

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

**Substantive Order Review Hearing
Monday 30 September 2024**

Virtual Hearing

Name of Registrant: Yasmin Gay Velasquez Marabur

NMC PIN 02C14230

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – February 2002

Relevant Location: Kent

Type of case: Misconduct

Panel members: Peter Wrench (Chair, lay member)
Anne Murray (Registrant member)
Julia Cutforth (Lay member)

Legal Assessor: Suzanne Palmer

Hearings Coordinator: Emma Norbury-Perrott

Nursing and Midwifery Council: Represented by Thomas Waldron, Case Presenter

Ms Marabur: Not present and not represented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 Months) to come into effect on 6 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 Ms Marabur was not in attendance and that the Notice of Hearing had been sent to Ms Marabur's registered email address by secure email on 29 August 2024.

Mr Waldron, 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 Ms Marabur'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 Ms Marabur 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 Ms Marabur

The panel next considered whether it should proceed in the absence of Ms Marabur. The panel had regard to Rule 21 and heard the submissions of Mr Waldron who invited the panel to continue in the absence of Ms Marabur. He submitted that Ms Marabur had voluntarily absented herself.

Mr Waldron submitted that there had been no engagement at all by Ms Marabur with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Marabur in reaching this decision, the panel has considered the submissions of Mr Waldron, and the advice of the legal assessor. There were no submissions provided by Ms Marabur for the panel to consider. 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 Ms Marabur;
- Ms Marabur has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- Ms Marabur has not provided the NMC with details of how she may be contacted other than her registered address;
- There is no reason to suppose that adjourning would secure her 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 Ms Marabur.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for an additional six months.

This order will come into effect at the end of 6 November 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 5 October 2023. This was reviewed on 25 March 2024. The first reviewing panel had no new information before it to show that Ms Marabur 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 suspension order was extended for a further six months to afford Ms Marabur more time to reflect and engage with proceedings with a view to remediating previous misconduct.

The current order is due to expire at the end of 6 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 while working at Darent Valley Hospital on Ebony ward during the course of a night shift between 17 and 18 December 2018

- 1) Failed to monitor or document Patient A observations between 2:10am and 5:10am*
- 2) Prior to going on your break at 2:10am failed to handover the care of Patient A to the nurse in charge and/or another colleague...*
- 4) On discovering that Patient A was unresponsive failed to communicate appropriately with:*
 - a) Nurse in charge*
 - b) On call medics*

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

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

'The panel considered whether Ms Marabur's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Marabur had insufficient insight. At this hearing, the panel had nothing further before it to show that Ms Marabur had developed any insight into the areas the previous panel had identified as being of concern.

The original panel determined that Ms Marabur was liable to repeat matters of the kind found proved. Today's panel had no new information before it to show that Ms Marabur was unlikely to repeat matters proved. In light of this, this panel determined that Ms Marabur is 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. In addition to the original basis of impairment, the panel noted Ms Marabur has failed to engage with the NMC as her regulator consistently through the regulatory process or submit any evidence that she has reflected on the matters that brought her before it. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required, as the public's confidence in the NMC would be undermined if it took no action where registrants persistently fail to engage with its investigations into the safety and quality of their practise.

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

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

'Having found Ms Marabur'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 Ms Marabur'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 Ms Marabur'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 Ms Marabur's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel has no information before it on Ms Marabur's health issues and future intentions in the nursing profession to make a reasonable assessment as to the workability of imposing a conditions of practice order. 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 Ms Marabur's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Marabur further time to fully reflect on her previous misconduct. It considered that Ms Marabur needs to gain a full understanding of how the misconduct of one nurse can impact upon the nursing profession as a whole and not just the

organisation that the individual nurse is working for. The panel concluded that a further 6 months suspension order would be the appropriate and proportionate response and would afford Ms Marabur adequate time to further develop her insight and take steps to strengthen their practice.

The panel determined that a striking off order would be disproportionate at this stage. At the next hearing, the reviewing panel will have all options available to it, including a striking off order.

The panel took into account the principle of proportionality and that Ms Marabur will not be able to practice her profession, however the need to protect the public and uphold the public interest outweighed her interest in this regard.

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 6 months would provide Ms Marabur with an opportunity to engage with the NMC, provide further evidence of insight and training. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 6 May 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 reflective piece from Ms Marabur, demonstrating any insight into the concerns, any explanation or context of her behaviour, the*

impact of her conduct on Patient A, public safety and the nursing profession, as well as any steps taken to strengthen her practice in the areas of concern;

- Any information as to Ms Marabur's future nursing career plans;*
- Any references or testimonials attesting to Ms Marabur's capability to perform her duties in any paid or unpaid work she may have undertaken since the incident; and*
- Ms Marabur's engagement and attendance at any future review hearing'*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Marabur'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. There are no new submissions from Ms Marabur in regard to this case. The panel has taken account of the submissions made by Mr Waldron on behalf of the NMC. He gave a background of Ms Marabur's case, directing the panel to the allegations found proved at the substantive hearing. He submitted that the NMC is seeking a further suspension order, or a striking off order if the panel deems fit.

Due to the panel having no new information to consider, Mr Waldron suggested that Ms Marabur has had the opportunity to engage but has chosen not to, perhaps due to Ms Marabur not wishing to continue within the registered nursing profession. He concluded by stating that a striking off order may be proportionate at this stage, due to the total lack of engagement from Ms Marabur, however, a further suspension order may also be

proportionate to afford Ms Marabur some additional time to engage with proceedings and remediate in order to return to safe practice in the future.

As with the previous substantive review hearing for this case (25 March 2024), Ms Marabur has not provided any submissions or evidence to assist the panel in their deliberations.

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 Ms Marabur's fitness to practise remains impaired.

The panel noted that the previous reviewing panel found that Ms Marabur had not demonstrated any development in her insight, or any steps taken by her to remedy past failings or strengthen her practice. The same was true at this second review hearing. Ms Marabur appears to have disengaged from the process, and has not provided any new information or representations, or any evidence of development of insight or remedial steps. She has not provided the information recommended by the previous panel. The panel had no new information before it to show that Ms Marabur was unlikely to repeat the matters found proved by the substantive panel.

The panel considered that the misconduct is capable of remediation with committed engagement from Ms Marabur. In light of Ms Marabur's continued non-engagement, and the absence of evidence of insight or strengthened practise, this panel determined that there is a continued risk that Ms Marabur might 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 required.

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

Decision and reasons on sanction

Having found Ms Marabur'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 considered that to take no further action, or to impose a caution order would be inappropriate as this would not protect the public from the risk associated with any repetition of the misconduct. The panel considered that a conditions of practice order would also be inappropriate. Ms Marabur has not demonstrated any willingness or ability to comply with conditions of practice, and nothing is known about her current circumstances or career intentions. It was therefore not possible to formulate workable conditions which would be effective to protect the public.

The panel next considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Marabur further time to reflect on her future career intentions and whether or not she wishes to seek to remedy her past failings and return to her nursing career. The panel noted that before she could safely return to practice, Ms Marabur would need to develop further insight into her actions and their potential impact on the patient, her colleagues and the nursing profession, and to demonstrate a willingness to take remedial steps to ensure that those actions would not be repeated. Perhaps more fundamentally, however, if she reaches a settled conclusion that she does wish to leave the profession, a further period of time would enable Ms Marabur to provide evidence to a future panel to demonstrate a clear and settled intention to retire from the profession without the necessity of a striking-off order, and the steps she has taken to implement her plans to leave the profession and pursue an alternative career.

The panel noted that the failings identified in this case are capable of being remedied, provided Ms Marabur is able to develop greater insight and take the appropriate remedial steps, although there is no evidence that they have been remedied at this stage. It bore in mind that Ms Marabur had practised without regulatory concern for a significant period before this isolated episode which took place on a single shift. It considered that there was no evidence of deep-seated attitudinal issues in this case, and that the failings were not fundamentally incompatible with ongoing registration.

In all those circumstances, the panel considered that at this stage, a striking-off order would be disproportionate and inappropriate. It considered that at this stage, the public could be protected, and the wider public interest considerations satisfied, by a lesser sanction, which would give Ms Marabur the opportunity for a further period of reflection on how she wishes to proceed. However, the panel wished to advise Ms Marabur that if she continues to be disengaged from the process, a future reviewing panel might well consider that a point has come when the situation ceases to be compatible with ongoing registration and a striking-off order becomes the only proportionate outcome.

The panel therefore determined that a suspension order is the appropriate sanction at this stage, which would continue to protect the public and satisfy the wider public interest considerations. Accordingly, the panel determined to extend the current suspension order for the period of six months, to provide Ms Marabur with an opportunity to reflect further and to engage with the NMC. The panel considered that within that period Ms Marabur should be able to give a clear indication of whether she wishes to seek to return to her nursing career, or whether she has instead decided to leave the profession.

The panel recommends that, if she wishes to avoid the possibility of a future panel considering that a striking-off order is the only proportionate outcome, Ms Marabur provide the information recommended below, so that an informed decision can be made on the next occasion about the further progress of this case. She should be aware that a failure to do so, and a further disengagement from the process, may cause difficulties for a future panel.

The extension of the current suspension order will take effect from the end of 6 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.

A future reviewing panel is likely to be assisted by the following:

- If Ms Marabur has reached a settled intention that she wishes to leave the profession, evidence (in the form of correspondence or a statement by her) giving clear evidence of that intention, together with evidence of any steps she has taken towards leaving the profession or embarking on an alternative career;
- If Ms Marabur wishes to seek to return to nursing:
 - A reflective piece from Ms Marabur, demonstrating any insight into the concerns, any explanation or context of her behaviour, the impact of her conduct on Patient A, public safety and the nursing profession, as well as any steps taken to strengthen her practice in the areas of concern;
 - Any information as to Ms Marabur's future nursing career plans;
 - Any references or testimonials attesting to Ms Marabur's capability to perform her duties in any paid or unpaid work she may have undertaken since the incident; and
 - Ms Marabur's engagement and attendance at any future review hearing

This decision will be confirmed to Ms Marabur in writing.

That concludes this determination.