

**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 David Kuru

**NMC PIN:** 97D1128O

**Part(s) of the register:** Registered Nurse – sub part 1  
Mental Health Nursing (15 April 1997)

**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 Kuru:** Not present and not represented in absence

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

**Order being reviewed:** Suspension Order for 6 months

**Fitness to Practise:** Impaired

**Outcome:** Striking-off Order to come into effect at the end  
of 22 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 Kuru 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 Kuru on 3 June 2019 by recorded delivery and first class post to his 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 Kuru. 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 absence of the registrant if it is satisfied notice has been served in accordance with the Rules.

Ms Stokes submitted that Mr Kuru had voluntarily absented himself from today’s hearing. She submitted that there had been no communication or engagement from Mr Kuru with the NMC in relation to today’s hearing. Ms Stokes submitted there were five factors in this case supporting proceeding in the absence of Mr Kuru:

- There had been no application for an adjournment;
- There was no evidence that an adjournment would secure the attendance of Mr Kuru;
- There had been no correspondence from Mr Kuru;
- It was in the interests of Mr Kuru for this matter to be heard promptly given that the substantive order to which he was subject was due to expire at the end of 22 August 2019;
- There was a strong public interest in the expeditious disposal of this hearing.

Ms Stokes submitted that the power to proceed in Mr Kuru’s absence must be executed with the utmost care and caution. She submitted that in light of the circumstances of this

case, it would be fair, appropriate and proportionate to proceed in the absence of Mr Kuru.

The panel had regard to the fact that Mr Kuru had not engaged with these proceedings. There had been no request for an adjournment. The panel did not consider that there was any evidence to suggest that an adjournment would secure Mr Kuru's attendance at a hearing on a future date. The panel was of the view that Mr Kuru had voluntarily absented himself from this hearing. The panel noted that these proceedings dated back to 2014, when the original charges arose. It also noted that this was a mandatory review of a substantive order which was due to expire shortly. The panel had regard to the public interest in the expeditious disposal of these proceedings as well as the need to maintain public protection. In these circumstances, the panel determined to proceed in the absence of Mr Kuru.

## **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 22 August 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the second review of a substantive order. A panel of the Conduct and Competence Committee originally imposed a conditions of practice order on 21 July 2017 for 18 months. That order was reviewed by a panel of the Fitness to Practise Committee on 21 January 2019 and a suspension order was imposed for six months. The current order is due to expire on at the end of 22 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, whilst employed by Cornwall Partnerships NHS Foundation Trust:*

1. *Upon being allocated to care for Patient A, between 4 November 2014 and 6 March 2015:*

*1.1...*

*1.2 Failed to regularly visit Patient A or document your visits;*

*1.3 Failed to carry out a follow up review of the new Olanzapine medication prescribed on 11 December 2014;*

*1.4...*

*1.5 Completed a care plan on 6 March 2015 without first visiting and seeing Patient A;*

*1.6 Failed to carry out a visit on Patient A after you had been instructed to do so by a manager.*

2. *Upon being allocated to care for Patient B, following an incident that took place on 2 December 2014, you:*
  - 2.1...
  - 2.2...
  - 2.3...
  - 2.4 *Following the identification of concerns with Patient B on 16 January 2015, failed to make a follow up appointment until 28 January 2015.*
  
3. *Upon being allocated to care for Patient C, between 24 December ~~2016~~ 2014 and 18 March 2015 you:*
  - 3.1 *Failed to conduct an initial assessment of Patient C following discharge;*
  - 3.2 *Failed to make appropriate attempts to make contact with Patient C.*
  - 3.3...
  
4. *Upon being allocated to care for Patient D, between March 2013 and April 2015, you:*
  - 4.1 *Failed to make a detailed record of a Section 117 meeting on 13 November 2014*
  - 4.2 *Failed to contact Patient D from November 2014*
  
5. *Upon being allocated to care for Patient E you:*
  - 5.1...
  - 5.2 *Failed to ensure that Patient E received regular input or in the alternative, did not record that you had provided Patient E with regular input;*
  - 5.3...
  - 5.4 *Failed to complete a risk assessment for Patient E*
  - 5.5 *Failed to complete a care plan for Patient E*
  
6. *Upon being allocated to care for Patient F you:*

*6.1 Failed to make contact with Patient F between 23 October 2014 and 5 March 2015;*

*6.2 Failed to carry out a follow up appointment with Patient F*

*6.3 Failed to undertake a risk assessment*

*6.4 Failed to complete a crisis plan*

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

“The panel considered whether Mr Kuru’s fitness to practise remains impaired. It was mindful that the burden is on him to satisfy this panel that he has remedied the concerns about his practice. Despite this, he has provided no information about his current situation and no evidence of any further insight or remediation. Further, Mr Kuru has not complied with condition 6. The panel therefore concluded that his fitness to practise remains impaired.”

The first reviewing panel went on to determine the following with regard to sanction:

“The panel therefore moved on to consider a suspension order. It was of the view that no useful purpose would be served by a further conditions of practice order, given Mr Kuru’s lack of meaningful engagement, and that therefore a suspension order was necessary and proportionate in order to protect the public and satisfy the public interest. The length of this order will be for 6 months. The panel considered that this period of time would be sufficient for Mr Kuru to re-engage with the NMC and provide meaningful and relevant evidence that would reassure a future panel that he is committed to remediating the concerns about his practice.

The panel did consider imposing a striking-off order but decided that this would be disproportionate at this stage. However, it wished to emphasise the comments made by the previous panel, namely that if Mr Kuru does not take this opportunity to meaningfully engage with his regulator and provide evidence of his reflection, insight and remediation and commitment to providing safe and effective practice in his future nursing career, then a future panel may conclude that the only

workable option at that stage is to remove him from the register on a permanent basis.”

## **Decision on current fitness to practise**

This panel has considered carefully whether Mr Kuru'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. She submitted that there had been no additional evidence to indicate that Mr Kuru had reengaged with the NMC and that he had taken steps to remediate his conduct and to demonstrate any further insight into his failings. Ms Stokes invited the panel to find that Mr Kuru's fitness to practise remains impaired. She submitted that given Mr Kuru's lack of engagement with these proceedings for some 24 months, the panel may wish to consider imposing a striking-off order, given that there was no evidence that Mr Kuru intended to return to nursing whilst subject to his regulatory obligations.

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 Kuru's fitness to practise remains impaired.

The panel considered that there had been no material change of circumstances since the previous review hearing. Mr Kuru had not engaged with these proceedings, and there was no evidence to suggest that he had remediated his failings and that he had developed insight and demonstrated remorse into them. The panel considered that Mr Kuru had been given reasonable opportunities to engage with these proceedings and to address his failings, initially by way of a conditions of practice order by the original substantive hearing panel and then through a period of suspension, however he had failed to utilise such opportunities. Given the lack of evidence of remediation, the panel considered that Mr Kuru remained liable to repeat matters of the kind found proved by the original substantive hearing panel. 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 original charges found proved in this case, which demonstrated serious and wide ranging failings by Mr Kuru over a two year period. Since the original substantive hearing in 2017 Mr Kuru had failed to meaningfully engage with these proceedings and demonstrate any evidence of insight, remorse and remediation. The panel considered that this demonstrated a disregard by Mr Kuru for the regulatory process. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator, as well as to declare and uphold proper standards of conduct and performance.

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

## **Determination on sanction**

Having found Mr Kuru'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 Kuru'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 Kuru'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 had regard to Mr Kuru's lack of engagement with these proceedings, and the fact that since the original substantive hearing, he had not demonstrated any evidence of remediation, remorse and insight into his failings. In particular the panel noted that Mr Kuru did not engage with and comply with the conditions of practice order imposed by the original substantive hearing panel, over a period of 18 months. In these circumstances, the panel considered that there was no evidence to suggest that Mr Kuru would be willing and able to comply with a conditions of practice order. The panel concluded that it was not possible to identify and formulate practicable and workable conditions of practice which would be sufficient to protect the public and satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted that since the original substantive hearing, Mr Kuru has failed to demonstrate further insight and remorse into the original misconduct. Mr Kuru had not demonstrated any evidence of any attempts to remediate his failings. The panel considered that Mr Kuru had failed

to engage with these proceedings, and in doing so, had demonstrated a disregard for the regulatory process. The panel considered that it was not in the wider public interest to impose a further suspension order where there was no evidence to suggest that this would facilitate the meaningful engagement of Mr Kuru and facilitate his return to safe and effective practice. At the last review hearing the panel imposed a suspension order for a period of six months to allow Mr Kuru to reengage with these proceedings and outlined what this panel may be assisted by. However, Mr Kuru has not reengaged and has not provided any of the evidence recommended. The panel was of the view that considerable evidence would be required to show that Mr Kuru no longer posed a risk to the public. In these circumstances, the panel considered that a further suspension order would serve no useful purpose.

The panel determined that it was now necessary to take action to prevent Mr Kuru from practising in the future. The original charges found proved demonstrated wide-ranging failings over a two year period. The charges related to failings in basic and fundamental nursing care, where Mr Kuru showed a disregard for the safety and wellbeing of vulnerable patients in his care. Mr Kuru had been given ample opportunity to address these failings and he had failed to do so. 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 Kuru in writing.

That concludes this determination.