

Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Order Review Hearing
Wednesday, 8 November- Thursday, 9 November 2023

Virtual Hearing

Name of Registrant:	Agnes Olajumoke Abimbola
NMC PIN	98D0770E
Part(s) of the register:	Registered Nurse – Sub part 1 RNA: Adult Nursing – April 2001 RM: Midwifery – September 2006
Relevant Location:	Essex
Type of case:	Lack of competence
Panel members:	Patricia Richardson (Chair, Lay member) Susan Tokley (Registrant member) Lisa Lezama (Registrant member)
Legal Assessor:	Suzanne Palmer
Hearings Coordinator:	Maya Khan
Nursing and Midwifery Council:	Represented by Rowena Wisniewska, Case Presenter
Miss Abimbola:	Present and represented by Trisan Hyatt, Counsel
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Amended conditions of practice order (18 months) to come into effect on expiry of the current order in accordance with Article 30 (1)

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order and to extend it by 18 months.

This order will come into effect on expiry of the current order in accordance with Article 30 (1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a substantive order, originally imposed as a suspension order by a panel of the Conduct and Competence Committee on 27 June 2017 for 10 months. You lodged an appeal to the High Court of Justice in England pursuant to Article 38(1) of the Order by way of notice on 25 July 2017. The appeal was dismissed by consent on 11 October 2017. The order was reviewed on 4 July 2018, where the suspension order was extended for a further 6 months. The order was reviewed on 18 January 2019 and a conditions of practice order was imposed for a period of 18 months. The order was reviewed on 24 July 2020 and the conditions of practice order was extended further for a period of 18 months. The order was further reviewed on 3 February 2022 and the conditions of practice order was extended for a period of 12 months. The order was last reviewed on 21 December 2022 and the conditions of practice order was varied and extended for a further period of 12 months.

The current order is due to expire at the end of 20 December 2023.

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 employed by Barking, Havering and Redbridge University Hospitals NHS Trust between 17 November 2008 and 24 September 2015 failed to demonstrate the standard of knowledge, skill and judgement required for practice without supervision as a Midwife in that:

1) *On 2 April 2014 and in relation to Patient A you:*

- a) *At approximately 1535h, told the patient that she should only have natural pain relief or used words to that effect;*
- b) *Did not provide adequate pain relief when she said that she was in pain after the induction had commenced;*
- c) *Inappropriately advised Patient A and/ or her husband that they should try strong sexual intercourse to induce labour or words to that effect;*
- d) *Did not examine Patient A's sanitary towel when she told you that she was bleeding.*

2) ...

3) *In relation to mandatory training on dates between 2 and 4 September 2014 you:*

- a) *Did not pass mandatory training in drug calculation;*
- b) *Did not pass mandatory training in CTG interpretation;*
- c) *Demonstrated unsafe practice in neonatal resuscitation;*
- d) *Demonstrated unsafe practice in shoulder dystocia;*
- e) *Demonstrated unsafe practice in breech station.*

4) *During the night shift of 7th/ 8th September 2014 when providing care to Patient C you:*

- a) *Did not use a 'fresh eyes' approach to reviewing the CTG at or about:*
 - i) *2058h*
 - ii) *2243h*
 - iii) *2321h*
 - iv) *0025h*
 - v) *0121h*
- b) *Did not recognise a suspicious/ pathological CTG at or about:*
 - i) *2243h*
 - ii) *2321h*
 - iii) *0025h*
 - iv) *0121h*
- c) *Did not escalate concerns when Patient C's CTG was suspicious at or about 0135h;*

- d) ...
- 5) ...
- 6) ...
- 7) *On 20 October 2014 you failed an assessment in relation to neonatal resuscitation.*
- 8) *Between 20 October 2014 and 5 November 2014 you:*
 - a) *On one or more occasions, did not demonstrate that you were able to obtain sufficiently detailed information when interviewing clients;*
 - b) *On one or more occasions, did not demonstrate that you were able to cannulate clients correctly.*
- 9) *On 24 November 2014 you failed a breech assessment.*
- 10) *On 9 December 2014 you failed an assessment in relation to neonatal resuscitation.*
- 11) *On 10 August 2015 you:*
 - a) ...
 - b) *Documented information about the care of Patient V in another patient's notes.*
- 12) *On 11 August 2015 you:*
 - a) *When assessing Patient I's medical history, took the clinical notes away from the bedside and read them without consulting with Patient I.*
 - b) *When referring Patient I to an obstetrician, required prompting to include in the referral that Patient I had blurred vision.*
 - c) *Were unable to input data on the K2 and/or E3 systems in a timely manner.*
 - d) *Were unable to concisely document care that you had provided.*
 - e) *Had to be prompted to keep contemporaneous notes.*

- f) *Did not demonstrate a correct understanding of the "Pain" element of an "AVPU" score.*

13) *On 13 August 2015 you:*

- a) *Could not adequately explain the "RAG" system;*
- b) *Could not adequately explain the "SBAR" system;*
- c) *Could not adequately explain and/ or carry out an assessment of an AVPU score.*

14) *On 17 August 2015 you:*

- a) *Required prompting to palpate Patient Z's uterus;*
- b) *You took approximately four hours to input Patient Z's care data onto the computer system;*
- c) *Did not carry out a full abdominal and/ or vaginal examination of Patient AA prior to breaking her waters;*
- d) *Did not react when Patient AA's baby's heart rate began to drop;*
- e) *Did not press the emergency button when Ms 8 asked you to do so.*

15) *On 18 August 2015 in relation to Patient BB, you:*

- a) *On one or more occasions, when listening to her baby's heart rate, did not listen to the heart rate for a period of at least 1 minute;*
- b) *Did not know how to plot a Partogram on the K2 computer system;*
- c) *Did not identify a para-urethral tear and/ or escalate the para-urethral tear;*
- d) *Did not start suturing the vaginal tear one centimetre from the apex of the tear;*
- e) *Drew up a vitamin K injection and leant over the patient in bed to ask Ms 8 if the injection was drawn up correctly.*

16) *On 20 August 2015 in relation to Patient DD, you:*

- a) *Had to be prompted to complete an assessment the patient's CTG every hour;*
- b) *Could not explain why the patient's CTG was suspicious;*
- c) *Did not know the difference between atypical and typical decelerations;*
- d) *Made only sporadic checks for contractions;*

- e) *Did not communicate clearly when the patient should and should not push;*
- f) *...*

17) *On 24 August 2015 you referred Patient J a doctor when you had not looked at her GROW scan result.*

18) *On 25 August 2015 in relation to Patient K, you:*

- a) *Did not include her in discussions about the plan for her care;*
- b) *Required prompting to ask appropriate questions about her medical history;*
- c) *Required prompting to read the patient's notes when taking her medical history;*
- d) *Required prompting to be more specific when creating a plan of care.*

19) *On 27 August 2015, you:*

- a) *Did not ask questions about the per vaginum bleed that Patient L reported to you;*
- b) *Told Patient M that you would refer her to a doctor for Braxton Hicks contraction;*
- c) *Did not note that Patient N was on antihypertensive medication and/ or did not ensure that this information was included in the referral to a Doctor.*

20) *On 1 September 2015 you:*

- a) *Could not provide a plan of care to Patient EE;*
- b) *Attempted to give Patient EE more Morphine Sulphate than had been prescribed and/or attempted to administer 10mg of Morphine Suplhate intramuscularly when it was prescribed to be given intravenously.*

21) *On 2 September 2015 you did not recognise that Patient O had not had a urates test carried out and/ or did not arrange for the test to be performed.*

22) *On 3 September 2015 you:*

- a) *Had to be reminded to check Patient FF's CTG at the correct time on one or more occasions;*

- b) Reduced Patient FF's dose of Syntocinon to 3.99ml on the syringe driver when it should have been reduced to 3ml;*
- c) Did not do an abdominal palpitation on Patient FF prior to carrying out a vaginal examination;*
- d) Misinterpreted Patient FF's CTG as suspicious when it was normal;*

23) On 4 September 2015 you had to be prompted to:

- a) Read Patient P's clinical notes prior to handing over to the obstetrician*
- b) Read Patient Q's clinical notes prior to handing over to the obstetrician*
- c) Read Patient R's clinical notes prior to handing over to the obstetrician;*

24) On 9 September 2015 you failed a breech delivery assessment.

25) On 9 September 2015 you failed a shoulder dystocia assessment.

26) On 16 September 2015 you:

- a) Disposed of the probe cover for a tympanic probe in an inappropriate manner;*
- b) Did not check and/ or confirm that the heart rate of Patient T's baby had been monitored;*
- c) Did not look on the daily attendance record to see why Patient T had been referred to the Obstetric Assessment Unit.*

And in light of the facts set out above your fitness to practise is impaired by reason of your lack of competence.

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

'In its consideration of whether you have taken effective steps to strengthen your practice, the panel took into account that you have undertaken extensive training and noted the training certificates that you had provided to this panel. The panel also noted that you had attended study days sessions in your own time to develop and maintain your knowledge and skills. The panel considered that whilst it has

evidence of you demonstrating safe practice in your current role, which is in a midwifery environment, this is not in a midwifery role.

The panel took into account that you have not been able to comply with the current conditions of practice, but that this is not due to any resistance from your part but rather the lack of opportunity in terms of securing a role. The panel noted the positive character references before it as well as the oral evidence from Ms 1. The panel took into account that you have faced challenges in securing a midwifery role whilst having conditions on your practice, the need to protect the public, uphold the public interest and maintain public confidence in the profession outweighs the challenges you are facing at this time. It was of the view that the risk of harm is ongoing and has not been reduced to a level which would allow you to practise unrestricted. The panel therefore finds your current fitness to practise to be 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 your fitness to practise remains impaired.'

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

'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 accepted that you have been unable to comply with conditions of practice due to you finding it difficult to find employment because of the conditions currently on your practice. The panel noted, however, that you have been engaging with the NMC and that you are determined and keen to return to a midwifery role and the panel wanted to be able to assist you in this aim.

The panel noted that you have been completing regular annual training and assessments, which your employer has supported you in completing, have attended several unpaid study days of your own accord and have received positive references from those that you work with. The panel also considered that it had heard evidence from Ms 1 who spoke very positively of you and the challenges that you had faced in finding employment with your current conditions of practice.

The panel was mindful of the fact that, given the period of time you have been out of practice, it will be necessary for you to complete either a return to practice programme or a test of competency, before being allowed to return to work as a registered midwife. Both of these would involve physical assessment of the areas of concern with your practice as outlined in the charges found proved. This would, therefore, provide a level of protection for the public since you would not be able to return to practice as a midwife until deemed competent to do so. Thereafter, once employed as a midwife the panel considered a less restrictive, time-bound set of conditions would ensure you continue to practice safely and effectively.

The panel bore in mind its duty to balance the need to protect the public and the public interest with your interests. The panel determined that the current conditions of practice were preventing you from securing either a nursing or midwifery role, without which you cannot fully address the regulatory concerns identified. The panel noted that it is difficult for you to move forward under the current restrictions. The panel was of the view that whilst completing a return to practice course or test of competency will provide a level of protection for the public, it considered it necessary to ensure that you continue to practice safely and effectively when you return to practice as a midwife. The panel was of the view that it could formulate varied conditions of practice that would be sufficient to protect patients and the wider public interest and conditions could be formulated which would protect patients during the period they are in force.

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

Accordingly, the panel determined, pursuant to Article 30(2) to vary the conditions of practice order and extend it for a period of 12 months, which will come into immediate effect in accordance with Article 30(4)(e). 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. When you have completed a return to practice course and/or test of competency course and are able to secure employment, you must:
 - Have regular monthly meetings with your line manager*
 - Provide the NMC with a report every month from your line manager on your progress**
- 2. You must only work for a single substantive employer, which must not be an agency.*
- 3. You must keep us 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 us informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.**

- b) Giving your 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 employers you apply to for work (at the time of application).*
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

- 6. You must tell your 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'*

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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, including the NMC bundle, and the documents from you. It has taken account of the submissions made by Ms Wisniewska on behalf of the NMC and Ms Hyatt on your behalf.

Ms Wisniewska outlined to the panel the background to the case and referred it to the decisions and reasons of the previous reviewing panel. She submitted that you have provided a number of documents to the panel. This includes your CV, a number of one-page references dated 25 October 2023, 26 October 2023, 7 November 2023 and a duplicate reference dated 8 November 2023. You also provided a recommendation letter to the NMC for the conditions of practice order to be lifted and a letter describing your efforts to secure a clinical placement so that you can undertake return to practice training, and the difficulties you have encountered.

Ms Wisniewska informed the panel that you are currently working at the Queen Elizabeth Hospital in Lewisham as a Maternity Support Worker and therefore you have not been able to comply with the conditions of practice order.

Ms Wisniewska submitted that you have been experiencing difficulty in securing a place on a Return to Practice (RTP) course and clinical placement. She submitted that the NMC acknowledged your difficulties and referred the panel to an email dated 7 September 2023 from the NMC to you, informing you of alternatives to the RTP course such as a competency test. However, she told the panel that you have not pursued an alternative course such as a competence test and therefore you have not been able to comply with the current conditions of practice order.

Ms Wisniewska submitted that you have in the past provided some evidence of insight however there is no reflective piece before the panel today. She submitted that there is no evidence today of further training or that you have sufficiently strengthened your practice.

Ms Wisniewska submitted that your lack of competence put patients at risk of unwarranted harm, and that risk of harm continues today in the absence of evidence of sufficiently strengthened practice and you not having been able to complete a RTP course or an alternative competence test. She submitted that patients and members of the public would

be concerned to hear of a nurse or midwife being permitted to practice unrestricted in these circumstances.

In regards to the appropriate sanction, Ms Wisniewska submitted that in the current circumstances, it is not appropriate for the panel to take no action. She also submitted that a caution order would not be appropriate.

Ms Wisniewska informed the panel that it is open to it to make a striking off order today because despite this being a competence case, you have been continuously suspended or subject to conditions of practice order for more than two years immediately preceding the date of today's hearing, however this was not a positive submission being made by the NMC today. She submitted that the panel may find it appropriate to extend the current order in its identical terms for a period of one year, and that this remains necessary and proportionate in all the circumstances of the case.

Ms Hyatt invited the panel to revoke the current conditions of practice order.

In relation to there being no reflective piece before the panel today as submitted by Ms Wisniewska, Ms Hyatt submitted that you have produced a reflective piece every time you appeared before the NMC in the past. However, she told the panel that this year has been particularly difficult for you both professionally and personally, but you have continued to reflect on your shortcomings.

Ms Hyatt submitted that you are very keen to return to practice. She provided the panel with certificates which demonstrate that you have continued to engage in annual mandatory training such as skills and drills which included management of obstetric emergencies including shoulder dystocia, cord prolapse, vaginal breech delivery, antepartum, postpartum and massive obstetric haemorrhage and sepsis. She also provided a bundle of documents which had been available to the reviewing panel in December 2022, including training certificates and a reflective statement.

Ms Hyatt submitted that you have had an unblemished career of many years and you have worked successfully as both a nurse and midwife. She submitted that despite this setback in your career and not being able to find employment, you are satisfied with working as a maternity support worker and the references before the panel today attest to your positive practice.

Ms Hyatt submitted that you have not been able to secure employment and therefore you have not been able to demonstrate compliance with the conditions of practice order.

Ms Hyatt submitted that in September 2023, you attended a webinar relating to the test of competence where you were given the advice that completing a RTP course would be better suited to you at this time. She submitted that as part of that course, you will be in a clinical setting, there will be conditions in any event for supervision during that period and therefore it was not necessary for the NMC to impose further conditions of practice. Ms Hyatt submitted that you wish for the opportunity to return to the nursing and midwifery profession and it would be in the public interest to have a midwife with your experience return to the register.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel considered that the regulatory concerns in this case are remediable. They relate primarily to issues of clinical competence which are capable of being addressed through further training. The panel noted however that the concerns are numerous and wide ranging, involving a number of aspects of basic midwifery care, including record keeping, escalation of concerns and the monitoring of foetal wellbeing.

The panel next considered whether the concerns had been remedied. It took into account the new information before it today including positive references, training certificates and your efforts to complete other training. However, it noted that some of the training did not relate to the failings identified in your practice, some related to attendance of courses only instead of an assessment of your competencies. The panel noted that you have been unable to secure employment in a midwifery role and therefore there is no evidence of your training being embedded into practice. You have not been able to provide the panel with any evidence that you have complied with the conditions of practice order or that you are capable of safe and effective practice and have addressed the failings in your practice.

The panel bore in mind that you had demonstrated insight at previous review hearings and took the view that your insight is still developing. It was mindful that the reflective document provided in December 2022 demonstrated limited remorse and understanding about the impact of your actions on patients and the wider profession and no new evidence was available today to demonstrate further development of your insight.

In these circumstances, the panel considered that you remained liable to put patients at risk of harm. The panel considered that a risk of repetition was likely, and therefore determined that a finding of impairment remained necessary on the grounds of public protection.

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 practise. 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 your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 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 your 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 your identified lack of competence 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 a conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel was satisfied that the current conditions of practice order would be sufficient to protect patients from a risk of harm in the event that you complete the RTP course and would be sufficient to maintain confidence in the profession and uphold professional standards. It considered that a conditions of practice order would also provide you with the opportunity to address the identified concerns in your practice.

The panel did consider whether it could remove the conditions as requested by Ms Hyatt on your behalf. However, it considered that this would be inappropriate at this time. Bearing in mind the number and wide-ranging nature of the concerns identified, the panel considered that some level of monitoring of your progress was required even after you successfully complete a return to practice course. It noted that a number of potential providers of clinical placements have indicated to you that they are unable to offer you a place because of the conditions on your registration. However, the panel considered that the conditions were not onerous and were the minimum restriction required to protect the public from the risk of harm identified in this case. It considered that it was necessary to continue the conditions unvaried, save for removal of the reference to the test of competence course.

The panel considered that extending the conditions of practice order for a period of 18 months would give you sufficient time to continue with your efforts to secure a clinical placement and to apply for a place on an academic course commencing in 2024.

The panel considered whether a suspension order or a striking off order would be an appropriate order in your case but concluded that it would be disproportionate at this time as the concerns are remediable and you are continuing to engage and to attempt to secure training in order to remedy them. The panel was mindful that it cannot bind any

future reviewing panel's decision making but recognises that if you are unable to secure a place on a RTP course in the foreseeable future, the time may come when a future panel may consider that conditions of practice order may no longer be a workable option.

Accordingly, the panel determined, pursuant to Article 30(1), to impose a conditions of practice order for a period of 18 months from the expiry of the current order. The amended conditions are as follows:

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. When you have completed a return to practice course and are able to secure employment, you must:
 - Have regular monthly meetings with your line manager
 - Provide the NMC with a report every month from your line manager on your progress
2. You must only work for a single substantive employer, which must not be an agency.
3. You must keep us 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 us informed about anywhere you are studying by:
 - a. Telling your case officer within seven days of accepting any course of study.
 - b. Giving your 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 employers you apply to for work (at the time of application).
 - c. any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
6. You must tell your 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 panel decided to impose thus conditions of practice order, with a review, for a period of 18 months.

Before the order expires, a panel will hold a review hearing to see how well you have 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 with another order.

This will be confirmed to you in writing.