

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

**Substantive Order Review Hearing
Wednesday, 26/02/2025**

Virtual Hearing

Name of Registrant: Melfort Makhosonke Khumalo

NMC PIN 11E1092E

Part(s) of the register: Registered Nurse, Sub Part 1
Adult Nurse, Level 1 – May 2011

Relevant Location: Leicester

Type of case: Misconduct & Lack of competence

Panel members: Alan Greenwood (Chair, Lay member)
Philippa Hardwick (Lay member)
Kathryn Smith (Registrant member)

Legal Assessor: Marian Gilmore KC

Hearings Coordinator: Yousrra Hassan

Nursing and Midwifery Council: Represented by Nawazish Choudhury, Case Presenter

(Registrant's name): Not Present and unrepresented

Order being reviewed: Conditions of practice order (12 month)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months)
To come into effect on expiry of the current order on
17 April 2025 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Khumalo was not in attendance and that the Notice of Hearing had been sent to Mr Khumalo's registered email address by secure email on 27 January 2025.

Mr Choudhury, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Khumalo's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Khumalo has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Khumalo

The panel next considered whether it should proceed in the absence of Mr Khumalo. The panel had regard to Rule 21 and heard the submissions of Mr Choudhury who invited the panel to continue in the absence of Mr Khumalo. He submitted that Mr Khumalo had voluntarily absented himself.

Mr Choudhury referred the panel to the documentation from Mr Khumalo which included a letter from his representative, which states Mr Khumalo is content for the hearing to proceed in their absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Khumalo. In reaching this decision, the panel has considered the submissions of Mr Choudhary, 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:

- It was made clear Mr Khumalo's behalf that he was happy for the proceeding to continue in his absence,
- No application for an adjournment has been made by Mr Khumalo;
- Today's hearing is a mandatory review of a substantive order and there is a strong public interest in the expeditious review of the case.
- It's also in Mr Khumalo's own interest that an order which restricts his nursing practice be reviewed.

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

Decision and reasons on review of the substantive order

The panel decided to extend the period of the current suspension order for a period of 12 months.

This order will come into effect at the end of 16 April 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

The current order is due to expire at the end of 16 April 2025.

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:

1. *On 26 May 2018 having checked the wrong patient's drug chart, incorrectly administered Paracetamol and Ibuprofen to a patient.*

2. *On 26 July 2018 failed to administer the following drugs whilst completing the 18.00 drugs round:*
 - (a) *Dalteparin.*
 - (b) *Metformin.*
 - (c) *Zomorph.*

3. *On 22 September 2018;*
 - (a) *Failed to administer Dalteparin to a patient.*
 - (b) *Administered a non-steroid medication too early to a patient.*

4. *...*

5. *On 11 May 2019 administered the incorrect eye drops to a patient.*

6. *On 15 May 2019 failed to check and/or ensure that a patient's intravenous cannula had been removed prior to the patient being discharged.*

7. *...*

8. *On 14 June 2019 had to be prompted on one or more occasions to check a patient's blood sugar level before insulin could be administered safely.*

9. *On 14 June 2019 failed to immediately dispose of a controlled medication device containing morphine upon removal from the patient.*

- Whilst working at University Hospital Coventry & Warwickshire*

10. *...*
11. *On 6 January 2021 incorrectly potted 12.5mg of Diazepam instead of the prescribed amount of 12.5mls.*

12. *On or around 29 January 2021 failed to complete a health clinic in respect of one or more patients.*

13. *On 5 February 2021 failed to;*

(a) *Complete mattress audits.*

(b) *Complete first aid box checks.*

(c) *Review and/or adequately evaluate one or more patients' care plan.*

14. *On 9 February 2021 on one or more occasions failed to complete waterlow assessments for patients.*

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

That you a registered nurse;

The original panel determined the following with regard to impairment:

The panel next went on to decide if as a result of the lack of competence and/or misconduct, your fitness to practise is currently impaired.

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.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and act with integrity. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must

make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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) ...'*

The panel finds that whilst no actual harm occurred, your actions had the potential to do so and patients and colleagues were put at unnecessary risk. The panel was of the view that your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you demonstrated some insight, however this was not fully developed at this stage. It noted that you admitted your failings early on and have continuously demonstrated a keen passion for the nursing profession. However, during the course of this hearing you were unable to explain to the panel how you would effectively manage a similar situation should it arise again, focusing on delegation rather than your own practice. In your oral evidence you told the panel that you would 'utilise' your team member to help you with your workload.

The panel was satisfied that the misconduct in this case is capable of being addressed by the strengthening of your practice. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account that you have addressed some issues whilst working in a Health Care Assistant role, however you are yet to work in a registered nursing space. The panel noted some concerns around how you would manage in such a role given that the concerns have not been fully remediated. It noted that these errors are of a serious nature and include poor practice by cutting and pasting information which could have resulted in actual harm caused by inaccurate records.

However, the panel is of the view that there is a risk of repetition and as such, the panel determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that 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 addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment was not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

Having found your 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:

- *Your failings were repeated over a period of three years;*
- *Some of your failings occurred whilst you were under a high level of supervision; and*
- *Some of your failings placed patients at an unwarranted risk of harm.*

The panel also took into account the following mitigating features:

- *You have demonstrated developing insight which is evidenced within both your reflective statement and oral evidence;*
- *You made early admissions to some charges; and*
- *You have been working as Health Care Assistant in a clinical setting since 2022.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the wide-ranging allegations found proved. 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 your failings, and the public protection 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 placing conditions of practice on your 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 the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. During

the course of this hearing, the panel did not receive any evidence to suggest a harmful deep-seated personality or attitudinal problem. To the contrary, the panel had before it a number of positive comments from witnesses attesting to your character and your patient centred approach to nursing. It noted that you have been working as a Health Care Assistant since you were made subject to an interim suspension order and that, during this time, no further concerns have been raised regarding your employment in this role. The panel accepted that you would be willing to comply with a conditions of practice order and that your employer would be supportive of any conditions imposed. It determined that you should now be allowed the opportunity to demonstrate a strengthening of your practice as a registered nurse. The panel determined that conditions could be formulated that would protect patients during the period they are in force and that it was in the public interest, with appropriate safeguards, that you should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order at this time would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions 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 must limit your employment to one substantive employer. This cannot include agency work.*
- 2. You must ensure that you are working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above and/or equivalent.*
- 3. You must be directly supervised by another registered nurse of band 6 or above and/or equivalent when administering medication until signed off as competent by your clinical line manager, mentor and/or supervisor.*
- 4. You must work with your line manager, mentor and/or supervisor to create a personal development plan (PDP). Your PDP must address the regulatory concerns about:*
 - a) Medication administration*
 - b) Prioritisation*
 - c) Record keeping*
 - d) Time management*

You must send your case officer a copy of your PDP before any review hearing.

- 5. You must meet with your line manager, mentor and/or supervisor, every two weeks for the first three months of this order and once a month thereafter, to discuss your progress towards aims set in your personal development plan (PDP).*
- 6. Send your case officer a report from your line manager, mentor and/or supervisor before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.*

7. *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.*

8. *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.*

9. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any employers you apply to for work (at the time of application).*
 - c) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

10. *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.*

11. *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*

The period of this order is for 12 months.

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.

Any future panel reviewing this case would be assisted by:

- Your attendance at the hearing;*
- Any up to date testimonials from your current employment; and*
- Evidence of your compliance with the order.*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Khumalo's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's 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 had regard to all of the documentation before it, including the NMC bundle and the on-table material from Mr Khumalo.

It has taken account of the submissions made by Mr Choudhury on behalf of the NMC. He outlined to the panel the background of the case and the previous panels decision. He submitted that Mr Khumalo's misconduct fell short of the conduct and standards expected of a registered nurse and he demonstrated failures which amount to serious misconduct.

Mr Choudhury also explained that Mr Khumalo had provided the panel with a reflective statement, positive testimonials from his role as a support worker and positive comments from witnesses regarding Mr Khumalo's character. However, Mr Khumalo's failure to strengthen his practice because he has been unable to find work as a registered nurse, means that he is not yet able to demonstrate that he is no longer impaired. Mr Choudhury submitted that an order is necessary on the grounds of public protection and public interest and that it is a matter for the panel to consider what sanction is appropriate to be imposed. He submitted that it is appropriate in the circumstances to continue the conditions of practice order for a further 12 months.

The panel also had regard to the written submissions from the representative Ms Polack which had also submitted that the current order should be continued. She drew the panel's attention to the evidence of the numerous attempts Mr Khumalo has made to secure work as a registered nurse without success.

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 Mr Khumalo's fitness to practise remains impaired. The panel noted that the original panel found that Mr Khumalo had insufficient insight. At this hearing, today's panel has received evidence of reflection from Mr Khumalo as recommended by the original panel. However, although he has shown developing insight, he has had no opportunity to show that he is no longer impaired because he has not been working as a registered nurse.

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 was of the view that an informed member of the public would be concerned to learn that a registrant, in these particular circumstances, was allowed to practice unrestricted. 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 Mr Khumalo's fitness to practise remains impaired.

Decision and reasons on sanction

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

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Mr Khumalo's misconduct was not at the lower end of the spectrum and the caution order would be inappropriate in the 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Mr Khumalo has been unable to comply with conditions of practice due to their current employment status but is engaging with the NMC, is actively seeking employment as a registered nurse and is willing to comply with any conditions imposed.

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 were no deep seated attitudinal problems. In this case, conditions 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 or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Khumalo's case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the existing conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 16 April 2025. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

1. You must limit your employment to one substantive employer. This cannot include agency work.

2. You must ensure that you are working at all times on the same shift as, but not always directly observed by a registered nurse of band 6 or above and/or equivalent.

3. You must be directly supervised by another registered nurse of band 6 or above and/or equivalent when administering medication until signed off as competent by your clinical line manager, mentor and/or supervisor.

4. You must work with your line manager, mentor and/or supervisor to create a personal development plan (PDP). Your PDP must address the regulatory concerns about:

a) Medication administration

b) Prioritisation

c) Record keeping

d) Time management

You must send your case officer a copy of your PDP before any review hearing.

5. You must meet with your line manager, mentor and/or supervisor, every two weeks for the first three months of this order and once a month thereafter, to discuss your progress towards aims set in your personal development plan

(PDP).

6. Send your case officer a report from your line manager, mentor and/or supervisor before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.

7. 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.*

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8. 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.*

9. You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.*
- b) Any employers you apply to for work (at the time of application).*
- c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

10. 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.*

11. 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 condition*

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 16 April 2025 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 Mr Khumalo 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.

Any future panel reviewing this case would be assisted by:

- Engagement with the NMC and any proceedings including attendance at future review hearings;
- Up to date reflective statement from Mr Khumalo demonstrating his insight, what he has learnt since this hearing and how he has strengthened his practice;
- References and testimonials relating to his clinical work from colleagues who are aware of the regulatory concerns of this case;
- Evidence of any completed training and associated assessment that relate to the regulatory concerns in this case.

This will be confirmed to Mr Khumalo in writing.

That concludes this determination.