

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

**Substantive Order Review Hearing
Monday, 6 November 2023**

Virtual Hearing

Name of Registrant: Jeannette Makuete Gibson

NMC PIN 06D1008E

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nurse - December 2007

Relevant Location: Gloucestershire

Type of case: Misconduct

Panel members: Sarah Lowe (Chair, lay member)
Pauleen Pratt (Registrant member)
Nicola Hartley (Lay member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Jessie Miller

Nursing and Midwifery Council: Represented by Ed Carey, Case Presenter

Ms Gibson: Not present and unrepresented

Order being reviewed: Suspension order (3 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect on 13
December 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Gibson was not in attendance and that the Notice of Hearing had been sent to Ms Gibson's registered email address by secure email on 6 October 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Gibson's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Ms Gibson

The panel next considered whether it should proceed in the absence of Ms Gibson. The panel had regard to Rule 21 and heard the submissions of Mr Carey who invited the panel to continue in the absence of Ms Gibson. He submitted that Ms Gibson had voluntarily absented herself.

Mr Carey submitted that there had been limited engagement by Ms Gibson with the NMC in relation to these proceedings. In previous hearings, she has communicated that she is content for the hearing to proceed in her absence from the email address registered with the NMC. In this instance, she has not confirmed whether or not she would be in

attendance, despite requests made to her. Mr Carey submitted that there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Gibson. In reaching this decision, the panel has considered the submissions of Mr Carey and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Gibson;
- Ms Gibson has limited engagement with the NMC and has not responded to any of the requests relating to this hearing, including the most recent email sent on 17 October 2023;
- Ms Gibson has been content for the hearing to proceed on previous occasions;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Gibson.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a striking off order.

This order will come into effect at the end of 13 December 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed for a period of eight months by a Fitness to Practise Committee panel on 16 August 2022. This was

reviewed on 29 March 2023 when the order was extended for a period of four months and again on 10 August 2023 when the order was extended for a period of three months. The current order is due to expire at the end of 13 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, a Registered Nurse:

1) On 27 February 2019 you:

...

d) When caring for Patient E:

- i) you did not document how much of the unknown prescribed fluids were remaining before dispensing of the unknown prescribed fluids.*
- ii) You did not document when the unknown prescribed fluids were stopped.*
- iii) You wanted to administer a new bag of unknown prescribed fluids from an old prescription.*
- e) You administered Fragmin to Patient F before they were due to have the medication.*

2) On the 31 May 2019 you administered oral furosemide instead of intravenous furosemide to Patient A.

3) On the 27 June 2019 you;

- a) Failed to administer pain relief to Patient B when she requested pain relief on one or more occasions.*
- b) Communicated abruptly from the door when Patient B asked for pain relief*
- c) communicated to Patient B words to the effect of "you will have to wait for the next shift for your pain relief "*
- d) communicated to Patient B, when she asked for pain relief, words to the effect of "I can only do one thing at once "*

4) On the 13th August 2019 you:

...

b) *Did not use two bags of intravenous fluid for Patient G.*

...

5) *On the 13 August 2019 you refused to care for Patient H with clostridium difficile.*

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

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

'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 Ms Gibson's fitness to practise remains impaired.

The panel considered whether Ms Gibson's insight into the areas identified during the substantive panel had developed and whether she has taken any steps to strengthen her practice, since the last review meeting. Due to Ms Gibson's lack of engagement with the NMC, the panel has not received any information and/or evidence from her in order for it to determinate either her level of insight, or the efforts she has made to address the concerns identified regarding her practice. It therefore found that the only reasonable conclusion is that Ms Gibson's insight remains the same as determined by the last reviewing panel (that her insight was limited). In light of this, the panel also concluded that the risk of the proved misconduct in this case being repeated also remains.

The panel therefore decided that a finding of continuing impairment is 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 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 Ms Gibson's fitness to practise remains impaired.'

The second panel determined the following with regard to sanction:

'The panel considered the imposition of a further period of suspension. Although there has been no material change since the last review hearing due to Ms Gibson's lack of engagement with the NMC since the substantive hearing, the panel was of the view that a suspension order would allow Ms Gibson the time to seriously consider how she wishes to proceed forward in respect of her nursing career, and come to a decision on this. The panel therefore determined that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of three months. During this time, should Ms Gibson decide that she does wish to return to her nursing practice, she can use this opportunity to start working on developing her insight and strengthening her practice in the areas identified, and clearly evidence this at the next review of this substantive order.

Given the nature of the misconduct, and the distress and pain caused to a patient as a result, the panel were disappointed at Ms Gibson's lack of appreciation for the seriousness of this matter, and the detrimental impact her misconduct has had on the nursing profession. This is evidence by her lack of engagement with the NMC and unwillingness to

demonstrate that she is capable of returning to safe practice and remaining on the register. Whilst this panel did not feel that striking Ms Gibson off the register is the appropriate and proportionate response at this time, such an order will remain available to any future reviewing panel considering this case. Should there continue to be no development in Ms Gibson's case, which all depends on her level of engagement with the NMC, there is a real possibility of her being struck off the register if a future reviewing panel were to determine that this is the most appropriate response at that time.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 13 September 2023 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Gibson'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, including the NMC bundle. It has taken account of the submissions made by Mr Carey on behalf of the NMC.

Mr Carey briefly outlined the previous panel's decision.

Mr Carey submitted that there has been no material change in the circumstances before the panel today. He went on to state that there remains an impairment based on the same reasons previously found.

Mr Carey went on to state that the previous approach was to impose a suspension order upon Ms Gibson's practice to allow her time to review her actions and either take steps

towards remediation or show reflection into how her actions have impacted the public and the nursing community. He submitted that in previous determinations, it was outlined that if Ms Gibson continues to take no action to show that she understands the seriousness of her actions, the only reasonable outcome will be an eventual strike-off order.

Mr Carey submitted that Ms Gibson has been given four opportunities to demonstrate her insight and address the issues raised. He went on to state that she has not taken any of these opportunities and the panel now find themselves in a position to either extend the suspension order or make a striking-off order. He concluded by submitting that the most appropriate and proportionate response in the current circumstances is to make a striking off order.

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 Ms Gibson's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Ms Gibson had limited insight, as did the panel before it. The previous panel also reviewed what, if any, steps Ms Gibson had taken to strengthen her practice. It then assessed whether she would be liable to repeat her actions, based on these findings. Due to the lack of engagement and that no information has been submitted, it was unable to determine whether or not she had taken appropriate steps to remediate her actions.

The panel noted that there is no new information before it to demonstrate that Ms Gibson has taken any steps to remedy the concerns found proved. It remains of the view that these charges are not only serious, but multi-faceted and that her lack of insight and action show that there remains the same level of risk. It further determined that Ms Gibson is still liable to repeat matters of the kind found proved and therefore decided that a finding of continuing impairment is 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 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 Ms Gibson's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Gibson'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 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 lack of insight and engagement, an order that does not restrict Ms Gibson'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 Ms Gibson'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 a conditions of practice on Ms Gibson'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 bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public

interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Gibson's misconduct.

The panel noted previous information that Ms Gibson does not have any intention of returning to nursing. Her registration expired in August of 2021 and she has not renewed this. In view of Ms Gibson's apparent intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Ms Gibson has not shown remorse for her misconduct. Further, Ms Gibson has not demonstrated any insight into her previous failings, nor has she shown any reflection or remorse into the impact and distress her actions have caused her patient. The panel was of the view that considerable evidence would be required to show that Ms Gibson no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances, particularly given the lack of engagement with the Regulator and that no new information, reflection or training records have been received, despite clear direction from previous panels. The panel determined that it was necessary to take action to prevent Ms Gibson 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 13 December 2023 in accordance with Article 30(1).

This decision will be confirmed to Ms Gibson in writing.

That concludes this determination.