

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Meeting
22 August 2019**

Nursing and Midwifery Council, Regus Belfast, Forsyth House, Cromac Street, Belfast,
BT2 8LA

Name of registrant:	Octavia Thembie Nkwanyana
NMC PIN:	04F00800
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – June 2004
Area of Registered Address:	Berkshire
Type of Case:	Misconduct
Panel Members:	Catherine Rice (Chair, Registrant member) Jane Davis (Registrant member) Anthony Griffin (Lay member)
Legal Assessor:	Attracta Wilson
Panel Secretary:	Caroline Pringle
Order being reviewed:	Suspension order (12 months)
Fitness to Practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 4 October 2019 in accordance with Article 30(1)

Decision on proof of service

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004*, as amended state:

11A.(1) Where a meeting is to be held in accordance with rule 10(3), the [Fitness to Practise] Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post*

The panel accepted the advice of the legal assessor.

It noted that the letter of notice of this substantive meeting was sent to Miss Nkwanyana's address on the register by both first class post and recorded delivery on 11 July 2019. Royal Mail "Track and Trace" also confirms that notice was collected and signed for at the Reading Delivery Office on 15 July 2019. The panel was satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore determined that notice had been served in accordance with the Rules.

Decision and reasons on review of the current order

The panel decided to make a striking-off order. This order will come into effect at the end of 4 October 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a 12 month suspension order, originally imposed on 4 September 2018 by way of a Consensual Panel Determination (CPD) agreement. The current order is due to expire at the end of 4 October 2019.

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

The charges found proved, by way of admission, which resulted in the imposition of the substantive order were as follows:

That you, a Registered Nurse, while working on the night shift of 1/2 July 2017 at Torr Home:

1. *Following a fall by Patient A:
 - i) *failed to carry out adequate checks on Patient A after a fall, and/or*
 - ii) *failed to escalate Patient A's deteriorating condition**
2. *Failed to escalate Patient B's deteriorating condition*
3. *Failed to administer Levothyroxine to Patient C*
4. *Signed Patient C's medical chart to indicate that you had administered Levothyroxine to Patient C, when you had not.*
5. *Were asleep during the shift:
 - i) *At approximately 02:30*
 - ii) *At approximately 05:00*
 - iii) *On one or more other occasions**

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

The original panel endorsed the relevant sections of the CPD agreement in relation to impairment, which were as follows:

*23. Ms Nkwanyana has provided a written reflective piece and some training certificates, these are attached as **Annex 1**.*

24. Ms Nkwanyana has made basic failings in nursing practice placing patients at risk of harm. Ms Nkwanyana failed to carry out basic checks on two fragile patients (Patients A and B) and failed to escalate these patients when this should have been done. Ms Nkwanyana also slept for a significant part of the nightshift, which should not occur in any event, and is particularly concerning where she was the only nurse or medically trained staff member on that shift with vulnerable patients. The parties agree that a finding of current impairment is required on public interest grounds to uphold proper professional standards and public confidence in the nursing profession, and public protection grounds. A finding of no impairment would amount to a complete acquittal and that would undermine public confidence in the profession and the NMC as its regulator.

25. For the reasons above, the parties agree that Ms Nkwanyana's fitness to practise is currently impaired.

The original panel determined the following with regard to sanction:

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel noted that Miss Nkwanyana's misconduct occurred on a single shift which gave rise to multiple and serious charges. Miss Nkwanyana's actions directly affected two patients, one of whom required hospitalisation as a result. The panel had regard to Miss Nkwanyana's reflective piece and considered that although it does not specifically address her failings, she has taken the initial steps towards remediation. In light of this the panel determined that Miss Nkwanyana's misconduct was not incompatible with remaining on the register.

The panel did consider whether a striking-off order would be proportionate in Miss Nkwanyana's case. Taking into account all the information before it, and taking account of all the mitigation provided to

the panel on Miss Nkwanyana's behalf, the panel concluded that it would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Nkwanyana's case to impose a striking off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. 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. Further, a suspension order would adequately protect the public.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

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

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order. Any future panel may be assisted by:

- *Miss Nkwanyana's attendance*
- *Any references from Miss Nkwanyana employer whether paid or unpaid*
- *Evidence of how Miss Nkwanyana has kept her nursing knowledge up to date*
- *A much more detailed reflective piece using a recognised model such as Gibbs with specific regard to:*
 - *The specific failings raised within the charges*

- *How Miss Nkwanyana's actions were in breach of the Code and what she should have done in the circumstances*
- *How Miss Nkwanyana's actions affected her junior colleagues at the time, the profession and the public interest*
- *Miss Nkwanyana's view on her role as a nurse in charge/team leader and what support she should provide to junior colleagues whilst working in this capacity*

Decision on current fitness to practise

The panel considered carefully whether Miss Nkwanyana's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined it as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. It noted the decision of the last panel. However, it exercised its own judgment as to current impairment.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Nkwanyana's fitness to practise remains impaired. It noted that the last panel had found Miss Nkwanyana's fitness to practise impaired on both public protection and public interest grounds. The last panel recommended that a future reviewing panel would be assisted by a further reflective piece, references, and evidence of how Miss Nkwanyana has kept her nursing skills and knowledge up to date. Miss Nkwanyana has not provided any of this information. The only new information the panel had was an email from Miss Nkwanyana's representative at the Royal College of Nursing on 5 August 2019 in which they stated that they would no longer be representing Miss Nkwanyana as she 'does not wish to return to nursing'.

In the absence of any new information regarding remediation or insight, the panel concluded that a finding of current impairment remained necessary on both the grounds of public protection and public interest.

Determination on sanction

Having found Miss Nkwanyana'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 also took into account the NMC's Sanctions Guidance and bore 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 repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate for the same reasons.

The panel next considered conditions of practice but concluded that these would be unworkable given Miss Nkwanyana's clear indication that she does not wish to return to nursing.

The panel next considered imposing a further suspension order. The panel noted that there has been no engagement at all from Miss Nkwanyana since the current suspension order was imposed. She is no longer represented by the RCN and has clearly stated that she does not wish to return to nursing practice. In these circumstances, the panel concluded that no useful purpose would be served by a further suspension order.

The panel therefore determined that the only sanction which would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Miss Nkwanyana in writing.

That concludes this determination.