

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

**Substantive Order Review Hearing  
Monday, 29 January 2024**

Virtual Hearing

**Name of Registrant:** Mr Garikayi Bwerinofa

**NMC PIN** 99E0227E

**Part(s) of the register:** Registered Nurse – Mental Health  
(May 2002)

**Relevant Location:** West Sussex

**Type of case:** Misconduct

**Panel members:** Sarah Lowe (Chair, lay member)  
Jacqueline Metcalfe (Registrant member)  
Robert Fish (Lay member)

**Legal Assessor:** John Donnelly

**Hearings Coordinator:** Catherine Acevedo

**Nursing and Midwifery Council:** Represented by Surendra Agarwala, Case Presenter

**Mr Bwerinofa:** Present and represented by Mickael Puar, Counsel instructed by the Royal College of Nursing (RCN)

**Order being reviewed:** Suspension order (12 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (6 months) to come into effect on 21 February 2024 in accordance with Article 30 (1)**

## **Decision and reasons on application for hearing to be held in private**

Mr Agarwala on behalf of the Nursing and Midwifery Council (NMC) made a request that parts of the hearing be held in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Puar indicated that he supported the application [PRIVATE].

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

[PRIVATE], the panel determined to hold the parts of the hearing [PRIVATE] in private in order to maintain your privacy.

## **Decision and reasons on review of the substantive order**

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 21 February 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee on 21 January 2022. This was reviewed on 6 January 2024 and a 12 month suspension order was imposed. The current order is due to expire after 21 February 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,*

1. *On or around 6 June 2019:*
  - a) *administered to Patient A, a dose of Flupentixol, by injection, which was not due until 13 June 2019; [PROVED]*
  - b) *failed to follow the correct procedure for administering Flupentixol, in that you did not have a second member of staff check before administering depot injection medication; [PROVED]*
  - c) *failed to record that you administered Flupentixol to Patient A on 6 June 2019; [PROVED]*
  - d) *deleted an entry dated 13 June 2019 from Patient A’s medication administration record; [PROVED]*
  - e) *failed to immediately report the early administration of Flupentixol injection to the nurse in charge and/or the ward manager. [PROVED]*
2. *Your actions at charge 1e) were contrary to your duty of candour. [PROVED]*
3. *Your actions at 1c) and/or 1d) were dishonest in that you sought to conceal your error of early administration of Flupentixol by injection, to Patient A. [PROVED in relation to 1c only]*

*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 finds that Patient A was put at a real risk of harm as a result of Mr Bwerinofa’s misconduct. Whilst there is no evidence to suggest that Mr*

*Bwerinofa's actions caused actual harm to Patient A, his dishonesty and failure to report his error prevented the potential for other intervention to be made in respect of Patient A's care. Furthermore, having breached multiple provisions of the Code, the panel determined that Mr Bwerinofa's misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find Mr Bwerinofa's failures and omissions to constitute misconduct and the charges relating to dishonesty as serious.*

*The panel did not have any documentation or other evidence before it addressing Mr Bwerinofa's insight on the impact his actions could have had on Patient A, colleagues, the nursing profession and the wider public as a whole. Therefore, the panel was of the view that Mr Bwerinofa had not demonstrated any insight into the misconduct. The panel could not be satisfied, in the absence of any evidence, that Mr Bwerinofa understands and appreciates the seriousness of his failure to act appropriately and his dishonesty.*

*In considering whether Mr Bwerinofa had remediated his nursing practice, the panel noted that it did not have any information before it. It bore in mind that dishonesty is often more difficult to remediate than clinical concerns.*

*Therefore, in having regard to the above, the panel considered there to be no evidence to demonstrate that Mr Bwerinofa had remediated his misconduct, or whether he has any level of insight into the concerns identified. The panel also did not have any evidence to allay its concerns that Mr Bwerinofa may currently pose a risk to patient safety. In the absence of any evidence to the contrary, it considered there to be a risk of repetition of Mr Bwerinofa's lack of candour and dishonesty and a risk of unwarranted harm to patients in his care, should adequate safeguards not be imposed on his nursing practice. Therefore, the panel 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 considered there to be a public interest in the circumstances of this case. Whilst it noted that this was a one-off incident, the panel found that the charges found proved are serious and include dishonesty and a lack of duty of candour. It was of the view that a fully informed member of the public would be concerned by its findings on facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.*

*Having regard to all of the above, the panel was satisfied that Mr Bwerinofa's fitness to practise as a registered nurse is currently impaired on the grounds of public protection and public interest.'*

The original panel determined the following with regard to sanction:

*'The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:*

- The seriousness of the misconduct requires a temporary removal from the NMC Register;*
- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident.*

*The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register and that a suspension order would protect the public.*

*When considering seriousness, the panel determined that the level of seriousness was not at the lower end of the spectrum, nor was it at the top end of the spectrum.*

*The panel had regard to Ms 3's written statement, which stated:*

*'[...] He also explained that he felt the NMC referral should not go ahead just yet, as he had been having difficulties at home, which were causing him stress.'*

*The panel was aware of this reference to Mr Bwerinofa's personal or family issues. However, it did not have further information on this.*

*The panel also had regard to Mr 1, Ms 2 and Ms 3's oral evidence stating that Mr Bwerinofa was a good and caring nurse. It had regard to Mr 1's written statement, which stated:*

*'I feel it relevant to mention that my prior experience of working with the Registrant had always been positive. He seemed to make every effort to support patients and was very eager to learn, since he had come from working in different type of setting.'*

*These sentiments were supported by evidence presented by the other witnesses who confirmed that they had had no previous concerns about Mr Bwerinofa's practice.*

*The panel determined that, albeit serious, Mr Bwerinofa's misconduct was not fundamentally incompatible with ongoing registration and that the public interest considerations can be satisfied by a less severe outcome than permanent removal from the NMC register. The panel did consider this to be a finely balanced decision, but it reminded itself that the purpose of a sanction is not to be punitive, and it decided that Mr Bwerinofa should be afforded the opportunity to demonstrate insight, remorse, and remediation for his misconduct, having regard to the good comments given by the witnesses and the personal issues he may have been facing at the material time.*

*Taking account of all the information before it, and of the positive comments given by Mr 1 with regard to his previous practice, the panel determined that a striking-off order would be disproportionate in Mr Bwerinofa's case. It was of the view that Mr Bwerinofa's dishonesty was not motivated by personal gain. In making this decision, the panel carefully considered the submissions of Ms Stewart in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a striking off order at present would be disproportionate. The panel was of the view that the sanction of a maximum term of 12 months' suspension would satisfy the public protection and public interest concerns identified in this case.*

*Whilst the panel acknowledges that any sanction may have a punitive effect, it considered that it would be disproportionately punitive in Mr Bwerinofa'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 to mark the seriousness of Mr Bwerinofa's misconduct. It decided that public confidence in the nursing profession and the NMC can be maintained by the imposition of a suspension order for 12 months, subject to a review. The panel determined that this would give time for Mr Bwerinofa to address the concerns through engaging with the NMC, developing his insight, demonstrating remorse and remediation. The panel considered that a suspension for the maximum term of 12 months would satisfy the public interest in this case.*

*The panel had no specific information before it relating to Mr Bwerinofa's current employment status. It noted the hardship such an order will inevitably cause Mr Bwerinofa. 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.*

*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:*

- *Mr Bwerinofa's full engagement with the NMC in the future;*
- *Attendance at any future hearing;*
- *A detailed reflective piece to demonstrate Mr Bwerinofa's insight into his misconduct and the impact it had on Patient A, Colleagues and public confidence in the nursing profession;*
- *Evidence of remediation and any relevant testimonials from Mr Bwerinofa's current employer, whether in paid or unpaid employment. This must have particular regard to his failings found proved; and*

*Any other relevant information relating to the circumstances of the incident. '*

## **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 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 your responses that included a number of reflective pieces, references and training certificates. It has taken account of the submissions made by Mr Agarwala on behalf of the NMC.

Mr Agarwala outlined to the panel the background of the case and the previous panel's decisions. He referred to the NMC guidance DMA-1 and submitted that there is a persuasive burden on you to show that your fitness to practice is not currently impaired. He confirmed that it was the NMC's position that the suspension order should continue



unless the panel is satisfied that the issues leading to the misconduct and impairment found at the substantive hearing had been remediated. He referred to the pressures you were under at the time which goes some way to explain why the correct procedures were not followed but does not explain why you failed to discharge your professional duties.

[PRIVATE].

The panel also had regard to Mr Puar's submissions on your behalf. He submitted that the charges relate to a mistake in relation to the administration of medication and a breach of your duty of candour coupled with dishonesty. He submitted that in your reflection you have considered the event that took place that day and have given an explanation, which is not an excuse for your conduct, nor does it deal with the issues of lack of duty of candour and dishonesty.

[PRIVATE].

Mr Puar submitted that you have been in the profession since 2002 and this is the first time a sanction has been imposed on you by the NMC. He submitted that you have provided testimonials to support your case, some of which speak well of your clinical practice and ability as a nurse. He submitted that in your reflective statements you have accepted your misconduct and have apologised to your colleagues and shown remorse for the impact on your patients. He submitted you have also undertaken targeted courses.

Mr Puar submitted that the most serious aspect was that of dishonesty but that this was not at the lower or the upper end of the spectrum of seriousness. The substantive hearing panel however determined that it was not incompatible with you remaining on the register. Once the patient had made it known that you had given the medication a week early, you disclosed this to your colleagues.

Mr Puar informed the panel that you would be happy to get on with working through an agency as a healthcare assistant, depending on the panel's decision today. He informed the panel that you have also been working with Mind on a voluntary basis.

[PRIVATE].

Mr Puar submitted that you should be allowed to practise without restriction. He invited the panel to allow the suspension order to lapse or to revoke the order. In the alternative, he invited the panel to consider a conditions of practice order. He submitted that the misconduct is not at the top end of seriousness and you are now engaging with the process and have provided evidence of insight and remediation via your reflective statements and training you have undertaken.

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 noted that you had not engaged with the NMC at previous hearings and therefore those panels had no information regarding your insight at that time. At this hearing the panel had sight of your reflective statements and noted that you have demonstrated developing insight. The panel considered that you have demonstrated an understanding of how your actions put the patient at a risk of harm. It noted that you have demonstrated an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel also noted that you have shown remorse towards patients and colleagues for your misconduct. The panel recognised that you are currently working in a voluntary capacity and have taken steps to move towards working as a healthcare assistant pending DBS clearance.

However, [PRIVATE]. The panel was not satisfied that you have sufficiently detailed how you would manage [PRIVATE] in a similar situation in the future when working as a nurse.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account that you have undertaken targeted training courses in duty of candour and medicines administration. It also noted the positive character testimonials. However, the panel determined that further consideration of the importance of record keeping and the adherence to established medication policy and procedures was required.

The panel has taken into account the evidence of training and your developing insight. However, in the absence of any independent evidence regarding [PRIVATE] and how you are managing that and how you would manage it when you return to nursing, the panel determined that there is a risk of repetition. 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 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 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 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 bore in mind the lack of [PRIVATE] detail as to how you could return to work and so determined that it was unable to put in place proportionate, measurable and workable conditions of practice. The panel concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel considered the imposition of a further period of suspension. It considered that you need to gain a full understanding of how you would manage and sustain a return to work [PRIVATE]. The panel concluded that a further 6 month 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. [PRIVATE]

The panel considered that a striking-off order would be disproportionate in the circumstances.

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. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 21 February 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:

- [PRIVATE].
- A reflection covering the importance of accurate medicines administration and record keeping in line with both policy and procedure and the impact on patient care quality.
- [PRIVATE].
- Evidence of any training undertaken.
- Testimonials from work colleagues and your line manager.

This decision will be confirmed to you in writing.

That concludes this determination.