

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

**Substantive Order Review Hearing
Friday 4 October 2024**

Virtual Hearing

Name of Registrant: Stefan Emil Popa

NMC PIN 12K0158C

Part(s) of the register: Registered Nurse, Sub Part 1
Adult Nursing, Level 1 (19 November 2012)

Relevant Location: Devon

Type of case: Misconduct

Panel members: Adrian Ward (Chair, lay member)
Sharon Haggerty (Registrant member)
Dora Waitt (Lay member)

Legal Assessor: Sean Hammond

Hearings Coordinator: Emma Norbury-Perrott

Nursing and Midwifery Council: Represented by Grace Khaile, Case Presenter

Mr Popa: Not Present and unrepresented at the hearing

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months)
to come into effect on 14 November 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 Popa was not in attendance and that the Notice of Hearing had been sent to Mr Popa's registered email address by secure email on 5 September 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mr Popa's representative at the Royal College of Nursing (RCN) on 5 September 2024.

Grace Khaile, 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 Popa's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In view of all of the information available, the panel was satisfied that Mr Popa 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 Popa

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

Ms Khaile referred the panel to the letter sent by the Royal College of Nursing (RCN) to the NMC dated 3 October 2024 in which the following was stated:

'Our member will not be attending the hearing, nor will they be represented. No disrespect is intended by their non-attendance and our member is keen to continue to engage with the proceedings. Our member has received the notice of hearing and is happy for the hearing to proceed in their absence.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Popa. In reaching this decision, the panel has considered the submissions of Ms Khaile, the representations from Mr Popa, 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 Popa.
- Mr Popa has confirmed he is content for the hearing to proceed in his absence;
- 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 Popa.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for 12 months.

This order will come into effect at the end of 14 November 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 20 April 2023. This was first reviewed on 4 April 2024. The reviewing panel had no new information before it to show that Mr Popa was unlikely to repeat matters proved. The panel therefore decided that a finding of continued impairment was necessary on the grounds of public protection.

The panel at the first review imposed a suspension order for a period of 6 months. An early review of the suspension order was requested by Mr Popa, and this took place on 31 May 2024. The second reviewing panel decided to impose a conditions of practice order for a period of six months to afford Mr Popa the opportunity to prove his commitment to working safely within the conditions imposed by the conditions of practise order, while also reflecting and engaging with proceedings, with a view to remediating previous misconduct.

The current order is due to expire at the end of 14 November 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, a registered nurse, on 13 November 2018:

1. *On one or more occasions as set out in Schedule A, you did not administer medication to patients. 3. Patient E – Madopar **[PROVED, no misconduct found]***
2. *...*
3. *...*
4. *On one or more occasions as set out in Schedule B, you did not and/or did not ensure that relevant clinical information was recorded within the patient records. **[PROVED, misconduct found]***
5. *...*
6. *Did not order Glucogel for Patient C or alternatively, you did not record that you had placed an order. **[PARTIALLY PROVED no misconduct found]***

7. *You did not carry out observations for Patient D following a fall or alternatively, did not record your observations. [PROVED, misconduct found]*

8. *You did not provide an adequate handover to staff in that you:*

a) *Could not remember who one or more of the residents were. [PROVED, no misconduct found]*

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

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

'The panel had regard to the documentation provided by you, namely, your CV, a reference from Colleague A and a certificate of completed training dated 5 February 2024 for 'Care of Medicines – Advanced Knowledge Test'. The panel considered that whilst the reference was positive, it was undated and unsigned by Colleague A and therefore, the panel was unable to attach significant weight to it when considering current impairment. The panel was of the view that the reference provided was of limited value. It also considered the test certificate presented. It noted that the certificate did not specify what learning had been covered, including that covered in the test, nor did the panel have any information to evidence what you had learnt from the training or how you would put the theory of this training into practice. The panel acknowledged the submissions it had heard regarding the restrictions imposed on your practice by way of the other matter and the difficulties you have faced in seeking employment. It noted that as a result of that, and the current suspension order, you have not practised as a registered nurse since June 2022. Taking all of the above into account and noting that you had not been able to provide evidence of improved practice and that you accept that your fitness to practise remains impaired, the panel found that there remains a risk of repetition.

The panel noted the lack of any documented express remorse or insight at this time. However, it accepted that in light of the forthcoming hearing in July 2024 you are awaiting the findings of that that hearing so you can consolidate any outstanding matters and fully engage in the process.

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 for the reasons given above, 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 second 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 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 your 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 your 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 considered substituting the current suspension order with a conditions of practice order. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Having taken into account the NMC’s guidance in respect of sanctions and the submissions it heard today, the panel was of the view that it was able to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel concluded that the conditions of practice order previously imposed in April 2023, is sufficient to protect patients, the wider public interest and the reputation of the profession. In reaching this decision, it took account of your attendance today, your earlier engagement with the regulatory process and your explanation that your absence from the previous review meeting occurred as a result of an error. It also noted that you had indicated a willingness to comply with a conditions of practice order. The panel noted the panel at the substantive hearing had found that the misconduct identified is capable of remediation.

The panel did go on to consider a suspension order, however taking into consideration its findings above, it concluded that this was disproportionate in the circumstances of this case.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

'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 will send your case officer evidence that you have successfully completed training in:*
 - a) *record keeping,*
 - b) *patient documentation*

2. *You must work with your current employer to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and documentation. You must:*
 - a) *Send your case officer a copy of your PDP within a month of commencing employment*
 - b) *Send your case officer a report seven days prior to any review. This report must show your progress towards achieving the aims set out in your PDP*

3. *You must engage with your current employer on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:*
 - a) *Meeting at least monthly to discuss your progress towards achieving the aims set out in your PDP*

4. *You must keep us 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.*

5. *You must keep us 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.*
6. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*
7. *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.*
8. *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*
9. *You will send the NMC a report from your current employer, which can be an agency you work through or a place of substantive employment, seven days in advance of the next NMC hearing or meeting.*

This conditions of practice order will replace the current suspension order with immediate effect and shall have effect for the remainder of the term of the previous suspension order in accordance with Article 30(4)(d).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have 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.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Popa'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, and written submissions provided by the RCN on behalf of Mr Popa. It has taken account of the submissions made by Ms Khaile on behalf of the NMC. Ms Khaile gave a background of Mr Popa's case, directing the panel to charges found proved at the substantive hearing on 20 April 2023.

Ms Khaile also reminded the panel that Mr Popa was subject to a second conditions of practise order (case 080864) which came into effect on 26 July 2024, and that the charges found proved were of a similar nature to those found proved in the current case under review. In light of this, Ms Khaile stated the risk of repetition of previous misconduct remains. She submitted that the NMC were seeking a conditions of practise order.

The panel also had regard to Mr Popa's written representations and submissions from the RCN. Ms Khaile directed the Panel to a written testimonial provided by the RCN which was undated, and unsigned, and which appears to be written by a former colleague. She also directed the panel to the training certificate provided by the RCN on Mr Popa's behalf, which appears to be evidence previously used at the last review hearing on 31 May 2024.

Ms Khaile stated that there is no new evidence to show that the registrant has undertaken any steps to remediate the previous misconduct, and has failed to provide evidence such as a reflective statement demonstrating insight, written testimonials, or details of training undertaken that could provide an indication that Mr Popa has strengthened his practice.

It was noted by Ms Khaile that Mr Popa is not currently working within the nursing profession, so there is no way of assessing his capability to work safely within the bounds of the conditions of practise outlined by the previous panel. She concluded, that without any new and substantial submissions, Mr Popa's practise remains impaired, on the grounds of public protection and public interest.

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 Popa's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Popa had insufficient insight.

At this hearing, the panel had regard to the documentation provided by the RCN on behalf of Mr Popa. This included a testimonial which is undated and unsigned, an RCN letter stating Mr Popa would not be present or represented at today's review hearing, and a certificate of completed training dated 5 February 2024 for 'Care of Medicines – Advanced Knowledge Test'. This certificate was previously submitted for panel consideration on 31 May 2024, so this cannot be considered by the current panel as new information. The panel considered that whilst the testimonial was positive, it was undated and unsigned, and therefore, the panel was unable to attach significant weight to it when considering current impairment.

The panel noted that the previous reviewing panel found that Mr Popa had not demonstrated any progress towards developing insight. They also noted that Mr Popa had not taken any steps to remedy past failings or strengthen his practice. This panel

concluded that there has been no material change in Mr Popa's circumstances and was not assured that Mr Popa was unlikely to repeat the misconduct previously proved. When taking into account the second substantive order (case 080864), and the similarities in misconduct and charges found proved, the panel found that there remains a risk of repetition.

The previous reviewing panel noted the lack of any documented remorse or insight at that time, and attributed this to Mr Popa's impending substantive hearing for case 080864 which was to commence in the forthcoming weeks. This panel also noted the persistent lack of remorse or insight demonstrated by Mr Popa, and with no relevant new evidence available to suggest that Mr Popa had taken steps to strengthen his practice. 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 for the reasons given above, 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.

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 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 your 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 your 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 imposing a further conditions of practice order on Mr Popa's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. 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 concluded that the conditions of practice order previously imposed on 31 May 2024, is sufficient to protect patients, the wider public interest and the reputation of the profession. The panel noted the panel at the substantive hearing had found that the misconduct identified is capable of remediation.

The panel did go on to consider a suspension order, however taking into consideration its findings above, it concluded that this was disproportionate.

The panel decided that the public would be suitably protected and the reputation of the profession maintained by the implementation of the following conditions of practice:

'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 will send your case officer evidence that you have successfully completed training in:
 - a) record keeping,

b) patient documentation

2. You must work with your current employer to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and documentation. You must:
 - a) Send your case officer a copy of your PDP within a month of commencing employment
 - b) Send your case officer a report seven days prior to any review. This report must show your progress towards achieving the aims set out in your PDP

3. You must engage with your current employer on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:
 - a) Meeting at least monthly to discuss your progress towards achieving the aims set out in your PDP

4. You must keep us 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.

5. You must keep us 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.

6. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.

- b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
7. 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.
8. 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
9. You will send the NMC a report from your current employer, which can be an agency you work through or a place of substantive employment, seven days in advance of the next NMC hearing or meeting.

The extension of the current conditions of practice order will take effect from the end of 14 November 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 you have 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.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC
- Your attendance at any review hearing
- Evidence of further relevant training
- A reflective piece written by you following a recognised model which shows that you understand the effect that your misconduct has had upon patients work colleagues and the public perception of the nursing profession
- This reflective piece should also include reflection on your training and your practice going forward
- Evidence of you strengthening your practice. For example, evidence of training and professional development.
- Up-to-date testimonials or references, especially from other nursing professionals

This will be confirmed to you in writing.

That concludes this determination.