

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

**Substantive Order Review Hearing
Thursday 5 October 2023**

Virtual Hearing

Name of Registrant: Onyenuche Courage Amalime

NMC PIN 17J0805E

Part(s) of the register: Registered Nurse
Mental Health Nursing – 14 March 2018

Relevant Location: Milton Keynes

Type of case: Misconduct

Panel members: Museji Ahmed Takolia (Chair, Lay member)
Amanda Revill (Registrant member)
Helen Kitchen (Lay member)

Legal Assessor: Robin Hay

Hearings Coordinator: Claire Stevenson

Nursing and Midwifery Council: Represented by Terence Merck, Case Presenter

Mr Amalime: Present and not represented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension Order confirmed for the remaining period**

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order.

This is an early review at your request of the substantive order imposed on 12 April 2023. This review is being held because of a change in your circumstances.

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 12 April 2023.

The current order is due to expire at the end of 11 May 2024.

The panel is reviewing the order pursuant to Article 30(2) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order following a Consensual Panel Determination and stated:

‘ Mr Amalime admits the following charges:

That you, a registered nurse:

1) On 29 June 2021:

a) Punched Patient A;

b) Kicked Patient A; and

c) Failed to follow restraining techniques and procedure in accordance with the Trust’s policy.

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

The original panel determined the following with regard to impairment:

‘The panel then went on to consider whether Mr Amalime’s fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Amalime, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel had regard to the case of Grant and considered limbs a, b, and c to be engaged in this case. It determined that Mr Amalime had exposed a patient in his care to a significant risk of harm and he had acted in a way that would have brought the nursing profession into disrepute. Furthermore, Mr Amalime had breached fundamental tenets of the nursing profession.

In considering whether Mr Amalime has addressed the issues identified, the panel had regard to the factors set out in Cohen. It noted that, in principle, behavioural concerns are often more difficult to remediate than clinical issues, mainly because it could be indicative of a deep-seated attitudinal concern. However, the panel was aware that insight and remediation are key in considering attitudinal concerns, as it means a registrant will be less likely to repeat their failings if these factors are present.

In having regard to Mr Amalime’s reflections, the panel was satisfied that he had demonstrated a substantial amount of insight into his conduct.

The panel noted that Mr Amalime had stated in his reflective piece dated 26 August 2021, that:

“I want to state unequivocally that I sincerely apologise to the patient in question, to the professional body; NMC, and my employer. I also want to make it clear, that, I have no motive or intention to assault the patient or any patient in my care. I am well aware that my responsibility as a professional Nurse is to keep my patient safe, to protect, and safeguard them.”

Furthermore, Mr Amalime stated in his reflective piece submitted on 18 January 2023 that:

“I have no doubt I made a mistake by using inappropriate restrain technique to move him away from the door...”

I did not recall the details of the incident and my actions until I was helped to watch the CCTV footage. I have no doubt I made a mistake, and I overreacted by not exercising enough self control over my human impulsive and instinctive actions and behaviour. I saw myself in an involuntary reflex action punching and kicking patient A but with no particular motive, or plan to hit him so as to hurt him. I was like a man throwing punches in the air.

I accept that my behaviour falls short of the NMC standards and code of practice, and it is not what is expected of a professional Mental Health Nurse. I take full responsibility for my actions and behaviour.

I have from my statement of the incident admitted that I made a mistake, and unreservedly apologise. I am sincerely sorry...”

Whilst Mr Amalime attempted to rationalise some of his actions, the panel considered him to have recognised his shortcomings, and identified ways in which he will prevent his misconduct from reoccurring in future. Mr Amalime has shown an understanding of how his actions could have adversely impacted upon patient safety and has demonstrated sincere remorse for his conduct. He has apologised to Patient A, the NMC and the wider public for his actions.’

The original panel determined the following with regard to sanction:

- 1. ‘Whilst sanction is a matter for the panel’s independent professional judgement, the Parties agree that a 12-month suspension order with a review before expiry is the most appropriate and proportionate sanction.*
- 2. In reaching this agreement, the Parties considered the **NMC’s Sanctions Guidance**, bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the*

public and satisfy public interest. The panel should take into account the principle of proportionality and it is submitted that the proposed sanction is a proportionate one that balances the risk to public protection and the public interest with Mr Amalime's interests.

3. *The aggravating features of this case have been identified as follows:*

- a) Patient A was vulnerable and was accessing mental health services;*
- b) Conduct displayed which could put patients at the risk of suffering harm;*
- c) Failure to follow policy in relation to restraint;*
- d) Acted outside the scope of practice.*

4. *The mitigating features of this case have been identified as follows:*

- a) Showed some insight and remorse for his actions;*
- b) No previous concerns or referrals raised.*

5. *Considering each sanction in turn starting with the least restrictive:*

6. **Taking no action or a caution order** - *The NMC's guidance (SAN-3a and SAN-2b) states that it will be rare to take no action where there is a finding of current impairment and this is not one of those rare cases. The seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

7. **Conditions of Practice Order** - *The NMC's guidance (SAN-3c) states that a conditions of practice order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

- "no evidence of harmful deep-seated personality or attitudinal problems;*
- identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining;*

- *no evidence of general incompetence;*
- *potential and willingness to respond positively to retraining;*
- *the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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;*
- *conditions can be created that can be monitored and assessed.”*

8. *The nature of this misconduct is such that it seems unlikely that conditions on Mr Amalime’s practise would alleviate the concerns identified. Furthermore, the concerns are not clinical in nature, but raise concerns about Mr Amalime’s attitude.*

9. **Suspension Order** – *Allegations of physical assault on a patient in a nurse’s care would fall into the category of concerns that are difficult to put right. It clearly has the potential to harm patients and falls so far short of the expectations in the Code to treat patients with kindness and respect. Whilst it is acknowledged that the patient’s behaviours may have been challenging and the altercation wasn’t unprovoked, nurses are trained to deal with volatile situations, particularly those with mental health training and as such Mr Amalime should have acted in accordance with the requirements of his role as a registered, trained professional.*

10. *Additionally, nurses are expected to uphold professional values. In this case a vulnerable patient was physically assaulted by a nurse who was there to care for him, and the registrant’s actions would undermine the public’s trust and confidence in the nursing profession. The Parties agree that a suspension order is the only sanction that is appropriate and proportionate in the circumstances of this case.*

11. *This sanction would reflect the seriousness of the misconduct and send a message to the professions, that such behaviour is wholly unacceptable for a registered nurse. According to the NMC guidance (SAN-d), a suspension order would be most appropriate were the misconduct is not fundamentally incompatible with continuing registration. The overarching objective of public protection would*

be satisfied by a suspension order, and it would be in the public interest to impose a suspension order. As such, the Parties agree that a temporary removal from the register is sufficient to mark the seriousness of the misconduct and meet the wider public interest. A 12-month suspension order with review would allow Mr Amalime to demonstrate that he has completed training in restraint techniques.

12. *The Parties agree that a 12-month suspension order strikes a proportionate balance in meeting the wider public interest considerations and the interests and needs of the employer and Mr Amalime's patients.*

13. **Striking-Off Order** - *Whilst the misconduct raised fundamental questions about Mr Amalime's professionalism and behaviour, Mr Amalime has taken steps to address those questions by seeking to develop his insight. Since viewing the CCTV, Mr Amalime has continued to develop his insight and has worked towards ensuring that a similar incident should be unlikely to occur by identifying factors that led to him reacting in the manner he did. Mr Amalime's positive clinical record and support from his employer, highlights the public interest in keeping a clinically skilled nurse on the register. As such it is submitted that a striking-off order would be disproportionate in the circumstances.'*

Decision and reasons on current impairment

The panel first considered whether your 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 the documentation before it, including the NMC bundle, and your submissions. It has taken account of the submissions made by Mr Merck on behalf of the NMC.

Mr Merck asked the panel to confirm the suspension order. He took the panel through the background of the case and the reasoning of the previous determination on 12 April 2023. Mr Merck drew the Panel's attention to the agreement between the parties in a previous Consensual Panel Determination setting out the facts relating to the charges. They related to a single incident where you failed to follow restraining techniques and punched and kicked the patient in retaliation. He invited the panel to draw a distinction between, on the one hand, the registrant failing to follow restraining technique in removing a patient from blocking the door, which was less serious, and on the other hand, the registrant delivering a punch and kick against the patient in retaliation. The use of physical force in retaliation, albeit under provocation, was a far more serious matter raising concerns about self-control and is unlikely to be addressed by the certified courses that the registrant has since taken. Mr Merck submitted that this would require you to satisfy the panel that you now had the necessary self-control that would withstand the pressures and provocations that occasionally confront a nurse practising in mental health services with vulnerable patients.

Mr Merck submitted that the incidents are of a serious nature and such acts are liable to put patients at serious harm and bring the reputation of the professions into disrepute. He submitted that you were quick to admit the charges and to express remorse. However, your behaviour fell far below that of what is expected of a registered nurse. He submitted that you have shown some insight into your actions, have undertaken remediation, reflection and training, expressed sincere remorse and you have kept your nursing skills up to date as seen through your admissions. Mr Merck stated that although there are some new material circumstances, they are not such as to entirely address all of the risks. He stated that the incident involved a physical altercation with a vulnerable patient and resulted in physical harm. He submitted that the grounds of public protection and safety to patients is still engaged.

Mr Merck acknowledged that you have undertaken training and that is to your credit, but the NMC is concerned that should you find yourself in a similar situation you may not be able to refrain from retaliation. He submitted that a five-day training course on using the correct techniques does not address the central point on what you would do should you find yourself in a similar situation. He submitted that the certificate does not address exercising self control when provoked.

Mr Merck submitted that any lesser sanctions than confirming the suspension order would not be appropriate and that the panel should confirm the suspension order. He stated that if the panel was not with him on this, should a conditions of practice order be imposed it should devise conditions that would avoid interaction with vulnerable patients. He told the panel that it will be extremely difficult to formulate such conditions given the nature of mental health nursing. He submitted that the appropriate and least restrictive order remains confirming the suspension order.

You informed the panel that you have not asked for the early review to defend yourself, but to ask the panel to reconsider the suspension order. You stated you are not denying the charges, and deeply regret your actions and the impact it has had on your reputation, and that of the NMC. You stated the suspension order has had a devastating effect on both you and your family.

You stated you have learned and reflected on this incident, and you would never allow this to happen again in the future. You stated you did not know what went wrong but said perhaps it was because of what was going on, but the ward was locked down due to Covid 19 and tensions were high. You said you take full responsibility for your actions and behaviour. You recognise that as a trained mental health nurse you have a responsibility to control any inappropriate instinctive and compulsive reactions to provocation. You stated you have a responsibility to keep patients safe and must always act and exercise caution to ensure the public and family and friends have confidence that the hospital is a safe place.

You told the panel that you have attended a course and training in cognitive behavioural therapy and that this has allowed you to recognise being mindful of your instinctive behaviour and actions. This course has also empowered you to exercise self control of your emotions when dealing with challenging situations. You told the panel that in future you would call for help and escalate concerns to your senior staff when difficulties arise in managing and keeping patients safe.

You told the panel that you have also recently attended a course in risk management in the health and care sector. You stated that the course stressed that provocation is common in mental health and when this situation arises nurses should call for assistance

immediately. In future you would approach the same incident differently. You have learned that in risk management you must weigh your options and react accordingly.

You went on to say that because a patient was Covid 19 positive, the ward was locked down and the atmosphere was very tense. There were twenty-two patients on the ward who were suddenly locked up and they all wanted to go out for leave. You stated you did not want to escalate the situation by bringing other staff on to the ward. You stated that you did everything possible to help Patient A. You realised that he probably required additional medication and as you were leaving to see the doctor to ask for a prescription the incident happened. On reflection you now know this was a mistake and a moment of thoughtlessness. However since then, you have undertaken training to ensure this does not happen again.

You referred the panel to your letter dated 18 August 2023 which states:

'In addition to my earlier learnings in Cognitive Behavioural Therapy, and SEE, THINK, and ACT, a further learning in Safeguarding Vulnerable Adults and Children, Physical intervention and Therapeutic Management of Violence and Aggression, Risk Management in Health and Social Care, has no doubt enlightened me more in my role as a Nurse, to be more professional in my responsibilities, and to uphold dearly the NMC code of conduct always, so as to prevent such incident and behaviour from ever occurring again.

The consequences of the incident that led to this case has been a bitter experience in the last 2 years. It has no doubt impacted negatively on the socio-economic life of myself and my family, and I would never want any kind or such incident to ever happen again. Having gone through the above mentioned courses, I can assure the NMC that I will never behave like that again. As I mentioned earlier in one of my correspondence, my training in Mindfulness has equipped me with the skills to manage myself, thoughts and behaviour. The 5-day course in Physical intervention and Therapeutic Management of Violence and Aggression emphasised the breakaway technique when I am therefore appealing to the NMC Fitness to Practice to review the suspension order.

Caring for vulnerable people is the only thing I know how to do that gives me satisfaction, I am passionate about helping people that are unwell, and I do it compassionately.

I am not a risk to vulnerable people or members of the public. I have worked 11 years in the healthcare sector with no questionable character. I have again and again reflected on the incident that led to this case, in addition to my learnings, and I have come to the realisation that I would have done things differently to prevent the incident'.

In response to a panel question you stated that you have not been employed other than on a couple of shifts in warehouse work through an agency. In response to a panel question regarding what the impact of the incident has had on Patient A, you responded that you feel they would be affected emotionally and not reassured that they are in safe care. You went on to say that a member of the public would be alarmed, and the reputation of the profession would have been brought into question. You also stated that you think your colleagues would think that your behaviour was very unprofessional. You told the panel that you have apologised to management in writing because at that time you were being treated in Accident and Emergency for the injury to your eye. You stated that prior to this incident you had a good relationship with patient A which is why you thought to deal with him yourself rather than call other people in to assist.

In response to a panel question regarding the Cognitive Behavioural Therapy training you have undertaken you said it helped you understand that instead of trying to deal with the situation yourself you should have called for help. You said that you had been told to keep away from patient A and were aware that patient A had said that he was going to punch a member of staff and was trying to wind staff up. You stated that in the situation that presented itself you should have called for help instead of trying to get involved.

You submitted that the training has taught you how to control impulsive behaviour when under attack and shown you how you should have reacted in this situation. With regard to the certificate in physical intervention and therapeutic management you stated this emphasised the importance of the “*breakaway technique*”. Should such an incident occur in the future you would now run away and seek assistance or pull the emergency alarm.

You provided further details to the panel around the other training courses you had taken and the form they took.

In response to a panel question you stated that you have experienced injuries and violence from patients in the past approximately three times and confirmed you did not react in the way you did in this incident.

In response to a panel question Mr Merck submitted, having heard your oral representation, that your explanations of your training and support in relation to self-control were relevant and appropriately taken into account by the panel.

The panel accepted the advice of the legal assessor.

The panel also had regard to your submissions.

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 noted that the original panel found that your insight was still developing.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your engagement with the NMC proceedings, your reflection and the impact your actions would have on the patient and the steps you are taking to strengthen your practice through training.

In its consideration of whether you have remedied your practice, the panel took into account the training you have undertaken and your reflections including your letter of 18 August 2023. Despite this the panel concluded that your insight is still developing, and that further insight and reflection is necessary. The panel concluded you had demonstrated insufficient insight into the impact of your actions on patient A, your colleagues, and the wider profession. The panel determined that as you have stated you are unable to fully

explain why you reacted the way you did in the incident, a risk of repetition remains. The panel determined that there is still a risk of harm to the public and a finding of impairment remains 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 required.

For the reason of facts these facts and those found at the original hearing, 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 panel next considered whether a conditions of practice order 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 raised

by your current level of insight and your being unable to account for why your conduct occurred and the risk of repetition that this presents. It therefore concluded that the risks have not yet been adequately addressed.

The panel therefore considered whether to confirm the existing suspension order. It concluded to do so would allow you further time to fully reflect more deeply, particularly from the patient's perspective on your insight into the impact this incident had on the patient and your colleagues. This would also allow you time to gain a full understanding of how the actions of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. It therefore concluded that to confirm the suspension order would be the appropriate and proportionate response.

The panel determined that confirmation of the existing suspension order would continue both to protect the public and satisfy the wider public interest.

The panel did consider a striking-off order as a sanction but concluded that this would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- References from any employment or voluntary work you undertake;
- A more detailed reflective piece on the following:
 - why the incident occurred and your reaction;
 - the impact of your actions on the patient, the public, your colleagues and the wider profession; and
- Your attendance at the next review hearing.

This will be confirmed to you in writing.

That concludes this determination.