**Conduct and Competence Committee**  
**Substantive Hearing**  
**4 – 6 April 2017**  
Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

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<tr>
<th>Name of Registrant Nurse:</th>
<th>Ms Sophia Njumbi</th>
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<td>NMC PIN:</td>
<td>06H0609E</td>
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| Part(s) of the register: | RNLD: Registered Nurse (Sub part 1)  
Learning Disabilities Nurse (level 1) 29  
September 2006 |
| Area of Registered Address: | England |
| Type of Case: | Misconduct |
| Panel Members: | Robert Barnwell (Chair Lay member)  
Louise Suzanne Poley (Registrant member)  
Judith Alderton (Lay member) |
| Legal Assessor: | Ben Stephenson |
| Panel Secretary: | Nour Shaheen |
| Ms Njumbi: | Present and represented by Ms Abbie Johnson, counsel, instructed by Royal College of Nursing. |
| Nursing and Midwifery Council: | Represented by Ms Julian Norman, counsel, instructed by NMC Regulatory Legal Team. |
| Facts proved by admission: | All |
| Fitness to practise: | Impaired |
| Sanction: | Suspension Order – 3 months |
| Interim Order: | Not imposed |
Details of charges, as amended:

That you, a registered nurse:

1. Between 22 December 2014 and 20 January 2016 submitted one or more of the training certificates set out in Schedule A to Westmeria Recruitment Ltd and those training certificates contained false information in that you had not attended the training courses on the dates stated.

2. Created or modified one or more of the training certificates referred to in Schedule A.

3. Your actions in relation to Charge 1 and/or Charge 2 were dishonest in that you sought to mislead Westmeria Recruitment Ltd as to your training history.

4. Between 18 July 2014 and 20 January 2016 failed to complete mandatory training in relation to one or more of the following areas of practice contrary to the requirements of your employment via your service company, Sophiben Healthcare Services Limited:

   4.1. Violence and Aggression;
   4.2. Health and Safety;
   4.3. Infection Control;
   4.4. Mental Capacity;
   4.5. Moving and Handling;
   4.6. Record Keeping;
   4.7. Risk Assessment;
   4.8. Safe Administration of Medication;
   4.9. Medication Awareness and Safe Administration;
   4.10. Complaints Handling;
4.11. Safeguarding and Vulnerable Adults;
4.12. Safeguarding Children;
4.13. COSHH;
4.15. Diversity and Equality.

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

____________________________________

SCHEDULE A

1. Infection Control training dated 26 October 2015.
8. Moving and handling training at S.E. Branch dated 15 September 2015.
10. Moving and handling theory dated 26 October 2015.
19. Mental Health Act training dated 20 October 2015.
20. COSHH training dated 26 October 2015.
30. Record keeping dated 22 December 2014.
34. RIDDOR training dated 13 December 2014.
38. Lone worker training 13 December 2014.

Decision and reasons on application to amend charge

The panel heard an application made by Ms Norman, on behalf of the NMC, to amend the wording of Schedule A to remove from the end of all 39 points “Received by Westmeria Ltd on [date]”, so as to provide clarity and more accurately reflect the evidence. It was also submitted that the amendment would make no material difference to the charges.

The proposed amendment:
1. Infection Control training dated 26 October 2015.
8. Moving and handling training at S.E. Branch dated 15 September 2015.
10. Moving and handling theory dated 26 October 2015.
11. Risk assessment dated 22 December 2014
19. Mental Health Act training dated 20 October 2015.
20. COSHH training dated 26 October 2015.
Ms Johnson, on your behalf, did not oppose the application.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28 (1) At any stage before making its findings of fact …

(i) … the Conduct and Competence Committee, may amend

(a) the charge set out in the notice of hearing …

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It
was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

**Background**

The charges arose whilst you were engaged as a contract nurse by Westmeria Recruitment Ltd (the “agency”). Upon routine checks by the agency, it was uncovered that you may have falsified training certificates. The agency contacted your previous employer and alleged training provider, Danshell Group Ltd (“Danshell”), who confirmed that they had not issued these certificates to you. The agency then checked historical files from 2014 and found a number of further fraudulent certificates submitted by you.

It is alleged that between December 2014 and January 2016 you submitted a total of 39 certificates to the agency which were not issued by Danshell. Of the 39 training certificates, 29 of these were mandatory to your nursing practice.

During the agency’s internal investigation, you admitted that you had not completed the training and accepted full responsibility for falsifying the documents to indicate that you were up to date with training, in order to take up a nursing placement.

**Findings on facts**

Following the amendment of Schedule A of the charges, you made admissions to all of the charges against you. Ms Johnson submitted that you admitted the facts as alleged at charge 1, in so far in that you submitted false certificates between June 2015 and 20 January 2016.

The panel was satisfied that these dates fell within the range specified within charge 1 and accepted the admission on this basis.

The facts were therefore announced as proved by admission.
Submission on misconduct and impairment:

Having announced its finding on the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

The panel heard evidence from you at this stage. The panel was also presented with a bundle of documents by Ms Johnson which contained a number of positive testimonials on your behalf, evidence of training undertaken by you and a reflective piece written by you.

In her submissions Ms Norman invited the panel to take the view that your actions amount to a breach of The Code: Standards of conduct, performance and ethics for nurses and midwives 2008 (the “2008 Code”) and The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the “2015 Code”). She then directed the panel to paragraphs of the 2015 Code, specifically 20 and 22, and identified where, in the NMC’s view, your actions amounted to misconduct.

Ms Norman then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Ms Norman referred the panel to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).

Ms Johnson submitted on your behalf that through your acceptance of the allegations against you, you acknowledge that your behaviour was dishonest and that you created a continuing misleading impression. She told the panel that you accept that your fitness
to practice was impaired at the time of your misconduct, but that you believe that your fitness to practice is no longer impaired, having undertaken the relevant training.

Ms Johnson submitted that your references indicate that there is a broad spectrum of people with whom you have come into contact, to whom you have disclosed the NMC investigation, and each of these people clearly state that there are no issues with your character. On the contrary, you are described as having unreservedly good character. She submitted that, in disclosing these proceedings to a number of people who held you in high regard prior to these incidents, you have demonstrated a movement to openness and accountability.

Ms Johnson submitted that there was no risk of repetition of your misconduct. She told the panel that there have been no issues raised as to your clinical practice at any time, before or after these incidents, and that there has been no repetition of this behaviour since. Ms Johnson submitted that having worked as a nurse and maintaining your CPD demonstrates that you are working with honesty and integrity. She therefore invited the panel to find that your fitness to practice is no longer impaired.

The panel has accepted the advice of the legal assessor which included reference to the case of Grant. The legal assessor further referred the panel to the case of Roylance v GMC (No. 2) [2000] 1 AC 311 which defines misconduct as a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

**Decision on misconduct**
When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the 2008 Code and the 2015 Code.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of both the 2008 Code and the 2015 Code.

In relation to charge 4, so far as any behaviour before 31 March 2015 is concerned, from the 2008 Code:

40 You must keep your knowledge and skills up to date throughout your working life.

And in relation to charges 1-3, from the 2015 Code:

6 Always practise in line with the best available evidence
To achieve this, you must:
6.2 maintain the knowledge and skills you need for safe and effective practice.

16 Act without delay if you believe that there is a risk to patient safety or public protection
To achieve this, you must:
16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can

Promote professionalism and trust
You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other healthcare professionals and the public.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times…

22 Fulfil all registration requirements

To achieve this, you must:

22.3 keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance.

The panel appreciated that breaches of the Codes do not automatically result in a finding of misconduct. However, the panel was of the view that your actions constituted a significant departure from the standards expected of a registered nurse. The panel considered that although there was no clinical misconduct in your case, your actions in being dishonest by submitting fraudulent training certificates to the agency, given your position as training coordinator, would be viewed by fellow members of the nursing profession as deplorable. Further, in misleading the agency to believe that you had completed your training when you had not, you placed patients at an unwarranted risk of harm.

The panel therefore concluded that your actions did fall significantly short of the conduct that the public has a right to expect from a registered nurse and was serious enough to amount to misconduct.
Decision on impairment

The panel next went on to decide if as a result of this misconduct your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision, 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.”

She said:

“Dame Janet Smith, in her Fifth Report from Shipman, identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
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 finds that criteria b, c and d are engaged. You have in the past acted so as to put patients at unwarranted risk of harm, but the panel consider that you are not liable to do so in the future. You have in the past brought, and are liable in the future to bring, the nursing profession into disrepute. You have in the past breached, and are liable in the future to breach, fundamental tenets of the nursing profession. And you have in the past acted dishonestly and are liable to act dishonestly in the future.

Regarding insight, the panel considered that you have demonstrated some insight. You made admissions to all the charges against you. You showed insight into the effect of your actions on the nursing profession and accepted that you had brought the nursing profession into disrepute and you demonstrated remorse for your actions. Your reflective piece addresses honesty and integrity; however, the panel remained concerned that you may not be open, transparent and honest if you were faced with the same situation in the future. The panel could not overlook the fact that your dishonest actions spanned a period of eight months. You did not take sufficient action to remedy the situation during this period. While you consistently stated that you were [PRIVATE] over the relevant period, the panel note that in the many favourable references to your character and ability as a nurse, there is limited reference [PRIVATE]. Furthermore, the panel was not satisfied that you demonstrated sufficient insight into the seriousness of
falsifying records and were concerned that you were of the view that you had adequately remediated your misconduct simply by undertaking the relevant training.

In its consideration of whether you have remedied your practice the panel took into account your oral evidence at this stage, the evidence of training undertaken by you and the testimonials written on your behalf. The panel noted that you have completed the training required of you, and that there have been no concerns raised as to your practice, nor has there been any repetition of this behaviour since these incidents. The panel also noted that the testimonials were all positive and attested to your good character. The panel bore in mind that dishonesty is difficult to remediate and was not convinced that you were entirely candid whilst giving oral evidence in regards to dishonesty.

The panel was satisfied that there was a low risk of repetition of you working without completing your relevant training, and that these proceedings have had a salutary effect on you in this regard. However, the panel could not be satisfied that you that you would not be dishonest in the future.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold the wider public interest, which 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 determined that, in this case, a finding of impairment on public interest grounds was required. The panel considered that, given the seriousness of the misconduct found, and the findings of dishonesty, public confidence in the NMC as a regulator would be undermined if a finding of impairment on the ground of public interest were not made.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.
Decision and Reasons on application under Rule 19

Ms Johnson made a request that the hearing of your case be held partly in private on the basis that proper exploration of your case involves your family members’ health conditions.

Ms Norman indicated that she supported the application to the extent that any reference to your family members’ health conditions is raised.

The legal assessor reminded the panel that while Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to rule on whether or not to go into private session in connection with your family members’ health conditions, as and when such issues are raised.

Determination on sanction:

The panel has considered this case very carefully and has decided to make a suspension order for a period of three months. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor which included reference to *Parkinson v NMC [2010] EWHC 1898 (Admin)*. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Indicative Sanctions Guidance (“ISG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.
The panel assessed the aggravating and mitigating factors in the case as follows:

Aggravating:

- Your misconduct involved acts of dishonesty spanning a period of eight months;
- You abused your previous position as a training facilitator in order to falsify the certificates; and
- You demonstrated incomplete insight.

Mitigating:

- You have engaged with the regulatory process throughout and have attended this hearing;
- You made early admissions both at the employer investigation stage and at the outset of this hearing;
- There is no evidence of repetition since 20 January 2016 and there have been no previous regulatory findings before or since these incidents;
- You are described as having good character;
- You have provided a number of positive testimonials from doctors, nurses and people of standing in your community. These were made in the knowledge of the investigation against you and attest to your good character, nursing practice and caring nature;
- There is no evidence of actual patient harm;
- You took swift action to undertake training following the issue being raised with you;
- You have kept up to date in your training since the incidents;
- You demonstrated some insight, remorse and remediation; and
- You were experiencing considerable [PRIVATE] at the time.
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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the ISG, which states that a caution order may be appropriate where ‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that your misconduct was not at the lower end of the spectrum as it involved dishonesty, with an element of repetition, and that a caution order would be inappropriate. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the ISG, in particular:

64.8 It is possible to formulate conditions and to make provision as to how conditions will be monitored

The panel 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 panel noted that you have undertaken the relevant training required of you. The panel further noted that the misconduct identified in this case centred on dishonesty, which cannot be adequately addressed through retraining or the placing of conditions.

The panel then went on to consider whether a suspension order would be an appropriate sanction. ISG paragraph 68 indicates that a suspension order may be appropriate where some of the following factors are apparent:
68 This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

68.2 No evidence of harmful deep-seated personality or attitudinal problems.

68.3 No evidence of repetition of behaviour since the incident.

68.4 The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

The panel determined that, although there had been a clear breach of a fundamental tenet of the profession, there are in your case mitigating circumstances. As such, the panel considered that, in your case, the misconduct was not fundamentally incompatible with remaining on the register. The panel noted that you made admissions to all the matters found proved both at an internal investigation by the agency and from the outset of this hearing. You have engaged with the NMC since your referral. The panel has been told that there have been no adverse findings in relation to your practice either before or since these incidents. It has been demonstrated to the panel, through the testimonials on your behalf, that you are a highly regarded practitioner, who is respected by fellow members of your profession and members of your community. The panel had no evidence before it that you had repeated this misconduct. The panel previously noted that you had gained some insight into your misconduct. You have assured the panel that there will be no repetition, and the panel was of the view that there was no significant risk that you would repeat the behaviour. The panel considered that a period of suspension would afford you the opportunity to fully develop your insight and remediate for your misconduct. The panel considered that it would be contrary to the interests of the public if it was to remove you from the register permanently, given that you are an otherwise competent nurse and have enjoyed a previously unblemished career.
The panel further considered whether a striking-off order would be proportionate in your case. Taking account of all the information before it, and taking account of all the mitigation provided to the panel on your behalf, 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 your case to impose a striking off order.

Balancing all of these factors the panel has concluded that a short suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary in the public interest. The order will mark the importance of maintaining public confidence in the profession, and send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of three months was proportionate, balancing the seriousness of the misconduct and the interests of the in retaining a good nurse.

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.

**Determination on Interim Order**

The panel has considered the submissions made by Ms Norman that an interim suspension order should be made for a period of 18 months on the grounds that it is otherwise in the public interest.
The panel took account of the submissions made by Ms Johnson that you have been working without incident since 20 January 2016 and reminded the panel that there has been no patient harm.

The panel accepted the advice of the legal assessor which included reference to the case of *Davey v General Dental Council, Queen’s Bench Division [2015] WL 675783 and R (on the application of Sheikh) v General Dental Council [2007] EWHC 2972 (Admin).*

The panel bore in mind the case of *Davey* which outlined the following:

“The reputational damage at that stage has inevitably been incurred and it is simply impact on the right to earn a living that falls into play…It was not clear that the full extent of the impact of the immediacy [sic] order was outweighed by the panel. It was not clear that the draconian effect of a prospective appeal, which is that all times spent until the appeal was heard subject to the immediate order would not count at all towards the 12 months suspension the panel imposed, was considered. It was not easy to see why the public interest which had until then allowed the claimant to continue to practise required that he should cease immediately, rather than continue for 28 days until the suspension took effect or, if appealed, until the appeal was heard.”

The panel also bore in mind the case of *Sheikh* which outlined that it is “likely to be a relatively rare case that where a suspension order would be made on an interim basis on the ground that it is in the public interest.”

The panel reminded itself of the need for proportionality and also of the authorities of *Davey* and *Sheikh.* In the light of this the panel was not satisfied that an interim order was necessary.

The panel took into account that you have financial responsibilities, and an interim order would have an immediate impact on your ability to earn a living.
The panel was not satisfied that an interim order is necessary for public protection, nor that an interim order is otherwise in the public interest.

The panel therefore has decided not to impose an interim order.

If no appeal is made, the suspension order will take effect 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.