

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

**Substantive Order Review Hearing  
28 July 2020**

Virtual Hearing

**Name of registrant:** Alice Oduor Onginjo

**NMC PIN:** 98J0468E

**Part(s) of the register:** Registered Nurse – sub part 1  
Adult Nursing (6 October 2001)

V100: Community Practitioner Nurse Prescriber

V300: Nurse Independent/Supplementary  
Prescriber

Registered Specialist Comm Public Health Nurse  
School Nurse – 21 September 2012

**Area of registered address:** Milton Keynes

**Type of case:** Misconduct

**Panel members:** Eileen Skinner (Chair, Lay member)  
David Boyd (Lay member)  
Claire Clarke (Registrant member)

**Legal Assessor:** Charles Apthorp

**Panel Secretary:** Edmund Wylde

**Nursing and Midwifery Council:** Represented by Samantha Forsyth, Case  
Presenter

**Alice Odour Onginjo:** Not present and not represented

**Order being reviewed:** Conditions of practice order (12 months)

**Outcome:** Conditions of practice order (24 months) to come  
into effect at the end of 3 August 2020, in  
accordance with Article 30(1)

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mrs Onginjo was not in attendance and that the Notice of Hearing had been sent to Mrs Onginjo's registered email address on 29 June 2020.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Onginjo's representative at the Royal College of Nursing (RCN) on 29 June 2020.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mrs Onginjo's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Forsyth, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Onginjo has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Mrs Onginjo**

The panel next considered whether it should proceed in the absence of Mrs Onginjo. The panel had regard to Rule 21 and heard the submissions of Ms Forsyth who invited the panel to continue in the absence of Mrs Onginjo.

The panel had sight of the letter from Mrs Onginjo's representative at the Royal College of Nursing (RCN), dated 27 July 2020, which read as follows:

*Our member will not be attending the hearing nor will she be represented. No disrespect is intended by her non-attendance. Our member is not able to attend the hearing because her internet connection is very poor and, as such, she would be unable to participate fully in the hearing. Our member has received the notice of hearing and is happy for the hearing to proceed in her absence. She is keen to engage with the proceedings going forward.*

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Onginjo. In reaching this decision, the panel has considered the submissions of Ms Forsyth, the representations made on Mrs Onginjo's behalf in the letter from the RCN, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties.

The panel bore in mind that Mrs Onginjo's representative has indicated that she has received Notice of this hearing, and is happy for it to proceed in her absence. Mrs Onginjo's representative has also provided written submissions and supporting documentation. The panel was mindful that this order will expire at the end of 3 August 2020, and considered that it was not satisfied that an adjournment would secure Mrs Onginjo's attendance or serve any real purpose. The panel bore in mind the public interest in this substantive order being reviewed expeditiously and by an independent professional panel.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Onginjo.

### **Decision and reasons on review of the substantive order**

The panel decided to extend the current conditions of practice order for a period of 24 months.

This order will come into effect at the end of 3 August 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a conditions of practice order, originally imposed by a Fitness to Practise Committee panel on 4 October 2017 for a period of nine months. A Fitness to Practise Committee panel reviewing the order imposed a conditions of practice order for a further 12 months on 22 June 2018. A second reviewing panel imposed a conditions of practice order for a further 12 months on 27 June 2019. The current order is due to expire at the end of 3 August 2020.

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, whilst working as an Advanced Nursing Practitioner at Horsefair Surgery,*

- 1) *On 28 September 2016 during and/or following a consultation with Patient A you did not*
  - a) *Send Patient A’s urine sample for culture*
  - b) *Escalate concerns regarding Patient A to a General Practitioner*
  - c) *Conduct an abdominal examination*
- 2) *On 28 September 2016 you recorded that you preformed a physical examination of Patient A’s testes when you did not.*
- 3) *On 4 October 2016 you did not carry out a physical examination of Patient B*
- 4) *...*
- 5) *On 4 October 2016 during a consultation with Patient C you did not*
  - a) *Document that Patient C had chest pain*
  - b) *Carry out an electrocardiogram*

c) *Conduct a mental health assessment*

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

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

*The panel considered whether Mrs Onginjo’s fitness to practise remains impaired.*

*Regarding Mrs Onginjo’s insight, the panel had regard to her detailed reflective pieces and noted that she had further developed her insight. Mrs Onginjo has now taken into account the impact that her failings had on the patients in her care, on the colleagues that she worked alongside and also the impact that her actions would have on the public’s perception of the nursing profession. The panel did not consider that any further reflective piece was needed.*

*In its consideration of whether Mrs Onginjo has remedied her practice the panel took into account that Mrs Onginjo has not been working as a nurse and therefore has not been able to demonstrate that she has remediated her practice. The panel saw evidence of her attempts to gain employment as a nurse and the RCN detailed her tentative intention to undertake a return to practice course. The panel was of the view that Mrs Onginjo would be able to demonstrate her willingness to keep her knowledge and skills up to date by undertaking online training and reading nursing journals but it had not been provided with any evidence of this.*

*The last panel determined that Mrs Onginjo was liable to repeat matters of the kind found proved. This panel has not received any new information to enable it to make a different finding. In light of this the panel determined that Mrs Onginjo remains liable to repeat matters of the kind found proved. 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*

*determined that, in this case, a finding of continuing impairment on public interest grounds is required.*

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

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

*The panel first considered whether to impose a caution order 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 impose a caution order.*

*The panel next considered whether to make a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest. It noted, as the original panel did, that there was no evidence of general incompetence, no deep seated attitudinal problems and that conditions could be formulated which would protect patients during the period they are in force.*

*The panel considered that a suspension order would be disproportionate at this time as the concerns highlighted in this case are remediable. The panel was of the view that the only way Mrs Onginjo can remediate her practice is to work in a setting where she can demonstrate that the concerns have been addressed.*

*Accordingly, the panel determined, pursuant to Article 30(1) (b) of the Nursing and Midwifery Order 2001, to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order. It decided to impose the following varied conditions which it considered are appropriate and proportionate in this case:*

- 1) Whenever you are providing nursing services you must be supervised by a medical practitioner or a registered nurse. This person must work the same*

*shift/ session as you and must be physically present in the same clinical setting as you. They do not need to observe you directly.*

- 2) *You must work with the person supervising you (or someone they nominate) to create a personal development plan (PDP). This PDP must address the concerns about the following areas of your practice*
  - a) *Communication*
  - b) *Assessment skills*
  - c) *Investigations and diagnoses*
  - d) *Record keeping*
- 3) *You must send a copy of your PDP to the NMC within 28 days of taking up the nursing appointment to which it relates.*
- 4) *You must meet with the person supervising you (or someone they nominate) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your PDP.*
- 5) *You must send a report from the person supervising you (or someone they nominate) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC 14 days before any NMC review hearing or meeting.*
- 6) *If you accept any nursing appointment (whether paid or unpaid and whether in the UK or abroad) or begin any course of study connected with nursing or midwifery you must tell the NMC that you have done so. You must also give the NMC contact details for the person or organisation offering the appointment or course of study. You must do this within 14 days of accepting the appointment or beginning the course of study.*
- 7) *You must tell the NMC within 14 days of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*

- 8) *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (7) above, to them*
- a) *Any organisation or person employing, contracting with or using you to undertake nursing work*
- b) *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services*
- c) *Any prospective employer (at the time of application) where you are applying for any nursing appointment*
- d) *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).*

*The panel determined that a future panel would be assisted by the following:*

- *Mrs Onginjo's continued engagement with the NMC process and attendance at the next hearing either in person or by telephone;*
- *Up to date references and testimonials from line managers or supervisors, whether for unpaid or paid employment;*
- *Evidence of any training undertaken or other ways in which Mrs Onginjo has tried to keep her nursing skills and knowledge up to date.*

### **Decision and reasons on current impairment**

The panel has considered carefully whether Mrs Onginjo'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. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, which included a reflective piece, prepared for the previous review hearing, and evidence of job applications and enquiries in respect of Return to Practice courses - provided on your behalf. It has taken account of the submissions made by Ms Forsyth, on behalf of the NMC, and those made on your behalf in the letter from the RCN dated 27 July 2020.

Ms Forsyth informed the panel of the background to the case and invited its attention to the relevant documentation before it. She submitted that Mrs Onginjo has not been able to secure a nursing role and has been trying to secure a place on a Return to Practice course. Ms Forsyth reminded the panel that the Return to Practice course is not designed to remedy specific concerns in a nurse's practice and that it would be inappropriate to rely on such a course in place of a conditions of practice order; she further invited the panel not to impose a condition that Mrs Onginjo must undertake such a course, as to do so would be inappropriate.

Ms Forsyth made clear that Mrs Onginjo's registration has not lapsed, but continues to be live due to these proceedings and the current conditions of practice order. She submitted that, in this case, it would be inappropriate to allow the order to lapse as Mrs Onginjo has indicated an intention to return to nursing and therefore does not fall under the specific criteria identified by the relevant NMC guidance.

Ms Forsyth invited the panel to find that Ms Onginjo's fitness to practise remains currently impaired, as her misconduct has not yet been remedied and a risk of repetition remains live; Mrs Onginjo has not yet had the opportunity to work in a nursing role to demonstrate that she has remedied the deficiencies in her practice.

Ms Forsyth invited the panel to extend the current conditions of practice order and direct that a further review take place in due course to decide whether the order remains necessary. She reminded the panel that Mrs Onginjo's representative at the RCN has requested that the order be extended for the longest period possible (3 years); Ms Forsyth submitted that such a period of time may be too long, and that a 12 or 18 month order may be more appropriate to allow Mrs Onginjo an opportunity to complete a Return to Practice

course and obtain employment within a nursing setting, thereafter engaging with a conditions of practice order.

The panel also had regard to the letter dated 27 July 2020 from Mrs Onginjo's representatives. It read as follows:

*Since the last review of the order, our member has made efforts to undertake a return to nursing course, which she would like to do in order to develop her skills further. We enclose some evidence of her efforts and would like to inform the Panel that she is yet to hear back from some of the course providers whom she has approached.*

...

*In terms of insight, we invite the Panel to find that Mrs Onginjo has been on an upward trajectory since substantive hearing. She has engaged with these proceedings and battled her own self-doubt in resolving to return to nursing as a career. While a return to nursing is what she intends, her efforts to do a return to practice course have not been rewarded with an offer to join one yet. This set-back has made it difficult for her to find the extra resolve that she will need to obtain work and ultimately prove to a Panel that the concerns have been remediated in practice.*

*As an insightful practitioner, Mrs Onginjo's removal from the register would not be in the public interest. She is someone who has no criminal convictions and has never been referred to the NMC before or since the present referral. Presently, she is not in paid employment and so, regrettably, she is unable to provide the Panel with references commenting on recent performance. But she is planning to improve her skills by undertaking some further training and will send evidence of this to the NMC. This training is due to take place in the second week of August 2020.*

*As regards the conditions themselves, we say that they have not had a chance to apply, except in so far as they require Ms Onginjo to inform potential employers of the conditions, which the enclosed evidence confirms she is doing.*

*Our submission is that the conditions as they stand are appropriate, that they provide the required degree of public protection and uphold the public interest appropriately. We therefore invite the Panel to make a new order in similar terms for the longest period possible. A longer order would give Mrs Onginjo sufficient time to improve her skills and hopefully obtain work. Given that the pandemic is causing delays nationwide and making it difficult to do face to face training in some instances, it may be that an order whose length accounts for this is more appropriate. We submit that any more severe a sanction would have a disproportionately punitive effect, particular bearing in mind Mrs Onginjo's engagement, insight and efforts.*

*If the Panel is not minded to agree with our application, we respectfully request that the hearing be adjourned to the earliest available date so that enquiries can be made about whether our member's internet connection has improved, and so as to allow our member to attend and be represented. We look forward to hearing from you in due course.*

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 Onginjo's fitness to practise remains impaired.

Mrs Onginjo has not had the opportunity to engage with the current conditions of practice, as she has not obtained nursing employment or a place on a Return to Practice course; furthermore she has not provided any evidence of updated (classroom or online) training or reading, or references or testimonials from any paid or voluntary work. The panel bore in mind that Mrs Onginjo has not worked as a registered nurse since December 2016, and determined that there is no evidence before it that she has remediated her failings adequately. As such, a risk of repetition of her misconduct remains live.

The panel determined that, on the information before it, there has been no material change in circumstances of the case since the last review hearing.

The panel noted that, in the light of the lack of any evidence of remediation – such as training (online or otherwise), or work within a healthcare setting (paid or voluntary), the risk to patients has potentially been exacerbated due to the passage of time.

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

### **Decision and reasons on sanction**

Having found Mrs Onginjo'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 action or to impose a caution order but concluded that such courses of action would be inappropriate in the light of its finding of impairment on public protection grounds and the live risk of repetition; no order, or an order that does not restrict Mrs Onginjo's practice, would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel next considered whether imposing a further conditions of practice order on Mrs Onginjo's registration would still be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The current conditions of practice order would adequately protect patients and address the wider public interest in this case. It is clear from the documentation provided on Mrs Onginjo's behalf that she is attempting to take her nursing career forward and return to nursing practice, through her

attempts to seek employment and enrol in a Return to Practice course. The panel determined that an extension of the current conditions of practice order would be appropriate and proportionate; its terms are suitable and workable to protect the public sufficiently.

The panel was of the view that to impose a suspension order would be disproportionate in the circumstances of the case. It noted that Mrs Onginjo has had the opportunity to seek employment in a healthcare setting (in a non-nursing role, for example as a healthcare assistant) and undertake relevant training for a number of years since the imposition of the substantive order; Mrs Onginjo does not appear to have done so. However, it is also clear that she wishes to engage with the regulatory process with a view to returning to unrestricted practice. To impose a suspension order at this point in time would deprive Mrs Onginjo of the opportunity to attempt to remediate her practice in a clinical setting, be it on the Return to Practice course or in nursing employment.

The panel considered that a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Onginjo's case, at this point in time.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 24 months, which will come into effect on the expiry of the current order, namely at the end of 3 August 2020. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

*'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'*

- 1) Whenever you are providing nursing services you must be supervised by a medical practitioner or a registered nurse. This person must work the same shift/ session as you and must be physically present in the same clinical setting as you. They do not need to observe you directly.*

- 2) *You must work with the person supervising you (or someone they nominate) to create a personal development plan (PDP). This PDP must address the concerns about the following areas of your practice*
  - a) *Communication*
  - b) *Assessment skills*
  - c) *Investigations and diagnoses*
  - d) *Record keeping*
  
- 3) *You must send a copy of your PDP to the NMC within 28 days of taking up the nursing appointment to which it relates.*
  
- 4) *You must meet with the person supervising you (or someone they nominate) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your PDP.*
  
- 5) *You must send a report from the person supervising you (or someone they nominate) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC 14 days before any NMC review hearing or meeting.*
  
- 6) *If you accept any nursing appointment (whether paid or unpaid and whether in the UK or abroad) or begin any course of study connected with nursing or midwifery you must tell the NMC that you have done so. You must also give the NMC contact details for the person or organisation offering the appointment or course of study. You must do this within 14 days of accepting the appointment or beginning the course of study.*
  
- 7) *You must tell the NMC within 14 days of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
  
- 8) *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (7) above, to them*

- a) *Any organisation or person employing, contracting with or using you to undertake nursing work*
- b) *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services*
- c) *Any prospective employer (at the time of application) where you are applying for any nursing appointment*
- d) *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).*

The period of this order is for 24 months. The panel considered this to be an appropriate and proportionate period of time in which Mrs Onginjo may engage with a Return to Practice course and obtain nursing employment, such as to begin to remediate her practice.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 3 August 2020 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Onginjo has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

The panel noted that no references or testimonials (from voluntary or paid work) or evidence of training (online or otherwise) were provided on Mrs Onginjo's behalf for this panel's consideration. It reminded itself of the recommendations of the previous reviewing panel.

This panel noted that the next reviewing panel will have all options available to it in terms of sanction, including that of a striking off order. If there has been no material change of

circumstance by the time of the next review, it may well be that the next reviewing panel may find its collective judgement focused and narrowed in respect of which sanction is appropriate in the circumstances of the case.

The next reviewing panel will be assisted by the following:

- Mrs Onginjo's continued engagement with the NMC process and attendance at the next hearing either in person or by telephone;
- Up to date references and testimonials from line managers or supervisors, whether for unpaid or paid employment;
- Evidence of any training undertaken (online or otherwise) or other ways in which Mrs Onginjo has tried to keep her nursing skills and knowledge up to date.

This will be confirmed to Mrs Onginjo in writing.

That concludes this determination.