

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

**Substantive Order Review Hearing
Wednesday, 7 February 2024**

Virtual Hearing

Name of registrant: Sathimol Edattukunnel Raghavan

NMC PIN: 14J00300

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – October 2014

Relevant Location: Brent

Type of case: Misconduct

Panel members: Susan Ball (Chair, Registrant member)
Donna Green (Registrant member)
Jane McLeod (Lay member)

Legal Assessor: Melissa Harrison

Hearings Coordinator: Monsur Ali

Nursing and Midwifery Council: Represented by Emma Kutner, Case Presenter

Mrs Raghavan: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect at the end of 28 February 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 Mrs Raghavan was not in attendance and that the Notice of Hearing had been sent to Mrs Raghavan's registered email address on 5 January 2024.

Ms Kutner, 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 venue of the hearing and, amongst other things, information about Mrs Raghavan'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 Mrs Raghavan 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 Mrs Raghavan

The panel next considered whether it should proceed in the absence of Mrs Raghavan. It had regard to Rule 21 and heard the submissions of Ms Kutner who invited the panel to continue in the absence of Mrs Raghavan.

Ms Kutner submitted that Mrs Raghavan had voluntarily absented herself. In support of this submission, Ms Kutner stated that the NMC had made a number of attempts to secure her attendance but Mrs Raghavan did not respond, other than once in December 2023 indicating that she would like to instruct a solicitor to represent her.

Ms Kutner reminded the panel that Mrs Raghavan has not requested an adjournment. She submitted that in light of the evidence outlined above, it is unlikely that an adjournment

would secure the attendance of Mrs Raghavan at any future date. Ms Kutner invited the panel to consider the public interest in the expeditious review of this case.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel had sight of an email from Mrs Raghavan dated 29 December 2023 which states:

'I would like to request for a hearing. I want to be represented by my solicitor. Do let me know if you need details of the solicitor.'

The panel has decided to proceed in the absence of Mrs Raghavan. In reaching this decision, the panel has considered the submissions of Ms Kutner and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Raghavan;
- Mrs Raghavan last contacted the NMC on 29 December 2023 but there has been no other communication from her since. In particular, there was no response from her to two emails sent by the NMC on 29 December 2023 following her email of that date.
- Mrs Raghavan has not attended the substantive hearing, nor did she submit any documentation in support of her case to the last review meeting;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate, and proportionate to proceed in the absence of Mrs Raghavan.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 28 February 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 12 months by a Fitness to Practise Committee panel on 29 July 2022. The order was reviewed on 25 July 2023 and the panel decided to impose a suspension order for a further period of six months.

The current order is due to expire at the end of 28 February 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:

- 1. Between 26 July 2019 & 16 August 2019 misappropriated money donated to James Ward, London Northwest University NHS Trust by relatives of Patient A.*
- 2. Your actions at 1 above were dishonest in that you intended to retain some or all of the money for yourself.*
- 3. On 13 August 2019 represented to Colleague A that:*
 - a) You had directed the relatives of Patient A to take the donation money downstairs, when you had not*
 - b) You did not have the donation money, when you did*

4. *Your representations at 3 a) and/or b) were dishonest in that you were stating things about the donation money to Colleague A which you knew were untrue.*

5. ...

a) *On 26 July 2019, you accepted a donation made in cash to James Ward by relatives of Patient A*

b) *Having accepted the donation at 5 a) above, failed to declare it in the Trust's Gifts and Hospitality Register*

6. *Between 25 February 2020 and 11 July 2020 practised as a Nurse while suspended from the Register of Nurses, Midwives and Nursing Associates*

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 did not find that patients were put at risk and were caused physical and emotional harm as a result of Mrs Raghavan's misconduct. The panel noted that the concerns had nothing to do with Mrs Raghavan's clinical practice. In reaching its conclusion, the panel also took into account the written statement of Person A implying that her or her family had not suffered any harm:

"My position has always been very clear - that the nurse in question, did not do anything wrong and followed instructions in my presence from her supervisor."

The panel determined that Mrs Raghavan's dishonesty was a one-off and opportunistic conduct relating to money. It found that Mrs Raghavan's misconduct had breached the fundamental tenets of the nursing profession and therefore

brought its reputation into disrepute. The panel has found that the dishonesty in this case is a grave concern and that Mrs Raghavan failed to be open and honest with her colleagues and did not fulfil her duty of candour. It concluded that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. The panel considered that, whilst limbs (b), (c) and (d) of the test were engaged, it was not satisfied that there was a requirement for a finding of impairment on the ground of public protection.

Regarding insight, the panel acknowledged that Mrs Raghavan subsequently admitted being in possession of the money and gave the money back. It did consider this as a limited form of remediation. However, the panel had regard to Mrs Raghavan's email to the NMC dated 23 December 2021 cited by Ms Evans which it found demonstrated very limited insight into the implications of her dishonesty on colleagues, the family members of Patient A and for the reputation of the profession.

The panel considered that dishonesty is not an easily remediable concern, although it noted that there can be a degree of remediation in certain circumstances. The panel carefully considered the evidence before it in determining whether or not Mrs Raghavan has demonstrated insight and remorse and taken steps to strengthen her practice. The panel has no information before it on Mrs Raghavan's current situation, no reflection pieces or information as to whether she is enhancing her practice, and no evidence of insight or remorse.

The panel is therefore of the view that there is insufficient insight to suggest that such dishonest conduct will not be repeated in the future.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Mrs Raghavan's fitness to practise currently impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Raghavan's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'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 interest issues identified, an order that does not restrict Mrs Raghavan'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 Mrs Raghavan's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Raghavan'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 determined that a conditions of practice order is not relevant to her misconduct. It is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The finding of dishonesty identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Raghavan's registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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/midwife has insight and does not pose a significant risk of repeating behaviours.*

In considering the imposition of a suspension order, the panel noted that misconduct is on the serious end of the spectrum. It considered that dishonesty is a serious matter and that most cases of dishonesty result in a strike-off order. The panel also expressed concerns about the lack of evidence demonstrating insight on the part of Mrs Raghavan and had already concluded that due to this lack of evidence, it could not say today that there was no risk of repetition.

However, the panel determined that, based on the evidence before it, the panel considered that there is no risk to the public. It took into account that there is no evidence before it about deep-seated attitudinal issues or repetition on the part of Mrs Raghavan. It considered that the misconduct was an opportunistic incident and comprised of a single course of conduct. It noted that Mrs Raghavan's opportunistic behaviour may have been motivated by personal gain, but that there was no actual gain from it as she subsequently admitted having the money and returned it. It noted that Mrs Raghavan is a nurse of 25 years' experience and that it did not have the benefit of Mrs Raghavan's presence at this hearing, nor was she represented.

The panel considered that the choice between a suspension order and a strike off order was finely balanced. It considered the principle of proportionality, the bigger picture, and the need to protect the public interest, but also the need to balance the benefits to the public in retaining the services of an experienced and competent nurse. It took into account the SG on suspension and that Mrs Raghavan was

already subject to an interim suspension order for a period of two years. It noted all the points in the submissions from Ms Evans and gave very serious consideration to a strike off order but ultimately decided that a strike off order would be a disproportionate sanction to satisfy the public interest. It determined that a strike off order was not the only mechanism which would satisfy the public interest. It concluded that a suspension order for a period of 12 months would be sufficient and proportionate to maintain public confidence and to send the right message to the profession. The panel was satisfied that in this case, her misconduct was not fundamentally incompatible with Mrs Raghavan remaining on the register.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Raghavan's case to impose a striking-off order. The panel noted the hardship such an order will inevitably cause Mrs Raghavan. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary 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.

In making this decision, the panel carefully considered the submissions of Ms Evans in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a strike off order would be disproportionate at this time for the reasons it has outlined above.

The panel determined that a suspension order for a period of up to one year was appropriate in this case to mark the seriousness of the misconduct. It would give Mrs Raghavan sufficient time to complete some vital actions in order to prepare a detailed reflective statement. This would be to demonstrate her insight into the impact of her behaviour, to express her remorse, and to make clear that there was no risk of repetition of her dishonest behaviour.

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Raghavan'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. It has taken account of the submissions made by Ms Kutner on behalf of the NMC. Ms Kutner provided the panel with the summary of the case and invited it to find current impairment on the basis that there is no evidence to demonstrate that Mrs Raghavan had taken steps to address the concerns or reflected on her misconduct since the imposition of the substantive order.

Ms Kutner submitted that there is no evidence to allay the concerns previously highlighted; there is no information regarding insight, remorse, training, or reflection, and as a result the issue regarding dishonesty remains. She informed the panel that none of the suggestions from the previous panels have been taken up by Mrs Raghavan.

Ms Kutner submitted that Mrs Raghavan's fitness to practise remains impaired and the order therefore remains necessary for the same reasons as before. She submitted that there is no evidence to demonstrate that Mrs Raghavan has taken any steps to remediate the concerns raised about her dishonesty and no evidence of any reflective work. Having taken all these into consideration, Ms Kutner submitted that there is therefore no evidence before the panel to demonstrate that Mrs Raghavan's dishonest conduct is highly unlikely to be repeated.

Ms Kutner submitted that given Mrs Raghavan's lack of engagement with the NMC and having made no attempts to remediate the concerns highlighted, the public would be concerned if Mrs Raghavan is returned to nursing practise without restrictions. Ms Kutner therefore invited the panel to consider that Mrs Raghavan remains impaired. She drew the panel's attention to the decision and reasons on sanction of the previous reviewing panel and quoted the following:

'The panel was of the view that though a strike off order may be appropriate at this time, a further and possibly last short suspension order would afford Mrs Raghavan a final chance to engage with her regulator and time to fully reflect on her previous failings and related dishonesty.'

Ms Kutner indicated that the options available to this panel were a suspension order or a strike-off order but that this was a matter for the panel's judgement.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance. In this regard, the panel considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927. In paragraph 74, she said:

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

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

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

a) ...

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

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

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel found that three of the four limbs remain engaged.

The panel considered whether Mrs Raghavan's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Raghavan had shown very limited insight. At this hearing, the panel determined that this has not changed. Furthermore, Mrs Raghavan has not attended the substantive hearing, nor has she submitted any evidence to those previous panels. The panel further noted that Mrs Raghavan has not had any meaningful engagement with the NMC in relation to these proceedings and the last contact she made was on 29 December 2023. The NMC replied to her registered email but heard nothing further since that date.

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 Mrs Raghavan's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Raghavan's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel received further legal advice in relation to sanctions, in particular with reference to the NMC's guidance on seriousness and strike-off order.

The panel accepted the advice of the legal assessor.

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 interest issues identified, an order that does not restrict Mrs Raghavan's practice would not be appropriate in the circumstances of the case. 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 Mrs Raghavan's misconduct and dishonesty 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 the imposition of conditions of practice on Mrs Raghavan'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 satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Raghavan's misconduct and it was of the view that given her lack of engagement, it is unlikely any conditions imposed would be complied with.

The panel next considered imposing a further suspension order. Mrs Raghavan's misconduct involved serious dishonesty and she has provided no evidence of any steps

taken to address the concerns, no evidence of any reflection, insight or remorse. The last reviewing panel stated that a future panel would be assisted by:

- *'Mrs Raghavan's engagement with the NMC*
- *Evidence of remediation, remorse, or insight, focusing on the impact of your behaviour towards your colleagues and the nursing profession,*
- *Evidence of reflection on the impact of the dishonesty on the public Interest*
- *Information regarding Mrs Raghavan's personal and professional situation,*
- *Testimonials from a line manager or supervisor that detail Mrs Raghavan's current work practices, if Mrs Raghavan has been in employment, and*
- *Evidence of Mrs Raghavan's continuing professional development.'*

Mrs Raghavan did not provide any mitigating circumstances as to why she had not complied with the recommendations of the previous panel.

The panel gave careful consideration to the SG on suspension orders. It noted that a suspension order is appropriate if a registrant has insight, but found that Mrs Raghavan has not submitted any evidence to the last two panels showing that she has developed insight or taken steps to address the concerns.

The panel determined that, given Mrs Raghavan's lack of engagement with her regulator, and her failure to submit any evidence as requested by the previous panels, a suspension order was no longer appropriate. It noted that the last reviewing panel was quite clear that any future reviewing panel will have all sanctions including strike-off available to it.

The panel is concerned therefore that this lack of engagement with the process and failure to provide any evidence of the steps taken to remediate the concerns or provide any reflection into her misconduct, raises fundamental concerns regarding Mrs Raghavan's professionalism; it is a registrant's duty to engage with their regulator. Further, the panel determined that public confidence in the profession would be undermined in these circumstances. The panel therefore determined that it was necessary to take action to

prevent Mrs Raghavan from practising in the future and concluded that the only sanction that would adequately serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely at the end of 28 February 2024 in accordance with Article 30(1).

This decision will be confirmed to Mrs Raghavan in writing.

That concludes this determination.