

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

Substantive Order Review Hearing

10 July 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Mr Nelson Kwaku Akakpo

NMC PIN: 04F0614O

Part(s) of the register: Registered Nurse – sub part 1
Mental Health Nursing (15 June 2004)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: John Penhale (Chair, Lay member)
Carla Hartnell (Registrant member)
Rachel Ellis (Lay member)

Legal Assessor: Sean Hammond

Panel Secretary: Anjeli Shah

Mr Akakpo: Not present and not represented in absence

Nursing and Midwifery Council: Represented by Aimee Stokes, Case
Presenter

Order being reviewed: Suspension Order for 12 months

Fitness to Practise: Impaired

Outcome: Striking-off Order to come into effect at the end
of 24 August 2019 in accordance with Article
30(1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Akakpo was not in attendance, and he was not represented in his absence.

The panel was informed that the notice of this hearing was sent to Mr Akakpo on 6 June 2019 by recorded delivery and first class post to his/her registered address.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (“the Rules”).

Proceeding in absence

The panel then considered proceeding in the absence of Mr Akakpo. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Stokes, on behalf of the Nursing and Midwifery Council (“NMC”). The panel accepted the advice of the legal assessor, which included reference to the cases of: *GMC v Adeogba* [2016] EWCA Civ 162 and *R v Jones (No.2)* [2002] UKHL 5.

Ms Stokes, on behalf of the NMC, referred the panel to Rule 21 of the Rules which states that where a registrant fails to attend a hearing and is not represented, the committee can proceed in the registrant’s absence if it is satisfied that notice has been served in accordance with the Rules.

Ms Stokes submitted that Mr Akakpo had voluntarily absented himself from today’s hearing. She submitted that despite being emailed on 17 June 2019 to enquire as to whether he would be attending, and receiving the notice of hearing, there had been no contact from Mr Akakpo, and therefore no engagement with these proceedings. Ms Stokes submitted that there were five factors in this case which supported proceeding in the absence of Mr Akakpo:

- There had been no application for an adjournment;
- There was no evidence to suggest that an adjournment would secure Mr Akakpo’s attendance;
- There had been no engagement from Mr Akakpo;
- It was in the interests of Mr Akakpo to proceed with this matter promptly as the substantive order to which he is subject is due to expire at the end of 24 August 2019;
- There was a strong public interest in the expeditious disposal of this hearing.

Ms Stokes submitted that the power to proceed in the absence of Mr Akakpo must be exercised with the utmost care and caution. She submitted that in the circumstances of this case, it would be fair, appropriate and proportionate to proceed in the absence of Mr Akakpo.

The panel noted that there had been no engagement from Mr Akakpo in relation to these proceedings. There had been no request for an adjournment of today's hearing. The panel did not consider that there was any evidence to suggest that an adjournment would secure Mr Akakpo's attendance at a hearing on a future date. The panel considered that Mr Akakpo had voluntarily absented himself from today's hearing. The panel noted that this was a mandatory review of a substantive order which is due to expire shortly. The panel also had regard to the public interest in the expeditious disposal of these proceedings and the need to maintain public protection. In these circumstances, the panel determined to proceed in the absence of Mr Akakpo.

Decision and reasons on review of the current order:

The panel decided to impose a striking-off order. This order will come into effect at the end of 24 August 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 suspension order, originally imposed by a Fitness to Practise panel on 25 July 2019 for 12 months. The current order is due to expire at the end of 24 August 2019.

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, on 24 June 2014 after Patient A experienced a fall:

- 1. Allowed Patient A to remain on the floor for an extended period of time.*
- 2. Did not conduct any or any adequate assessment of Patient A.*
- 3. Did not call in a timely manner.*
- 4. ...*

The original substantive hearing panel determined the following with regard to impairment:

“The panel noted that Patient A was restored to Eleanor House shortly after the incident in good health, and that it was not aware of any long term harm to her; however, it considered that Patient A was exposed to a risk of harm by Mr Akakpo’s actions, in that she was in unnecessary pain for a prolonged period. The panel considered that Mr Akakpo’s actions had demonstrably brought the nursing profession into disrepute, as evidenced by the wording and tone of the email, dated 25 June 2014, from Ms 3 (a member of staff, not the nursing profession) to Ms 2. The panel further determined that Mr Akakpo had breached

a fundamental tenet of the nursing profession, in not providing adequate care to Patient A.

The panel took into account all of the documentary evidence before it to determine Mr Akakpo's employment history since 24 June 2014, to the best of its abilities. He appears not to have been dismissed by Eleanor House, but the panel does not know when he ceased working there. He had worked since September 2017 for an agency called SJ Healthcare Professionals Ltd. It noted the record of the telephone call, dated 13 July 2018, in which Mr Akakpo stated that "he has given up nursing completely" and has "no intention of ever returning to nursing".

With regards to remediation of Mr Akakpo's practice, the panel noted that, while still employed at Eleanor House, Mr Akakpo commenced an up-to-date first aid course and practised under a level of supervision from Ms 6; furthermore, while working with SJ Healthcare Professionals Ltd as an agency nurse, Mr Akakpo completed the induction and mandatory training required of him, has been "paired with regular nurses as supernumerary and his practice monitored and assessed", and "there has been no concerns with his practice in providing care to patients". The panel noted that, in the undated response letter from SJ Healthcare Professionals Ltd, Mr Akakpo was described as being "slow at times in responding to situations".

Concerning Mr Akakpo's current levels of insight, the panel noted that Mr Akakpo made no admissions to the charges against him in these proceedings. It took into account his statement, where he indicated that he was the one to decide that an ambulance needed to be called – a matter which the panel found not to be the case in its finding on the facts. The panel considered that there was nothing before it to demonstrate Mr Akakpo's insight into his failures, particularly in relation to their impact on Patient A. There was no evidence of remorse or reflection on the incident; Mr Akakpo's brief statement appeared to be more exculpatory, rather than accepting responsibility for his actions. The panel noted

Mr Akakpo's most recent indication, in the telephone call dated 13 July 2018, that "he washes his hands of it all".

The panel considered that the areas of Mr Akakpo's practice at issue can be remediated, but that there is no evidence before it to demonstrate that such remediation has been adequately undertaken.

The panel determined that it cannot be satisfied that Mr Akakpo's failings are unlikely to be repeated; he has been given the opportunity to reflect, acknowledge his failures and their impact, and remediate his practice, but does not appear to have done so. The panel therefore concluded that it finds current impairment on the grounds that he continues to pose a risk to the public.

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/protect 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 was also required in order to maintain public confidence in the profession and the regulatory process.

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

The original substantive hearing panel went on to determine the following with regard to sanction:

"The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel determined that, although there had been a clear breach of a fundamental tenet of the profession, it is in the context of a long and otherwise

unblemished career. As such, the panel considered that the misconduct, although serious, was not fundamentally incompatible with remaining on the register. The panel had no evidence before it that Mr Akakpo had repeated this misconduct. It considered that Mr Akakpo has engaged to a degree with NMC proceedings, only truly demonstrating a lack of engagement in the two weeks leading up to this hearing.

Although the panel was not satisfied that Mr Akakpo had demonstrated any insight into his misconduct, and found that there was a risk of repetition, the panel considered that a suspension order would adequately protect the public. It further considered that such an order would be a proportionate response, as well as marking the importance of maintaining public confidence in the profession and sending to the public and the profession a clear message about the standard of behaviour required of a registered nurse. It had regard to the fact that Mr Akakpo had been the subject of an interim suspension order between May 2016 and January 2017.

The panel gave serious consideration as to whether a striking-off order would be proportionate in Mr Akakpo's case. It considered that Mr Akakpo's misconduct was a serious departure from the relevant standards of a registered nurse, and that he had provided no evidence to suggest any insight into his failings and their impact. The panel noted that, although Mr Akakpo had acted in such a way that prolonged the pain and distress suffered by Patient A, he did not do so deliberately, but through the exercise of poor judgement. Taking account of all the information before it, the panel concluded that it would be disproportionate to impose a striking off order at this time.

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

The panel considered that Mr Akakpo's statement that "he washes his hands of it all" ought to be taken in the context of his lengthy nursing career, as well as the strain of undergoing these and other non-regulatory proceedings. The panel

considered that such a comment may have been a heat-of-the-moment response and Mr Akakpo should be given an opportunity to consider this panel's findings and reflect on his misconduct. The panel therefore concluded that a suspension order for a period of 12 months was appropriate in this case, as it would provide Mr Akakpo with the opportunity to re-engage with the NMC, reflect on his failures and remediate his practice, or alternatively to demonstrate clearly that he wishes to fully remove himself from the nursing profession. Such an order would also adequately protect the public, as well as marking Mr Akakpo's misconduct as an unacceptable departure from the standards expected of a registered 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. Any future panel may be assisted by evidence of:

- Mr Akakpo's engagement with, and attendance at, any review hearing;
- A clear statement from Mr Akakpo as to his intentions with regards to his future nursing career;
- A robust written reflective piece, specifically addressing Mr Akakpo's failings and their impact on Patient A, the public, and the wider nursing profession;
- Up-to-date references and/or testimonials in relation to any work undertaken by Mr Akakpo since he ceased working as a registered nurse."

Decision on current fitness to practise

This panel has considered carefully whether Mr Akakpo'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it. It took account of the submissions made by Ms Stokes, on behalf of the NMC.

Ms Stokes, on behalf of the NMC, outlined the background in this case and drew the panel's attention to the recommendations made by the original substantive hearing panel as to what this panel may be assisted by. She submitted that Mr Akakpo had failed to provide any of the information suggested by the previous panel, which included a statement regarding his future intentions in relation to nursing, a reflective piece and up to date testimonials. Mr Akakpo had also not attended this hearing. Ms Stokes invited the panel to find that Mr Akakpo's fitness to practise remains impaired. She submitted that given there had been no engagement by Mr Akakpo and no evidence that he wished to return to a career in nursing, a striking-off order was now an appropriate sanction for the panel to be considering.

The panel accepted the advice of the legal assessor, which included reference to the cases of *Cohen v GMC* [2008] EWHC 581 (Admin), *Yeong v GMC* [2009] EWHC 1923 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

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 Mr Akakpo's fitness to practise remains impaired.

The panel noted that there had been no material change of circumstances since the original substantive hearing. Mr Akakpo had not engaged with these proceedings and there was no evidence to suggest any remediation of his failings nor any evidence to suggest a development of insight and remorse into his failings. The panel noted that Mr Akakpo had been given clear recommendations as to what this panel may be assisted by, however he had not provided any of the information suggested. In the absence of any evidence of remediation, insight and remorse, the panel considered that there remains a risk of repetition. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 had regard to the seriousness of the original charges found proved at the substantive hearing and the fact that Mr Akakpo had provided no evidence to suggest he had addressed his failings. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain public confidence in the nursing profession and in the NMC as a regulator, and in order to declare and uphold proper standards of conduct and performance.

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

Determination on sanction

Having found Mr Akakpo'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 29 of the Order. The panel also took into account the NMC's Sanctions Guidance ("SG") 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 remaining risk identified and the seriousness of the case. Taking no action would not restrict Mr Akakpo's practice. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the remaining risk identified and the seriousness of the case. Imposing a caution order would not restrict Mr Akakpo's practice. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that Mr Akakpo had not been engaging with these proceedings. Prior to the original substantive hearing, Mr Akakpo had indicated to the NMC that he had no intentions of returning to nursing. Since then, there had been no information from Mr Akakpo to suggest anything to the contrary. The panel therefore considered that there was no evidence to suggest that Mr Akakpo would be willing and able to comply with a conditions of practice order. The panel concluded that it would not be possible to identify and formulate practicable and workable conditions of practice which would sufficiently protect the public and satisfy the public interest.

The panel considered the imposition of a further period of suspension. The panel noted that Mr Akakpo had not demonstrated any insight and remorse into his failings. Mr Akakpo had not demonstrated any attempts to remediate his failings. The panel noted that prior to the original substantive hearing, Mr Akakpo indicated an intention not return to nursing and that he "just wanted the process to end". The original substantive hearing panel imposed a suspension order to give Mr Akakpo the opportunity to reengage with

the NMC, to reflect on his failures and remediate his practice or alternatively to clearly demonstrate that he wished to fully remove himself from the nursing profession. That panel gave Mr Akakpo clear recommendations as to what this panel may be assisted by, including a statement regarding his future intentions in relation to the nursing profession. Mr Akakpo has not provided any of the information suggested, nor has he provided any evidence contradicting his previous intentions to give up nursing. The panel considered that it was not in the public interest to impose a further period of suspension when there was no evidence to suggest that this would facilitate Mr Akakpo's return to safe and effective practice. In these circumstances, the panel considered that a further period of suspension would serve no useful purpose and it would not be appropriate and proportionate in this case.

The panel determined that it was now necessary to take action to prevent Mr Akakpo from practising in the future. The panel had regard to the seriousness of the original charges found proved, noting that they involved a very vulnerable patient, and Mr Akakpo's actions demonstrated a disregard for the patient's safety and wellbeing. Mr Akakpo had failed to meaningfully engage with these proceedings and to provide any evidence of remorse, insight and remediation of his failings. The panel therefore concluded that a striking-off order was appropriate and proportionate in the circumstances of this case, and was the only sanction which would maintain public confidence in the nursing profession and in the NMC as a regulator.

This decision will be confirmed to Mr Akakpo in writing.

That concludes this determination.