

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

**Substantive Order Review Hearing
Thursday, 31 October 2024**

Virtual Hearing

Name of Registrant: Grace Bempong

NMC PIN 03H0424O

Part(s) of the register: RN1: Registered Nurse
Adult - Level 1 (7 August 2003)

Relevant Location: Greater Glasgow

Type of case: Misconduct

Panel members: Denford Chifamba (Chair, registrant member)
Michael Glickman (Lay member)
Sally Shearer (Registrant member)

Legal Assessor: Hala Helmi

Hearings Coordinator: Fabbuha Ahmed

Nursing and Midwifery Council: Represented by Stephanie Stevens, Case Presenter

Miss Bempong: Not Present and Represented by Tracey Lambert instructed by Unison

Order being reviewed: Suspension order (12 Months)

Fitness to practise: Impaired

Outcome:

Order to lapse upon expiry with a finding of impairment in accordance with Article 30 (1), namely at the end of 11 December 2024

Decision and reasons on review of the substantive order

The panel decided to allow the current substantive suspension order to lapse with impairment upon its expiry.

This order will come into effect at the end of 11 December 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 10 November 2023.

The current order is due to expire at the end of 11 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, on 31 October 2018:

1) In respect of Patient A

- a) Failed to properly complete the NEWs chart by tallying the NEWs score;*
- b) Did not sign the NEWs chart;*
- c) Left the completion of the NEWs chart to a newly qualified nurse who had sought your assistance;*
- d) Failed to verbally inform the newly qualified nurse of the oxygen saturation level;*
- e) Failed to escalate Patient A's deterioration to a medical team in accordance with the NEWs local escalation policy;*
- f) Failed to carry out and/or instruct others to carry out hourly observations on Patient A after the observations at 13.25.*

2) Did not hand over Patient A's condition to the night shift:

- a) Verbally;*

b) When making the 5pm entry in Patient A's clinical notes, by making any reference to:

- i) Patient A's condition;*
- ii) Patient A's NEWS score;*
- iii) Patient A's oxygen saturations.*

3) In respect of Patient B:

- a) Failed to follow medical instructions to take a urine sample before administering Gentamicin;*
- b) Failed to replace Patient B's catheter after administering Gentamicin;*
- c) Failed to verbally inform the night shift that Patient B required:
 - i) A urine sample to be taken;*
 - ii) The existing catheter to be replaced.**

4) In respect of Patient B:

- a) Failed to record on the Gentamicin chart;
 - i) Your signature;*
 - ii) The date the Gentamicin was administered;*
 - iii) The time the Gentamicin was administered;**

b) Failed to ensure that a second person/checker signed the Kardex for the administration of Gentamicin.

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 then went on to consider whether Miss Bempong's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Bempong, the panel has exercised its own independent judgement in reaching its decision on impairment.

In this respect, the panel endorsed paragraphs 18 to 26 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Miss Bempong's fitness to practise is currently impaired by reason of misconduct. In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

The panel determined that Miss Bempong's fitness to practise is currently impaired in relation to both public protection and public interest. In this respect the panel endorsed paragraphs 27 to 59 of the provisional CPD agreement.'

The original panel determined the following with regard to sanction:

'Having found Miss Bempong's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features agreed by both parties. However, the panel had concerns in relation to Miss

Bempong's reflective piece and were of the opinion that her insight was limited and did not address her failings. Therefore the panel felt it was more of an aggravating factor than a mitigating factor.

Ms Huggins and Ms Lambert on behalf of Miss Bempong agreed to this amendment.

The panel took into account the amended following aggravating factors:

- Previous disciplinary findings at Trust level in respect of similar concerns;*
- Being subject to a disciplinary written warning in respect of similar concerns at time of later incident;*
- Conduct which put patients at risk of suffering harm; and*
- Limited insight*

The panel also took into account the following mitigating factor:

- Early admissions and has expressed remorse*

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 Miss Bempong'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 Miss Bempong'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 Miss Bempong's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. However, the panel is of the view that there are no practical or workable conditions that could be formulated, in relation to the charges admitted in this case. Further, the panel concluded that the placing of conditions on Miss Bempong's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel took into consideration that the admitted misconduct in this case relates to clinical concerns and that there is evidence of a pattern of similar concerns that resulted in Miss Bempong being issued written warnings in 2015 and 2017 by her employer. It noted that the clinical concerns are wide ranging. It noted that Miss Bempong's conduct had the potential to put patients at risk of harm. The panel was of the view that this misconduct is serious and should properly be marked.

The panel bore in mind Miss Bempong's admissions, limited insight and initial steps to strengthen her professional practice. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Bempong's case to impose a striking-off order.

Balancing all of these factors the panel agreed with the CPD that a suspension order for a period of 12 months with a review would be the appropriate and proportionate sanction.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

At 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:

- A reflective piece on your failings which uses NMC Code as a framework to demonstrate how you intend to return to safe nursing practice;*
- Copies of a personal development plan (PDP) to include reviews with your supervisor demonstrating the outcomes and providing evidence which addresses the following areas of practice:
 - o Record keeping*
 - o Drug management and administration*
 - o Assessment and evaluation of and where appropriate escalation of the deterioration of patients*
 - o Collaborative team working**
- Testimonial from your employer being very specific in respect of the areas identified in your PDP.'*

Decision and reasons on current impairment

The current panel has considered carefully whether Miss Bempong's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has described fitness to practise as being able to practice safely, kindly 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 had regard to all of the documentation before it including the NMC bundle. It has taken account of the submissions made by Miss Stevens on behalf of the NMC and Miss Lambert on behalf of Miss Bempong.

Miss Stevens submitted that Miss Bempong has not provided the panel with evidence supporting any remediation or progress. Miss Stevens further added that it is unlikely that Miss Bempong will reach the standard required by a nurse to practise unrestricted. She informed the panel that the risk of harm found by the previous panel has not been reduced.

Miss Stevens asked the panel to consider allowing the current suspension order to lapse with findings of impairment.

Miss Lambert submitted that Miss Bempong remains working as a Band 3 healthcare assistant. She informed the panel that Miss Bempong has submitted her application to the NHS Pensions Agency to retire in April 2025 and does not wish to seek continued employment as a registered nurse. Miss Lambert further submitted that Miss Bempong has not worked as a registered nurse since May 2019 and that her registration is only active because of the current suspension order imposed on her registration. Miss Lambert told the panel that it would be in the public interest and a proportionate response to allow the order to lapse upon expiry.

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 Miss Bempong's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Bempong had limited insight. At this hearing the panel found that Miss Bempong still has insufficient insight into her failings as she has not provided any evidence of remediation. In its consideration of whether Miss

Bempong has taken steps to strengthen her practice, the panel took into account that the last panel asked Miss Bempong to assist the future panel with the following:

- A reflective piece on your failings which uses NMC Code as a framework to demonstrate how you intend to return to safe nursing practice;
- Copies of a personal development plan (PDP) to include reviews with your supervisor demonstrating the outcomes and providing evidence which addresses the following areas of practice:
 - Record keeping
 - Drug management and administration
 - Assessment and evaluation of and where appropriate escalation of the deterioration of patients
 - Collaborative team working
- Testimonial from your employer being very specific in respect of the areas identified in your PDP.

As Miss Bempong did not provide any of the above information, the panel found that she has not taken steps to remediate her failings. The panel concluded that Miss Bempong is still unable to practise kindly, safely and professionally.

The original panel determined that Miss Bempong was liable to repeat matters of the kind found proved. Today's panel has heard that there has been no new information received. In light of this, this panel determined that Miss Bempong 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 required.

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

The panel accepted the parties' agreed position that the most appropriate and proportionate outcome would be to allow this order to lapse upon expiry, at which point Miss Bempong will be removed from the register. In coming to this decision, the panel took into account that Miss Bempong has no desire to practise as a registered nurse and has applied for her pension from April 2025, thus formalising her decision. The panel took into account NMC guidance 'Removal from the register when there is a substantive order in place' (REV- 3h).

The panel also considered the NMC Sanction Guidance (SG). The panel decided that a caution order would not reflect the seriousness of the misconduct in this case and conditions of practice would not be appropriate as Miss Bempong does not wish to return to practice. The continuation of a suspension order would serve no useful purpose in light of her circumstances. The panel considered that a striking off order would be wholly disproportionate considering her previous engagement in proceedings.

The panel was satisfied that allowing the order to lapse upon expiry with a finding of impairment will protect the public in that Miss Bempong will be removed from the register on expiry of the order and will be unable to return to practice unless she makes a new application to the Registrar who would be aware of this panel's decision. This outcome will also meet the public interest in that the regulator is upholding proper standards.

In accordance with Article 30(1), the substantive suspension order will lapse upon expiry with a finding of impairment, namely the end of 11 December 2024.

This will be confirmed to Miss Bempong in writing.

That concludes this determination.