

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

**Substantive Order Review Meeting
Thursday, 5 September 2024**

Virtual Meeting

Name of Registrant: Libia Arias Garcia

NMC PIN 16G0835C

Part(s) of the register: RN1: Registered Nurse – Adult
(19 July 2016)

Relevant Location: Haverfordwest

Type of case: Lack of knowledge of English

Panel members: Catherine Devonport (Chair, registrant member)
Lisa Holcroft (Registrant member)
Asmita Naik (Lay member)

Legal Assessor: Nigel Pascoe KC

Hearings Coordinator: Yewande Oluwalana

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

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of 8 October 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Garcia's registered email address by secure email on 4 July 2024.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 26 August 2024 and inviting Mrs Garcia to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Garcia has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to replace the current conditions of practice order with a striking-off order. This order will come into effect at the end of 8 October 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the sixth review of a substantive conditions of practice order originally imposed for a period of six months by a Fitness to Practise Committee panel on 7 September 2018. This order was first reviewed on 12 March 2019 when it was extended for a further 18 months. The order was then reviewed on 1 September 2020 when the conditions were varied, and then extended for a further 12 months. The conditions of practice order was then reviewed on 23 August 2021, 23 August 2022 and 21 August 2023 when it was extended for a further 12 months on each occasion.

The current order is due to expire at the end of 8 October 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved which resulted in the imposition of the substantive order was as follows:

'That you, a registered nurse:

- 1. Do not have the necessary knowledge of English to practise safely or effectively;*

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

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

'The panel has had regard to the NMC guidance on English language requirements. It also had regard to all of the documentation before it, including the NMC bundle and the response from Mrs Garcia which included:

- a written statement dated 31 March 2023;*
- emails between Mrs Garcia and the NMC dated from 11 June 2023 to 3 August 2023; and*
- screenshots showing confirmation of an IELTS written and speaking examination booked for 28 October 2023.*

...

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 Garcia's fitness to practise remains impaired.

The panel noted that there has been no material development in Mrs Garcia's case since the last review. This is because Mrs Garcia has yet to undertake further IELTS testing and obtain scores that meet the NMC English language requirements. The panel has also been provided with no evidence to indicate any further steps Mrs Garcia has taken to strengthen her practice in her English language since the last review meeting to date, for example, a reflective piece or testimonials from a current/previous employer.

However, the panel accepted the email evidence between Mrs Garcia and the NMC and the screenshots which shows that Mrs Garcia is still willing and actively taking steps to demonstrate her proficiency in the English language. It took account of the fact that Mrs Garcia has booked herself onto a face-to-face IELTS written and speaking examination, which she is due to take on 28 October 2023.

In light of the above, the panel determined that Mrs Garcia has not yet been able to demonstrate that her proficiency in the English language is at the level required to satisfy the NMC's requirements for safe and effective practice. It considered that a restriction on Mrs Garcia's practice therefore remains necessary to protect the public and to uphold professional standards in order to maintain confidence in the profession.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection and on the wider public interest grounds.

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

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

'The panel next considered whether imposing a further conditions of practice order on Mrs Garcia'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 could see that Mrs Garcia has continued to demonstrate a willingness to engage with the NMC and prove that she is capable of returning to safe practice. It took into account the fact that Mrs Garcia has an upcoming IELTS booked for 28 October 2023, and that she has requested additional time to enable her to take the examination and receive her results thereafter.

The panel was therefore of the view that a further conditions of practice order is the most appropriate and proportionate sanction in this instance. It determined that such an order, which restricts Mrs Garcia's nursing practice, would continue to prove sufficient in ensuring that the public remained protected and is also otherwise in the wider public interest.

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 this case. This is because Mrs Garcia continues to show engagement with the NMC and commitment in her efforts to undertake and pass the IELTS examination.

The panel decided that the following conditions remain 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 not work as a Registered Nurse until you have taken the IELTS test (or OET equivalent) and achieved an overall score of 7 or above (or OET equivalent). You must send a copy of your results to the NMC within 7 days of receiving them.

2. You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.

3. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.

4.a) You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

b) You must within 14 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

5. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (4) above, to them

1. Any organisation or person employing, contracting with or using you to undertake nursing work

2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services

3. Any prospective employer (at the time of application) where you are applying for any nursing appointment

4. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

The period of this order is for 12 months. The panel considered that this length of time would allow Mrs Garcia sufficient opportunity to undertake the

IELTS examinations she has booked, receive her results, secure employment in a healthcare setting and demonstrate her communication skills in the context of safe clinical practice. Should Mrs Garcia receive the required pass mark following her IELTS examination on 28 October 2023, she may request an early review to seek to have either the conditions varied or the entirety of the conditions of practice order reviewed.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 8 October 2023 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 Mrs Garcia 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.

Any future panel reviewing this case would be assisted by:

- The attendance of Mrs Garcia at a future review hearing;*
- A reflective piece on the importance of competence in English in relation to safe nursing practice;*
- Any references and testimonials demonstrating Mrs Garcia's use of English in the workplace or as a volunteer; and*
- EITHER Completion of the test to the requisite standard OR; Any other evidence of the type mentioned in the Guidance that displays competence in the English language.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Garcia's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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

conducted 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 the response from Mrs Garcia which included:

- emails between Mrs Garcia and the NMC dated from 22 November 2023 to 18 March 2024; and
- screenshots showing confirmation of an IELTS written and speaking examination booked for 28 October 2023, the fee paid and the results for the IELTS test.

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 Garcia's fitness to practise remains impaired.

The panel considered the NMC's English language requirements (last updated 27 June 2023) and what is required of a registered nurse in order to practice safely. The panel noted that Mrs Garcia's current test results from her October 2023, show that she scored the following: Listening 5.0, Reading 6.0, Writing 5.0, Speaking 6.5 with an overall band score of 5.5. The requirement as mentioned in the NMC guidance is for an overall score of 7 above in the IELTS. This was also confirmed as a condition in her conditions of practice order.

The panel noted that Mrs Garcia fell below the standard expected of a registered nurse to be able to practice safely by communicating with the standard English proficiency in a clinical setting. Further, it noted that Mrs Garcia has not practiced without restriction since 2018 as she has been unable to achieve the standard required.

The panel was mindful that Mrs Garcia qualified as a registered nurse in Spain in 2013 and worked in a hospital setting for 30 days, before relocating to the United Kingdom in 2016. Her practice as a registered nurse ended in 2017 when the charges found proved were brought against her and she resigned from her former employer. Mrs Garcia has effectively only worked as a registered nurse for less than a year since her qualification as a registered nurse.

The panel noted that since the last review, Mrs Garcia has not complied with the previous panel's recommendations in respect of:

- The attendance of Mrs Garcia at a future review hearing;
- A reflective piece on the importance of competence in English in relation to safe nursing practice;
- Any references and testimonials demonstrating Mrs Garcia's use of English in the workplace or as a volunteer; and
- EITHER Completion of the test to the requisite standard OR; Any other evidence of the type mentioned in the Guidance that displays competence in the English language.

There was nothing before this panel that demonstrated that Mrs Garcia understands her deficiencies or taken sufficient steps to remediate. The panel did not have sight of a further IELTS test being rebooked, since she failed the last test in October 2023. There has been no information as to her next steps or what she is currently doing to address the concerns raised. The panel was of the view that Mrs Garcia has not progressed to the standards required of a registered nurse in order to practice safely.

In light of the above, the panel determined that Mrs Garcia has not yet been able to demonstrate that her proficiency in the English language is at the level required to satisfy the NMC's requirements for safe and effective practice. It considered that a restriction on Mrs Garcia's practice therefore remains necessary to protect the public.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and

upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection and on the wider public interest grounds.

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

Decision and reasons on sanction

Having found Mrs Garcia'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 risk of harm associated with Mrs Garcia's inability to communicate at the level required for safe practice. 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 Garcia's practice would not be appropriate in the circumstances as it would not protect the public from the risk of harm 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 Garcia'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 noted that Mrs Garcia has been subject to a conditions of practice order since 2018, and at each review Mrs Garcia has been unable to attain the standard required of a score of 7 and above in an IELTS test or OET equivalent. Since the inception of the order, the panel was of the view that Mrs Garcia has not sufficiently progressed her English language skills over

six years. The panel also noted that Mrs Garcia did not provide the information as recommended by the previous panel to assist with the review in the form of a reflective piece and testimonials.

The panel determined that in light of Mrs Garcia's reduced engagement and lack of compliance with the current conditions of practice order, it was not satisfied that a further conditions of practice order would progress this further or address the public interest concerns that may be perceived because of the lengthy regulatory process.

The panel determined that a further conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a suspension order. The panel determined that a suspension order would serve no useful purpose and would not do any more than a conditions of practice order in terms of protecting the public. The panel did not have any further information to assist it, when determining Mrs Garcia's current level of English or any further planned English tests. Mrs Garcia has not attended most of the previous review hearings and has not provided any testimonials or references of her use of English language in the workplace, which would give insight into her current level. The panel determined that a period of suspension would not serve any useful purpose. The panel was also mindful that a suspension order may not be appropriate in this case as it is a matter of English language skills and not misconduct.

The panel considered the NMC guidance titled 'Standard reviews of substantive orders before they expire' (Reference: REV-3a, last updated 30 August 2024). It noted the following:

'If the panel concludes that continuing or imposing a conditions of practice order or suspension order is unlikely to result in the professional returning to safe unrestricted practice within a reasonable period of time, it should ensure that the professional is removed from the register.'

The panel also noted the NMC's Sanction Guidance titled 'Striking-off Order' (SAN-3e)

'When a striking off order cannot be used

- *A striking-off order can't be used if the nurse, midwife or nursing associate's fitness to practise is impaired due to:*
- ...
- ...
- *not having the necessary knowledge of English*

*until they have been on either a suspension order **or** a conditions of practice order for a continuous period of two years.*

The two-year period can be made up of a combination of periods of suspension and conditions, provided that there is a continuous period during which the nurse, midwife or nursing associate's practice has been subject to restriction under a substantive order.'

The panel was not satisfied that Mrs Garcia, over the last six and a half years, has improved or shown adequate steps taken to achieve the required standards of English as set out by the NMC. The panel noted that Mrs Garcia has been subject to a conditions of practice order for more than six years and noted that according to SAN-3e, two years is all that is required to be able to use a striking-off as a sanction. The panel further noted that the guidance requires that a registrant to be on an order of suspension **or** conditions of practice for a strike-off in such circumstances and therefore the panel was not required to move up the ladder of sanction in order to impose a striking-off order.

Previous panels have given Mrs Garcia the opportunity to address the concerns and provided recommendations for her to follow. These recommendations were not followed, and no evidence of a further planned test provided.

The panel carefully considered proportionality, taking into account the need to balance the public safety, public confidence and the rights of the registrant. Whilst the panel noted that it had moved from a conditions of practice order to a striking off order, it found that it was proportionate because of the length of time Mrs Garcia has been on a conditions of practice order without being able to fulfil the main condition of achieving an adequate level of English language skills in order to practice safely in a clinical setting.

The panel determined that it was necessary to take action to prevent Mrs Garcia from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel therefore directs the registrar to strike Mrs Garcia's name off the register.

This striking-off order will take effect upon the expiry of the current conditions of practice order, namely the end of 8 October 2024 in accordance with Article 30(1).

This will be confirmed to Mrs Garcia in writing.

That concludes this determination.