

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

**Substantive Order Review Hearing
Friday, 9 August 2024**

Virtual Hearing

Name of Registrant: Emmanuel Xavier Udo

NMC PIN 03G02520

Part(s) of the register: Sub Part 1
RN1: Adult Nurse, Level 1 (4 July 2003)

Relevant Location: Kent and Medway
Maidstone and Tunbridge Wells

Type of case: Misconduct

Panel members: Mary Idowu (Chair, Lay member)
Janet Williams (Registrant member)
Janine Green (Lay member)

Legal Assessor: Jayne Salt

Hearings Coordinator: Dilay Bekteshi

Nursing and Midwifery Council: Represented by Jacqueline Rubens, Case Presenter

Mr Udo: Not present and not represented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (18 months)**

Rule 19

The panel, of its own volition, decided to conduct parts of the hearing in private when matters relating to Mr Udo's health arise. It was agreed by Ms Rubens that any such topic raised would be marked as private on the transcript to protect Mr Udo's privacy.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Udo was not in attendance and that the Notice of Hearing had been sent to Mr Udo's registered email address by secure email on 11 July 2024.

Ms Rubens, 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 Mr Udo's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Udo 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 Mr Udo

The panel next considered whether it should proceed in the absence of Mr Udo. The panel had regard to Rule 21 and heard the submissions of Ms Rubens who invited the panel to continue in the absence of Mr Udo. She submitted that Mr Udo had

voluntarily absented himself. As a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

Ms Rubens referred the panel to the email correspondence between Mr Udo and the NMC Case Coordinator dated 8 August 2024 where Mr Udo states: *“I confirm here that the hearing can go ahead with me not in attendance.”*

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mr Udo. In reaching this decision, the panel considered the submissions of Ms Rubens and the advice of the legal assessor. It had particular regard to 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 Mr Udo;
- Mr Udo has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his 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 Mr Udo.

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order for a further period of 18 months.

This order will come into effect at the end of 19 September 2024 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 12 months by a Fitness to Practise Committee panel on 22 August 2023. The current order is due to expire at the end of 19 September 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 18 January 2018, administered analgesia to the wrong patient;
- 2) On 27 November 2018, failed to undertake frequently or at all, observations on a post-operative patient;
- 3) ...
- 4) On 19 April having administered Lorazepam to a patient, you failed to sign the drug chart to confirm this had been done;
- 5) On 22 October 2020 you:
 - a) failed to administer insulin to a patient at the prescribed time;
- 6) Between 24 October 2020 and 25 October 2020, you administered incorrect dose/s of insulin to a patient in your care;
 - a) Administered incorrect doses of insulin to a patient;
 - b) Administered 14 units of insulin instead of the prescribed 18 units
- 7) During a night shift on 27 October 2021, you failed to conduct frequently or at all, clinical observations for Patient A;
- 8) On 17 November 2021:

- a) during handover you provided colleagues with inadequate information relating to patients you had cared for;
- b) in relation to Patient B you:
 - i. failed to ensure that both dextrose and insulin were attached to the syringe pump as prescribed;
 - ii. ...;
 - iii. failed to sign Patient B's drug chart to confirm intravenous phosphate polyfuser had been administered;
 - iv. administered medication to Patient B via an incorrect route and/or without checking the prescribed route for administration;
 - v. ...;
 - vi. ...;
- c) In relation to Patient C, you failed to follow the correct procedure for controlled drugs in that you:
 - i. ...;
 - ii. did not have a second nurse present when administering morphine;
 - iii. administered morphine to Patient C via an incorrect route and/or without checking the prescribed route for administration;
- d) In relation to Patient D, you failed to follow the correct procedure for controlled drugs in that you:
 - i. ...;
 - ii. did not obtain a second nurses signature on Patient D's drug chart;
 - iii. administered medication to Patient D via an incorrect route and/or without checking the prescribed route for administration;
- e) did not complete visual infusion phlebitis scores for one or more patients;

9) During a night shift on 31 October 2019 in relation to Patient E you failed to:

- a) check if Patient E's syringe pump was on and/or working;
- b) conduct and/or note frequently or at all, clinical observations for Patient E;

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 went on to consider whether Mr Udo remained liable to act in a way that would put patients at risk of harm, would bring the profession into disrepute and breach the fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight and remediation.

The panel carefully considered the documentation and found that there was some evidence that demonstrated limited insight when Mr Udo repeatedly accepted the errors and said that he would not act in the same way again. Additionally, the panel noted that there was evidence of difficult working environments due to shortage of staff which might have adversely affected Mr Udo's ability to practise safely and professionally. However, the panel considered that, Mr Udo, as a professional nurse could have escalated the matter to the appropriate authority.

In the panel's judgment, Mr Udo's reflective pieces, written at the time of each incident, were very limited with no details of how he would do things differently in the future or any material to indicate that he wished to remediate the concerns raised with his practice.

The panel has not been able to ascertain his current level of insight. The panel was therefore unable with confidence to accept that Mr Udo had demonstrated anything other than limited insight into his misconduct or that he had considered the impact on patients, colleagues and the reputation on the profession.

The panel next considered whether Mr Udo has taken any steps to strengthen his practice. The panel did not find any references, testimonials or evidence of Continuing Professional Development (CPD) to indicate strengthening of practice related to the regulatory concerns.

In the absence of any evidence of steps to strengthen his practice or provide evidence of remediation, the panel concluded that Mr Udo had not remediated his actions.

In all the circumstances, the panel considered that there remains a risk of repetition should Mr Udo return to unrestricted practice which could place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

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

Having regard to Mr Udo's conduct in this case, the panel considered that members of the public and patients would expect a nurse to provide safe and effective care to patients by ensuring all care is carried out safely. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

In light of all of the above, the panel concluded that Mr Udo's fitness to practise is currently impaired.

The original panel determined the following with regard to sanction:

'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 Mr Udo's practice would not be appropriate in the circumstances. The [Sanctions Guidance] 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 Mr Udo'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 Mr Udo'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 and willingness 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.*

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 satisfied that the clinical failings found proved revealed identifiable areas of Mr Udo's practice which are in need of further assessment or training. The panel was of the view that it was in the public interest that, with appropriate safeguards, Mr Udo should be able to return to practise as a nurse.

The panel took into account that Mr Udo is not currently working as a registered nurse in the UK and there is no information about whether he intends to return to nursing practice, or his willingness to comply with conditions of practice. However, the panel determined that it would be possible to formulate sufficient, appropriate and practical conditions which would address the failings highlighted in this case should he return to practice.

The panel was of the view that a conditions of practice order would allow Mr Udo to work on, and evidence insight and the impact of his failings as identified in this case on patients and colleagues.

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate in the circumstances of Mr Udo's case. The panel determined that the concerns are related Mr Udo's practice and it considered that suspending Mr Udo from nursing practice would prevent him from addressing those concerns, developing his skills and demonstrating safe medication management along with record keeping, taking observations and communicating with colleagues. The panel was satisfied that Mr Udo's misconduct was not fundamentally incompatible with remaining on the register.

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... role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing...'

1. *You will send the NMC a report seven days in advance of the next NMC hearing or meeting from either:*
 - *Your line manager, mentor or supervisor detailing your progress including the plan, log and any training as set out in Condition 5 below.*
2. *You must not administer medication, whether orally, via injection or infusion unless directly supervised by another nurse until such time that you have been signed off as competent by your line manager, mentor, or supervisor (who must be a registered nurse).*
3. *You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:*
 - *Working at all times on the same shift as, but not always directly observed by a registered nurse.*
4. *You must identify a personal development plan with you line manager, mentor or supervisor and keep a log of your progress towards addressing the following areas:*
 - *Medicine administration*

- *Record keeping*
 - *Hand overs to colleagues, verbal and written*
 - *Patient Observations*
5. *You must provide a reflective piece for a reviewing panel covering the areas of concern identified.*
 6. *You must keep the NMC 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.*
 7. *You must keep the NMC 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.*
 8. *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*
9. *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.*
10. *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*

...

Any future panel reviewing this case would be assisted by:

- *Mr Udo's attendance at any future hearing.*
- *An indication of Mr Udo's future intentions in relation to his nursing career.*
- *Testimonials and/or references from any work paid or otherwise.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Udo'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 capability to practise 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.

Ms Rubens outlined the background of the case and referred the panel to the relevant documentation. She submitted that impairment persists, and the panel may deem it appropriate to extend the current conditions of practice order for a further period of 12 months.

Ms Rubens submitted that while remediation was possible at the time, there has been no evidence of steps taken to strengthen Mr Udo's practice or remediate the issues since the charges were brought against him.

Therefore, Ms Rubens invited the panel to find that Mr Udo remains impaired. He has not engaged with the hearing process. The original panel made recommendations on how he could assist in this process, specifically by attending the hearing and providing testimonials; however, none of these actions have been taken. Additionally, Mr Udo is not in a position to comply with conditions due to his lack of employment. One of the conditions required him to provide a reflective statement addressing areas of concern, which has not been submitted. Given that there has been no change in circumstances, the panel may conclude that there is a likelihood that he remains impaired.

Ms Rubens stated that the sanction imposed in August 2023 should be extended for another 12 months to give Mr Udo an opportunity to strengthen his practice. It was noted that there were no issues concerning general competency, and the conditions proposed are targeted areas where Mr Udo could receive supervision and training, thus allowing ample opportunity for improvement.

Ms Rubens referred the panel to an email response to the NMC dated 8 August 2024, in which Mr Udo stated: *[PRIVATE]*. Furthermore, there are no details indicating whether Mr Udo wishes to continue practising as a nurse. Nevertheless,

Ms Rubens suggested that the conditions of practice should continue to afford Mr Udo another chance at remediation.

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 Mr Udo's fitness to practise remains impaired.

The panel had regard to the information before it. The panel noted that there has been no information about whether Mr Udo had taken up employment as a registered nurse, subject to the current conditions of practice order. The panel had no information to suggest that Mr Udo had been able to work towards fulfilling the conditions of practice order. The panel also had no information to suggest that the concerns identified by the original substantive hearing panel had been addressed. It considered that Mr Udo had not provided evidence to show that he had addressed the recommendations made by the original panel. It noted that there was no evidence before this panel to suggest that Mr Udo's insight or remediation had developed since the original substantive hearing.

The panel considered that Mr Udo, as a registered nurse, had a duty to engage with the NMC as his regulator, and to demonstrate compliance with his conditions of practice order.

The panel therefore considered that a risk of repetition remains and that patients would be placed at real risk of harm if Mr Udo were permitted to practise without restriction. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 considered that

registrants have a duty to engage with their regulator, and that members of the public, in the circumstances, would have expected Mr Udo to demonstrate compliance with his conditions of practice order. Taking this as well as Mr Udo's misconduct into account, the panel determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

For these reasons, the panel finds that Mr Udo's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Udo'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 Mr Udo'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 Mr Udo'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 Mr Udo'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 considered that Mr Udo's failings were remediable, and that this could be achieved through workable conditions of practice, as the original substantive hearing panel had determined.

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 took into account the email from Mr Udo dated 8 August 2024 [PRIVATE] and is able to remediate and practise safely again.

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 no deep-seated attitudinal problems. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel considered whether to impose a suspension order. It noted the duty upon Mr Udo to engage with these proceedings, to satisfy any recommendations made and to demonstrate evidence of satisfying the conditions of practice order. Whilst it was the case that Mr Udo had not provided the panel with any such evidence; the panel also had no evidence to suggest that he had breached the current conditions of practice order. The panel considered that Mr Udo's clinical failings remained capable of remediation by way of a conditions of practice order, and that he should be given further opportunity to address the issues in this case in such a manner. For these reasons, the panel determined that a suspension order would be disproportionate at this time.

The panel determined to extend the current conditions of practice order for a period of 18 months. It considered that this would give Mr Udo sufficient opportunity to obtain employment subject to the conditions, and to work towards addressing them, in order to remediate his clinical failings. The panel also considered that this would provide Mr Udo with time to address recommendations set out below, including

developing his insight, and providing information about what he has been doing to remediate his clinical practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 19 September 2024. It decided to extend 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 will send the NMC a report seven days in advance of the next NMC hearing or meeting from either:
 - Your line manager, mentor or supervisor detailing your progress including the plan, log and any training as set out in Condition 5 below.
2. You must not administer medication, whether orally, via injection or infusion unless directly supervised by another nurse until such time that you have been signed off as competent by your line manager, mentor, or supervisor (who must be a registered nurse).
3. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:
 - Working at all times on the same shift as, but not always directly observed by a registered nurse.

4. You must identify a personal development plan with you line manager, mentor or supervisor and keep a log of your progress towards addressing the following areas:
 - Medicine administration
 - Record keeping
 - Hand overs to colleagues, verbal and written
 - Patient Observations

5. You must provide a reflective piece for a reviewing panel covering the areas of concern identified.

6. You must keep the NMC 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.

7. You must keep the NMC 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.

8. 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
9. 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.
10. 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 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 19 September 2024 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 Mr Udo 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:

- Mr Udo's attendance at any future hearing to give him an opportunity be able to share in person his reflections on impairment, current situation and answer questions from the panel.
- If Mr Udo chooses not to attend, to provide clear reasons as to why he is unable to attend the hearing.
- A recent reflective piece to show reflections and insight on the potential impact on patients, colleagues and the nursing profession and what he has done to rectify the areas of concern. (Mr Udo may find it useful to use a recognised model, such as Gibbs Reflective Cycle)
- An indication of Mr Udo's future intentions in relation to his nursing career.
- Testimonials and/or references from any paid or unpaid work.

This will be confirmed to Mr Udo in writing.

That concludes this determination.