

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Monday 14 March 2022, Monday 28 March 2022**

Virtual Hearing

Name of registrant: **Sazini Mavumisa**

NMC PIN: 13I6339E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – (September 2013)

Area of registered address: Wolverhampton

Type of case: Fraudulent/Incorrect entry

Panel members: Valerie Paterson (Chair, Lay member)
Anne-Marie Borneuf (Registrant member)
Sarah McAnulty (Lay member)

Legal Assessor: Michael Bell

Hearings Coordinator: Megan Winter (14 March 2022)
Charis Benefo (28 March 2022)

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case
Presenter

Ms Mavumisa: Present and represented by Zahra Ahmed,
instructed by Thompsons Solicitors

Facts proved: **Incorrect entry**

Outcome: **The panel directs the Registrar to remove Ms
Mavumisa’s entry from the register in
accordance with Article 26(7)**

Interim Order: **No order imposed**

Details of charge

That:

1. On your Notification of Practice form dated 29 August 2019, you did not indicate that you had received a conviction, when you had received conviction on 24 January 2019 at Black Country Magistrates' Court, for travelling in the county of West Midlands, on a railway, namely Cross Country, without having previously paid your fare of £17.30 and with intent to avoid payment contrary to section 5(3) (a) of the Regulation of Railways Act 1889.

And thereby an entry on Sub Part 1 of the Nursing and Midwifery Council (NMC) register in the name of Ms Sazini Mavumisa PIN 13I6339E was fraudulently procured and/or incorrectly made.

Background

The NMC commenced an investigation into your entry on the NMC register following an allegation that your entry was either fraudulently procured and/or incorrectly made.

In order to remain on the NMC register, a registered nurse or midwife is required to go through a revalidation and registration renewal process. Revalidation was introduced in April 2016. Nurses and midwives have to revalidate every three years to renew their registration.

You received a conviction on 24 January 2019 for travelling on Midlands Railway Line on 13 September 2018 '*without paying a fare and with intent to avoid payment*'. You were convicted '*in absence*' and given a financial penalty, to be paid by 21 February 2019.

The requirements for revalidation are:

- 450 practice hours in the last three years
- 35 hours of continuing professional development (CPD), including 20 hours of participatory learning
- Five pieces of practice-related feedback
- Five written reflective accounts
- Reflective discussion (with another NMC registered registrant)
- Health and character declaration
- Professional indemnity arrangement
- Confirmation (with another NMC registrant and/or Line Manager).

In accordance with the 'Revalidation Guidance' and in line with 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code), registrants are obliged to inform the NMC if they have been made subject to any criminal charges, cautions or convictions.

The NMC Code of Conduct states:

23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body

23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment

23.5 give your NMC Pin when any reasonable request for it is made'

You submitted an application to the NMC for Revalidation on 29 August 2019. You answered 'No' to the question as to whether you had received any police charges, cautions or convictions.

Admissions

At the outset of the hearing, you informed the panel that you accepted you were convicted in your absence of the offence as more fully set out in the following section of charge 1:

'1. On your Notification of Practice form dated 29 August 2019, you did not indicate that you had received a conviction, when you had received conviction on 24 January 2019 at Black Country Magistrates' Court, for travelling in the county of West Midlands, on a railway, namely Cross Country, without having previously paid your fare of £17.30 and with intent to avoid payment contrary to section 5(3) (a) of the Regulation of Railways Act 1889.'

The panel therefore noted the areas of the charge which you have accepted, by way of your admissions.

The panel then went on to consider whether your entry was fraudulently procured or incorrectly made.

Rule 19

During the course of the hearing, the legal assessor made an application that this case be held partly in private. This was on the basis that proper exploration of your case involves references to your personal circumstances. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Ahmed and Mr Kennedy both indicated that they were in support of the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel noted that there would be reference to your personal circumstances during the course of the proceedings. On this basis, the panel was satisfied that your case could be heard partly in private as and when such matters arose.

Submissions

In reaching its decisions on the disputed limb of the charge, 'fraudulently procured', the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Kennedy, on behalf of the NMC. It also took into account the submissions made by Ms Ahmed, on your behalf and submissions made by you under affirmation.

Mr Kennedy outlined the background to your case. He referred the panel to the NMC's Guidance on Fraudulent or Incorrect entry to the Register (the Guidance), it states:

'An allegation that an entry on the register has been fraudulently or incorrectly made goes to the very core of whether someone is actually entitled to practise as a nurse or midwife. It also raises genuine public protection concerns. For example, where an individual has been entered onto the register without the required approved qualification, they may lack the skills required to carry out their nursing or midwifery role and therefore pose a risk to patient safety.'

Mr Kennedy submitted that, on the balance of probabilities, the panel must make a decision as to whether your application was deliberately misleading or merely incorrect. He referred to the Guidance, namely paragraph 26 which states:

'Before taking any action, the IC must be satisfied on the balance of probabilities that an entry in the register has been fraudulently obtained or incorrectly made. In determining this question, the IC should have regard to the same factors set out at paragraphs 14 and 16–24.'

Mr Kennedy submitted that it is clear from your statement that you did not make your entry for revalidation based on the correct information. Furthermore, he submitted that the error has not been remedied.

Mr Kennedy submitted that it is not an immaterial or trivial matter to fail to disclose criminal convictions and that it cannot be said that there is no suggestion of fraudulent entry. He referred the panel to NMC's guidance relating to declarations and its guidance in relation to good character, it states:

'If you do need to declare any charges, cautions, convictions, conditional discharges or determinations you will need to keep evidence of these to provide us with further information.'

Mr Kennedy submitted that the NMC could do nothing more in terms of signposting you to your duty to declare your conviction.

You provided oral evidence under affirmation.

You told the panel that, at the time of the incident, you were working as a Nurse at Alexandra Hospital (the Hospital) in Redditch. You explained that [PRIVATE].

You told the panel that [PRIVATE]. You explained that, due to balancing work with your personal life, you often missed post as you did not open all of your letters.

You said that you always got off peak return tickets for your train. On the morning of the incident, you finished work between 07:10 and 07:30, you then sat and waited to catch an off peak train. You stated that you had worked a 13 hour shift, you set your alarm to wake you in time for the train due to arrive at 09:35. You said that, when the time came about that your train was supposed to arrive, another delayed train arrived instead which you got on without realising. You said that you were told by the ticket inspector that you would need to purchase another ticket, as this particular train was not off peak. You said you were traumatised and crying at what was happening and you declined to do so. You said that the inspector asked for your details and '*gave you a receipt*' but that you did not hear anything about the incident thereafter.

You said that, in July 2020, you received a letter from the Disclosure and Barring Service (DBS) and you obtained further information from the DBS in August 2020 including a copy of the conviction. You then sought advice and declared your conviction to the NMC and your employer.

Ms Ahmed submitted that you have been full and frank with the panel. Furthermore, she submitted that you have been open and honest when addressing that you did not declare your conviction when revalidating. Ms Ahmed submitted that, despite any discrepancies in the documentation provided, you have never wavered from this position.

Ms Ahmed submitted that the underlying seriousness in this case has been avoided by you through your self-referral. She submitted that there is no dispute in terms of the factual matrix of the charge, given that there is a copy of the conviction in the papers.

Ms Ahmed submitted that the panel can be satisfied that there is nothing to undermine your account of becoming aware of the existence of the conviction and that the disclosure has been made by you to the NMC.

Decision on fraudulently procured and/or incorrectly made entry

The panel went on to consider whether the entry on the NMC register was made fraudulently and/or incorrectly. The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities.

The panel had regard to the Guidance and accepted the advice of the legal assessor.

The Guidance states that:

'If our decision to register, renew or readmit someone onto the register was based on wrong or inaccurate information about whether the person met the relevant requirements, it is an incorrect entry. For example, if someone wrongly declared that they had carried out the required number of hours of registered practice because they made a mistake when calculating them, their entry in the register is incorrect.

[...]

An entry on the register is fraudulent if any of the information submitted as part of the registration, readmission or revalidation process was deliberately misleading about whether the person meets the relevant requirements.

[...]

It doesn't matter whether or not the person whose name was entered on the register was able to meet the relevant criteria to be successfully registered or if they are currently able to practise safely. The key issue is whether we made the entry based on deliberately misleading information.'

The panel bore in mind that it is for the NMC to prove on the balance of probabilities that you acted deliberately and dishonestly when you submitted your revalidation form.

The panel noted the areas of the charge which you have accepted, by way of your admissions.

The panel noted you to be of good character and took this into account when considering your credibility in relation to your responses as well as your lack of propensity to act fraudulently.

The panel gave significant weight to your oral evidence and the reasons you gave as to why you state that you were not aware of the conviction at the time of completing your revalidation form. It took into account [PRIVATE]. You were also struggling to balance your personal life.

The panel noted that, when you found out about the conviction, you contacted the DBS promptly for further information and, upon receipt of this, you contacted the NMC to inform them about your conviction. It considered that there is no information before it to suggest that you would not have taken similar actions if you had been aware of the conviction initially.

The panel concluded that you were not aware of the conviction and accepted your account that you are not aware of having received the Summons or conviction from the

Magistrate's Court administration. Consequently, it is not satisfied that you acted fraudulently when you submitted your revalidation form and did not declare it.

Therefore, the panel found that your entry on the Register was incorrectly made.

The hearing adjourned on 14 March 2022 due to insufficient time to conclude within the allocated time.

The hearing resumed on 28 March 2022.

Decision and reasons on direction

Having determined that you had incorrectly made an entry on the NMC's register, the panel went on to decide what direction, if any, to make under Article 26(7) of the 'Nursing and Midwifery Order 2001' (the Order).

Article 26(7) states:

'...If the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.'

Mr Kennedy submitted that it is a matter for the panel to decide whether revalidation was obtained appropriately, given the incorrect information was entered. He submitted that the correct approach for the panel to take would be to make an order for your entry to the register to be removed. Mr Kennedy submitted that the register would then be open for you to remake an application immediately, leaving the decision to the registrar.

Mr Kennedy submitted that it would not be appropriate for the panel to make no order, nor are there any suitable amendments which could be made.

Ms Ahmed submitted that it would be wholly disproportionate for the panel to direct the Registrar to remove your entry from the register, given that the panel made no finding of dishonesty.

Ms Ahmed submitted [PRIVATE]. She invited the panel to consider the impact that its direction may have on you.

Ms Ahmed submitted that the public interest in this case has been served by the mark on your record. Furthermore, she submitted that you now have a conviction due to being disorganised and have learnt a dear lesson at the expense on your character. Ms Ahmed invited the panel to take no further action.

The panel accepted the advice of the legal assessor.

The panel considered that, having found that your entry on the NMC register was incorrectly made, it would be inappropriate to take no action. The panel did not perceive the incorrect entry to be trivial or immaterial so as to justify taking no further action.

The panel noted that the information about your conviction has not yet been before the Registrar. The effect of this is that the Registrar has not had the opportunity to consider all the relevant information about your application, before making a decision about your entry remaining on the register.

Having regard to this, the panel decided that the only appropriate order is to direct the Registrar to remove your entry from the register. It noted that you will then be able to re-apply immediately and the Registrar will be able to make an informed judgement based on the fuller information before them.

You will be notified of the panel's decision in writing. You have the right to appeal the decision under Article 38 of the Order. This order cannot take effect until the end of the 28 day appeal period or, if an appeal is made, before the appeal has been concluded.

Decision and reasons on interim order

Having directed that the Registrar remove your entry from the register, the panel then considered whether an interim order was required under Article 26(11) of the Order, in relation to the appeal period.

The panel heard and accepted the legal assessor's advice.

The panel took account of the submissions made by Mr Kennedy. He invited the panel to make an interim suspension order for a period of 18 months. Mr Kennedy submitted that an interim order is in the public interest to protect the integrity of the register. He submitted that it would be inconsistent if you were allowed to practise during the 28 day appeal period, and, if an appeal were lodged, the time necessary for that appeal to be determined.

The panel also took into account the submissions of Ms Ahmed. She submitted that in the absence of any risk to the public, an interim order is not necessary or justified at this stage. Ms Ahmed submitted that there is no lack of competence, misconduct or risk of harm to patients that would justify the necessity of an interim order. [PRIVATE].

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

In reaching its decision on whether to impose an interim order, the panel had regard to the reasons set out in its decision on the facts and its decision to direct the Registrar to remove your entry from the Register. It also had regard to the Guidance. It noted that the imposition of an interim order is not an automatic outcome but is a matter for the panel's discretion in the circumstances of the case, having regard to the public interest in

maintaining the integrity of the register. It also had regard to Article 31 of the Order and the NMC's guidance on interim orders.

The panel noted that there was no information to suggest that there are concerns with your clinical practice, nor was there any suggestion that you pose a risk of harm to patients, colleagues and members of the public. The panel took into account the submissions made on your behalf during the NMC process. It also had regard to the character references which were supportive of your standard of practice as a nurse.

The panel considered that the bar for making an interim order on public interest grounds alone is high. It had regard to your account of the circumstances regarding your conviction and accepted that you were unaware of the conviction, and that the entry was made incorrectly. The panel determined that despite its substantive finding, a well-informed member of the public would not be seriously concerned if you were allowed to practise without restriction during the 28 day appeal period, before your entry is removed from the register. It concluded that allowing you to practise without restriction would not undermine public confidence in, or damage of the reputation of the nursing profession and the NMC as its regulator. The panel was not satisfied that the bar for making an interim order on public interest grounds alone has been met.

Accordingly, the panel determined not to impose an interim order.

That concludes this determination.