

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

**Substantive Order Review Hearing
Thursday 14 November 2024**

Virtual Hearing

Name of Registrant: **Monica Zandile Mkhize**

NMC PIN 01Y05710

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 10 December 2001

Relevant Location: London Borough of Lambeth

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, Lay member)
Anne Murray (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Emily Mae Christie

Nursing and Midwifery Council: Represented by Violet Smart, Case Presenter

Ms Mkhize: Not present and unrepresented

Order being reviewed: Conditions of practice order (3 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry with impairment in accordance with Article 30 (1), namely at the end of 22 December 2024**

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

At the outset of the hearing, Ms Smart made a request that this case be held partly in private on the basis that her submissions would mention [PRIVATE] with regard to proceeding in absence. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session when Ms Smart were to make submissions in connection with [PRIVATE].

Decision and reasons on service of Notice of Hearing

The panel was informed at the beginning of this hearing that Ms Mkhize was not in attendance and that the Notice of Hearing had been sent to Ms Mkhize's registered email address via secure email on 11 October 2024. However, the secure email bounced back, indicating that the email was undelivered. Consequently, the Notice of Hearing was sent to Ms Mkhize's registered address by recorded delivery and by first-class post on 15 October 2024.

The panel had regard to the Royal Mail 'Track and trace' printout which was unable to confirm the Notice of Hearing's status of delivery to Ms Mkhize's registered address.

Ms Smart, 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 was informed that the NMC Case Officer confirmed that on ringing the phone number provided by the registrant the voicemail message mentioned Ms Mkhize's forename.

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 Ms Mkhize's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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.

In the light of all of the information available, the panel was satisfied that the NMC have complied with the Rules with regard to serving notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Ms Mkhize

The panel next considered whether it should proceed in the absence of Ms Mkhize. The panel had regard to Rule 21 and heard the submissions of Ms Smart who invited the panel to continue in the absence of Ms Mkhize.

Ms Smart informed the panel that Ms Mkhize was not in attendance at the previous hearing in August 2024 [PRIVATE]. She also mentioned that the email regarding that hearing was undeliverable, although she got in contact during that hearing following a voicemail message left by the case officer.

In relation to this hearing, Ms Smart pointed the panel to the email in the On-Table bundle sent by the Case Officer on 13 November 2024 which bounced back stating that '*This mailbox is disabled*'. She also pointed the panel to the NMC bundle, which includes a scan of the envelope containing the previous determination marked as '*R.T.S New tenant from 01-09-24*'.

Ms Smart asked the panel to consider if Ms Mkhize is aware of this hearing today, if she would be content for the hearing to proceed in her absence, and if she has voluntarily absented herself. She submitted that although the answers are unclear, it remains the case that there has been no application for an adjournment, and that Ms Mkhize has not been in contact with the NMC to update her contact details.

Ms Smart submitted that the NMC has made all reasonable efforts to contact Ms Mkhize, and, as such, there is no reason to believe that adjourning the hearing would secure her attendance. Furthermore, she submitted that there is a strong public interest in the expeditious review of this case, given that the order expires in December. Therefore, she submitted that the panel should proceed in the absence of Ms Mkhize.

The panel accepted the advice of the legal assessor.

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

- Ms Mkhize has not engaged with the NMC since the previous hearing, and it is unclear if she has received the information about this hearing;
- Ms Mkhize has not provided the NMC with details of how she may be contacted other than her registered email and postal address' which now appears to be incorrect;
- It is unable to say whether Ms Mkhize has voluntarily absented herself from this hearing;
- No application for an adjournment has been made by Ms Mkhize;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious review of the case; and
- This order expires on 22 December 2024.

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

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse on expiry with a finding of impairment.

The order will therefore lapse on expiry, namely at the end of 22 December 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive suspension order originally imposed for a period of nine months by a Fitness to Practise Committee on 24 May 2021. This was reviewed on 10 February 2022 where a further six-month suspension order was imposed. This was subsequently reviewed on 5 September 2022 where a conditions of practice order was imposed for the duration of two years. This was further reviewed on 14 August 2024 where the conditions of practice order was extended for a further period of 3 months.

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

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

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

“That you, a registered nurse;

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

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

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

“The panel considered whether Ms Mkhize’s fitness to practise remains impaired.

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

The panel noted that the last reviewing panel found that Ms Mkhize had developing insight. At this hearing the panel considered that there was a lack of any further information that limited their decision to find otherwise. In light of this, and in the absence today of any further submissions from Ms Mkhize as to her developing insight, the panel has no reason to undermine the previous panel’s decision.

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

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

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

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

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

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

"The panel next considered whether imposing a further conditions of practice order on Ms Mkhize's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

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

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

It decided to impose the following conditions which it considered are appropriate and proportionate in this case by protecting the public, addressing the wider public interest [PRIVATE].

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role.

Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. *You must ensure that you are directly supervised by another registered nurse any time you are working until such time as your line manager has signed you off as competent to work under indirect supervision. Your direct supervision must consist of:*
 - *Working at all times while being directly observed by a more senior registered nurse;*

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

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

2. *You must work with your line manager, supervisor, mentor or deputy to create a personal development plan (PDP). Your PDP must address the concerns about your honesty, integrity and any areas identified in need of support to focus on your safe return to practise. You must:*
 - a) *Send your case officer a copy of your PDP within 4 weeks of creating it.*
 - b) *Meet with your line manager, supervisor, mentor or deputy at least every 4 weeks to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a report 4 weeks prior to the next review hearing. This report must show your progress towards achieving the aims set out in your PDP.*

3. *You must keep us informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*

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

- a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
5. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*
6. *You must tell your case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*
7. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions”*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Mkhize's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has described fitness to practise as a registrant's ability 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.

The panel has taken into account all the documentation presented to it, including the NMC bundle and the on-tables bundle, which contained the NMC's attempts to contact Ms Mkhize. It has also taken account of the submissions made by Ms Smart on behalf of the NMC.

Ms Smart invited the panel to note that the previous panel determined that Ms Mkhize did not possess sufficient insight, and in the absence of new information, found her liable to repeat the misconduct. Consequently, her fitness to practice was deemed impaired on both grounds of public protection and public interest. Ms Smart submitted that as there has been no new information that would undermine the findings of the previous panel, she invited the panel to find Ms Mkhize impaired on the grounds of public protection and public interest.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Ms Mkhize's fitness to practise remains impaired.

The panel noted that there is no new information which would undermine the decision made by the previous panel. Furthermore, it noted that there is a persuasive burden on Ms Mkhize to demonstrate that there has been a change in her insight and that she has taken steps to address the areas of concern found proved by admission, and to strengthen her practice. Therefore, it determined that Ms Mkhize remains liable to repeat matters, and 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 Mkhize's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Mkhize's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action or to impose a caution order but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would not protect the public, not be proportionate, and would not be in the public interest to take no further action or impose a caution order.

The panel next considered the continuation of the current conditions of practice order. Ms Mkhize has not practised as a nurse since 2019. A condition which expects a line manager to directly observe a registrant at all times, and determine whether a nurse who has been out of practice for five years would be competent across all areas of nursing, is not practical or workable. Furthermore, Ms Mkhize has not engaged with the NMC since the previous hearing and there is no information before it to conclude that any conditions would be workable. The panel was also mindful that Ms Mkhize has been subject to a substantive conditions of practice order for over two years and has not secured employment as a registered nurse in compliance with those conditions, nor has she applied to vary those conditions.

On this basis, the panel concluded that any conditions of practice order would no longer be practicable in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel was not satisfied that a Suspension Order would be appropriate or constructive in the circumstances.

In considering a Striking Off Order, it was of the opinion that Ms Mkhize's behaviour was not fundamentally incompatible with remaining on the register considering the previous signs of her developing insight. It therefore determined that a Striking Off Order would be both disproportionate and unreasonable in these circumstances.

Therefore, the panel decided that, having found Ms Mkhize remains currently impaired, the most appropriate course would be to allow the current conditions of practice order to lapse upon its expiry. The panel had regard to the NMC guidance on '*Removal from the register when there is a substantive order in place*' (REV-3h), which was updated on 30 August 2024.

In making its decision, the panel acknowledged that Ms Mkhize has not engaged with the NMC since the previous hearing and has not provided the NMC with up-to-date contact information, including an email address or postal address. Furthermore, she has not addressed any of the recommendations made by previous panels to mitigate the identified risks. These included:

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

- *Current testimonials from any employment, paid or unpaid, you undertake attesting to your honesty and integrity and your competence as a nurse.”*

The panel noted that these were not dependent on Ms Mkhize working as a registered nurse. It was also mindful that these proceedings have now been ongoing for over five years.

The issues in this case have the potential to be remediated; however, they have not yet been addressed. If Ms Mkhize were to apply to rejoin the register, the public would be protected by the panel’s finding of current impairment, which the Registrar would consider at the time of any application.

The Substantive Conditions of Practice order will therefore lapse at the end of the current period, namely the 22 December 2024 in accordance with Article 30(1). This will mean that Ms Mkhize’s PIN will expire, and she will cease to be a registered nurse and unable to practise as such. In the event that Ms Mkhize wishes to re-join the register, the Registrar will take into account the finding of her current impairment were she to apply for re-registration.

The NMC will take all appropriate steps to identify and effect appropriate means of confirming this to Ms Mkhize in writing.

That concludes this determination.