

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

**Substantive Order Review Hearing
Monday, 14 October 2024**

Virtual Hearing

Name of Registrant: Iria Rita Diaz Tapia

NMC PIN 15D0013C

Part(s) of the register: Registered Nurse – Sub part 1
RN1: Adult Nursing – April 2015

Relevant Location: Berkshire

Type of case: Misconduct

Panel members: Anne Ng (Chair, Lay member)
Tanya Tordoff (Registrant member)
Kiran Chahal-Musgrave (Lay member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Eleanor Wills

Nursing and Midwifery Council: Represented by Uzma Khan, Case Presenter

Miss Tapia: Not present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 22 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 Miss Tapia was not in attendance and that the Notice of Hearing had been sent to Miss Tapia's registered email address by secure email on 6 September 2024.

Ms Khan, 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 Miss Tapia's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Tapia 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 Miss Tapia

The panel next considered whether it should proceed in the absence of Miss Tapia. The panel had regard to Rule 21 and heard the submissions of Ms Khan who invited the panel to continue in the absence of Miss Tapia.

The panel was informed at the outset of the hearing that Miss Tapia had planned to attend the hearing however she was unable to do so due to having connection issues as a result of severe weather conditions in Spain.

Ms Khan submitted that Miss Tapia has engaged with the NMC and is aware of the hearing taking place today. Ms Khan submitted that Miss Tapia is content for the hearing

to proceed in her absence today. Ms Khan submitted that there is a public interest in the expeditious disposal of this case.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Tapia. In reaching this decision, the panel has considered the submissions of Ms Khan, 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 Miss Tapia;
- Miss Tapia has had the opportunity to provide documentation, in advance, for the hearing;
- Miss Tapia has informed the NMC that she has received the Notice of Hearing;
- Miss Tapia has confirmed she is content for the hearing to proceed in her absence;
- 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 Miss Tapia.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order.

This order will come into effect at the end of 22 November 2024 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 6 months by a Fitness to Practise Committee panel on 23 April 2024.

The current order is due to expire at the end of 22 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 at Berkshire Healthcare NHS Foundation Trust (“the Trust”):

1. On a date between 4 April 2016 and 3 September 2019:

- a. administered one unit of blood to Patient A when two units were prescribed;*
- b. signed to confirm that two units of blood were provided to Patient A when one was provided;*

2. Your actions in charge 1(b) were dishonest in that you knew you had not provided the patient with two units of blood and intended to cover up what had happened;

3. Your actions in charge 1(b) were in breach of the duty of candour in that you were not open and honest in relation to what happened at the time;

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

The original panel determined the following with regard to impairment:

‘...'

The panel found that Ms Diaz put Patient A at a risk of harm by not administering the prescribed amount of blood and by concealing that the incorrect amount was given. Duty of candour is a fundamental tenet of the profession, the panel determined that Ms Diaz breached fundamental tenets of the profession and as a consequence brought the medical

profession into disrepute. The panel determined that Ms Diaz's actions were dishonest.

In determining whether the misconduct in this case is capable of remediation, the panel had regard to the NMC guidance on 'Serious concerns which are more difficult to put right' (Reference FTP-3a) and the case of Cohen. The panel noted that concerns relating to dishonesty are inherently more difficult to remediate.

In taking a holistic approach in determining current impairment, the panel had regard to the contextual factors of this case. The panel heard evidence from Ms Diaz's that her actions were a consequence of her feeling frightened of and intimidated by [Mr 1]. The panel noted that an investigation into allegations of bullying was carried out by the Trust, and it found no evidence that [Mr 1] had bullied Ms Diaz. The panel found that there was an unusual and intense dynamic between [Mr 1] and Ms Diaz and that their relationship extended beyond that of just colleagues. The panel had regard to [Mr 1]'s oral evidence about his relationship with Ms Diaz and noted the following:

"I was very attracted to her, well educated, so knowledgeable, amazing person, lovely lady, so sweet. She always used to bring me an elephant. Very special."

"We were very close most of the time"

"She was like my sister. When driving home, lots of traffic I would make sure she was home safely. To me she was my sister."

"I would always call to make sure she was home safely"

"I treated her like a princess, ..."

"We were having a wonderful time. She was living the dream. We were the happiest team ever"

"I was still buying her salad, I stayed calling her first thing in the morning to check safe, in the evenings to check safe"

"A lot of love and a lot of passion, didn't mean losing my support. I was always caring about her. In the beginning it was passion and love but I had to respect her. On Wednesday we have Marks and Spencers salad, coffee on Tuesday and on Thursday and Friday I was calling her to check safe"[sic]

"She couldn't challenge me. I would challenge her many, many times. In the beginning she accepted."[sic]

The panel determined that given the intensity of the relationship, it was more likely than not Ms Diaz felt pressurised by [Mr 1] and that this contributed to her dishonesty. However, the panel determined that this did not detract from the seriousness of her actions, she had ample opportunity to correct the issue and to report the incident at the time, or immediately after, but she did not.

The panel had regard to the NMC guidance on 'Insight and strengthened practice' (Reference: FTP-13). The panel had sight of a number of positive references and testimonials. It also had sight of Ms Diaz's written reflective statement and had particular regard to the following:

'I know the patient was not harmed and she still comes for a blood transfusion, but I still feel awful that I was in that situation and she could have been put at risk... When I was interviewed for the investigation I admitted everything, even though I knew that I would get into trouble, but I knew that I had to say everything. I am so sorry and I and[sic] ashamed that I did not stand up to him, and that this has meant that I did not do the right thing for the patient or myself...

I could have said no at the time, but unless people are in those sort of situations with people like that, it is difficult to understand how they convince you that you are doing the right thing. I could have reported it straight away, but my Team Leader had [previously] said that was just the way he is so I did not know where to go and I just tried to keep the peace in the team, nobody looks for trouble. I have never done anything like that before and after, and I told the truth about it finally even knowing that I would get into trouble for it.'

The panel found that Ms Diaz has shown remorse for her actions and demonstrated some insight into her misconduct. Whilst the panel acknowledged that Ms Diaz did eventually admit to this incident, albeit some months or even years later, and as a consequence of another matter. This should have been reported at the time of the incident to protect Patient A. Having found that Ms Diaz has not demonstrated full insight into her misconduct and dishonesty, the panel found that there is a risk of repetition and a consequent risk of future harm to patients. The panel therefore determined that a finding of impairment is necessary on public protection grounds.

The panel was of the view that a fully informed member of the public would be shocked to hear that a nurse, after failing to administer the prescribed number of units of blood, did not act in the best interests of the patient and sought to conceal that an incorrect amount was administered. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel therefore determined that a finding of impairment is also required public interest grounds.

Having regard to all of the above, the panel was satisfied that Ms Diaz's fitness to practise is currently impaired on both public protection and public interest grounds.'

The original panel determined the following with regard to sanction:

'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:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel found that Ms Diaz's misconduct and dishonesty arose during an isolated incident. The panel also found that there was no evidence of a deep-seated attitudinal issue, and whilst there was a delay in her admitting to the incident having occurred, once this came to light Ms Diaz has been open about her failings. The panel heard no evidence that Ms Diaz has repeated the misconduct or dishonesty since the incident occurred. Ms Diaz has shown remorse for her actions and her insight is developing although it is not full at this stage.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigating and contextual features of this case, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Diaz's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction to mark the seriousness of the misconduct and dishonesty. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with Ms Diaz remaining on the register.

The panel noted the hardship that a suspension order may cause Ms Diaz. However, the panel determined that this is outweighed by the public interest in this case.

The panel considered that a suspension order is necessary to protect the public, 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 nurse. The panel decided that a suspension order for a period of six months would allow Ms Diaz time to reflect on her misconduct and dishonesty and to develop her insight.

At 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 written reflective statement using a recognised reflective model. This statement should include reflection on this panel's findings, focussing on dishonesty and the professional duty of candour, and how Ms Diaz would act differently if faced with similar circumstances in the future.*
- Any evidence of strengthened practice.*
- Up to date positive testimonials and references that attest to Ms Diaz's good character, professional candour and honesty."*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Tapia'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 and responses from Miss Tapia. It has taken account of the submissions made by Ms Khan on behalf of the NMC.

Ms Khan submitted that Miss Tapia has provided the panel today with a training certificate, however the certificate provided is in Spanish. Ms Khan submitted that no further information has been provided by Miss Tapia in respect of any reflection having been undertaken or any relevant training to strengthen her practice and address the regulatory concerns. Ms Khan informed the panel that it is the responsibility of Miss Tapia to provide any documentation to the panel and that it is her responsibility to ensure that any documentation is provided in a format/manner that can be understood by the panel. Ms Khan referred the panel to the case of *Abrahaem v General Medical Council* [2008] EWHC 183 (Admin). She submitted that the persuasive burden is on Miss Tapia to demonstrate that she has fully acknowledged her past failings and how through insight, education, supervision and other achievements she has sufficiently addressed her past impairment.

Ms Khan submitted that Miss Tapia has not provided any documentation to the panel except a training certificate which has not been translated. She submitted that the position therefore remains the same in that there has been no further evidence of insight, reflection or strengthening of practice. Ms Khan therefore submitted that Miss Tapia's fitness to practise remains impaired.

Ms Khan invited the panel to extend the current interim suspension order in order to allow Miss Tapia further time to demonstrate full insight, to remedy the deficiencies in her practice and to provide evidence of her ability to practice safely.

The panel also had regard to the documentation Miss Tapia has provided. The panel noted that she provided a training certificate, however the certificate provided was in Spanish.

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 Miss Tapia's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Tapia had some insight. At this hearing the panel noted that Miss Tapia could not attend today but that she has continued to engage with NMC proceedings. The panel noted that Miss Tapia Diaz has had an opportunity to provide further documentation to the panel. However, the panel took into account that it does not have before it a further reflective piece demonstrating any development of insight.

In its consideration of whether Miss Tapia has taken steps to strengthen her practice, the panel took into account that it has been provided with a training certificate however the certificate provided to the panel was in Spanish and does not appear to address the regulatory concern of dishonesty. The panel noted that it has received no other documentation to evidence any relevant training having been undertaken or any strengthening of practice. Additionally, the panel noted that Miss Daiz Tapia is currently practising in Spain and yet she has not provided the panel today with any information in relation to her employment. Further she has not provided any testimonials or references in support of her practice or in relation to having addressed her professional duty of candour.

The original panel determined that Miss Tapia was liable to repeat matters of the kind found proved. The panel today noted that no actual harm was caused as a result of Miss Tapia's misconduct however there was a real risk of potential harm. Today's panel has received no new information which evidences a material change in circumstances, nor has it received any evidence in relation to the recommendations provided by the previous panel. In light of this, this panel determined that Miss Tapia 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 Miss Tapia's fitness to practise remains impaired.

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 Miss Tapia'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 Miss Tapia'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 Miss Tapia'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 adequately address the concerns relating to Miss Tapia's misconduct. Further the panel noted that Miss Tapia is currently practising in Spain and therefore a conditions of practice order would not be workable.

The panel considered the imposition of a further period of suspension. The panel noted that the original panel imposed the suspension order for a period of six months. It was of the view that a further period of suspension would allow Miss Tapia further time to fully

reflect on her previous failings. The panel noted that there are mitigating and contextual circumstances in relation to Miss Tapia's misconduct. The panel took into account that Miss Tapia has continued to engage with NMC proceedings. The panel concluded that a further six-month suspension order would be the appropriate and proportionate response and would afford Miss Tapia adequate time to further develop her insight and take steps to strengthen her practice. It would also give Miss Tapia an opportunity to approach past and current health professionals to attest to her honesty and integrity in her workplace assignments since the substantive hearing.

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 six months would provide Miss Tapia with an opportunity to demonstrate strengthening of her practice, obtain testimonials and references in support of her practice and to further develop her insight. It considered this to be the most appropriate and proportionate sanction available.

The panel did go on to consider a striking-off and determined that it was disproportionate in all circumstances, given the nature of the charges and Miss Tapia's continued engagement with the NMC.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 22 November 2024 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A detailed written reflective statement, which focuses on dishonesty, duty of candour and how Miss Tapia would act differently in the future;
- Evidence of any strengthening of practice;
- Up-to-date testimonials and references that attest to Miss Tapia's practice, professional candour and honesty;

- All documents having certified translation into English.

This will be confirmed to Miss Tapia in writing.

That concludes this determination.