

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

**Substantive Order Review Hearing
Monday, 25 September 2023**

Virtual Hearing

Name of Registrant: **Elita Matri Sibanda**

NMC PIN 08B0338E

Part(s) of the register: Registered Adult Nurse – Sub Part 1(25 November 2008)

Relevant Location: Barnet

Type of case: Misconduct

Panel members: Tanveer Rakhim (Chair, Lay member)
Sally Ann Underwood (Registrant member)
Mary Golden (Registrant member)

Legal Assessor: Graeme Dalgleish

Hearings Coordinator: Maya Khan

Nursing and Midwifery Council: Represented by Zainab Mohamed, Case Presenter

Ms Sibanda Not present and not represented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (9 months) to come into effect on 8 October 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 Sibanda was not in attendance and that the Notice of Hearing had been sent to Ms Sibanda's registered email address by secure email on 7 September 2023. The panel had regard to the email evidence and the signed witness statement from an NMC case officer confirming this.

Ms Mohamed, 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 in relation to service. He informed the panel that although there has not been a 28 days' notice period, Ms Sibanda has explicitly responded to the notice of hearing indicating she is aware of this hearing today.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date, link to the hearing and, amongst other things, information about Ms Sibanda's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Ms Sibanda 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 Sibanda

The panel next considered whether it should proceed in the absence of Ms Sibanda. The panel had regard to Rule 21 and heard the submissions of Ms Mohamed who invited the panel to continue in the absence of Ms Sibanda.

Ms Mohamed then referred the panel to the email from the Hearings Coordinator's email dated 22 September 2023 enclosing the link and details of joining the hearing. Ms Sibanda replied to this email stating:

'In reference to the above hearing I would like emphasise that I am happy with the panel proceeding in my absence'

Ms Mohamed submitted that Ms Sibanda has voluntarily absented herself from today's proceedings, and that it would be in the interest of justice to proceed with the hearing today as intended.

The panel accepted the advice of the legal assessor who referred it to the guidance in *Adeogba v GMC* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Ms Sibanda. In reaching this decision, the panel has considered the submissions of Ms Mohamed, the email from Ms Sibanda, 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:

- Ms Sibanda confirmed with the NMC that she received the Notice of Hearing for today's proceedings;
- Ms Sibanda has said she is happy for the panel to proceed in her absence;
- Ms Sibanda did not provide reasons for her non attendance today;
- Ms Sibanda's review hearing on 4 September 2023 was adjourned previously at her request and the date of this hearing was subsequently confirmed with her;
- a further adjournment of today's proceeding will not guarantee Ms Sibanda's attendance at some future date; and
- there is a strong public interest in the expeditious mandatory review of the case.

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

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for a period of 9 months.

This order will come into effect at the end of 8 October 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second effective review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 10 March 2022. The first review took place on 28 February 2023 where the suspension order was confirmed. The second review was adjourned on 4 September 2022.

The current order is due to expire at the end of 8 October 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 5 April 2019, did not administer Amoxicillin 250mg capsules to Resident A as prescribed at:*

a) *08:00, [PROVED BY ADMISSION]*

b) *15:30. [PROVED BY ADMISSION]*

2) *On or around 6 April 2019:*

a) *Retrospectively recorded "O + D" on Resident A's MAR chart for the following entries:*

i) *5 April 2019 at 08:00, [FOUND PROVED]*

ii) *5 April 2019 at 15:30; [FOUND PROVED]*

b) *Retrospectively recorded medication stock running totals on Resident A's MAR chart to read:*

i) *"12" for 5 April 2019 at 08:00, [FOUND PROVED]*

ii) "11" for 5 April 2019 at 15:30; [FOUND PROVED]

c) Retrospectively record on the reverse of the MAR chart:

i) "05/04/2019 08:00 Amoxicillin 250mg cap not taken, patient having difficult [sic] to swallow capsule", [FOUND PROVED]

ii) "05/04/2019 15:30 Amoxicillin 250mg caps not taken, patient having difficult [sic] to swallow capsule"; [FOUND PROVED]

d) Did not record that the amendments mentioned in the following charges were made retrospectively:

i) Charges 2(a), [FOUND PROVED]

ii) Charges 2(b), [FOUND PROVED]

iii) Charges 2(c); [FOUND PROVED]

e) Amended the stock running total for colleague B's entry on 5 April 2019 at 22:00 from "12" to "10"; [FOUND PROVED]

f) Did not indicate on the MAR that you amended the record as set out in charge 2(e). [FOUND PROVED]

3) Your actions in charge 2 above were dishonest in that you intended to create the impression that you had correctly recorded your omissions to administer Resident A's medication when you had not. [FOUND PROVED]

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

The first reviewing panel decided the following with regard to impairment:

'At this hearing, the panel noted your submissions and acknowledged that you have demonstrated some level of understanding of how your actions put the patient at a risk of harm and how this impacted negatively on your colleagues trust in you.

When questioned during the course of this hearing about how you would handle the situation differently in the future, you were able to provide some information, but the

panel determined that the information you provided did not sufficiently address the regulatory concerns in your case. For example, you did not elaborate on what actions outside of informing the manager you would take if faced with the same situation. The panel identified an ongoing risk to patient safety with regard to this aspect of your practice.

In its consideration of whether you had taken steps to strengthen your practice, the panel considered your submission regarding the courses you undertook in relation to patient care and also acknowledged your submissions regarding transparency. However, the panel noted that it had not seen these certificates. Furthermore, you did not explain how your training would be used to strengthen your practice and address the regulatory concerns.

The panel was encouraged by your developing insight and has acknowledged your engagement with the NMC including your verbal reflection. The panel also acknowledged your commitment to supporting and making lives better for people alongside your commitment to nursing. However, the panel decided that your insight was not focused sufficiently on the regulatory concerns.

The panel noted your submission that trust in the nursing profession is important, but the panel determined that you have not been able to sufficiently apply your learning to the concerns in this case. The panel was concerned that you have not yet reflected on the wider impact of your actions on your colleagues and the public's confidence in the nursing profession. In light of this, the panel determined that the risk of repetition remains high. Therefore, the panel determined 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 a fully informed member of the public would be concerned if they knew that a nurse found impaired on grounds of public protection would be allowed to practise without restriction. Therefore, the panel determined that 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 first reviewing panel decided the following with regard to sanction:

'The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings and gather any evidence that you wish to put before a future panel. The panel concluded that a further 6 months suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice. This would also give you an opportunity to approach colleagues for further testimonials that attest to your honesty, integrity and skills in the workplace whether paid or unpaid.

The panel determined therefore 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 the period of 6 months.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 8 April 2023 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Sibanda'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 had regard to all of the documentation before it, including the NMC bundle and Ms Sibanda's bundle enclosing her reflective statement, positive testimonials and training completed. It has taken account of the submissions made by Ms Mohamed.

Ms Mohamed outlined the background of this case and the outcome of the previous hearing.

Ms Mohamed referred the panel to the new information before it today from Ms Sibanda which was a bundle including:

- a reflective statement;
- a training certificate; and
- positive testimonials.

Ms Mohamed submitted that Ms Sibanda's reflective statement has not sufficiently addressed the concerns of the previous panel.

Ms Mohamed told the panel that Ms Sibanda has not provided any evidence of remediation and in light of the very limited insight there remains a risk of repetition of the behaviour found proved. Ms Mohamed submitted that, as there has been no material change in circumstances, Ms Sibanda remains impaired and is not suitable to practise unrestricted.

Ms Mohamed submitted that the panel may wish to extend the suspension order in order to allow Ms Sibanda sufficient time to demonstrate full insight, remedy the deficiencies in her practice, and provide evidence of her ability to practise safely and effectively as a nurse to a future panel.

The panel accepted the advice of the legal assessor who referred it to the NMC Guidance on Fitness to Practise, the Guidance in *CHRE v NMC Grant* [2011] EWHC 927 (Admin), and to the Sanctions Guidance (SG) issued by the NMC.

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 practice.

The panel considered whether Ms Sibanda's fitness to practise remains impaired. The panel noted the bundle provided by Ms Sibanda including a reflective statement, a training certificate and positive testimonials.

In relation to the reflective statement, the panel was mindful that Ms Sibanda had not addressed her dishonesty and she continued to blame her clinical failings on her workload. Although Ms Sibanda had addressed each of the failings in turn, there was little substance or detail regarding her failings, what she had learnt over the past six months and how she will ensure safe practice going forward. It concluded that Ms Sibanda had limited insight about how her actions impacted on patients and the wider profession.

In relation to the training certificate, the panel noted that the one-day training completed did not relate to the regulatory concerns found in Ms Sibanda's practice. The certificate had space for reflection on what was learnt on the day and changes to be made in light of that training, but this was blank. The panel did not have before it sufficient evidence that demonstrates strengthening of Ms Sibanda's practice.

In relation to the positive testimonials, the panel was mindful that the written testimonials were from friends and from people at Ms Sibanda's church rather than people who knew her in a professional capacity. It noted that it is not clear whether the authors of the testimonials are aware of the nature of the regulatory findings against Ms Sibanda.

In relation to Ms Sibanda's current volunteering, the panel noted the written reference from Global Challenge Investments (Pvt) Ltd dated 20 September 2023 which stated:

'We write to confirm that that Mrs Elita Sibanda has been undertaking voluntary work on a weekly basis covering up to 20 hours weekly. She has been volunteering in our Healthcare Services Department. We have found Mrs Elita Sibanda to be honest and trustworthy. She has been very dependable on the issues and tasks that needed attention.

We would recommend her to any organisation...'

The panel acknowledged Ms Sibanda's efforts in volunteering however it had no information about what exactly her role entails and whether it is in a clinical setting or an administrative role.

In light of Ms Sibanda's failure to demonstrate improved insight or strengthening of the failings found in her practice, the panel decided that there remains a real risk of repetition of the misconduct found proved.

For these reasons, the panel finds that Ms Sibanda's fitness to practise remains impaired on public protection grounds. The panel also found that Ms Sibanda's fitness to practise remains impaired on public interest grounds and that a finding of impairment was required to protect standards and maintain public confidence in the profession.

Decision and reasons on sanction

Having found Ms Sibanda'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 not protect the public and would be inappropriate. 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 public protection issues identified, an order that does not restrict Ms Sibanda's practice would not be appropriate in the circumstances. 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 order on Ms Sibanda'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 risk of repetition of the conduct found proved and in light of Ms Sibanda's limited insight and the absence of evidence demonstrating that she has sufficiently addressed the regulatory concerns found, it concluded that it could not formulate workable conditions that would adequately protect the public at this time.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Sibanda further time to demonstrate that she has fully accepted and fully reflected on her previous failings and gather further evidence that she has strengthened her practice. The panel concluded that a further 9 months suspension order would be the appropriate and proportionate response and would afford

Ms Sibanda adequate time to further develop her insight, hopefully find work in a clinical setting and take steps to strengthen her practice.

The panel determined therefore 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 the period of 9 months.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 8 October 2023 in accordance with Article 30(1).

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:

- Ms Sibanda's attendance at the next review hearing.
- A further reflective statement demonstrating full insight into her failings and dishonesty, details of lessons learnt and how Ms Sibanda would ensure safe, knowledgeable, professional and honest future practice.
- Professional references ideally from paid or unpaid work in a clinical setting.
- Training Certificates and course content relating to the regulatory concerns including honesty and integrity.

This will be confirmed to Ms Sibanda in writing.

That concludes this determination.