

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

**Substantive Order Review Hearing
Thursday, 16 May 2024**

Virtual Hearing

Name of Registrant: Runyararo Fungayi Moyo-Chiname

NMC PIN 01A0037E

Part(s) of the register: Nurses part of the register, sub part 1
RNC: Children's nurse, level 1 (05 January 2004)
Specialist community public health nursing part of the register
RHV: Health visitor (24 September 2010)
Recordable qualifications V100: Community practitioner nurse prescriber (24 September 2010)

Relevant Location: Essex

Type of case: Misconduct

Panel members: Janet Fisher (Chair, lay member)
Judith McCann (Registrant member)
Chris Thornton (Lay member)

Legal Assessor: Lucia Whittle-Martin

Hearings Coordinator: Hanifah Choudhury

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Ms Moyo-Chiname: Not present and not represented at this hearing

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect on 27 June 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 Moyo-Chiname was not in attendance and that the Notice of Hearing had been sent to Ms Moyo-Chiname's registered email address by secure email on 12 April 2024.

Mr Webb, 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 Moyo-Chiname'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 Moyo-Chiname 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 Ms Moyo-Chiname

The panel next considered whether it should proceed in the absence of Ms Moyo-Chiname. The panel had regard to Rule 21 and heard the submissions of Mr Webb who invited the panel to continue in the absence of Ms Moyo-Chiname.

Mr Webb submitted that there had been no engagement at all by Ms Moyo-Chiname with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Moyo-Chiname. In reaching this decision, the panel has considered the submissions of Mr Webb 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 all parties. It noted that:

- No application for an adjournment has been made by Ms Moyo-Chiname;
- Ms Moyo-Chiname has not engaged with the NMC and has not responded to any of the emails sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her 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 Ms Moyo-Chiname.

Preliminary matters

At the outset of the hearing Mr Webb informed the panel of a separate referral made against Ms Moyo-Chiname, involving allegations of dishonesty, which was referenced in the previous substantive order review decision which the panel had read.

Mr Webb submitted that the new referral remains under investigation and is soon to be considered by the Case Examiners. He submitted that the reference to those proceedings should be put out of the minds of the panel and today's review should be undertaken solely on the basis of the original concerns which were considered. He further submitted that today's circumstances would not lead to an informed observer to conclude that there would be any real possibility of bias.

The panel accepted the advice of the legal assessor.

The panel noted that it is unfortunate that it had sight of reference to another referral in relation to Ms Moyo-Chiname. It noted that the referral is different in nature and separate to the matters concerning today's panel. It is unproven and has yet to be reviewed by the Case Examiner.

The panel did not feel biased or prejudiced towards Ms Moyo-Chiname and was able to put the separate referral out of it's mind and focus solely on the relevant issues put in front of it for the purpose of today's hearing. It was also of the view that an informed observer would recognise that today's panel is an experienced, professional panel, well able to put irrelevant matters out of it's mind.

The panel therefore decided to proceed with today's hearing, focusing solely on the original concerns.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 26 June 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 25 November 2022. This was reviewed on 4 May 2023 and the order extended for 12 months.

The current order is due to expire at the end of 26 June 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 one or more occasions between February 2020 and 27 August 2021:

a) Failed to carry out allocated tasks;

- b) *Failed to timeously and accurately record details of tasks carried out;*
- c) *Failed to book and/or carry out safeguarding follow-up appointments;*
- d) *Failed to keep your caseload up to date on the SystemOne case management system;*
- e) ...
- f) *Failed to communicate clearly and effectively in that you:*
 - i) ...
 - ii) *Failed to communicate difficulties with your caseload to your colleagues and/or supervisors.*

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

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

'The panel considered whether Ms Moyo-Chiname's fitness to practise remains impaired.

Today's panel has heard no new information that suggests that Ms Moyo-Chiname is no longer impaired. The panel determined that there is no evidence to conclude that Ms Moyo-Chiname is unlikely to repeat matters of the kind found proved at the substantive hearing. In the absence of Ms Moyo-Chiname, in its consideration of whether Ms Moyo-Chiname has taken steps to strengthen her practice, the panel determined that there was no evidence of any steps taken to demonstrate insight or any training undertaken. It then determined that, in this case, 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 Moyo-Chiname's fitness to practise remains impaired.'

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

'Having found Ms Moyo-Chiname's fitness to practise currently impaired, the panel then considered what, if any, order it should impose in this case. The panel noted that its powers are set out in Article 30(1) 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 Moyo-Chiname'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 Moyo-Chiname'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 Moyo-Chiname'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 and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. Further there is no indication that Ms Moyo-Chiname would be willing to comply with a condition of practice order. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Moyo-Chiname's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Moyo-Chiname further time to fully reflect on her previous misconduct. It considered that Ms Moyo-Chiname needed to gain a full understanding of the potential risks to vulnerable children which arose from her misconduct and how the misconduct of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel determined that a further twelve months suspension order would be the appropriate and proportionate response and would afford Ms Moyo-Chiname's adequate time to further develop her insight and take steps to strengthen their practice. It would also give Ms Moyo-Chiname's an opportunity to obtain testimonials in relation to any employment paid or unpaid undertaken since the substantive hearing.

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 that a further suspension order for the period of twelve months would provide Ms Moyo-Chiname's with an opportunity to engage with the NMC, and the opportunity to reflect on her practice and develop insight into what went wrong. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 26 June 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 may be assisted by:

- Her engagement/attendance at the review hearing.*
- Evidence of keeping up to date with nursing/health visiting practice.*
- A reflective piece that demonstrates consideration of the impact of her actions on vulnerable patient and the steps she has taken to ensure no repetition of his misconduct in the future.*
- Character references and testimonials from any paid or unpaid work.'*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Moyo-Chiname'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. It has taken account of the submissions made by Mr Webb on behalf of the NMC.

Mr Webb submitted that there has been no engagement from Ms Moyo-Chiname and therefore none of the recommendations set out by the previous panel have been met. He submitted that there has been no information provided by Ms Moyo-Chiname to undermine the previous findings of impairment or to suggest that the concerns have been remediated. He further submitted that a finding of current impairment remains necessary on the ground of public protection and in the wider public interest.

Mr Webb submitted that the NMC's position today in relation to sanction is that nothing less than a further suspension would be sufficient to protect the public. He submitted that it

is a matter for the panel to decide if a striking off order is now the necessary and appropriate order.

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 Moyo-Chiname's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Ms Moyo-Chiname had insufficient insight. At this hearing the panel had no information before it from Ms Moyo-Chiname to suggest that she had shown insight into or remorse for her actions. The panel was of the view that although it would take commitment, Ms Moyo-Chiname's behaviour appears to be remediable but there has been no engagement from Ms Moyo-Chiname and no evidence of remediation.

The last reviewing panel determined that Ms Moyo-Chiname was liable to repeat matters of the kind found proved. Today's panel has received no information that showed Ms Moyo-Chiname had been taking steps to strengthen her practice and remediate the concerns found. In light of this, this panel determined that Ms Moyo-Chiname 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 where vulnerable children were put at risk and no steps had been taken by Ms Moyo-Chiname to strengthen her practice, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Ms Moyo-Chiname'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 Moyo-Chiname'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 Moyo-Chiname'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 conditions of practice on Ms Moyo-Chiname'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 meeting. The panel concluded that whilst it could formulate conditions of practice that would adequately protect the public and satisfy the wider public interest, it was of the view that there was no information before it to suggest that Ms Moyo-Chiname would comply with a conditions of practice order.

The panel next considered imposing a further suspension order. The panel noted that Ms Moyo-Chiname has not shown remorse for her misconduct nor has she demonstrated any

insight into her previous failings. It further noted that Ms Moyo-Chiname has shown no engagement with the NMC. The panel was of the view that it is part of a nurse's professional responsibility to maintain engagement with the regulator and it appears that Ms Moyo-Chiname has failed to do so throughout proceedings which implies a disregard to the NMC as a regulator.

The panel was of the view that considerable evidence would be required to show that Ms Moyo-Chiname no longer posed a risk to the public. The panel took into account the nature of Ms Moyo-Chiname's role as a Health Visitor and it bore in mind that the ability to reflect on one's practice is essential to this role. The panel noted that no information has been provided by Ms Moyo-Chiname that shows she had reflected on her behaviour or that she had shown any insight into or remorse for her failings.

The panel therefore 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 Moyo-Chiname 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 26 June 2024 in accordance with Article 30(1).

This decision will be confirmed to Ms Moyo-Chiname in writing.

That concludes this determination.