or breathing.” [proved].

Charge 1c

“On 5 September 2019 in relation to Resident A, failed to:

c) Provide a handover for the next shift.” [proved].

Charge 2c

“On 20 September 2019 in relation to Resident B:

c) Failed to call the GP about Resident B’s deteriorating condition as requested by Colleague A,” [proved].

...

Charge 4

“On or before 19 October 2019 failed to:

- a) Complete care plans. **[proved]**.
- b) Complete wound care records.” **[proved]**.

Charge 5a)

“On 18 November 2019, in relation to Resident C:

- a) Failed to check Resident C’s glucose levels before administering insulin,
Or, in the alternative” **[proved]**.

The original panel determined the following with regard to impairment:

‘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.’

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

‘In determining whether a practitioner’s fitness to practise is impaired by

reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) ...'

The panel found that, based on the evidence before it, limbs (a) to (c) of the Grant test, as laid out above, were engaged. The panel finds that residents were put at risk and were caused physical harm as a result of Mr Necula's misconduct. Mr Necula's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel was of the view that Mr Necula provided no evidence to demonstrate that he had reflected on and had remedied his failings. The panel

was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Necula has taken steps to strengthen his practice. Although Mr Necula provided various training certificates the panel determined that they were effectively historic in context and did not address the full spectrum of his deficient practice.

The panel noted that because Mr Necula was previously represented by the RCN, he would have been told about the importance of providing detailed information to the panel regardless of attendance. The panel determined that the information before it from Mr Necula was minimal and provided no context regarding the strengthening of his practice.

The panel is of the view that there is a risk of repetition based on the absence of any evidence to show that Mr Necula has strengthened his practice. The panel determined that it had a no information before it to counterbalance the allegations that Mr Necula lacks the ability to work collaboratively and that he does not communicate well. However, the panel acknowledged that, unprompted, Witness 1 told the panel on more than one occasion in her oral evidence that Mr Necula has the potential to be a good nurse if he asked for support when he needed it. Nevertheless, the panel determined based on all the evidence before it that after Mr Necula was given a verbal warning in September 2019 regarding the incident with Resident A, he did not address the concerns which contributed to the incidents regarding Residents B and C. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that 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.

The panel determined that a finding of impairment on public interest grounds is required because all the charges relate to clinical failures spanning all of the themes

of the NMC code. Considering all the evidence, the panel determined that Mr Necula's practice was lacking, and he put residents at risk of significant harm. Further, it was of the view that the reason there were no serious consequences was not due to his actions but to the alertness and intervention of his colleagues. 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 Mr Necula's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Necula'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:

- The panel has no information to demonstrate insight or remorse into his failings.*
- There is a pattern of misconduct over a period of time which put patients at risk of suffering harm.*

The panel also took into account the following mitigating feature:

- Mr Necula's colleague (Witness 1) told the panel during her oral evidence that he has the potential to be a good nurse with the right support and further training.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the clinical risk. 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 clinical concerns and the public protection issues identified, an order that does not restrict Mr Necula'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 Necula'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 Mr Necula'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, 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

Balancing all of these factors, the panel determined that that (sic) the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Necula's case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.'

Decision and reasons on current impairment

The reviewing panel has considered carefully whether Mr Necula'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 ability to practise kindly, safely and professionally. 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. Mr Necula did not submit any documentation for consideration by this reviewing panel.

It has taken account of the submissions made by Ms Ihuomah on behalf of the NMC. She submitted that Mr Necula had not submitted any materials addressing the charges found proved. The panel heard that the substantive case indicated that a reviewing panel would be assisted by a reflective statement, evidence of relevant training that addressed the charges and testimonials.

Ms Ihuomah further submitted that in the absence of any evidence that Mr Necula had addressed the matters identified by the previous panel his fitness to practise remains impaired.

She confirmed to the panel that Mr Necula has not been in contact with the NMC since the conditions of practice order was imposed on 9 November 2023 apart from his email yesterday indicating that he would not be attending today's review hearing.

Ms Ihuomah further submitted that there was no evidence to suggest a risk to patients had increased or decreased and therefore there still remains a risk of repetition.

Ms Ihuomah invited the panel to consider that Mr Necula's fitness to practise is still currently impaired on both public protection and public interest grounds due to a lack of evidence of his insight into his failings and the absence of steps to strengthen his practice. Therefore, concerns pertaining to risk of patient safety remain.

Ms Ihuomah submitted that should the panel determine that Mr Necula's fitness to practise remains impaired, the NMC was neutral in relation to what sanction should be imposed.

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 Necula's fitness to practise remains impaired. It notes that in practical terms there is a persuasive burden on him to demonstrate to this reviewing panel that he has addressed all the concerns found proved by the previous panel through insight, application and supervision.

The panel noted that the original panel had not been provided with any evidence as to Mr Necula's insight. However, it did appear to accept the evidence of an NMC witness that Mr Necula 'has the potential to be a good nurse with the right support and further training'.

In considering whether Mr Necula had taken steps to strengthen his practice, the panel noted the absence of evidence since the imposition of the conditions of practice order. It noted that he does not appear to have secured work as a registered nurse and therefore the conditions of practise order has not come into effect.

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 protection and public interest grounds is required.

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

Decision and reasons on sanction

Having found Mr Necula'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.

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 Mr Necula'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 Necula'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 extending the existing conditions of practice order would be a sufficient and appropriate response. It agrees with the matters identified by the previous panel from the sanctions guidance namely, 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of deep seated attitudinal problems. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

It has decided to afford Mr Necula a further opportunity to engage with the conditions of practice order. This will afford Mr Necula a final opportunity to obtain a nursing position and engage with the current conditions of practice order. Whilst this panel cannot bind any future reviewing panel, such a panel is unlikely to extend a conditions of practice order in the absence of persuasive evidence that Mr Necula is engaging with the current order. Further, in the absence of such engagement, it is likely to impose a more severe sanction.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Necula's case.

Accordingly, the panel determined, pursuant to Article 30(1), to extend the current conditions of practice order for a period of 12 months. This will come into effect on the expiry of the current order, namely at the end of 12 December 2024. It decided that the current conditions of practice are both appropriate and proportionate in this case.

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your employment to one substantive employer. This must not be an agency.

2. You must not be the sole registered nurse in charge until deemed competent by another registered nurse, equivalent to a Band 6.

3. You must ensure that you are supervised by another registered general nurse any time you are working. Your supervision must consist of:

a) Working at all times on the same shift as, but not always directly observed by, a registered nurse equivalent to a Band 6 or above until deemed competent.

4. You must work with your supervisor to develop a work plan which address the charges with particular regard to:

- a) Record keeping
- b) Improving communication skills
- c) The care of a deteriorating patient
- d) The care of a diabetic patient.

5. Meet monthly with supervisor to assess progress against the care plan in condition 4.

6. You must keep the NMC informed about anywhere you are working by:

- a) Telling your case officer within seven days of accepting or leaving any employment.
- b) Giving your case officer your employer's contact details.

7. You must keep the NMC informed about anywhere you are studying

by:

- a) Telling your case officer within seven days of accepting any course of study.
- b) Giving your case officer the name and contact details of the organisation offering that course of study.

8. You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.
- b) Any employers you apply to for work (at the time of application).
- c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

9. You must tell your case officer, within seven days of your becoming aware of:

- a) Any clinical incident you are involved in.
- b) Any investigation started against you.
- c) Any disciplinary proceedings taken against you.

10. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a) Any current or future employer.
- b) Any educational establishment.
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

Any future panel reviewing this case would be assisted by:

- Mr Necula's attendance at future hearings;
- Evidence of Mr Necula's work plan and the effective steps taken to maintain skills and knowledge;
- Evidence of relevant training and developed competence;
- A written reflective piece demonstrating insight and improved practice relevant to the charges proved and Mr Necula's future intentions with regard to his future as a nurse;
- Testimonials from current employer (paid or unpaid).

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 12 December 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Necula has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

This will be confirmed to Mr Necula in writing.

That concludes this determination.