

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

Substantive Order Review Meeting

4 November 2019

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

Name of registrant: Peggy Mbuyazi

NMC PIN: 02B2351O

Part(s) of the register: RN1, Registered Nurse – (sub part 1)
Adult (26 February 2002)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Graham Park (Chair, lay member)
Tanya Tordoff (Registrant member)
Peter Swain (Lay member)

Legal Assessor: Jeremy Barnett

Panel Secretary: Kelly O'Brien

Order being reviewed: Suspension Order (6 months)

Outcome: Striking-off order to come into effect on 11
December 2019 in accordance with Article 30
(1)

Decision on Service of Notice of Meeting:

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* (the Rules) state:

***‘11A.(1)** Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health 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 letter of notice of this substantive meeting was sent to Ms Mbuyazi’s address on the register on 22 August 2019, and was collected and signed for on 23 August 2019 in the name of “Ely DO”. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that there has been no response from Ms Mbuyazi in relation to the notice of this meeting.

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

This is the second reviews of a suspension order originally imposed by a Fitness to Practise panel on 11 May 2018 for 12 months. At the first review on 20 April 2019, a Fitness to Practise panel imposed a suspension order for a period of 6 months. The current order is due to expire on 11 December 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:

1. *On the night shift of 20 to 21 May 2017;*
 - a) *Failed to undertake observations for one of more of the patients listed in Schedule 1.*
 - b) *Recorded that you had undertaken observations for one or more patients between 02:00 and 02:20 when you had not.*

2. *On the night shift of 21 to 22 May 2017;*
 - a) *Failed to undertake observations for one of more of the patients listed in Schedule 1.*
 - b) *Recorded that you had undertaken observations for one or more patients between 02:00 and 02:20 when you had not.*

3. *Your conduct in Charges 1(b) and 2(b), above, was dishonest in that you knew you had not conducted the observations recorded.*

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

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

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 Ms Mbuyazi's fitness to practise remains impaired. It considered that it had no information before it to indicate a material change in circumstances since the substantive panel made its finding. Ms Mbuyazi has not engaged with the NMC by any method of correspondence since before the substantive hearing in May 2018. This panel had no evidence before it of any attempts by Ms Mbuyazi to remediate her practice, undertake relevant training, or demonstrate insight into her misconduct and its impact on others. This panel was therefore not satisfied that Ms Mbuyazi has appropriately remediated her practice, such that her fitness to practise was no longer impaired.

For these reasons, the panel finds that Ms Mbuyazi's fitness to practise remains impaired, on grounds of both public protection and public interest.

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

The panel first considered whether to take no action and to allow the order to lapse upon its expiry but concluded that this would be inappropriate in view of the nature and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action. Such a sanction would neither adequately protect the public nor satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the nature and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order. Such a sanction would neither adequately protect the public nor satisfy the public interest.

The panel considered whether to impose a conditions of practice order, but concluded that it could not formulate appropriate, workable and practicable conditions in the circumstances of the case. The panel considered that conditions would not address the dishonesty aspect of Ms Mbuyazi's case, and took into account the fact that Ms Mbuyazi has provided no information to suggest that she has attempted to remediate her practice. In light of Ms Mbuyazi's non-engagement with the NMC, the panel was also not satisfied that she would engage with any conditions of practice order, even were it able to formulate appropriate conditions.

The panel considered the imposition of a further period of suspension. The panel noted that Ms Mbuyazi has previously and unsuccessfully applied for Voluntary Removal from the register and indicated that she does not want to continue her nursing career. The panel considered that a further period of suspension would adequately protect the public and address the public interest concerns in this case. Such a sanction would also provide Ms Mbuyazi with a further opportunity to re-engage with the NMC, demonstrate insight into her misconduct and remediation of her practice, and confirm her future plans with regards to nursing. Taking all of the above into account, the panel concluded that a further six month suspension order would be a sufficient and proportionate response in the circumstances of the case.

The panel gave serious consideration to whether a striking-off order would be appropriate in this case, but concluded that such a course of action would be disproportionate at this point in time. This panel noted that all sanction options are available to the future reviewing panel; it would be open to the future reviewing panel to consider whether a striking-off order would be the appropriate action in the circumstances of the case at that time, were Ms Mbuyazi to continue not to engage with the NMC or demonstrate any attempts at remediating her practice.

This panel was of the view that a future reviewing panel may be assisted by:

- *Ms Mbuyazi's engagement with the NMC, and attendance at any review hearing;*
- *A reflective piece addressing the impact that Ms Mbuyazi's dishonesty had on her patients, her colleagues and the reputation of the profession as a whole, as well as how she would act differently in the future; and*
- *Evidence that Ms Mbuyazi has maintained knowledge of her clinical practice and kept this up-to-date.*

Decision on current fitness to practise

The panel has considered carefully whether Ms Mbuyazi'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.

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 Ms Mbuyazi's fitness to practise remains impaired. The panel considered that it had no new information before it since the date of the last review. Ms Mbuyazi has not engaged. In these circumstances the panel considered that there has been no material change in circumstances since the substantive panel's decision in May 2018. Ms Mbuyazi has not provided any evidence of reflection or remediation in relation to the charges found proved. In these circumstances, the panel could not be satisfied that Ms Mbuyazi has sufficient insight or has remediated her practice, such as to address the risk of repetition.

For these reasons, the panel finds that Ms Mbuyazi's fitness to practise remains impaired, on grounds of both public protection and public interest.

Determination on sanction

Having found 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 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 public protection concerns in the case. The panel decided that it would be neither proportionate nor protect the public, nor would it be in the public interest to take no further action. The panel decided that a caution order would be inappropriate for the same reasons.

The panel considered whether to impose a conditions of practice order, but concluded that it could not formulate appropriate, workable and practicable conditions in the circumstances of the case. The panel considered that Ms Mbuyazi has provided no information to suggest that she has attempted to remediate her practice. The panel noted that dishonesty is difficult to remediate and in the absence of sufficient insight could not be dealt with properly by conditions of practice. In light of Ms Mbuyazi's non-engagement, the panel was not satisfied that she would engage with any conditions of practice order, even were it able to formulate appropriate conditions.

The panel next considered imposing a further suspension order. The panel noted that Ms Mbuyazi has not demonstrated any further insight into her previous failings since the date of the substantive hearing. The panel was of the view that further evidence would be required to show that Ms Mbuyazi no longer posed a risk to the public. The panel noted that Ms Mbuyazi had previously applied for voluntary removal from the register and that she had returned to her native country. Ms Mbuyazi has not shown any willingness to engage with the NMC or remediate her failings. In these circumstances,

the panel determined that a further period of suspension would not serve any useful purpose because there was nothing to suggest that this would result in Ms Mbuyazi engaging with the NMC. The panel determined that it was necessary to take action to prevent Ms Mbuyazi from practising in the future and concluded that the only sanction available in these circumstances that would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Ms Mbuyazi in writing.

That concludes this determination.