

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

**Substantive Order Review Meeting
9 June 2022**

Virtual Meeting

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 Community Public Health Nurse School Nurse – 21 September 2012
Relevant Location:	Milton Keynes
Type of case:	Misconduct
Panel members:	Andrew Harvey (Chair, Lay member) Terry Shipperley (Registrant member) Jane McLeod (Lay member)
Legal Assessor:	Andrew Granville-Stafford
Hearings Coordinator:	Roshani Wanigasinghe
Order being reviewed:	Conditions of practice order (24 months)
Outcome:	Striking off-order to come into effect on 3 August 2022 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Meeting

The panel considered whether notice of this meeting has been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”).

The panel noted that notice of this meeting was sent to Mrs Onginjo on 26 April 2022 to her email address on the register. The notice of meeting stated that Mrs Onginjo’s case would be considered at a meeting on or after 6 June 2022. This notice was also sent to Mrs Onginjo’s representative on 26 April 2022.

The panel took into account that the Notice of Meeting provided details of the review including the time, date and venue of the meeting.

The panel accepted the advice of the legal assessor.

The panel noted that under Rule 34, notice of a meeting can be sent to an email address the registrant has notified the Nursing and Midwifery Council (“NMC”) of for the purposes of communication. The panel received a signed statement confirming that notice had been served in accordance with this Rule.

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

Decision regarding proceeding to consider this case at a meeting

The panel noted that a letter was sent to Mrs Onginjo on 8 February 2022 informing her that her case would be reviewed at a meeting. She was told to let the NMC know within 14 days of the date of the letter if she wished for her case to be reviewed at a hearing.

Furthermore, within the notice of meeting sent to Mrs Onginjo on 8 February 2022, she was informed that her case would be heard at a meeting on or after 6 June 2022, unless she requested a hearing within 29 days of the date of the letter. Mrs Onginjo was also informed that if she wished to send any written response, she should do so as soon as

possible. The panel noted that there had been no response from Mrs Onginjo to either of these communications by the NMC, nor any from her representative. Mrs Onginjo had not requested a hearing and she did not appear to be engaging with the NMC. The panel did not have any information before it to suggest this case should be considered at a hearing. The panel therefore proceeded to consider this case at a 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 3 August 2022 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of a substantive 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 third reviewing panel imposed a further conditions of practice order for a further period of 24 months on 28 July 2020.

The current order is due to expire at the end of 3 August 2022.

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 third 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 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.”

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

“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.”*

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 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 Onginjo's fitness to practise remains impaired.

The panel noted that Mrs Onginjo has not engaged with her regulator since the last hearing, nor as far as it was aware, engaged with the current conditions of practice. It noted from the last panel's reasons that Mrs Onginjo had not obtained nursing employment or a place on a Return to Practice course; furthermore she had not provided any evidence of updated (classroom or online) training or reading, or references or testimonials from any paid or voluntary work. At that time, the previous panel noted that Mrs Onginjo had not worked as a registered nurse since December 2016, and determined that there was no evidence before it that she had remediated her failings adequately and as such, a risk of repetition of her misconduct remained live. This panel had no documentary evidence before it to suggest otherwise. There was nothing before the panel to suggest that since the last reviewing meeting, in July 2020, Mrs Onginjo has taken any steps to address the concerns identified in her nursing practice.

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 even further than at the last review hearing due to the passage of time.

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

The panel has borne 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Onginjo's fitness to practise remains impaired both on 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 a conditions of practice on Mrs Onginjo's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no workable conditions that could be formulated given the lack of evidence regarding Mrs Onginjo's compliance with the current conditions of practice order. The panel noted that Mrs Onginjo has not provided any new information addressing the concerns found in her practice. It noted that Mrs Onginjo has been subject to a conditions of practice order for over four and half years, since October 2017, without any progress. The panel therefore concluded that extending the current conditions of practice order would serve no useful purpose.

The panel next considered imposing a suspension order. The panel noted that Mrs Onginjo has not provided any evidence of remediation or insight into her clinical failings found proved. Mrs Onginjo has had over four and half years to address her failings and demonstrate that she is capable of safe and effective practice. Mrs Onginjo has not

demonstrated any insight during this time nor has she provided any evidence of remediation. Having regard to all of the above, the panel determined that a period of suspension would not serve any useful purpose and indeed would be contrary to the public interest in that, in the particular circumstances of this case, it would undermine public confidence in the profession and the regulatory process.

Mrs Onginjo has therefore shown a persistent lack of insight into her misconduct, its impact on patients and the profession and has not addressed any of the concerns raised by previous panels. This panel is of the view that such lack of engagement and increasing lack of insight is fundamentally incompatible with being a registered professional.

The panel therefore determined that it was necessary to take action to prevent Mrs Onginjo from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel therefore directs the registrar to strike Mrs Onginjo's name off the register.

This striking-off order will take effect upon the expiry of the current conditions of practice order, namely the end of 3 August 2022 in accordance with Article 30(1).

This will be confirmed to Mrs Onginjo in writing.

That concludes this determination.