

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Thursday, 18 April 2024 – Friday, 19 April 2024 & 17 June 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Virtual on 17 June 2024

Name of Registrant: Micheal Omoniyi

NMC PIN 22G1116O

Part(s) of the register: Registered Nurse – RNA, Adult Nurse (July 2022)

Relevant Location: Nigeria

Type of case: Incorrect/Fraudulent entry

Panel members: Godfried Attafua (Chair, Registrant member)
Catherine Lund (Registrant member)
Neil Calvert (Lay member)

Legal Assessor: Lucia Whittle-Martin

Hearings Coordinator: Max Buadi
Leigham Malcolm (17 June 2024 only)

Nursing and Midwifery Council: Represented by Harry Perkin, NMC Case Presenter

Mr Omoniyi: Present and represented by Simon Holborn, (NMC Watch)

Outcome: **Charged proved, Registration entry fraudulently procured**

Direction: **Entry to be removed from the register**

Interim Order: **Interim suspension order (18 months)**

Details of charge

That you, as part of your application to join the NMC register:

1. Submitted or caused to be submitted, the following Computer Based Test result, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNA Clinical test, taken on 2 September 2021

And, in light of the above, your entry on the NMC register, in the name of Micheal Omoniyi, PIN 22G1116O, was fraudulently procured and/or incorrectly made.

After the charge was read the panel heard from Mr Holborn, who informed the panel that you denied the charge.

Preliminary matters

Decision and reasons on application to admit written statements of Witness 4 and Witness 5 into evidence

Prior to the charge being read, the panel heard an application from Mr Perkin, on behalf of the Nursing and Midwifery Council (the NMC) to admit the witness statements of Witness 4 and Witness 5 as hearsay evidence.

Mr Perkin informed the panel that Witness 4's statement stated that she had undertaken a Computer Based Test (CBT) at Yunnik Technologies Limited (the test centre) and admitted to fraudulently procuring her exam. Witness 4 stated that she felt pressured to pay a bribe and a human proxy undertook the exam on her behalf. She further stated that she barely had time to read the questions because the proxy went through the CBT so quickly.

Mr Perkin then drew the panel's attention to the Witness 5's statement. He submitted that Witness 5 also admitted to fraudulently procuring her CBT at the test centre. She stated that a lady sat next to her and told her what answers to select and said Witness 5 needed to do this quickly.

Mr Perkin referred the panel to the guidance in the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* which pertains to the admissibility of hearsay evidence.

Mr Perkin submitted that the witness statements are not the sole or decisive evidence in this case. He submitted that both Witness 4 and Witness 5 had undertaken their respective CBT's on different dates to you. He submitted that their witness statements provide broad generic evidence in support of the proposition that the test centre was operating as a "fraud factory". He submitted that Witness 2 and Witness 3 have provided evidence in support of this.

Mr Perkin submitted that it would be easy for you to challenge the witness statements due to the fact that both Witness 4 and Witness 5 had undertaken the CBT on different dates to you. He submitted that there is no reason for them to fabricate these allegations.

Mr Perkin submitted that it would not be practical for Witness 4 and Witness 5 to attend each, and every hearing connected to the test centre and give live evidence. He also submitted that the witness statements are not contested. He informed the panel that you were given prior notice by the NMC that this application would be made and there were no issues raised.

Mr Perkin invited the panel to admit the witness statements of both Witness 4 and Witness 5.

Mr Holborn, on your behalf, submitted that this is a matter for the panel.

Panel's Decision on Witness 4 and Witness 5's witness statement

The panel heard and accepted the legal assessor's advice, during which she referred the panel to a number of cases including the case of *Thorneycroft*.

The panel considered *Thorneycroft* and determined the following:

(1) whether the statement was the sole or decisive evidence in support of the charge;

The witness statements of Witness 4 and Witness 5 were not the sole or decisive evidence in support of the charge.

(2) the nature and extent of the challenges to the contents of the statement;

Witness 4 and Witness 5 had undertaken the CBT on different days to you. No challenge to the content of either statement was advanced on your behalf.

(3) whether there was any suggestion that the witness had reason to fabricate their allegations;

There is no evidence to suggest that Witness 4 and Witness 5 had a reason to fabricate this evidence. They have admitted to fraudulently procuring a proxy, and by doing so put their own registration and careers at risk.

(4) the seriousness of the allegations, taking into account the impact that adverse findings might have on the Registrant's career;

The charge is serious and relates to fraudulent entry which could have an adverse impact on your nursing career.

(5) whether there was a good reason for the non-attendance of the witness;

It was suggested by the NMC that it would be impractical for both witnesses to be asked to attend each and every Yunnik test centre hearing. Your representative made no representation in that regard.

(6) whether the NMC had taken reasonable steps to secure the attendance;

There is no evidence to suggest that the NMC had taken any steps to secure the attendance of Witness 4 and Witness 5. A policy decision had been made not to call them.

(7) the fact that the registrant did not have prior notice that the witness statement was to be read.

You had prior notice that the NMC would apply to read the witness statements of Witness 4 and Witness 5.

The panel bore in mind that Witness 4 and Witness 5 are giving an account of their personal experiences at the test centre. While the panel accept that both Witness 4 and Witness 5 were not present at the test centre at the same time you were, the panel considered that their experience provides context to what is alleged was occurring at the test centre, namely fraud.

In light of the above, the panel decided that it would be fair and relevant to admit the witness statements of Witness 4 and Witness 5. In due course the panel will determine what weight, if any, to attach to it.

Background

Pearson VUE have a contract with the NMC as their Computer Based Test (CBT) provider which has been in place since 2014. CBT is one part of the NMC's Test of Competence (ToC) and is used by the NMC to assess the skills and knowledge of people wanting to join the NMC's register from overseas as a nurse, midwife or nursing associate or re-join the register after a long period away from practice. The second part of the ToC is an objective structured clinical examination (OSCE) – a practical examination.

The current CBT (CBT 2021), created on 2 August 2021, is split into two parts (Part A and Part B). Part A contains a numeracy test consisting of 15 short answer questions and lasts up to 30 minutes. Part B is a clinical test consisting of 100 multiple-choice questions and lasts up to 2 hours and 30 minutes. All questions are scored as either correct or incorrect.

Pearson VUE contracted with a third party, the test centre, in relation to a Pearson Vue authorised test centre (PVTC) in Ibadan, Nigeria. This testing centre is where the concerns in this matter relate.

On 15 March 2023, Pearson VUE identified that multiple candidates at the test centre were completing the clinical part of the CBT in 10 minutes whereas 2.5 hours is allowed for this part of the exam. The number of candidates was initially unknown.

Pearson Vue conducted an investigation and found that the data set for the period between 15 March 2019 and 31 March 2023 indicated probable fraudulent behaviour which was not present in other test centres globally. This conclusion was reached on the basis of the candidates' geographical proximity to the centre, the speed with which the candidates completed the test, and the accuracy of the candidates' results.

The investigation also concluded that there was no technical error at the testing centre that had led to the data set and that interference in the form of a human proxy was more likely involved.

The NMC commissioned a report from Witness 2, instructed as an independent expert to analyse and report on the data. He concluded that there were a significant number of exceptionally quick test times at the testing centre, compared to global averages.

On 3 August 2023 the NMC's Registrar decided to operate a presumption that a candidate at the test centre had acted fraudulently, if they passed a test at a speed that would place them as the fastest individual in an average population of 2,500 (the '1 in 2,500 threshold').

Because of the evidence of alleged widespread fraudulent activity at the testing centre, the NMC were unable to be confident in any of the CBT results obtained at the testing centre. The Registrar therefore considered all CBT results obtained there to be invalid and that the safest, fairest, and most proportionate way to deal with this was to ask everyone who sat their CBT at the testing centre if they wanted to take a new CBT. In the absence of a valid CBT an individual should not have been allowed entry to the NMC register.

On 2 September 2021, you completed the CBT at the testing centre. According to the data, you completed the clinical test in 17.30 minutes. It is the NMC's case that the reason you were able to complete the test so quickly was that you used a proxy to sit the test on your behalf.

Your evidence

You informed the panel of your academic achievements. You stated that in 2018, you gained admission into nursing school and in 2019, due to your academic performances you were selected to be part of an exchange programme to go to a hospital in Germany for five weeks. You said that you spoke to many professors who would tell you that you had a good prospect of becoming a health practitioner. You said that it was at that point you decided that you were not going to practice in Nigeria once you graduated. You said that you would do all you could do to travel abroad once you had completed your studies.

You said that in 2018 and in 2019, you were a member of the quiz competition group for your training institution. You said that you were also a member of educational groups in the educational wing of your training institution. You said that you had attended national quiz competitions in your first year, and again in your second year but as part of a group. You were due to attend and represent your school in the third year as the main candidate but lockdown due to the coronavirus pandemic prevented this. You stated you were informed by the board organising the competition that the competitions would go ahead once lockdown was lifted so you continued practicing for it. You said that while you were practicing for the quiz competition, you also practiced for your final qualifying exams, and then the National Council Exams.

You told the panel that you sat your final qualifying exams in August 2020 and passed in one sitting. You also sat the National Council Exams in November 2020 which you also passed in one sitting. You said that you became registered after this.

You told the panel that preparing for and sitting your qualifying exams helped in preparations for your CBT test. You also said that some of the practice questions on the Pearson Vue website were the same as the actual CBT you took in September 2021. You

said that you used numerous materials to prepare for the exam and had undertaken around 500 practice questions.

You said that you chose the test centre because it was the closest one to you and you knew you would be able to get there easily. You said that the test was due to begin at 12:00. Your passport was taken to be verified, however there were problems with the internet at the test centre which was why the biometric tests could not be conducted. You confirmed that there was another candidate at the test centre with you who was also affected by the technical difficulties. You said that you could not start the CBT until this was resolved. You started the test at 17:00. You said you completed the test quickly because you had to get back in time so that you could get to work the following day. You said that you completed the CBT in the time that you did and denied the use of a proxy test take.

You informed the panel that you did re-sit the CBT on 12 October 2023 and that you passed. You completed the test on that occasion in a time of 25.98.

You invited the panel to consider a practice test you had undertaken online that morning and that you had completed it very quickly to demonstrate that you are capable of completing such tests quickly.

Decision and reasons on the facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Perkin on behalf of the NMC and by Mr Holborn on your behalf.

The panel was aware and accepted that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel was encouraged to consider the principles that emerged from the *Upper Tribunal (Immigration and Asylum Chamber) in DK and RK v Secretary of State for the*

Home Department [2022] UKUT 112 (IAC) and SSHD v Akter [2022] 1 WLR 3868 and Ram v SSHD [2023] EWCA Civ 1323.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: An independent data analyst who provided the NMC with an analysis of the data provided by Pearson Vue;
- Witness 2: Director of Information Security and Security Services at Pearson Vue, undertook the initial investigation into the anomalies;

The panel took account of the witness statements from the following witnesses on behalf of the NMC:

- Witness 3: Executive Director of Professional Practice at the NMC;
- Witness 4: Band 5 nurse in the UK provides her experience sitting an exam at Yunnik Test centre;
- Witness 5: Band 4 Pre-registration nurse, in the UK provides her experience sitting an exam at Yunnik Test centre.

The panel heard live evidence from Witness 6, a practice development lead who was a character witness on your behalf.

The panel also heard evidence from you under affirmation.

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

Charge 1

1. Submitted or caused to be submitted, the following Computer Based Test result, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNA Clinical test taken on 2 September 2021

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Witness 1, Witness 2, Witness 3, Witness 4, Witness 5 and your evidence.

In her written statement Witness 3 provided the panel with reasons as to why the NMC needed to take action in regard to potential fraudulent activity at the test centre.

The panel further had regard to Witness 1's written and oral evidence, in which they confirmed that Pearson Vue, following their investigations, concluded that the data gathered from the test centre was indicative of fraud undertaken by proxies. He stated that one of the key reasons for this conclusion was the speed upon which candidates were completing their tests. Witness 1 stated that Pearson Vue conducted an analysis of the time it was taking candidates to complete the tests at the test centre compared to the global benchmark.

Witness 1 also stated that Pearson Vue released one online practice test for the CBT on its website. He said that he believed the practice questions did not contain the same questions as the actual CBT. He confirmed that candidates preparing for the CBT would not have seen the exam questions beforehand in any practice questions made available by Pearson Vue.

The panel also took account of the evidence of Witness 2 and his analysis in his report titled "Review of Pearson VUE Computer Based Test Data for the Nursing and Midwifery Council" dated 14 September 2023. Witness 2's conclusion was that data showed that the test centre statistically had significantly lower test times than the global benchmark

population. The report also determined that other centres in Nigeria matched the global times as well. It is not country specific, namely that Nigeria has remarkably fast results, it is purely the test centre that has results with testing speeds significantly lower both within Nigeria and globally.

The panel also considered the witness statements of both Witness 4 and Witness 5. It noted that Witness 4 accepts that she used a proxy as she felt pressured to do so. Witness 5's experience was different as she stated she did not use the proxy at the test centre. However, she stated that she was being shouted at with answers, threatened and felt pressured.

The panel was mindful that this amounted to hearsay as neither Witness 4 and Witness 5 had attended to give evidence at this hearing. As a result, there was no way to test the veracity of what is in their respective witness statements. It bore in mind that both Witness 4 and Witness 5 are providing their own personal experiences, they attended the test centre on different days than you did. Therefore, their accounts did not indicate that there was a proxy tester on the day you took the CBT. However, the panel was satisfied that both witness statements provided context to what was occurring at the test centre, namely that there were some instances of fraud taking place.

The panel took account of the evidence you provided.

The panel took account of the numerous positive references you provided from senior colleagues including doctors and managers attesting to your academic and clinical abilities as well as your good character. Witness 6, your previous line manager, stated that you were respected by all members of the multidisciplinary team, in which you are currently working, and spoke to your trustworthiness.

The panel also took account of your submission that you are undertaking a master's degree at the University of Derby which you are self-funding.

The panel considered the NMC's charge that you had obtained your CBT clinical result through fraud, and the allegation that the exceptional speed in which you completed the test was indicative of a human proxy being used. According to Witness 2's analysis, the

odds of you completing the clinical section of the CBT at your time of 17.30 minutes was 1 in 8068.29. It considered the evidence that only 7 out of 56,478 were faster in the global benchmark.

The panel had regard to your evidence that you completed the CBT yourself, without the use of a proxy tester. You also said that you used numerous materials to prepare for the test and had access to around 500 practice questions which you found on the internet. It was unclear on the face of the evidence whether the questions on the internet were the same as the actual CBT questions. However, the panel noted that these would have been accessible to all candidates in any event.

The panel considered the evidence of your resit exam. You completed the clinical section of the CBT in 25.98 minutes.

With regard to this second CBT test, the panel took into account:

- Your evidence that this was still completed quickly.
- The statistical evidence which indicated that the speed of completion of this test would not have fallen within the NMC's '1 in 2,500 threshold' for suspicion.
- The evidence from Witness 2 which advised caution in making direct comparisons between tests taken under different conditions.

Having weighed these factors, the panel concluded that the results of the second CBT test were of no probative value.

With regard to the evidence that you provided on taking the test on the morning of the hearing, the panel established that these were the same practice questions provided as a sample test within the documents that were before the panel.

The panel then considered the evidence of Witness 1 regarding the presence of another person in the room at the time you sat the test. Witness 1 informed the panel that according to the data you started your test at 17:04 and another candidate started their test at 17:02. You both completed the test in an almost identical time. The data showed,

and you agreed, that there were only two candidates in the room at the time you took the test.

The panel noted that in cross examination, you stated that you would not expect the average candidate to complete the clinical section of the CBT in a similar time as yourself bearing in mind that you are an exceptional candidate.

The panel also considered your strong academic background. However, the panel concluded that it would be exceptionally unlikely that two candidates taking the test at the same time, at the same test centre would complete the CBT so quickly.

The panel bore in mind that it had already concluded that there was fraud occurring at the test centre and concluded that the reason why two candidates were able to complete the CBT so quickly was more likely than not due to the use of a human proxy test taker.

The panel bore in mind that under cross examination, you were asked if you would have known if there was a proxy test taker in the room. You said that you would have and subsequently stated that there was no human proxy taker in the room with you. The panel was not persuaded and did not find your response credible.

In light of the above the panel was satisfied that, on the balance of probabilities, you submitted or caused to be submitted, your CBT clinical test results, obtained at the test centre had been obtained through fraud.

In all the circumstances, the panel concluded that you submitted that CBT with the intention of misleading the Assistant Registrar, and that your actions were fraudulent.

The panel therefore find this charge proved on the basis that your entry was fraudulently procured.

Panel's direction

Mr Perkin submitted that you may well be a competent and professional nurse. However, in view of the panel's finding that your entry to the NMC register was fraudulently procured, he invited the panel to direct that the entry be removed.

Mr Perkin submitted that to take no action would not address the public interest considerations and would therefore not be appropriate.

Mr Perkin highlighted that any direction made by the panel would not come into effect for 28 days due to the appeal period. Because of this, he submitted that the NMC sought an interim suspension order for at least 28 days.

Mr Holborn accepted the panel's finding that your entry was fraudulently procured. He maintained, however, that you did not accept that that your entry was fraudulently procured.

Mr Holborn submitted that, despite the panel's finding, there were some circumstances in which it would not be appropriate to remove an entry from the register.

Mr Holborn submitted that there was no direct evidence of a proxy in your case. He highlighted to the panel your positive testimonials and references, and noted that you are currently self-funding a master's degree. He submitted that you are an excellent member of the health service, and that the public could be confident in your clinical nursing practice.

Mr Holborn told the panel that you are willing, keen, and able to continue practising as a nurse and invited the panel to consider a conditions of practice order.

The panel accepted the advice of the legal assessor.

The panel had careful regard to the NMC's guidance on 'Available orders for fraudulent or incorrect entry', which set out the following:

'The Investigating Committee may decide there is no need to make an order removing the entry if:

- *the entry was incorrect*
- *there was no fraud or dishonesty, and*
- *there is no issue over any of the registration requirements that needs the specialist judgement of the Registrar.*

...In certain circumstances, it may be appropriate to order that the Registrar amend the entry in the register. This could apply in situations where an annotation has been made in error, and there is no wider concern regarding the integrity of the entry.

An order to amend the entry in the register may be appropriate if:

- *the entry was incorrect*
- *there was no fraud or dishonesty, and*
- *there's no issue over any of the registration requirements that needs the specialist judgement of the Registrar.'*

The panel previously found that your entry was fraudulently procured. It determined that it would be inappropriate to take no action.

The panel also considered that an amendment was not appropriate in this case because it was not just a matter of you having made an error with regards to your entry on the register.

The panel took account of your good character and excellent testimonials. However, it decided to direct that your entry onto the register be removed. It considered that removal of your entry on the register was necessary to maintain the public's trust in the profession and in the accuracy of the register.

You will be notified of this decision in writing. You have the right to appeal the decision under Article 38 of the order. This order cannot take effect until the end of the 28 day appeal period or, if an appeal is made, before the appeal has been concluded.

Interim order

As the panel's direction to remove your entry from the register cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the substantive direction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel took account of the submissions made by both Mr Perkin and Mr Holborn.

The panel was satisfied that an interim order is in the public interest. The panel had regard to the seriousness of the facts found proved, the public interest considerations, and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, as no workable conditions could be devised in light of the nature of the finding. The panel therefore imposed an interim suspension order for a period of 18 months due to allow for any potential appeal.

If no appeal is made, then the interim suspension order will be replaced once the panel's direction to remove your entry from the register comes into effect, namely 28 days after it is sent to you in writing.

That concludes this determination.