

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

**Substantive Order Review Hearing
Wednesday 14 August 2024**

Virtual Hearing

Name of Registrant: **Monica Zandile Mkhize**

NMC PIN: 01Y05710

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – December 2001

Relevant Location: London Borough of Lambeth

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, lay member)
Sharon Haggerty (Registrant member)
Margaret Wolff (Lay member)

Legal Assessor: Paul Hester

Hearings Coordinator: Bethany Seed

Nursing and Midwifery Council: Represented by Luna Spada, Case Presenter

Ms Mkhize: Not present and unrepresented at this hearing

Order being reviewed: **Conditions of practice order (2 years)**

Fitness to practise: Impaired

Outcome: **Conditions of practice order (3 months) to come into effect on 22 September 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Mkhize was not in attendance and that the Notice of Hearing had been sent to Ms Mkhize's registered email address by secure email on 8 July 2024 but was undeliverable to the email on file. Notice was resent to Ms Mkhize's registered address by recorded delivery on 10 July 2024.

Ms Spada, 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, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Mkhize'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 Ms Mkhize has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

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

At the outset of the hearing, Ms Spada made a request that this case be held in private on the basis that proper exploration of Ms Mkhize's case involves reference [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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.

The panel decided to go into private session in connection with [PRIVATE] as and when such issues are raised in order to protect the privacy of Ms Mkhize.

Decision and reasons on proceeding in the absence of Ms Mkhize

Following its decision on the service of the notice of hearing, the panel heard submissions from Ms Spada as to proceeding in the absence of Ms Mkhize. The panel received advice from the legal assessor and retired to make its deliberations. During the course of these deliberations, the panel received information that Ms Mkhize had contacted the NMC by telephone.

The panel made no decision at this stage but went back into session and invited submissions from the NMC who had spoken with Ms Mkhize.

The panel was informed that during deliberations, the hearing coordinator received a call back from Ms Mkhize by telephone. [PRIVATE]

Upon reconvening, Ms Spada submitted that the NMC's position was that the panel should proceed in the absence of Ms Mkhize.

[PRIVATE]

Ms Spada submitted that proceeding in absence would be in the interest of Ms Mkhize to allow her to engage in proceedings in the future. She submitted that adjourning the case to be heard before the expiry of the order would place undue time pressure on Ms Mkhize to engage in proceedings, [PRIVATE]

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Mkhize. In reaching this decision, the panel has considered the submissions of Ms Spada and the advice of the legal assessor. It has had particular regard to relevant case law and to the overall interests of justice and fairness to both parties.

The panel gave careful regard to the circumstances which have led to Ms Mkhize not attending this hearing. The panel noted that under Rule 21 (2)(c) it has the power to adjourn the hearing.

The panel carefully considered whether to adjourn this hearing. It noted that the current order expires on 22 September 2024. The NMC would have sufficient time to serve a further notice of hearing which would enable it to relist a substantive order review prior to the date of expiry.

[PRIVATE]

The panel noted that it must proceed with the utmost care and caution before proceeding in the absence of Ms Mkhize. The panel decided to hear the substantive order review and noted that it may extend the present order for a short period, but longer than 22 September 2024, [PRIVATE]. The panel also noted that the overarching issue of public protection and the wider public interest need to be addressed. In deciding to proceed in the absence, the panel gave careful regard to fairness to both parties but, in particular, to Ms Mkhize.

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

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 22 September 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed for a period of nine months by a Fitness to Practise Committee on 24 May 2021. This was reviewed on 10 February 2022 where a further six-month suspension order was imposed. This was

subsequently reviewed on 5 September 2022 where a conditions of practice order was imposed for the duration of two years.

The current order is due to expire at the end of 22 September 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse;

- 1. On 27 January 2017 sent by way of email to Person 1 at Nursing 2000 a certificate indicating that you had attended a training session on basic life support at Fairlie House on 25 January 2017 when you had not.*
- 2. Your conduct in Charge 1, above, was dishonest in that you knew you had not attended a basic life support training session at Fairlie House on 25 January 2017 but intended to create the misleading impression that you had.*

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

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

"The panel noted that the last reviewing panel found that you had developing insight. At this hearing the panel was of the view that you had demonstrated an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. When questioned during the course of this hearing about how you would handle the situation differently in the future, you were able to provide answers and explain what you had taken from the training. However, the panel was concerned that whilst you stated that you take responsibility for your actions you also tended to focus on the role of a colleague

rather than focussing on your own actions. The panel was of the view that whilst you were able to demonstrate greater insight, it was not yet fully developed.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account that you were not able to demonstrate your knowledge gained in training on honesty and integrity in practice. However, it noted that you returned to work in a healthcare setting and that you stated that you keep yourself updated with current nursing practice.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has heard from you about the serious impact your dishonesty and the NMC proceedings had on you. Whilst the panel determined that your insight had not yet fully developed it was of the view that the consequences of your misconduct continue to act as a significant deterrent for you and will aid your consequential thinking in the future, making it very unlikely that you will repeat similar misconduct.

However, due to the not yet fully developed insight and, in the absence of any evidence of training today, further time needed to strengthen your practice after having been out nursing practice since 2019, the panel 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.”

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

“The panel considered replacing the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, there has been

evidence produced to show that you have developed insight, demonstrated remorse and have provided evidence of the steps taken to strengthen your practice. The panel also took into account that you have indicated that you wish to return to nursing.

The panel also noted that you have not been practicing as a registered nurse for some time and that you might have to satisfy the NMC's return to practice standards as set out in Article 19(3) to either completing an NMC-approved return to practice programme or take a competence to return to practice test.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

'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 ensure that you are directly supervised by another registered nurse any time you are working until such time as your line manager has signed you off as competent to work under indirect supervision. Your direct supervision must consist of:*

- Working at all times while being directly observed by a more senior registered nurse;*

Once you are deemed suitable by your line manager to move to indirect supervision this must consist of

- *Working at all times on the same shift as but not always being directly observed by a more senior registered nurse;*
2. *You must work with your line manager, supervisor, mentor or deputy to create a personal development plan (PDP). Your PDP must address the concerns about your honesty, integrity and any areas identified in need of support to focus on your safe return to practise. You must:*
 - a) *Send your case officer a copy of your PDP within 4 weeks of creating it.*
 - b) *Meet with your line manager, supervisor, mentor or deputy at least every 4 weeks to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a report 4 weeks prior to the next review hearing. This report must show your progress towards achieving the aims set out in your PDP.*
 3. *You must keep us informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
 4. *You must keep us informed about anywhere you are studying by:*
 - c) *Telling your case officer within seven days of accepting any course of study.*
 - d) *Giving your case officer the name and contact details of the organisation offering that course of study.*
 5. *You must immediately give a copy of these conditions to:*
 - e) *Any organisation or person you work for.*
 - f) *Any agency you apply to or are registered with for work.*

- g) *Any employers you apply to for work (at the time of application).*
 - h) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - i) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*
6. *You must tell your case officer, within seven days of your becoming aware of:*
- j) *Any clinical incident you are involved in.*
 - k) *Any investigation started against you.*
 - l) *Any disciplinary proceedings taken against you.*
7. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- m) *Any current or future employer.*
 - n) *Any educational establishment.*
 - o) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for 2 years. The panel was of the view that this would be sufficient time for you to satisfy the NMC return to nursing standards, find yourself employment as a registered nurse and demonstrate compliance with the conditions of practice order for a period of time.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 22 September 2022 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have 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:

- Your continued engagement and attendance at any hearing.*
- A detailed statement, drafted with the assistance of a model such as Gibbs (examples of which can be found on the NMC website), demonstrating your insight into your actions and reflecting on your personal responsibility for your dishonest conduct.*
- Documentary evidence of any training undertaken, whether in person or online, including relating to personal integrity, honesty and the duty of candour as well as updating your nursing practice;*
- Documentary evidence of self-directed study, such as reading around the topics of honesty and integrity;*
- Current testimonials from any employment, paid or unpaid, you undertake attesting to your honesty and integrity and your competence as a nurse.”*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Mkhize’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 and 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 Ms Spada on behalf of the NMC.

Ms Spada outlined the background of the case. She submitted that Ms Mkhize's fitness to practise remains impaired and that the current order should be extended and relisted in the future to allow time for Ms Mkhize to engage in these proceedings.

Ms Spada drew the panel's attention to the recommendations of the previous reviewing panel. She noted that these recommendations were intrinsically linked to Ms Mkhize's attendance and engagement with the NMC.

Upon panel questioning, Ms Spada clarified that despite the charges relating solely to "dishonesty-based misconduct", the current conditions of practice order only related to restriction on clinical practice insofar as the dishonesty impacted Ms Mkhize's clinical practice and competence.

Ms Spada submitted that the lack of information regarding Ms Mkhize's compliance with the previous order should therefore result in a finding of continuing impairment.

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 Ms Mkhize's fitness to practise remains impaired.

The panel noted that the last panel made a finding that Ms Mkhize's fitness to practise is impaired. The panel also noted that the persuasive burden is upon Ms Mkhize to provide evidence that her fitness to practise is no longer impaired. The panel noted that Ms Mkhize has been unable to attend this review and that, as a consequence, there is no new information from her as to strengthening her practice and addressing her insight.

The panel noted that the last reviewing panel found that Ms Mkhize had developing insight. At this hearing the panel considered that there was a lack of any further information that limited their decision to find otherwise. In light of this, and in the absence

today of any further submissions from Ms Mkhize as to her developing insight, the panel has no reason to undermine the previous panel's decision.

In its consideration of whether Ms Mkhize has taken steps to strengthen her practice, the panel took into account that there was no evidence available since the last review to suggest Ms Mkhize has taken any further steps to strengthen her practice.

Today's panel has received no new information from Ms Mkhize. The panel noted that there is a persuasive burden on Ms Mkhize to provide evidence demonstrating further insight and strengthening practice. They further noted the disadvantage faced by Ms Mkhize not being able to attend. On the balance of the evidence available, this panel determined that as Ms Mkhize's insight remains incomplete, it cannot find that Ms Mkhize is not liable to repeat matters of the kind found proved.

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. The panel considered the previous suspension orders and whether these had satisfied the public interest limb when finding impairment but were hesitant to divert from the previous panel's findings with no further information available.

For these reasons, the panel finds that Ms Mkhize's fitness to practise remains impaired on public protection and public interest grounds.

Decision and reasons on sanction

Having found Ms Mkhize'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 Ms Mkhize'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 Ms Mkhize'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 Ms Mkhize's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and that the misconduct related to poor judgement rather than clinical competence. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of Ms Mkhize's case because there have been no findings that her clinical practice is impaired.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the existing conditions of practice order for a period of 3 months, which will continue upon the expiry of the current order, namely at the end of 22 September 2024. It decided to impose the following conditions which it considered are appropriate and proportionate in this case by protecting the public, addressing the wider public interest [PRIVATE].

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 ensure that you are directly supervised by another registered nurse any time you are working until such time as your line manager has signed you off as competent to work under indirect supervision. Your direct supervision must consist of:

- Working at all times while being directly observed by a more senior registered nurse;

Once you are deemed suitable by your line manager to move to indirect supervision this must consist of

- Working at all times on the same shift as but not always being directly observed by a more senior registered nurse;

2. You must work with your line manager, supervisor, mentor or deputy to create a personal development plan (PDP). Your PDP must address the concerns about your honesty, integrity and any areas identified in need of support to focus on your safe return to practise. You must:

- a) Send your case officer a copy of your PDP within 4 weeks of creating it.
- b) Meet with your line manager, supervisor, mentor or deputy at least every 4 weeks to discuss your progress towards achieving the aims set out in your PDP.
- c) Send your case officer a report 4 weeks prior to the next review hearing. This report must show your progress towards achieving the aims set out in your PDP.

3. You must keep us informed about anywhere you are working by:

- a) Telling your case officer within seven days of accepting or leaving any employment.
- b) Giving your case officer your employer's contact details.

4. You must keep us informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
5. 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 when you are working in a self-employed capacity.
6. You must tell your 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.
7. You must allow your 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 3 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 22 September 2024.

Before the end of the period of the order, a panel will hold a review hearing to see how well Ms Mkhize 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.

[PRIVATE]. Although it made a finding of impairment on public interest and public protection grounds, it nevertheless recognises the public interest in enabling a nurse to return to safe practice. With this in mind, the panel considered that any future panel reviewing this case might be assisted by:

- Your continued engagement and attendance at any hearing.
- A detailed statement, drafted with the assistance of a model such as Gibbs (examples of which can be found on the NMC website), demonstrating your insight into your actions and reflecting on your personal responsibility for your dishonest conduct.
- Documentary evidence of any training undertaken, whether in person or online, including relating to personal integrity, honesty and the duty of candour as well as updating your nursing practice;
- Documentary evidence of self-directed study, such as reading around the topics of honesty and integrity;
- Current testimonials from any employment, paid or unpaid, you undertake attesting to your honesty and integrity and your competence as a nurse.

This will be confirmed to Ms Mkhize in writing.

That concludes this determination.