

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

**Substantive Order Review Hearing
Wednesday, 09 October 2024**

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

Name of Registrant: Gines Nsamba Mabonzo Younga

NMC PIN 06A1231E

Part(s) of the register: Nursing – Sub part 1
RNA: Registered Nurse (3 August 2006)
RHV: Health visitor (6 September 2013)
V100: Community practitioner nurse prescriber
(28 August 2013)

Relevant Location: Plymouth

Type of case: Misconduct

Panel members: Anne Ng (Chair, lay member)
Elizabeth Coles (Registrant member)
Gary Trundell (Lay member)

Legal Assessor: Andrew Granville-Stafford

Hearings Coordinator: Aditya Kaushik

Nursing and Midwifery Council: Represented by Michael Smalley, Case Presenter

Mrs Younga: Present and not represented at the hearing

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (18 months)
to come into effect at the end of 26 October 2024 in
accordance with Article 30 (1) of the Order**

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

At the outset of the hearing, Mr Smalley made a request that parts of this case be heard in private on the basis that proper exploration of your case involves [PRIVATE]. The application was made pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

You made no positive submissions with regard to the Rule 19 application.

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 decided to go into private session when hearing issues related to [PRIVATE] to protect the confidentiality of such matters. It considered that your right to privacy in relation to these matters outweighed the public interest in holding those parts of the hearing in public.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for a further period of 18 months.

This order will come into effect at the end of the current conditions of practise order, i.e., 26 October 2024, in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 ('the Order').

This is the second review of a substantive conditions of practice order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 28 September 2022. This was reviewed on 12 April 2023 when the reviewing panel decided to vary and extend the conditions of practice order by 18 months.

The current order is due to expire at the end of 26 October 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 are as follows:

'That you a registered nurse;

1. Having been informed by the mother on the 28th November 2019 that Child A sustained an injury failed to: [found proved]

- (a) Investigate with the mother how the injury was sustained.*
- (b) Assess whether Child A was subject to possible neglect and/or abuse.*
- (c) Escalate the incident to Child Protection Services.*
- (d) Report the matter to social care.*
- (e) Contact a paediatrician to review Child A.*
- (f) Seek advice from a supervisor as to the appropriate steps to take.*
- (g) Accurately record the part of the body the injury was sustained.*

2. Having examined Child A's growth was faltering failed to: [found proved]

- (a) Recognise that this was a safeguarding issue.*
- (b) Access clinical supervision and/or*
- (c) Access Child Protection Supervision and/or*
- (d) Flag Child A for supervision.*

3. On the 1st October 2019 inaccurately recorded in Child B's notes that a piece of sponge was found in Child B's uterus. [found proved]

4. On one or more occasions between September and December 2019 failed to follow Livewell's Health and Corporate Policy by not;

- (a) Completing records within 24-hours after the visit. [proved by admission]*
- (b) Documenting the reason why they were recorded more than 24-hours after the visit. [proved by admission]*
- (c) Documenting that the entry was written retrospectively. [proved by admission]*

5. On one or more occasions between September and December 2019 failed to ensure that your electronic diary was compatible with your paper diary. [**found proved**]

6.[**found proved by the original panel but did not amount to misconduct**]

7.

8.

9. On or before the 10 December 2019 failed to note in Child F's records anything about; [**found proved**]

(a) A child in need meeting.

(b) A clinic meeting.

10.

11.'

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

'The panel noted that there has been no material change since the last hearing, and although Mrs Younga has been actively seeking employment as a nurse, she has to date been unsuccessful. The panel therefore acknowledged that Mrs Younga has been unable to demonstrate through a period of safe and effective practice without further incident, that her failings have been remedied. She has also been unable to comply with the current conditions of practice order. Mrs Younga has not submitted a reflective piece, as recommended by the previous panel, to demonstrate that she has gained insight into her failures, nor submitted any other information for the panel to consider today.

In light of Mrs Younga's inability to demonstrate improved insight or remediation of the failings found in her practice by working in a healthcare setting, the panel determined that there remains a risk of repetition of the misconduct found proved.

The panel also took into account Mrs Younga's [PRIVATE] email she sent to her NMC case officer on 8 October 2022 and which may have impacted her ability to remediate the concerns identified in her practice. The email read as follows:

'[PRIVATE]'

For these reasons, the panel finds that Mrs Younga's fitness to practise remains impaired on the ground of public protection and public interest.'

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

'The panel next considered whether a conditions of practice on Mrs Younga'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 took into account that the concerns identified in Mrs Younga's practice were remediable and that she had been taking steps to try to obtain employment. She has shown willingness to return to nursing but has been unable to gain employment. The panel was of the view that a conditions of practice order remains sufficient to protect patients.

The panel noted Mrs Younga's request [PRIVATE]'. It considered that a further extension of the conditions of practice order would allow Mrs Younga the opportunity to [PRIVATE], to obtain employment and to address the identified concerns in her practice.

The panel considered a suspension order before finalising its decision and concluded, [PRIVATE], that a suspension order would be disproportionate at this time.

Accordingly, the panel determined, pursuant to article 30(1), to impose a conditions of practice order for a period of 18 months from the expiry of the current order. The conditions are as follows:

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 will send your case officer evidence that you have successfully completed training in safeguarding (adults and children) and record keeping, within 4 weeks of commencing any work as a registered nurse.*
2. *You must keep a reflective practice profile. The profile will:*
 - *Detail every case that you discuss with your line manager, mentor or supervisor (or nominated deputy) in depth*
 - *Set out the nature of the care given*
 - *Be signed by your line manager, mentor or supervisor (or nominated deputy) each time.*
 - *Contain feedback from your line manager, mentor or supervisor (or nominated deputy) on how you gave the care*

You must send your case officer a copy of the profile at least 14 days before any review hearing.

3. *You must work with your line manager, mentor or supervisor (or nominated deputy) to create a personal development plan (PDP). Your PDP must address the concerns about record keeping and safeguarding. You must:*
 - *send your case officer a copy of your PDP within 4 weeks of commencing a role as a registered nurse.*
 - *Meet with you [sic] line manager, mentor or supervisor (or nominated deputy) at least every 4 weeks to discuss your progress towards achieving the aims set out in your PDP*
 - *Send your case officer a report from your line manager, mentor or supervisor (or nominated deputy) at least 14 days before the next review hearing. This report must show your progress towards achieving the aims set out in your PDP*
4. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be*

involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.

5. *You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
6. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*
7. *a) You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*

b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
8. *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at 1 to 7 above, to them:*
 - *Any organisation or person employing, contracting with or using you to undertake nursing work.*
 - *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.*
 - *Any prospective employer (at the time of application) where you are applying for any nursing appointment.*
 - *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).*

This order will run for a period of 18 months, this period takes into account Mrs Younga's request in her email dated 8 October 2022 and would allow Mrs Younga the opportunity to obtain employment and demonstrate remediation to the next reviewing panel.

Before the order expires, a panel will hold a review hearing to see how well Mrs Younga has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order. Mrs Younga has the opportunity to request an early review if her circumstances change.

Any future panel reviewing this case would be assisted by:

- *Mrs Younga's attendance at the next review hearing, which will be held at least 4-6 weeks before the expiry of this order;*
- *references and testimonials from any employment paid or unpaid; and a holistic reflective piece bringing together learning from the regulatory process and any subsequent practice and addressing your understanding of professional curiosity and risk assessment.'*

Decision and reasons on current impairment

The panel has considered carefully whether your 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 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 considered all the documentation before it, including the NMC bundle and your correspondence with the NMC case officer. It heard the submissions made by Mr Smalley on behalf of the NMC. Mr Smalley gave a brief background of the case to the panel and reminded the panel that this case relates to incidents dating back to 2019.

Mr Smalley submitted that you have not provided a reflective written piece as suggested by the previous reviewing panel. He acknowledged that you provided an account [PRIVATE] in the email dated 20 June 2024 sent to the NMC. However, that does not amount to a reflective written piece of the nature required by the previous reviewing panel.

Mr Smalley further pointed out that there has been no material change in your circumstances and no new information has been provided by you with regard to further training, insight, or remediation. Mr Smalley submitted that this raised concerns around risk to the public with your returning to unrestricted practice. He submitted that if the aspect of public protection could be addressed, no further concerns around public interest would remain. He further clarified that if the panel concluded that you remain impaired, he would not press for a sanction of suspension or a striking off order.

The panel also heard your submissions. You submitted that since the issuance of the original substantive order you have not been able to work because of the current conditions of practice order. You submitted that you have tried applying for several jobs including a cleaning job. You considered working in Canada. However, your applications resulted in failure due to the current conditions of practise imposed on you.

You highlighted that before entering nursing, you worked as a carer and that every employment undertaken by you in your life has been centred around nursing/caring for people. You further submitted that you applied for a master's degree in psychology but were unsuccessful.

You accepted that you "*made a wrong decision*" which resulted in your misconduct. You submitted that your misconduct was blown out of proportion by your employer. That it could have been addressed by your employer by cautioning you and allowing you to explain your misconduct. You further submitted that the present conditions of practice order is worse than a "*jail punishment*" and amounted to a "*slap*" on your face.

You submitted that the present proceedings have made you realise the mistake you committed and that you are taking the present proceedings as a learning curve to improve your practice.

When questioned by the panel, you submitted that the proceedings are not allowing you to rebuild and learn from your mistake. You submitted that the present proceedings have impacted you personally and professionally. That you have always been open to change. You have stated that you have made several changes to your practice from being a care assistant to a registered nurse, to a health visitor and to a community practitioner nurse prescriber. You further submitted that if allowed, you would willingly go back to nursing, even if that required re-training or further studies. You stated that you have been in touch with a job centre advisor but the jobs being offered are support jobs. You applied for jobs in May and June 2024 but submitted that you had been unsuccessful. You submitted that you did apply for the healthcare assistant jobs after the last review but again met with failure. You attributed your recurrent job rejections to the strict conditions of practice imposed on you. And then said that the lack of a job led to a failure to obtain references which is a mandatory requirement for “*any job*”. You informed the panel that you are currently doing voluntary work with a charity shop. You submitted that you are taking this voluntary position as an opportunity to get a reference to help you apply for future jobs.

You further pointed out that apart from these incidents, you have had an unblemished career as a nurse.

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 your fitness to practise remains impaired.

The panel had regard to the NMC guidance on impairment, namely DMA-1 and principles laid down in various landmark judgments of the English Courts.

The panel considered the question as to whether, in light of the evidence before it, you can practise kindly, safely, and professionally. To determine this question, the panel directed its assessment to the following key considerations:

- Demonstration of insight by the registrant into their failings.
- Steps taken by the registrant to strengthen their skills and keep up-to date with knowledge.

- Risk of repetition of registrant's past misconduct, and
- The issues of public interest and public protection

The panel considered whether you have been able to develop insight into your failings. The panel noted that the previous panel had found your insight into your actions to be insufficient. The panel noted that it was not provided with any new information which demonstrated sufficient insight on your behalf. The panel noted that you have not provided a written reflective piece and/or a testimonial from an employer as suggested by the previous panel. The panel took into account that you accepted a mistake committed by you in the past that led to the present proceedings. The panel also noted that the present proceedings have impacted you both personally and professionally. However, the panel was of the view that your insight into your past misconduct is limited and self-focussed. The panel found that you failed to address how you would do things differently in the future.

The panel was mindful of your submission wherein you clarified that the present proceedings could have been avoided if your previous employer had given you a chance to address your misconduct rather than reporting it to the NMC. This led the panel to conclude that you have not developed insight into the potential impact of your actions on Child A and Child B. And the impact on the nursing profession in general. The panel noted that you referred to your past misconduct as '*a mistake*' whereas you are under sanction for similar repeated incidents over a period of time. The panel also noted that you failed to address the most serious charges related to safeguarding found to have been proved against you.

The panel observed that in your submissions you were able to identify some of the barriers to gaining employment and that you also have a plan for overcoming them. The panel noted the voluntary work that you are currently doing with a charity to obtain a testimonial.

The panel noted that you failed to provide any evidence of self-reflection or continuing professional development. The panel observed that you could have undertaken learning or reading. This would have demonstrated your willingness to strengthen your practice and update your knowledge. The panel noted that you have failed to show any evidence of strengthening of practice or any actions taken by you to update your knowledge.

Following the above discussion, the panel determined that there remains a risk of repetition of your past misconduct. This coupled with a lack of insight led the panel to conclude that your fitness to practise remains impaired on public protection grounds.

The panel observed that the current conditions of practice do not pose a barrier in your journey to returning to safe practice. Rather the present conditions are workable and formulated to act as a guide helping you strengthen your practice and return to safe and unrestricted working.

The panel determined that there remains a likelihood of you failing to uphold proper professional standards and conduct. The panel determined that your limited insight into your failings, lack of evidence to demonstrate strengthening of practice, and seriousness of the charges found proved against you, shows that the public interest would be undermined if a finding of no impairment is made against you. Therefore, the panel concluded that, in your case, a finding of continuing impairment on public interest grounds is required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 and public interest issues identified, an order that does not restrict your 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 your 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 imposing a further/varied conditions of practice order on your 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings identified in this case. The panel disagreed with your submissions that the current conditions of practice are unworkable or are too restrictive. The panel concluded that the present conditions of practice are in-line with your future plans of returning to practice and that these conditions are formulated to support you in improving your clinical practice rather than limiting your scope of work. The panel had no evidence to support your submissions as you failed to provide the panel with copies of job rejections received by you or your application for further degree in psychology. The panel found the current conditions of practice relate to safeguarding and strengthening of practice and follow the charges found to have been proved against you.

The panel determined that the current conditions of practice will help you return to safe and unrestricted practice whilst at the same time address the issues of public interest and public protection that have arisen around your practice as a nurse. The panel noted that you have had a lifelong vocation for caring for people and you intend to return to nursing. The panel determined that the charges found proved against you are not so serious that a conditions of practice order will not be able to address them. Therefore, the panel concluded that the current conditions of practice order will be extended by a further period of 18 months. The panel concluded that said order will allow you to develop insight into your actions, demonstrate strengthening of your practice, and remediate any risk of repetition of your past misconduct.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) of the Order, to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 26 October 2024. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

‘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 will send your case officer evidence that you have successfully completed training in safeguarding (adults and children) and record keeping, within 4 weeks of commencing any work as a registered nurse.
2. You must keep a reflective practice profile. The profile will:
 - a) Detail every case that you discuss with your line manager, mentor or supervisor (or nominated deputy) in depth
 - b) Set out the nature of the care given
 - c) Be signed by your line manager, mentor or supervisor (or nominated deputy) each time.
 - d) Contain feedback from your line manager, mentor or supervisor (or nominated deputy) on how you gave the care

You must send your case officer a copy of the profile at least 14 days before any review hearing.

3. You must work with your line manager, mentor or supervisor (or nominated deputy) to create a personal development plan (PDP). Your PDP must address the concerns about record keeping and safeguarding. You must:
 - a) send your case officer a copy of your PDP within 4 weeks of commencing a role as a registered nurse.
 - b) Meet with your line manager, mentor or supervisor (or nominated 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 from your line manager, mentor or supervisor

(or nominated deputy) at least 14 days before the next review hearing. This report must show your progress towards achieving the aims set out in your PDP

4. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.
5. You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
6. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
7.
 - a) You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.
 - b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
8. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at 1 to 7 above, to them:
 - a. Any organisation or person employing, contracting with or using you to undertake nursing work.
 - b. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.

- c. Any prospective employer (at the time of application) where you are applying for any nursing appointment.
- d. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

This order will run for a period of 18 months and would allow you the opportunity to obtain employment and demonstrate remediation to the next reviewing panel.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order. You have the opportunity to request an early review if your circumstances change.

Any future panel reviewing this case would be assisted by:

- Your attendance at the next review hearing, which will be held at least 4-6 weeks before the expiry of this order.
- Signed and dated reflective written piece referencing the misconduct found proved.
- Evidence of any learning undertaken to show strengthening of skill, for example, any course/ training certificates etc., and
- References and testimonials from any employment paid, unpaid, or voluntary work.

This will be confirmed to you in writing.

That concludes this determination.