

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

**Substantive Order Review Hearing
Monday 23 September 2024**

Virtual Hearing

Name of Registrant: **Damilola Akinkugbe**

NMC PIN: 07B3486E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nurse (Level 1)
(13 December 2007)

Relevant Location: Essex

Type of case: Misconduct

Panel members: Clive Chalk (Chair, lay member)
Donna Green (Registrant member)
Yousuf Rossi (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Leigham Malcolm

Nursing and Midwifery Council: Represented by Ms Fiona Williams, NMC Case Presenter

Ms Akinkugbe: Present and represented by Ms Shona Love, of Pump Court Chambers

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (6 months) to come into effect on 1 November 2024 in accordance with Article 30 (1), with a review**

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order for a period of six months, with a review.

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

This is the first review of a substantive order originally imposed by a Fitness to Practise Committee panel on 13 October 2023. The original order imposed on 13 October 2023 was that of a conditions of practice order. That order was appealed at the High Court and replaced with a suspension order on 2 May 2024 for a period of six months.

The current suspension order is due to expire at the end of 1 November 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 were as follows:

That you, a registered nurse:

1. On 17/18 July 2020:

a. ...

b. Having witnessed Colleague A be physically abusive to Patient A, failed to intervene and/or escalate.

c. ...

d. Failed to report:

i. ...

ii. physical abuse;

iii. ...

2. *Subsequent to the events set out at charge 1, created an inaccurate statement in that you omitted to record the verbal and/or physical abuse of Patient A and/or Patient A's inappropriate seclusion.*
3. *Your actions at charges 1d and 2 were dishonest in that you were seeking to conceal the abuse Patient A had suffered and/or Patient A's inappropriate seclusion.*

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, having regard to the case of Grant, and in particular the test approved in that case:

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel determined that all four limbs of the Grant test are engaged.

The panel carefully considered the breaches of the Code and the charges found proved.

The panel had regard to the evidence in this case and it found that Patient A was put at risk of unwarranted physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that it was a one-off incident but it was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel has accepted the submission of Ms Collins on your behalf that it was not condition precedent for finding full insight that you must admit the dishonesty charge. Ms Collins provided the panel with authorities which the panel has considered. The panel has considered all the evidence when determining whether you have gained full insight and the risk of repetition of your misconduct, including Ms Collins' submissions to take account of your previous good character and the evidence that this was a one-off incident.

In terms of strengthening of practice the panel acknowledged the various testimonials you have provided and that you have been practising as a registered nurse with no further concerns. It also appreciated the example you provided demonstrating how you have since effectively managed a situation involving a vulnerable patient.

However, the panel was of the view that your insight remained limited as there was insufficient understanding of the impact on Patient A. In the panel's judgement, you appeared more inclined to emphasise that the correct restraining technique was not

used, rather than acknowledging that the dragging of Patient A constituted a physical abuse regardless of which technique was employed at the time.

Given your level of insight into charges found proved, the panel decided that there is a risk of repetition and that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In this regard, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore also finds your fitness to practise impaired on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Order by consent from the High Court on 2 May 2024

The original order imposed on 13 October 2023 by a panel of the NMC's Fitness to Practise panel was that of a conditions of practice order. That order was appealed at the High Court and replaced with a suspension order on 2 May 2024 for a period of six months.

The reasoning of the High Court for allowing the appeal and imposing the suspension was as follows:

- a. *The Committee failed to properly consider the seriousness of the Second Respondent's misconduct: the findings of the Committee in relation to the Second Respondent's misconduct and impairment are expressed, in material part, in striking and stark terms. Those findings included that the Second Respondent failed "to*

intervene during the assault” leaving Patient A “exposed to an unwarranted risk of harm” and that the “failure to record and report [the assault] left other patients at risk of similar behaviour”. The Committee found that the Second Respondent’s misconduct was “deplorable” and “extremely serious”.

In relation to its determination on sanction, however, the Committee failed to bring the real burden or substance of what had gone wrong in the case into its analysis on sanction. There is no indication that the Committee considered the proven dishonesty on the part of the Second Respondent, proven against her denials, adequately or at all when deciding upon sanction.

- b. The Committee failed to properly apply the First Respondent’s Sanction Guidance (‘the Guidance’); the Committee did not expressly consider, as it was required to do by the Guidance, whether the conditions imposed would be sufficient to protect the public, having regard to the reasons why it had decided that the Second Respondent was not currently fit to practise and any aggravating or mitigating features.*

Nor did the Committee properly consider the next most serious sanction or explain why such a sanction was not considered to be necessary. The Committee simply stated that it was “of the view that to impose a suspension order or a striking-off order would be wholly disproportionate”. The Committee did not give any reasons for its view that such an order would be “wholly disproportionate”, despite the fact that the Guidance states “simply saying that it would be disproportionate isn’t enough”.

Despite the fact that the Second Respondent was found to be directly responsible for exposing a patient to harm through non-intervention in a non-reporting of a case of abuse, and the Committee having found her insight remained limited, the Committee failed to properly apply the Guidance by:

- i. Not considering the seriousness of this conduct in deciding that the appropriate and proportionate sanction was that of a conditions of practice order, and*
- ii. not considering the appropriateness or proportionality of a suspension.*

- c. *The Committee took an erroneous approach to aggravating and mitigating factors:*
- i. *The Committee did not identify its previous finding that the Second Respondent's insight remained limited as an aggravating factor. This was relevant to the Committee's consideration of the likelihood of the Second Respondent's conduct being remediated when subject to conditions; an assessment the Committee was required to undertake before deciding that a conditions of practice order (as opposed to a suspension order) was the appropriate sanction in this case;*
 - ii. *the Committee wrongly identified as a mitigating factor that the Second Respondent "witnessed a relatively short and one-off incident in a challenging environment"; the description of her having simply 'witnessed' the incident is a material mischaracterisation of her conduct and inconsistent with the fact, as found proved, that she had failed to take any measure to intervene to protect Patient A and thus prevent the abuse from continuing;*
 - iii. *The Committee wrongly gave credit for the completion of an incident report promptly that did mention physical intervention, despite the fact that the incident report did not correctly identify the assault.*

Submissions on current impairment and sanction

Ms Williams, on behalf of the Nursing and Midwifery Council (NMC), set out the background to your case. She highlighted to the panel that on 2 May 2024 the High Court quashed the original conditions of practice order for a period of one year and substituted it with a suspension order for a period of six months.

Ms Williams submitted that the NMC's position was neutral in respect of the panel's review today.

Ms Love, on your behalf, invited the panel to allow the current suspension order to lapse. She submitted that you have demonstrated significant insight and have learned from your mistakes. She referred the panel to your reflective statement, specifically the following extracts:

'First, I have learnt that I should not have written the incident report as I was not present at the beginning of the incident, and I relied on the information reported to me which was confirmed in SWMB's statement that CL threatened to smash KBa's head and that KBa headbanged. Secondly, I have learnt the importance of accurately documenting incident and information. Accurate and comprehensive recording of documentation and investigations allow the delivery of best care options.'

'In conclusion, I feel ashamed, embarrassed, and full of regrets. I cannot express enough the impact which my behaviour has on myself, or its effect on my patient(s), colleague(s), employer(s), the public and most importantly the nursing profession. My actions also brought the profession into disrepute. This experience has impacted on my practice altogether and in future I would do things differently by reporting and documenting accurately and report any form of abuse.'

Ms Love submitted that your reflection provided evidence of insight into your past behaviour and the impact upon both you and your patients.

Ms Love informed the panel that you are currently working as a clinical support worker/health care assistant and also referred the panel to a development plan and an appraisal written by your current line manager. She highlighted that you have undertaken relevant training and received positive feedback from your employer. The appraisal by your line manager set out the following:

'Damilola meets with me weekly for supervision. In these meetings we discuss her practice particularly in relation to safeguarding, communication, escalation of concerns, patient care and record keeping. Damilola has demonstrated good insight and understanding of these processes through her everyday practice.'

In view of your insight, training and development, and the steps you have taken to strengthen your practice, Ms Love invited the panel to allow the current suspension order to lapse. She submitted however, that should the panel be minded to impose a conditions of practice order, then she proposed fortnightly or monthly meetings with your clinical supervisor, as opposed to weekly meetings.

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. 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 bundle provided by you. It has taken account of the submissions made by Ms Williams and Ms Love. The panel also had regard to the NMC's guidance on conducting reviews of substantive orders, (REV-3A).

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 took account of all of the documentation provided by you, including your reflective statement dated 23 September 2024, your professional development plan, the appraisal from your line manager, and a testimonial from your clinical team lead.

The panel reached the view that whilst you demonstrated some insight into the issues in your case, it was not yet fully developed. Within your reflective statement you have clearly reflected on safeguarding and some of the other concerns. The panel, however, considered that some of your reflections were generic and not directly related to the

specific incident giving rise to the concern, and that there was further insight to be developed. The panel considered some of your insight had a focus on the impact to yourself, but not sufficient insight to the potential impact on patients, colleagues and the wider profession.

The panel considered how you have strengthened your practice. It acknowledged the mandatory training that you have undertaken and also took account of the positive testimonial and appraisal that you received in your current employment. The panel bore in mind that you are currently working as a clinical support worker/health care assistant and that you have not had an opportunity to apply any learning in the context of your nursing practice. For this reason, the panel was not satisfied that your learning so far has been fully embedded within your practice as a registered nurse.

In light of this, this panel determined that you remain 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 also 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 nature and seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The panel considered that until you are able to demonstrate that you have strengthened your practice in the key areas, an order that restricts your nursing practice is necessary for the protection of the public. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered imposing a conditions of practice order when your current suspension order expires. Despite the seriousness of your misconduct, there has been evidence produced to show that you have expressed regret and remorse and have developed some insight as well as taken steps to strengthen your practice. In view of the efforts that you have made, and your positive development, the panel decided that a conditions of practice would best support you in returning to unrestricted nursing practice. It would allow you time to reflect further and develop your insight, whilst applying and embedding the learning in the context of your nursing practice.

The panel considered, in accordance with the sanction's guidance, whether it should impose a further suspension order. It determined that such an order was unnecessary and disproportionate because of the insight you have developed so far, and the steps that you have taken to strengthen your practice.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

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 limit your practice to a single employer. If it is an agency, then you must only accept placements of no less than six months duration.
2. You must ensure that you are supervised by another registered nurse at any time you are working. Your supervision must consist of working at all times on the same shift and on the same floor or area but not always directly supervised by another registered nurse.
3. You must be allocated a clinical supervisor, who must be a registered nurse, with whom you must meet monthly to discuss your clinical practice. These discussions must relate to your conduct in general nursing practice particularly in relation to the following:
 - Safeguarding
 - Communication
 - Escalation of concerns
 - Record keeping
 - Professional candour.
4. You must work with your manager, mentor or supervisor to create an updated personal development plan (PDP). Your PDP must address the concerns about safeguarding, communication, escalation of concerns, record keeping and professional candour and include evidence of further training and assessment in these areas. You must send your NMC case officer a report prior to the review of this order. The report must show your progress towards achieving the aims set out in your PDP.

5. In advance of any review, you must provide to your NMC case officer a report from your clinical supervisor that draws on your record of clinical supervision to report particularly on the areas listed in condition 3 and observations on your integrity in the workplace.

6. 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.

7. 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.

8. 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

9. 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.

10. 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

This order is for a period of six months, with a review.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 1 November 2024 in accordance with Article 30(1).

Before the end of the period of the order, 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.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC.
- A reflective statement demonstrating your insight specifically addressing the issue of dishonesty including the impact on patients, colleagues and the wider nursing profession.
- Evidence of compliance with the conditions of practice.
- References and testimonials from your current employer.

This will be confirmed to you in writing.

That concludes this determination.