

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

**Substantive Order Review Hearing
Wednesday, 26 February 2025**

Virtual Hearing

Name of Registrant:	Nyakallo Putsoane	
NMC PIN	04H0144O	
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – August 2004	
Relevant Location:	Port Talbot	
Type of case:	Misconduct	
Panel members:	Alan Greenwood Kathryn Smith Philippa Hardwick	(Chair, Lay member) (Registrant member) (Lay member)
Legal Assessor:	Marian Gilmore KC	
Hearings Coordinator:	Ekaette Uwa	
Nursing and Midwifery Council:	Represented by Nawazish Choudhury, Case Presenter	
Nyakallo Putsoane:	Not present and unrepresented	
Order being reviewed:	Conditions of practice order (17 months)	
Fitness to practise:	Impaired	
Outcome:	Conditions of practice order (12 months) to come into effect at the end of 31 March 2025 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 Miss Putsoane was not in attendance and that the Notice of Hearing had been sent to Miss Putsoane's registered email address by secure email on 24 January 2025.

Mr Choudhury 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, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Putsoane'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 Miss Putsoane 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 Miss Putsoane

The panel next considered whether it should proceed in the absence of Miss Putsoane. The panel had regard to Rule 21 and heard the submissions of Mr Choudhury who invited the panel to continue in the absence of Miss Putsoane.

Mr Choudhury informed the panel that Miss Putsoane last engaged with the NMC in 2022, at which time she acknowledged the regulatory proceedings, confirmed her contact details, and stated that she was not working as a registered nurse.

Mr Choudhury noted that there has since been no engagement at all by Miss Putsoane with the NMC in relation to these proceedings and, as a consequence, there was no

reason to believe that an adjournment would secure her attendance on some future occasion. He reminded the panel of the seriousness of the allegations and urged the panel to exercise its discretionary powers and proceed in Miss Putsoane's absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Putsoane. In reaching this decision, the panel has considered the submissions of Mr Choudhury, 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 Miss Putsoane;
- Miss Putsoane has not engaged with the NMC and has not responded to any of the emails sent to her about this hearing;
- Miss Putsoane has not provided the NMC with updated contact details;
- 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 Miss Putsoane.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order.

This order will come into effect at the end of 31 March 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 17 months by a Fitness to Practise Committee panel on 3 October 2023.

The current order is due to expire at the end of 31 March 2025. 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:

On 16 March 2019:

1) Stopped Patient A’s oxygen:

a) ...

*b) without seeking the authority of a GP. **[Proved]***

2) ...

*3) Did not escalate and or take appropriate action promptly, after Patient A had pulled out the syringe driver. **[Proved]***

4) Failed to make adequate records of your observations of Patient A, in that you:

*a) Did not record that you had removed Patient A’s oxygen. **[Proved]***

b) ...

*c) Did not record that Patient A had removed the syringe driver. **[Proved]***

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 next went on to decide if as a result of the misconduct, Miss Putsoane’s fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must

make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel determined that limbs a, b and c in the above test were engaged both in the past and in the future.

Taking into account all of the evidence adduced in this matter, the panel finds that Patient A was put at risk of harm as a result of Miss Putsoane's misconduct. The panel determined that Miss Putsoane's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel noted that whilst Miss Putsoane had made some early admissions at the local level investigation, it was not presented with evidence of insight or remorse. The panel considered that it had not received any evidence to suggest that Miss Putsoane has demonstrated an understanding of how her actions put a patient at a risk of harm, an understanding of her wrongdoings, how this impacted negatively on the reputation of the nursing profession and how she would handle the situation differently in the future. The panel took into account that Miss Putsoane had disengaged with the NMC regulatory process and therefore it was not presented with any information regarding her current level of insight or remorse.

The panel was satisfied that the misconduct in this case is capable of being addressed. The panel carefully considered the evidence before it in determining whether or not Miss Putsoane has taken steps to strengthen her practice. However, the panel has not received any information to suggest that Miss Putsoane has taken steps to address the specific concerns raised about her practice, such as relevant training or reflection.

The panel was of the view that due to the lack of insight, remorse or evidence of strengthened practice, there remains a high risk of repetition. The panel considered that Miss Putsoane's actions set out in the charges found proved demonstrated behaviour that fails to acknowledge professional and clinical protocols, which inevitably led to unsafe practice. On the basis of all the information before it, the panel decided that there is a risk of harm to the public if a finding of impairment is not made. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel bore in mind 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 profession and upholding the proper professional standards for members of that profession.

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

Having regard to all of the above, the panel was satisfied that Miss Putsoane's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel took into account the following aggravating factors:

- Vulnerable end of life patient;*
- Lack of insight into failings;*
- Impact on the reputation of the profession;*
- Conduct which put patients at risk of suffering harm;*
- Lack of engagement with the NMC regulatory process; and*
- Fundamental questions about Miss Putsoane's professionalism and a risk of lack of public confidence in nursing.*

The panel also took into account the following mitigating factors:

- Partial admissions made;*
- Conduct which occurred on a single shift; and*
- Conduct which occurred on a busy under resourced night shift at the Home.*

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 not protect the public or satisfy public interest if no further action is taken.

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 Miss Putsoane'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 Miss Putsoane'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 placing conditions of practice on Miss Putsoane'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 took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- Potential... to respond positively to retraining;*
- 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; and*
- Conditions can be created that can be monitored and assessed.*

Having determined that Miss Putsoane's misconduct is capable of being addressed, the panel considered whether it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel was of the view that a conditions of practice order would give Miss Putsoane the opportunity to demonstrate that she is capable of safe and effective practice, while at the same time protecting patients.

The panel had regard to the fact that other than the concerns raised in this case, Miss Putsoane has had a longstanding career of 19 years as a nurse with no

previous NMC regulatory concerns. The panel was of the view that it was in the public interest that, with appropriate safeguards, Miss Putsoane should be able to return to practise as a nurse. Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of Miss Putsoane's case because it would be unduly punitive. The panel determined that a suspension order or a striking-off order would not allow Miss Putsoane the opportunity to address the issues identified with her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse. The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. You must not be the sole nurse on duty on any shift you are working.*
- 2. You must ensure that whilst on duty you are indirectly supervised, but not always directly observed by a registered nurse any time you are working.*
- 3. You must work with your line manager, mentor or supervisor who is also a registered nurse to create a personal development plan (PDP). Your PDP must address the concerns about medicines management, management of emergency escalations, record keeping, and end of life care. You must:*

- a) *Send your NMC case officer a copy of your PDP within 14 days of commencing employment or the date of this order, whichever is sooner.*
 - b) *Meet with your line manager, mentor or supervisor, who is also a registered nurse at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your NMC case officer evidence that you have completed a course on end of life care prior to any review of the order.*
4. *You must keep the NMC informed about anywhere you are working by:*
- a) *Telling your NMC case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your NMC case officer your employer's contact details.*
5. *You must keep the NMC informed about anywhere you are studying by:*
- a) *Telling your NMC case officer within seven days of accepting any course of study.*
 - b) *Giving your NMC case officer the name and contact details of the organisation offering that course of study.*
6. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis in your capacity as a registered nurse.*
7. *You must tell your NMC case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*

8. *You must allow your NMC case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

- a) Any current or future employer.*
- b) Any educational establishment.*
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions.*

The period of this order is for 17 months'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Putsoane'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 ability to practice kindly, safely and professionally. 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 Choudhury on behalf of the NMC.

Mr Choudhury gave a brief background of the case and referred the panel to relevant documentation particularly the charges against Miss Putsoane, the decisions of the original panel with regards to misconduct, impairment and sanctions. He also referred the panel to the failures identified by the original panel regarding patient assessment, escalation of care, and record-keeping, which posed a significant risk to patient safety.

He submitted that the purpose of this review is to assess whether the current order remains necessary or whether a different order is required to protect the public from any risk of harm posed by Miss Putsoane.

Mr Choudhury submitted that Miss Putsoane has completely disengaged with the NMC, that her absence from this hearing and lack of any submissions or evidence, reinforces her

failure to discharge the persuasive burden placed upon her to demonstrate insight and remediation in relation to her current impairment.

He referred the panel to the case of *Abrahaem v GMC* [2008] EWHC 183, paragraph 23 which states

“...In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments.”

Mr Choudhury noted that since the imposition of the conditions of practice order, there has been no record of Miss Putsoane’s current role or employment status, nor any indication that she has returned to nursing in any capacity. He submitted that Miss Putsoane has not provided any evidence by way of a reflective piece, testimonials from colleagues or evidence of relevant training undertaken to demonstrate that she has addressed the concerns highlighted by the original panel.

He submitted there is nothing before the panel today to indicate a material change of circumstances from when the conditions of practice order were imposed on 3 October 2023 by the original panel.

He submitted that given the absence of evidence, there is a real risk of repetition and a consequent risk of harm to members of the public. He therefore submitted that Miss Putsoane’s fitness to practise is impaired on public protection grounds.

Mr Choudhury invited the panel to make a finding of impairment on public interest grounds.

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 Miss Putsoane’s fitness to practise remains impaired.

The panel noted that the original panel was not presented with any evidence of insight or remorse. At this hearing, there remains a complete absence of evidence and engagement from Miss Putsoane to demonstrate that she has reflected on her practice, developed any insight into the concerns identified, or taken steps to address them. The panel noted that there is no evidence of any attempt at remediation. In light of this the panel had no basis to conclude that Miss Putsoane has acknowledged the seriousness of the concerns or taken steps to prevent a recurrence.

The panel noted that Miss Putsoane's failings posed a risk of significant harm to patients. Given the fundamental importance of patient safety, the panel expected to see evidence of remediation, such as evidence of relevant training, or testimonial from colleagues demonstrating improvements in clinical practice and decision making as outlined by the original panel.

In its consideration of whether Miss Putsoane has taken steps to strengthen her practice, the panel considered her continued lack of engagement, including failure to provide evidence of insight or remediation. It noted that Miss Putsoane has not fulfilled the persuasive burden to demonstrate she has addressed the deficiencies in her practice, and this gives the panel no assurance that she has taken any steps to remediate her failings.

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 Miss Putsoane's fitness to practise remains impaired.

The panel heard and accepted the advice of the legal assessor, who reminded the panel of the outcomes available on review.

Decision and reasons on sanction

Having found Miss Putsoane'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 the public protection issues identified, an order that does not restrict Miss Putsoane'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 Miss Putsoane'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 imposing a further conditions of practice order on Miss Putsoane's registration would still be a sufficient and appropriate response. The panel noted there was no record of Miss Putsoane's current employment status and there was no information on what Miss Putsoane's current intentions were regarding nursing.

The panel was however of the view that the concerns identified by the original panel could be remediated and that Miss Putsoane's practice could be strengthened. It noted that if Miss Putsoane chooses to remain in the profession, the public would be protected by the imposition of a conditions of practice order which remains a sufficient and appropriate response in this instance.

The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel was of the view that the current conditions of practice order is proportionate and workable, and that none of the conditions impede Miss Putsoane from gaining employment as a registered nurse.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Putsoane's case. It noted that an extension of the conditions of practice order would afford Miss Putsoane additional time to develop her insight and remediate.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 31 March 2025. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1) You must not be the sole nurse on duty on any shift you are working.
- 2) You must ensure that whilst on duty you are indirectly supervised, but not always directly observed by a registered nurse any time you are working.
- 3) You must work with your line manager, mentor or supervisor who is also a registered nurse to create a personal development plan (PDP). Your PDP must address the concerns about medicines management, management of emergency escalations, record keeping, and end of life care. You must:

- a) Send your NMC case officer a copy of your PDP within 14 days of commencing employment or the date of this order, whichever is sooner.
 - b) Meet with your line manager, mentor or supervisor, who is also a registered nurse at least every month to discuss your progress towards achieving the aims set out in your PDP.
 - c) Send your NMC case officer evidence that you have completed a course on end-of-life care prior to any review of the order.
- 4) You must keep the NMC informed about anywhere you are working by:
- a) Telling your NMC case officer within seven days of accepting or leaving any employment.
 - b) Giving your NMC case officer your employer's contact details.
- 5) You must keep the NMC informed about anywhere you are studying by:
- a) Telling your NMC case officer within seven days of accepting any course of study.
 - b) Giving your NMC case officer the name and contact details of the organisation offering that course of study.
- 6) You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis in your capacity as a registered nurse.
- 7) You must tell your NMC case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

- 8) You must allow your NMC case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 12 months. Before the order expires, a panel will hold a review hearing to see how well Miss Putsoane has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Engagement with the NMC and any proceedings including attendance at future review hearings;
- A reflective statement from Miss Putsoane demonstrating her insight, what she has learnt since this hearing and how this has strengthened her practice;
- References and testimonials for Miss Putsoane relating to clinical work from her colleagues who are aware of the regulatory concerns of this case; and
- Evidence of any completed training and associated assessments that relate to the regulatory concerns in this case.

This will be confirmed to Miss Putsoane in writing.

That concludes this determination.