

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

**Substantive Order Review Meeting
Tuesday, 30 August 2022**

Virtual Meeting

Name of registrant: **Blessing Kudzanyi Mupereki**

NMC PIN: 08A0696E

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nursing – February 2009

Relevant Location: Hertfordshire

Type of case: Misconduct, Health and Conviction/Caution

Panel members: Peter Wrench (Chair, Lay member)
Beth Maryon (Registrant member)
Asmita Naik (Lay member)

Legal Assessor: Mike Bell

Hearings Coordinator: Philip Austin

Order being reviewed: Suspension order (9 months)

Fitness to Practise: **Currently impaired**

Outcome: **Striking-off order to come into effect at the end of 16 October 2022, in accordance with Article 30(1)**

Decision and reasons on service of Notice of Meeting

The panel received information from the legal assessor concerning service of the notice of meeting.

The notice of meeting was sent by the Nursing and Midwifery Council's ("NMC") Case Coordinator to the new email address that Mrs Mupereki had provided over the telephone on 21 July 2022. The notice of meeting was also sent by recorded delivery and first class post to the home address of Mrs Mupereki on the same date. The main hearing bundle containing the documentary evidence was sent to Mrs Mupereki both physically and electronically.

The notice of meeting informed Mrs Mupereki that a meeting would go ahead no sooner than 29 August 2022, and this date was also the deadline for her to provide any written evidence to the panel. Furthermore, the notice of meeting informed Mrs Mupereki that she could ask for this matter to be dealt with at a hearing instead of a meeting, and that she had 29 days from the date of the notice to make this request.

The panel heard and accepted the advice of the legal assessor.

The panel noted that the notice of meeting had been served on 21 July 2022, which was more than 28 days before this meeting. The panel was satisfied that there was good service of the notice of meeting in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) ("the Rules").

The panel was content for this review to be undertaken at a meeting, and it did not consider it necessary to refer this matter to a hearing. The panel noted that the NMC contacted Mrs Mupereki by telephone twice on 21 July 2022 and twice on 22 July 2022. During the first telephone call on 21 July 2022, Mrs Mupereki provided a new email address for the notice of meeting to be sent to. During the second telephone call on 21 July 2022, Mrs Mupereki confirmed she had received the notice of meeting and corresponding documents to her new email address. The panel noted that despite the repeated attempts made by the NMC Case Coordinator to engage with Mrs Mupereki, she

was only able to speak on the telephone for a short period of time. Furthermore, Mrs Mupereki asked the NMC Case Coordinator to call back at a specific time, but there was no answer when they called.

The panel noted that Mrs Mupereki has not asked for this matter to be dealt with at a hearing, nor has she provided written representations for the panel to take account of in considering this matter today. The panel was satisfied that adjourning the matter was unlikely to secure the attendance of Mrs Mupereki on some future occasion. Therefore, the panel determined that adjourning this matter for consideration at a hearing would not serve any useful purpose. The panel determined that it would be able to consider this matter at a meeting today, having regard to all the documentary evidence before it.

Decision and reasons on review of the current order

The panel decided to impose a striking-off order. This order will come into effect upon expiry of the current suspension order, namely, at the end of 16 October 2022, in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' ("the Order").

This is the third review of a suspension order originally imposed by a panel of the Fitness to Practise Committee ("FtPC") on 18 December 2018 for a period of 12 months. At the first review meeting on 30 November 2020, a panel of the FtPC decided to extend another suspension order for a period of 12 months. At the second review meeting 2 December 2021, a panel of the FtPC decided to extend another suspension order for a period of 9 months.

The order is currently due to expire at the end of 16 October 2022.

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. *Have or have had in the past the medical condition set out in Schedule 1.*
2. *On an unknown date in 2015 and/or on 1 March 2017 impersonated Patient A in order to obtain a prescription for Tramadol.*
3. *Your actions at charge 2 were dishonest in that you intended to mislead the GP surgery and obtain a prescription that you were not entitled to.*

AND, in light of the above, your fitness to practise is impaired by reason of your health in relation to charge 1 and misconduct in relation to charges 2 and/or 3. All charges found proved by way of admission

*Schedule 1
[PRIVATE]*

And

That you, a registered nurse:

4. *On 9 August 2016, received a police caution for offences of fraud by false representation, possession of an article for use in fraud and theft.*
5. *On 20 March 2018, at West and Central Hertfordshire Magistrates Court, were convicted for an offence of fraud by false representation.*
6. *On 7 August 2018, at West and Central Hertfordshire Magistrates Court, were convicted of 2 offences of fraud by false representation.*

AND, in light of the above, your fitness to practise is impaired by reason of your convictions/caution in relation to charges 4 and/or 5 and/or 6. All charges found proved by way of admission”

The second reviewing panel determined the following with regard to impairment:

“The panel considered whether Mrs Mupereki’s fitness to practise remains impaired.

The panel noted that the original panel could not be satisfied that Mrs Mupereki had sufficient insight to understand the severity of her misconduct, convictions and caution, all of which are inextricably linked to her health. There was no new information available to the panel regarding Mrs Mupereki’s health. The panel had no evidence before it today to suggest that she has begun to address the health condition which led to her misconduct, convictions and caution, and therefore the panel could not be satisfied that Mrs Mupereki would not repeat the behaviour found proved.

The panel did, however, note the call log between Mrs Mupereki and the NMC, dated 2 December 2021. It stated [PRIVATE].

In the absence of any evidence of remediation, the panel determined that a finding of impairment in relation to her health, misconduct, convictions and caution should be made on public protection grounds.

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 determined that, in this case, a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mrs Mupereki’s fitness to practise is currently impaired by reason of her health condition, misconduct, convictions and caution.”

The second reviewing panel determined the following with regard to sanction:

“Having found Mrs Mupereki’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 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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 the nature of Mrs Mupereki’s health condition, misconduct, convictions and caution were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case and the need to protect the public. 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 Mrs Mupereki’s registration would be a sufficient and appropriate response. [PRIVATE].

The panel considered the imposition of a further period of suspension. It was of the view that Mrs Mupereki’s misconduct, convictions and caution are inextricably linked to her health condition. A suspension order would allow Mrs Mupereki further time to engage with the NMC’s proceedings.

The panel concluded that a further 9 months suspension order would be the appropriate and proportionate response and would afford Mrs Mupereki adequate time to demonstrate that she has further developed the insight she had shown before the substantive hearing and to make progress with remediation. In particular,

it would also give her an opportunity to comply with the NMC's health assessment requirements.

The panel considered whether a striking-off order would be proportionate in Mrs Mupereki's case. The panel took into account that this case is not one in which she deliberately harmed a patient although her misconduct did place patients at a risk of harm and her convictions were for serious charges. However, the root cause of her misconduct and convictions was her health condition, and she had been engaging with the NMC ahead of the substantive hearing. It also took into account that, although there has been an apparent lack of engagement from Mrs Mupereki in relation to these proceedings, she has engaged today and has declared [PRIVATE]. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive, at this time, to impose a striking-off order.

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 further suspension order for the period of 9 months which would provide Mrs Mupereki with an opportunity to engage with the NMC to provide evidence of responses to the recommendations put forward by the panel. It considered this to be the most appropriate and proportionate sanction available at this time. However, if Mrs Mupereki has not re-engaged with these proceedings and embarked on addressing her health condition, the next reviewing panel may be minded to impose a striking-off order.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 16 January 2022 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].*
- *[PRIVATE].*

- *An up to date reflective piece by Mrs Mupereki; and*
- *Mrs Mupereki's attendance at any future review hearing.*

The panel has been concerned that Mrs Mupereki informed the NMC today that she had not received any communication from the NMC in advance of this meeting. She confirmed that her current email address is the same address that appears on WISER. It was possible for the NMC to obtain immediate contact with her by telephone today. In those circumstances, it is recommended that the NMC case officer follows up any email communication which does not receive a response from Mrs Mupereki via telephone call to the telephone number listed on WISER.

This decision will be confirmed to Mrs Mupereki in writing.”.

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Mupereki'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 has had regard to all of the documentation before it contained within the NMC meeting bundle. It 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 the charges found proved to be serious, and noted that they predominantly relate to Mrs Mupereki's conduct and behaviour, albeit that her behaviour was linked to her health condition. Mrs Mupereki had received a police caution in March 2016 for offences of fraud by false representation, possession of an article for use in fraud

and theft, and she had also been convicted on three counts of fraud by false representation in 2018. Mrs Mupereki had impersonated patients in order to obtain a prescription for Tramadol, [PRIVATE].

The panel noted that there had been previous findings made that Mrs Mupereki presented a risk to the public, should she be permitted to practise as a registered nurse without some form of restriction.

In taking account of the information before it, the panel noted that there has been limited engagement from Mrs Mupereki with the NMC. The panel had sight of the telephone logs in the build up to this meeting, in which first contact was always sought by the NMC. Despite being aware of this meeting, Mrs Mupereki has not provided any additional information in relation to her case.

The panel considered there to be no new evidence provided by Mrs Mupereki to suggest that the risks previously identified have reduced. Mrs Mupereki has not sought to provide this panel with any further evidence of insight, remorse, or remediation for its consideration at this meeting in relation to her misconduct, her health, or her caution/convictions. The panel could not be satisfied that, specifically in terms of insight, Mrs Mupereki had reflected on how her actions had impacted upon patients, colleagues, the wider public, or the nursing profession as a whole.

The panel also noted that the previous reviewing panels have provided Mrs Mupereki with recommendations that a future panel may be assisted by. However, there does not appear to have been any attempts made by Mrs Mupereki to address these.

Therefore, in the absence of any evidence to the contrary, the panel could not be satisfied that Mrs Mupereki no longer poses a risk to patient safety. The panel considered there to be a risk of unwarranted harm to patients in Mrs Mupereki's care, should she be permitted to return to unrestricted nursing practice. The panel decided that there is a real risk of repetition of the misconduct and caution/convictions found proved and, in the absence of any new information relating to Mrs Mupereki's health concerns, these issues are yet to be addressed. [PRIVATE].

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

The panel also bore in mind the overarching objective of the NMC: to protect, promote and maintain the health, safety and well-being of the public and patients and 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. As Mrs Mupereki has not yet addressed the concerns identified by the previous reviewing panel, this panel determined that, in these particular circumstances, a finding of continuing impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of all the evidence presented in this case, would be concerned by Mrs Mupereki's lack of engagement, insight, remorse and remediation, and would expect a panel to make a finding that her fitness to practise remains impaired.

For these reasons, the panel finds that Mrs Mupereki's fitness to practise remains impaired on the grounds of public protection and the wider public interest.

Decision and reasons on sanction

Having found Mrs Mupereki's fitness to practise to be 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 impose a caution order but concluded that this would be inappropriate in view of the risks identified and the seriousness of the case, as this would not place any restrictions on Mrs Mupereki's nursing practice. The panel took account of the SG which 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 did not consider this case to be towards the lower end of the spectrum of fitness to practise. It

decided that it would be neither proportionate, nor in the public interest to impose a caution order.

The panel next considered substituting the current suspension order with a conditions of practice order. It is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

The panel noted that Mrs Mupereki's nursing practice has the potential to be impacted upon by her adverse health condition, and that it had received no new evidence to suggest that she was now fit to return to nursing practice. Furthermore, there had been no development in Mrs Mupereki's insight, remorse, or remediation in relation to her misconduct and police caution/convictions. Therefore, the panel determined that at this time, no practical or workable conditions could be formulated to adequately protect patients, given the nature of the concerns and the risk of repetition identified. There were no identifiable areas of retraining in respect of Mrs Mupereki's clinical nursing practice which needed to be addressed, as the matters it was being asked to consider relate to her health, as well as her behaviour and conduct.

In light of the above, the panel determined that a conditions of practice order would be neither proportionate, nor would it satisfy the public interest considerations.

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

The panel noted from its decision on impairment that Mrs Mupereki has not made any attempts to address her misconduct and police caution/convictions, nor has she attempted to address the outstanding health concerns identified. The panel considered there to have been a lack of engagement from Mrs Mupereki with the NMC, and a lack of effort in attempting to address the issues relating to her nursing practice. Mrs Mupereki has not utilised the time since the imposition of the first suspension order over two and a half years ago to properly address the concerns identified. Due to the lack of apparent insight and proactive steps taken to address the outstanding concerns, the panel determined that it would no longer be in the public interest to grant Mrs Mupereki further time to do so. It may be that Mrs Mupereki's health has been inhibiting her ability to respond, but the panel was

satisfied that she could at least have given some explanation at some point in the last two years of what her circumstances were.

Given Mrs Mupereki's lack of engagement with the process and apparent lack of motivation to take any steps to address the outstanding concerns, the panel determined that returning to the nursing profession in the near future is no longer achievable for Mrs Mupereki.

In taking account of the evidence provided, the panel was of the view that it would not be in the public interest to continue with these matters indefinitely, and that this process should be brought to a conclusion. Therefore, in having regard to the above, the panel was not satisfied that a further suspension order would sufficiently address the wider public interest elements of this case as it would not serve any useful purpose. Mrs Mupereki had been afforded many opportunities by previous panels to develop her insight and address the outstanding concerns. However, she has failed to do so. This inability to recognise her serious health concerns, combined with her misconduct and police caution/convictions, and seek to address them demonstrates a lack of understanding and appreciation that is key to safe and effective nursing practice. This is not compatible with the behaviours expected of a registered nurse. The panel determined that it was necessary to take action to prevent Mrs Mupereki from practising as a registered nurse in the future and concluded that the only sanction that would serve the wider public interest was a striking-off order.

This decision will be confirmed to Mrs Mupereki in writing.

That concludes this determination.