

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing

12 June 2019

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

Name of registrant:	Mrs Dzidzai Marima
NMC PIN:	00I5410E
Part of the register:	Registered Nurse – Adult (2003)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	John Hamilton (Chair, lay member) Julie Clennell (Registrant member) Ian Dawes (Lay member)
Legal Assessor:	Monica Daley
Panel Secretary:	Leigham Malcolm
Mrs Marima:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by Mr Richard Webb, NMC Case Presenter.
Order being reviewed:	Suspension Order – 12 months
Fitness to Practise:	Impaired
Outcome:	Striking-off Order to come into effect at the end of 26 July 2019 in accordance with Article 30 (1)

Service of notice of hearing

The panel was informed at the start of this hearing that Mrs Marima was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Mrs Marima on 14 May 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Mrs Marima registered address on 15 May 2019.

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 Mrs Marima. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

Mr Webb referred the panel to an email from Mrs Marima dated 5 June 2019 in which she stated:

“I am not coming as I have not been able to get all the things you require and I am happy for you to proceed...”

Mr Webb informed the panel that there had been no request for an adjournment by Mrs Marima and he invited the panel to proceed in her absence.

The panel considered all of the information before it, together with the submissions made by Mr Webb on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

The panel took into account the email from Mrs Marima dated 5 June 2019 in which she stated that she would not be attending and was happy for the hearing to proceed.

The panel was satisfied that Mrs Marima had been sent notice of today's hearing and that she was aware of it. The panel formed the view that she had chosen voluntarily to absent herself. The panel noted the contents of her emails dated 5 June 2019, it had no reason to believe that an adjournment would result in Mrs Marima's attendance. Having weighed the interests of Mrs Marima with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Marima's absence.

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 26 July 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of an order originally imposed by a panel of the Conduct and Competence Committee on 25 November 2013 for a period of 3 years. On 17 June 2016 the conditions of practice order was varied and extended for a further 12 months. On 20 June 2017 it was extended again and on 14 June 2018 it was replaced with a suspension order. The current suspension order is due to expire at the end of 26 July 2019.

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

At the substantive hearing of this case in June 2013, the panel found the following charges proved:

That you, a registered nurse, whilst employed as a staff nurse at Kettering General Hospital (“the Hospital”) between November 2008 and February 2010;

Misconduct

1. Failed to maintain acceptable levels of attendance and/or promptness in that you did not attend work at your scheduled start time or at all on one or more of the occasions set out in Schedule 1.

Lack of competence

During the period November 2008 to February 2010, during which you were given a period of supervision in or around April 2009, and/or were placed on supernumerary status on or around 5 May 2009, failed to demonstrate the

standards of knowledge, skill and judgment required to practise without supervision as a registered nurse in that you,

3. On or around 11 March 2009, during a period of approximately four hours in the accident and emergency department at the Hospital, failed to provide adequate care to Patient D in that you;
 - (a) did not undertake adequate observations.
 - (b) caused or permitted the door to the patient's room to be kept shut.
 - (c) failed to carry out an ECG.
 - (d) did not administer any pain relief.
 - (e) administered Clexane only after this was requested by the patient's daughter.

5. On or around 25 May 2009, in respect of Patient A, failed to adequately record in the drug chart the administration of
 - (a) Clopidogrel.
 - (b) Aspirin.

6. On or around 2 August 2009, whilst assigned to the observation bay, failed to undertake any adequate observations and/or record any adequate observations of;
 - (a) Patient C.

7. On or around 3 August 2009, in respect of Patient B
 - (a) failed to undertake adequate observations of the patient.
 - (b) falsely stated to Sister, Mrs 4, that you had undertaken observations of the patient.
 - (d) inappropriately made reference in the patient's notes to discussions between yourself and Sister, Mrs 4).

8. On or around 19 October 2009, after attending to an unknown patient with suspected swine flu, required prompting to
 - (a) wash your hands.

- (b) remove and/or dispose of your mask and/or apron and/or gloves.
- 9. Between around 07:00 and 10:00 on an unknown date in December 2009, failed to undertake adequate observations of an unknown elderly female patient.
- 10. During the night shift over 5-6 December 2009, in respect of Patient E, failed to obtain a Glasgow Coma Scale ("GCS") score for the patient.
- 11. On or around 5 Feb 2010, failed to note and/or act upon the deterioration in an unknown patient whose early warning score rose from 2 to 6.
- 12. On or around 9 February 2010, inappropriately asked an unknown patient to get out of bed to perform a standing blood pressure check.

AND, in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of charge(s) 1 - 2, and/or by reason of your lack of competence in respect of charge(s) 3 - 12.

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

This reviewing panel has considered carefully whether Mrs Marima'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 has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Richardson on behalf of the NMC.

Ms Richardson provided the panel with an overview of the history of this case. She referred the panel to Mrs Marima's email dated 12 June 2018 in which Mrs Marima stated she has not been able to complete the return to practice course yet. Ms Richardson informed the panel that there have been no changes to Mrs Marima's case. These allegations date back to 2009 and there has been little evidence that Mrs Marima has remediated her failings. Ms Richardson submitted that Mrs Marima has not provided any evidence of insight or remediation therefore her fitness to practice remains impaired.

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 Mrs Marima's fitness to practise remains impaired. In deciding this, the panel had careful regard to what, if anything, had changed since the original finding of impairment which might enable it to conclude that Mrs Marima's fitness to practise is no longer impaired.

The panel considered that Mrs Marima has not provided any evidence of remediation in relation to the initial findings concerning clinical competence. The panel had no information before it whether Mrs Marima is currently working in a healthcare role. The panel noted that Mrs Marima stated that she has been able to obtain a place at universities on two occasions however she has been unable to secure a clinical work placement and has therefore been unable to complete the return to practice course. In light of this information the panel concluded that Mrs Marima has not provided any evidence to demonstrate that she is now fit to practise as a nurse without restriction.

The panel therefore concluded that Mrs Marima's fitness to practise remains impaired by reason of lack of competence on the grounds of both public protection and in the public interest.

The third reviewing panel determined the following with regard to sanction:

Having found Mrs Marima's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel's 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 risk of repetition identified and the 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 but concluded that this would be inappropriate in view of the risk of repetition identified and the serious public protection issues in the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered continuing the current conditions of practice order. The panel has received no information as to Mrs Marima's current circumstances or evidence of her compliance with the conditions to which she is currently subject. The panel had regard to the fact that Mrs Marima has been subject to conditions since the substantive hearing in 2013 and has, by her own admission, been unable to comply with these conditions. The panel noted that Mrs Marima has had declining engagement over the course of these proceedings. The panel was of the view that no progress is being made by Mrs Marima with regard to her clinical practice, or with regard to remediating the deficiencies in accordance with the conditions of practice order. It determined that in the light of this, that a conditions of practice order is no longer appropriate or workable.

The panel next went on to consider a suspension order. The panel considered that a period of suspension would allow Mrs Marima time to reflect on her failings and take the necessary steps that would allow her to remediate her failings. It further considered that the imposition of a suspension order would send a message that compliance by a Registered Nurse with an order that has been imposed is required if that nurse wishes to work as a nurse in any capacity without restriction.

The panel concluded that a suspension order was the least restrictive sanction that would adequately protect the public and address the public interest in the case. It considered that a period of 12 months would allow Mrs Marima the appropriate time to address her failings, initiate remediation and properly re-engage with the NMC.

The panel gave serious consideration to a striking off order but considered it would be disproportionate at this time.

The panel considered that a future reviewing panel would have **all sanction** options (including striking-off) available to it, and would be assisted by:

- Mrs Marima's engagement and attendance at a future review hearing;
- evidence of Mrs Marima's reflection on these proceedings, demonstrating insight and a willingness to improve her practice;
- evidence of any training undertaken in the health care sector;
- evidence of any references and testimonials from any work undertaken whether paid or voluntary; and
- any evidence of or correspondence from any establishments providing a return to practice course.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 26 July 2018 in accordance with Article 30 (1) of the Order.

This decision will be confirmed to Mrs Marima in writing.

That concludes this determination.

Decision on current fitness to practise

The panel has considered carefully whether Mrs Marima'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 has had regard to all of the documentation before it and it has taken account of the submissions made by Mr Webb on behalf of the NMC.

Mr Webb outlined the background to Mrs Marima's case. He informed the panel that no new information had been made available to the NMC by Mrs Marima and there was therefore nothing to suggest that she no longer posed a risk to the public.

Mr Webb submitted that, in the absence of any new information, Mrs Marima's fitness to practise remains impaired on the grounds of public protection and the wider public interest. Mr Webb reminded the panel that Mrs Marima's substantive hearing was held in 2013 and she has been subject to some form of order since that time. He submitted that over the years since the substantive hearing Mrs Marima has failed to remediate the failings identified in her practice. Finally, Mr Webb noted that a striking-off order was available to the panel.

The panel heard and 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 Mrs Marima's fitness to practise remains impaired.

The panel considered that the findings made concerning Mrs Marima's practice indicated that she had breached fundamental tenets of the profession and put patients at unwarranted risk of harm. The panel bore in mind Mrs Marima's declining engagement over time and it was disappointed that there was no evidence before it of any remediation or willingness to remediate. It took into account that Mrs Marima had in the past, reportedly, twice secured a place at university on a return to practice course, and each time, subsequently been unable to take them up. The panel noted that these attempts had not led to the remediation of her practice.

The panel determined that Mrs Marima's insight remained extremely limited and this was indicated by the way in which she responded in her email dated 5 June 2019. Given the absence of any information, the panel formed the view that Mrs Marima has made no attempts to act upon the recommendations of the previous panel and made no attempts to develop her insight and remediate her misconduct. The panel was of the view that Mrs Marima's limited insight and historical attempts at remediation provided minimal mitigation at best. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was 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 also determined that, in this case, a finding of continuing impairment on public interest grounds is required.

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

Determination on sanction

Having found Mrs Marima'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 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 further action but concluded that this would be inappropriate in view of the risk identified. The panel decided that taking no further action would not protect the public.

The panel then considered whether to impose a caution order but concluded that this would be also inappropriate in view of the risk identified, and would also not protect the public.

The panel was of the view that Mrs Marima had in her misconduct and in her response to these proceedings demonstrated a poor professional attitude, which led the panel to conclude that a conditions of practice order would serve no useful purpose. The panel noted that Mrs Marima had been given conditions of practice and had not complied with the conditions and had gradually disengaged with these proceedings. This led the panel to conclude that a conditions of practice order would serve no useful purpose. The panel was not satisfied that Mrs Marima would be willing and able to comply with any further conditions imposed.

In regard to a suspension order, the panel accepted that this would protect the public. However, given the number of opportunities that Mrs Marima has had, she has consistently been unable to evidence any meaningful development in relation to her insight and remediation. The panel noted Mrs Marima's remarks in her email that: 'I am not ready as yet and will let you know if ever I am.' It considered that, at best, this statement demonstrated an unacceptable casual attitude towards these regulatory proceedings.

The panel concluded that Mrs Marima had been given sufficient time to begin the process of remedying her misconduct and it considered that a further period of suspension would serve no useful purpose.

Mrs Marima has not demonstrated insight or remediation into her failings. The panel was of the view that considerable evidence was required to show that Mrs Marima no longer posed a risk to the public. No such evidence was before the panel today. The panel concluded that the only sanction that would be appropriate, protect the public and serve the public interest was now that of a striking-off order.

This decision will be confirmed to Mrs Marima in writing.

That concludes this determination.