

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

**Substantive Meeting
Friday 23 October 2020**

Virtual Hearing

Name of registrant:	John Uwenluyi Osukporu
NMC PIN:	08G2100E
Part(s) of the register:	Registered Nurse – Sub Part 1 RNMH: Mental Health Nursing – 26 June 2009
Area of registered address:	West Midlands
Type of case:	Misconduct
Panel members:	Catrin Davies (Chair, lay member) Claire Clarke (Registrant member) David Boyd (Lay member)
Legal Assessor:	Marian Killen
Panel Secretary:	Catherine Acevedo
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Conditions of practice order (18 months)
Interim order:	Interim conditions of practice order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mr Osukporu was not in attendance and that the Notice of Meeting had been sent to Mr Osukporu's registered email address on 14 September 2020.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and venue of the meeting. The panel also noted that Mr Osukporu was invited to provide a response and was informed that he could request a hearing. No response has been received from Mr Osukporu.

The panel heard and accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Osukporu has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a Registered Nurse, employed at the Priory Woodbourne Hospital,

1. On the night of 15th to 16th September 2018:

- a. Placed your shoed foot on top of Patient A's bare foot*
- b. On one or more occasions, used inappropriate force and/or an inappropriate arm hold on Patient A*
- c. Placed patient A in a prone restraint.*

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

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence together with the video evidence and the representations made by the NMC.

The panel heard and accepted the advice of the legal assessor.

The panel bore in mind that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

Background

Mr Osukporu commenced employment with Priory Woodbourne Hospital having been placed by the Medbanks Nursing Agency as a Registered Mental Health Nurse. The referral in respect of this incident was made by the Director of Clinical Services at the Priory Woodbourne Hospital on 21 October 2018.

Mr Osukporu was employed on an eight bed Child and Adolescent Mental Health Service High Dependency Unit (the Unit) that caters for in-patients between the ages of 12 and 17 years. In England and Wales, any person under the age of 18 is classified as a minor and this guarantees them additional rights and protections. Patients at the Unit were therefore vulnerable not only by reason of their mental condition but also by age.

On an evening shift straddling 15 and 16 September 2018, Mr Osukporu and an Health Care Assistant (“HCA”) colleague were supervising a 17 year old female patient (Patient A) for whom aggression is part of her diagnosis and symptoms. Mr Osukporu would have been aware of this, having read and participated in handover notes and briefings. He would also have been aware that a primary staff concern was that the patient might harm herself or others.

The visually recorded footage in this case shows the HCA holding one of Patient A's arms (right) while Mr Osukporu is holding Patient A's left arm. Patient A is barefoot and repeatedly attempts to kick or make contact with Mr Osukporu's right leg. In order to prevent her doing so, he is seen to raise his foot to place it on top of Patient A's foot. Mr Osukporu has shoes on, Patient A does not.

The footage then shows Mr Osukporu pull Patient A's arm, before placing her face down on a soft sofa for a time. The HCA's perspective of the events is that Patient A had been calming down prior to her arm being pulled.

Mr Osukporu's account was that he was on average working 2 shifts per week. Patient A was being disruptive as a meeting that had taken place on the material date regarding whether she could be discharged had not gone as she had anticipated.

Patient A was known to be violent and prone to self-harming. Mr Osukporu raised concerns about staffing levels at the beginning of the shift. In particular he was concerned that only one of the HCAs working alongside him was trained in restraint.

Mr Osukporu denied that Patient A was calming before he pulled her arm three times. He recalls that she was incredibly aggressive, he was trying to pull her closer to him (as part of the recognised restraint) so that he could manoeuvre her onto the sofa. While attempting to do so, Patient A allegedly spat in his eye. The HCA who was trained in restraint was assisting but the other HCAs were not and remained in an office area, watching through the window.

In his undated written submission to the NMC, Mr Osukporu admitted that he did lower Patient A face down onto the sofa so that he could leave to wash his face. Mr Osukporu denied pushing her onto the sofa. He accepted that this was not a recognised restraint, but states that it was a reaction to the circumstances of the patient's aggression. He did not intend to harm Patient A and felt that the restraint was necessary.

There has been no response from Mr Osukporu in relation to any correspondence from the NMC, after 13 December 2019.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel then considered each of the disputed charges and made the following findings.

Charge 1a

On the night of 15th to 16th September 2018:

a. Placed your shoed foot on top of Patient A's bare foot

This charge is found proved.

In reaching this decision, the panel took into account the video footage of the incident. It noted that at 00:56 of the footage it appears that Mr Osukporu makes contact with Patient A's foot by placing his foot on top of her foot whilst wearing shoes. The panel did not consider that this was a deliberate attempt to harm Patient A but rather a misguided attempt to prevent her from kicking out.

Charge 1b

b. On one or more occasions, used inappropriate force and/or an inappropriate arm hold on Patient A

This charge is found proved.

In reaching this decision, the panel took into account the video footage of the incident. It noted that between the times 01:02 and 01.06, it appears that Mr Osukporu forcibly pulls Patient A's arm on five occasions. The panel concluded from the video footage that the force used by Mr Osukporu on Patient A was inappropriate.

Charge 1c

c. Placed patient A in a prone restraint.

This charge is found proved.

In reaching this decision, the panel took into account the video footage of the incident. The panel noted that the footage shows Mr Osukporu placing Patient A in a prone position. It considered whether this amounted to a prone restraint.

Patient A's resistant behaviour throughout the video footage both before and after being placed in the prone position, led the panel to conclude that Patient A did not adopt and maintain the prone position voluntarily.

The panel noted that Mr Osukporu maintained physical contact with Patient A's back and shoulders whilst she was in the prone position. Having viewed the footage, the panel was satisfied that Patient A was subjected to a prone restraint.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Osukporu's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Osukporu's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Mr Osukporu's actions amounted to misconduct. It is submitted that Mr Osukporu's actions can be properly characterised as a single incident of misconduct in the context of an otherwise unblemished career. He has no previous regulatory or disciplinary history and no similar incidents or incidents of any nature recorded in the 18 months since the incident forming the basis of the charge occurred. The NMC submitted that Mr Osukporu's actions also represent a departure from the principles of safe and supported clinical practice in the restraint and management of minor patients with a mental health condition. It is submitted that Mr Osukporu's conduct fell below the standards to be expected of nurses and a finding of misconduct must follow.

The NMC invited the panel to consider its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Osukporu's fitness to practise impaired. It was submitted that a finding of current impairment was required on the grounds of both public protection and public interest.

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.' The panel heard and accepted the advice of the legal assessor.

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mr Osukporu's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Osukporu's actions amounted to a breach of the Code. Specifically:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

4 Act in the best interests of people at all times

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Osukporu's actions represented a departure from the principles of safe and supported clinical practice in the restraint and management of minor patients with a mental health condition. The panel therefore found that Mr Osukporu's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Osukporu's fitness to practise is currently impaired. The panel considered the NMC Guidance on Impairment and heard and accepted the advice of the legal assessor.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and

the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...*

The panel found limbs a – c engaged in the *Grant* test. The panel found that Patient A was put at risk of physical and emotional harm as a result of Mr Osukporu's misconduct. It found that Mr Osukporu had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel noted that Mr Osukporu has not engaged with the NMC since December 2019. The panel had not received any information about whether Mr Osukporu has reflected on the incident or developed an understanding of how his actions put the patient at a risk of harm or how the incident has impacted on colleagues and the reputation of the nursing profession.

Although, the panel was satisfied that the misconduct in this case is capable of remediation, the panel noted there was no information, testimonials or references in relation to Mr Osukporu's current practice, or evidence of any training he has undertaken to remedy his practice.

In the absence of any evidence of insight or remediation, the panel is of the view that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 a finding of impairment on public interest grounds was also necessary.

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

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 18 months. The effect of this order is that Mr Osukporu's

name on the NMC register will show that he is subject to a conditions of practice order and anyone who enquires about his registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The NMC submitted that a caution order would be an appropriate disposal. A caution order would mark the seriousness of the allegation, provide Mr Osukporu with a warning that his conduct on this occasion should not be repeated, serve the public interest and declare and uphold standards within the professions.

The NMC submitted that a conditions of practice order would also be appropriate given the public protection risk inherent in Mr Osukporu's handling of a vulnerable patient.

Decision and reasons on sanction

Having found Mr Osukporu's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered that there were no aggravating features above and beyond the facts as set out which involved a vulnerable service user.

In terms of mitigation, the panel was told that Mr Osukporu has not been the subject of any previous regulatory proceedings.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Osukporu's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Osukporu's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Osukporu's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel had regard to the fact that Mr Osukporu's actions can be properly characterised as a single incident of misconduct. The panel took into account the NMC's submissions that Mr Osukporu has *"has no previous disciplinary history with any employer. He has not*

been the subject of any regulatory proceedings with the NMC prior. His actions, on the basis of his submissions, were not motivated by loss of control or temper and there appears to have been no malicious intent". The panel was of the view that it was in the public interest that, with appropriate safeguards, Mr Osukporu should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of Mr Osukporu's case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions 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. You must send your NMC case officer evidence that you have successfully completed training or updated training on the prevention and management of violence and aggression prior to any review hearing.*
- 2. You must produce a reflective piece using a recognised model (e.g. Gibbs) to demonstrate your learning from both the events of the night in question and the training completed. It should also consider the*

impact of your actions on patients, colleagues and the wider profession.

3. *You must keep the NMC informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*

4. *You must keep the NMC informed about anywhere you are studying by:*
 - a) *Telling your NMC case officer within seven days of accepting any course of study.*
 - b) *Giving your NMC case officer the name and contact details of the organisation offering that course of study.*

5. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*

6. *You must tell your NMC case officer, within seven days of your becoming aware of:*
 - a) *Any clinical incident you are involved in.*

- b) *Any investigation started against you.*
- c) *Any disciplinary proceedings taken against you.*

7. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

- a) *Any current or future employer.*
- b) *Any educational establishment.*
- c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for 18 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Osukporu 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.

Any future panel reviewing this case would be assisted by:

- Mr Osukporu's engagement and attendance at the review hearing
- Evidence of testimonials and character references from permanent employment and/or agency roles, preferably in a health care setting.
- Evidence of updated training records.

This decision will be confirmed to Mr Osukporu in writing.

Interim order

As the conditions of practice order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Osukporu's own interest until the conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC inviting the panel to impose an interim order for a period of 18 months.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months, to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Mr Osukporu is sent the decision of this hearing in writing.

That concludes this determination.