

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

**Substantive Order Review Meeting  
Tuesday ,11 June 2024**

Virtual Meeting

**Name of Registrant:** Nomsa Lindiwe Mbelle

**NMC PIN** 04F0044O

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing (June 2004)

**Relevant Location:** Derbyshire

**Type of case:** Misconduct/Lack of competence

**Panel members:** Bryan Hume (Chair, lay member)  
Esther Craddock (Registrant member)  
Sabrina Sheikh (Lay member)

**Legal Assessor:** Nigel Pascoe KC

**Hearings Coordinator:** Samara Baboolal

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

**Fitness to practise:** Impaired

**Outcome:** **Striking-Off order to come into effect on 25 July 2024  
in accordance with Article 30 (1)**

## **Decision and reasons on service of Notice of Meeting**

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Ms Mbelle's registered email address by secure email on 3 May 2024.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 10 June 2024 and inviting Ms Mbelle to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Mbelle has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

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

The panel decided to impose a striking-off order. This order will come into effect at the end of 25 July 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 24 June 2022. This was reviewed on 9 June 2023, where the reviewing panel continued the suspension order for a further 12 months.

The current order is due to expire at the end of 25 July 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. In 2018 and/or 2019 failed to adequately preserve safety as a scrub nurse and surgical first assistant in that you:*

*1.1 On one or more occasions in 2018 and/or 2019, did not provide correct surgical*

*instruments on request **[FOUND PROVED]***

*1.2 On an occasion in 2019 did not unpack surgical instruments correctly **[FOUND PROVED]***

*1.3 On one or more occasions in 2019 were unable to count surgical instruments accurately **[FOUND PROVED]***

*1.4 On one or more occasions, slept in Theatre while on duty **[FOUND PROVED]***

*1.5 On an occasion in 2018 or 2019, prior to 21 March 2019, slept in a prosthesis*

*store room while on duty **[FOUND PROVED]***

*1.6 On or about 15 February 2019, wrote illegibly in the 'report of the operation' document **[FOUND PROVED]***

*1.7 On or about 21 February 2019 risked compromising sterility in that you did not*

*scrub-in correctly without prompting **[FOUND PROVED]***

*2. On an occasion in 2018, bit Colleague A **[FOUND PROVED]***

*And, in light of the above, your fitness to practise is impaired by reason of your lack of competence in respect of charges 1.1, 1.2, 1.3, and/or 1.6, and by reason of your misconduct in respect of charges 1.4, 1.5, 1.7, and/or 2.'*

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

*'The panel noted that the original panel found that Ms Mbelle had not provided any evidence of insight. At this meeting the panel had no further information from Ms Mbelle since her substantive hearing to demonstrate that the concerns of the substantive panel have been addressed. Ms Mbelle has not provided any information as to what she has been doing since the substantive hearing. She has not provided a reflective piece or any evidence of insight into her misconduct or lack of competence. She has not provided any evidence that she has taken steps to strengthen her practice.*

*In light of this lack of information and Ms Mbelle's lack of engagement, the panel determined that there remains a risk of harm to the public if Ms Mbelle was permitted to practise as a nurse without restriction, and concluded that her fitness to practise remains impaired on the grounds of public protection.*

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

*The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.*

*For these reasons, the panel finds that Ms Mbelle's fitness to practise remains impaired.'*

The first reviewing 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 Ms Mbelle'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 Mbelle'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 a conditions of practice on Ms Mbelle'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 bore in mind the seriousness of the facts found proved at the original hearing. It also noted that Ms Mbelle has still not engaged with the NMC or stated what her future intentions are pertaining to her practice as a registered nurse.*

*Additionally, Ms Mbelle has not provided evidence of insight or strengthened practice. The panel had no evidence before it that Ms Mbelle would comply with conditions of practice. It therefore concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.*

*The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Mbelle further time to fully reflect on her previous failings. The panel concluded that a further suspension order would be the appropriate and proportionate response and would afford Ms Mbelle adequate time to further develop her insight and take steps to strengthen their practice. It would also give Ms Mbelle an opportunity to inform the NMC of her future intentions to practise as a registered nurse in the United Kingdom.*

*The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of*

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

*The panel did not consider a striking off order to be appropriate at this hearing. However, it noted that this sanction would be open to a future reviewing panel.*

*This suspension order will take effect upon the expiry of the current suspension order, namely the end of 25 July 2023 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:*

- *Evidence from Ms Mbelle as to her future intentions to practise as a registered nurse in this country, and if she wishes to do so, then she should provide:*
  - *A reflective piece*
  - *A medical report on Ms Mbelle's health status*
  - *Evidence of how Ms Mbelle has kept her practice up to date*
- *Ms Mbelle's attendance at the review hearing.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Ms Mbelle'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, including the NMC bundle.

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 Mbelle's fitness to practise remains impaired.

The panel took into account that Ms Mbelle has not engaged in any of the NMC proceedings. It found that the charges are serious and relate to professional conduct and fundamentals of nursing practice. It noted that Ms Mbelle has not provided any explanations to the charges as she has disengaged, and that there is no evidence to suggest that she has strengthened her practice. The panel determined that, as Ms Mbelle has not demonstrated any insight or strengthening of practice, the risk of harm remains. It determined that there is therefore a risk of harm to the public and a risk of repetition if Ms Mbelle were permitted to practise without restriction.

The last reviewing panel determined that Ms Mbelle was liable to repeat matters of the kind found proved. Today's panel has not received any new information which suggests that the risk of repetition has been mitigated. In light of this the panel determined that Ms Mbelle is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

### **Decision and reasons on sanction**

Having found Ms Mbelle'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 Mbelle'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 Mbelle'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 a conditions of practice on Ms Mbelle'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 were unaware of the current employment status of Ms Mbelle. The panel bore in mind the seriousness of the facts found proved at the last meeting and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Mbelle's misconduct.

The panel next considered imposing a further suspension order. The panel noted that Ms Mbelle has not shown remorse for her misconduct. Further, Ms Mbelle has not demonstrated any insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Ms Mbelle no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Ms Mbelle from practising in the future and concluded that the only



sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel took into account that Ms Mbelle has been subject to a suspension order for some time and has failed to use this time as an opportunity to reflect on the charges against her, engage with the NMC and strengthen her practice. The panel were of the view that a further suspension order would more likely than not be met with no engagement from Ms Mbelle. It found that imposition of another suspension order would risk becoming redundant considering that Ms Mbelle has disengaged and has failed to demonstrate any strengthening of practice or insight, and determined in light of this that a striking-off order is therefore the most appropriate order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 25 July 2024 in accordance with Article 30(1).

This decision will be confirmed to Ms Mbelle in writing.

That concludes this determination.