

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

**Substantive Order Review Meeting
Wednesday 3 April 2024**

Virtual Meeting

Name of Registrant: Jane Waeni Muthoka

NMC PIN 70H1127E

Part(s) of the register: Sub Part 1, Adult Nurse, Level 1 (22 September 1980)

Relevant Location: Wales

Type of case: Misconduct

Panel members: Pamela Johal (Chair, Lay member)
Claire Martin (Registrant member)
Robert Marshall (Lay member)

Legal Assessor: Paul Hester

Hearings Coordinator: Zahra Khan

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 6 May 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Muthoka's registered email address by secure email on 13 February 2024.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 1 April 2024 and inviting Mrs Muthoka to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mrs Muthoka has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a suspension order for a period of 12 months.

This order will come into effect at the end of 6 May 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 19 October 2023.

The current order is due to expire at the end of 6 May 2024.

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, whilst employed at the Ty Eirin Care Home ('the Home'):

1. *On one or more occasion provided inadequate information during handover to Colleague X, in that you;*

1.1 *On an unknown date did not hand over that an unknown Resident had vomited in the night. [PROVED]*

1.2 *Handed over information that one or more residents had 'slept well'. [PROVED]*

2. *On an unknown date around 2020/2021, failed to provide Resident C adequate care when Resident C's blood sugar level had dropped below 4mmols, in that you;*

2.1 *Did not provide Resident C with fast acting glucose/carbohydrates. [PROVED]*

2.2 *Did not repeat Resident C's blood sugar test after every 15 minutes. [PROVED]*

2.3. *Did not continuously monitor Resident C's consciousness levels. [PROVED]*

3. *On 20 February 2020;*

3.1. *Did not catheterise Resident B as required. [PROVED]*

3.2. *Before Resident B was transferred to the hospital, did not ensure that Resident B was provided with:*

3.2.1 *A clean t-shirt. [PROVED]*

3.2.2 Bottoms/trousers. **[PROVED]**

...

7. On 8 April 2021 counted/recorded Lorazepam in the Controlled Drug Book as 65 which was inaccurate. **[PROVED]**

8. On 9 April 2021 counted/recorded Lorazepam in the Controlled Drug Book as 64 which was inaccurate. **[PROVED]**

...

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

The original panel determined the following with regard to impairment:

‘... The panel finds that limbs a), b) and c) are engaged in Mrs Muthoka’s case as evidenced by her lack of response to the resident with low blood sugar, her actions in not recording or calculating a running total in the controlled drugs book and not considering Resident B’s health needs who travelled by ambulance in discomfort.

The panel finds that some residents were put at risk of harm and Resident B was caused actual harm as a result of Mrs Muthoka’s misconduct. Mrs Muthoka’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Mrs Muthoka’s misconduct was remediable and whether it had been remediated. The panel then considered the factors set out in the case of Cohen v GMC.

Regarding insight, the panel considered that Mrs Muthoka has limited insight into her actions, it considered that during the local investigation she

admitted to some of the concerns, but she did not consider that her miscalculation in the controlled drugs book was serious. Since the time of the local investigation, there has been no additional submissions or material and there was nothing before the panel today from Mrs Muthoka which demonstrated she understood the potential impact her actions could have on the nursing profession, colleagues and residents.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Muthoka has taken steps to strengthen her practice. There is nothing before the panel today that shows Mrs Muthoka has undertaken any training or practice in a clinical setting that addresses the concerns raised and therefore the risk of repetition remains.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel was of the view that the breaches of the Code indicate that Mrs Muthoka's conduct has fallen seriously short of what is expected of a registered nurse.

The panel determined that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Muthoka's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Muthoka's fitness to practise is currently impaired on the grounds of public protection and also in the wider public interest.'

The original panel determined the following with regard to sanction:

'The panel took into account the following aggravating features:

- *Lack of insight into failings*
- *A pattern of misconduct over a period of time.*
- *Conduct which put residents at risk of suffering harm.*
- *Conduct which caused residents to suffer harm.*
- *Lack of engagement with the NMC.*
- *Failure to address the regulatory concerns.*

The panel also took into account the following mitigating features:

- *The panel heard from witnesses that Mrs Muthoka was a good nurse.*
- *During the local investigation Mrs Muthoka was open and admitted her failings.*

...

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel considered whether the seriousness of this case required temporary removal from the NMC register and whether a period of suspension would be sufficient to protect patients and satisfy the public interest. When considering seriousness, the

panel had regard to the extent of the departure from the standards expected of a registered nurse and the damage done to the public interest caused by that departure.

The panel decided that although there had been a clear breach of fundamental tenets of the nursing profession and a significant departure from a number of the standards in the Code, Mrs Muthoka's misconduct was capable of remediation. The panel could find no evidence of attitudinal concerns or that there was long lasting general incompetence in Mrs Muthoka's practice. However, due to the lack of engagement and the absence of any real insight into her misconduct, the panel was not satisfied that Mrs Muthoka had developed a thorough understanding of how her nursing practice fell far below the standards expected of a registered nurse. Furthermore, it had no evidence of Mrs Muthoka having attempted to address the areas of concern through retraining.

The panel was of the view that Mrs Muthoka should be afforded the opportunity to demonstrate that she understands the severity of her acts and omissions to a future reviewing panel. The panel had identified that there was a risk of repetition in the absence of any evidence to the contrary. If Mrs Muthoka does decide that she wants to return to the nursing profession and can demonstrate sufficient insight and remediation to a future reviewing panel, it could be in the public interest to retain an experienced registered nurse who has had a lengthy career and is capable of delivering safe and effective nursing practice.

The panel was of the view that a suspension order would provide Mrs Muthoka with sufficient opportunity to reflect and develop her insight, explain to a future panel why she acted in the way that she did, and comment on what she will do differently if a similar situation arises in future.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Muthoka's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Muthoka. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct.

At 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:

- *Mrs Muthoka's engagement with the NMC.*
- *Mrs Muthoka's attendance at a future review hearing or, an indication as to what her future intentions are.*
- *A reflective piece focusing on the impact Mrs Muthoka's actions had on residents, colleagues, the nursing profession and the wider public, as well as what steps she would take to prevent her misconduct from reoccurring in future.*
- *Any training undertaken by Mrs Muthoka in relation to the areas of concerns, as well as evidence of her having kept her nursing skills up to date.*
- *Any recent references or testimonials from Mrs Muthoka having safely worked in a clinical environment, whether in paid or unpaid employment'.*

Decision and reasons on current impairment

The panel considered carefully whether Mrs Muthoka'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 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 exercised its own judgement as to current impairment.

The panel had regard to all of the documentation before it, which consisted of the NMC hearing bundle. The panel noted that Mrs Muthoka has not provided any written evidence to this meeting.

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 Mrs Muthoka's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Muthoka's insight into her actions was limited. The original panel also considered that, during the local investigation, Mrs Muthoka admitted to some of the concerns, but she did not consider that her miscalculation in the controlled drugs book was serious.

The panel noted that the substantive panel in October 2023 made a finding of impairment. In this regard, it is for Mrs Muthoka today to discharge the persuasive burden that she is no longer currently impaired. Mrs Muthoka has provided no written evidence to this panel. In particular, Mrs Muthoka has not attended today nor provided this panel with any of the material suggested by the substantive panel so as to assist this panel on the question of current impairment.

Mrs Muthoka has not demonstrated an understanding of how her actions put patients at a risk of harm, nor demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, the panel has

no information to suggest how Mrs Muthoka would handle the situation differently in the future. As such, the panel has not seen any evidence to demonstrate that Mrs Muthoka has taken steps to strengthen her practice.

The original panel determined that Mrs Muthoka was liable to repeat matters of the kind found proved. As today's panel has not received any new information, the panel determined that Mrs Muthoka is still liable to repeat matters of the kind found proved. 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 Mrs Muthoka's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Muthoka 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.

The panel 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 Mrs Muthoka'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 Mrs Muthoka's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the serious misconduct. 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 Mrs Muthoka's registration would be a sufficient and appropriate sanction at this stage. 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 Mrs Muthoka's misconduct. The panel's inability to formulate any conditions of practice was compounded by Mrs Muthoka not providing any evidence or information as to present thinking or circumstances in relation to her practice as a registered nurse.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Muthoka further time to fully reflect on her previous failings. The panel concluded that a further suspension order for an extended period of 12 months would be the appropriate and proportionate response and would afford Mrs Muthoka adequate time to further develop her insight, take steps to strengthen her practice and engage with the NMC. It would also give Mrs Muthoka an opportunity to approach past and current health professionals to attest to her honesty, integrity and an opportunity for collaboration in clinical supervision in her workplace since the substantive hearing.

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 12 months which would provide Mrs Muthoka with a longer opportunity to engage with the NMC and provide evidence of her strengthening of practice and developed insight. It considered this to be the most appropriate and proportionate sanction in the circumstances.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 6 May 2024 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:

- Mrs Muthoka's engagement with the NMC.
- Mrs Muthoka's attendance at a future review hearing or, an indication as to what her future intentions are.
- A reflective piece focusing on the impact Mrs Muthoka's actions had on residents, colleagues, the nursing profession and the wider public, as well as what steps she would take to prevent her misconduct from reoccurring in future.
- Any training undertaken by Mrs Muthoka in relation to the areas of concerns, as well as evidence of her having kept her nursing skills up to date.
- Any recent references or testimonials from Mrs Muthoka having safely worked in a clinical environment, including the opportunity for collaboration in clinical supervision, whether in paid or unpaid employment.

The next reviewing panel will have all sanction options open to it, including the power of imposing a striking-off order.

This will be confirmed to Mrs Muthoka in writing.

That concludes this determination.