

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

**Substantive Order Review Hearing
Wednesday 3 and 4, May 2023**

Virtual Hearing

Name of Registrant: Runyararo Fungayi Moyo-Chiname

NMC PIN 01A0037E

Part(s) of the register: Nurses part of the register, sub part 1
RNC: Children's nurse, level 1 (05 January 2004)
Specialist community public health nursing part of the register RHV: Health visitor (24 September 2010)
Recordable qualifications V100: Community practitioner nurse prescriber (24 September 2010)

Relevant Location: Essex

Type of case: Misconduct

Panel members: Mary Hattie (Chair, Registrant member)
Helen Chrystal (Registrant member)
Anthony Griffin (Lay member)

Legal Assessor: Alain Gogarty

Hearings Coordinator: Debbie Olawore

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case Presenter

Ms Moyo-Chiname: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 26 June 2023 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 Ms Moyo-Chiname was neither present nor represented at the hearing. The Notice of Hearing had been sent to Ms Moyo-Chiname's registered email address by secure email on 5 April 2023.

Mr Kennedy referred the panel to the 16-page proof of service bundle. He stated that the notice of hearing sent to Ms Moyo-Chiname on 5 April 2023 contains details of the date, time, and purpose of the hearing and further informed her that the hearing will be virtual and that the panel has a discretion to proceed in her absence should she not attend. The notice also contains a copy of the suspension order made by the previous panel on 25 November 2022.

Mr Kennedy invited the panel to have regard to the content of the notice of hearing. It informs Ms Moyo-Chiname that the panel will, in addition to reviewing the suspension order made on 25 November 2022, consider new information namely two allegations of dishonesty.

In relation to the issue of service for the substantive order review, Mr Kennedy submitted that proper service had been made in accordance with Rules 11(2)(b) and 11(3)(c) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' as amended (the Rules) which provides as follows;

*'The notice of hearing shall be sent to the registrant—
in every case, no later than 28 days before the date fixed for the hearing'.*

'Where the Committee is to review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the Committee's reasons for making that order'

Ms Moyo-Chiname had been given 28 days' notice of the review hearing containing a copy of the order to be reviewed.

In relation to the notice, in respect of the new matters, the position regarding service was different. Rule 11(3)(b) of the above rules provides;

'Where the committee is to consider the allegation at an initial hearing, contain a charge particularising the allegation, and-

- (i) Where it is alleged that the registrant has committed misconduct or received a criminal conviction, particularising the alleged facts upon which the allegations is based, or*
- (ii) In any other case, setting out the grounds or alleged facts in support of the allegation'*

Mr Kennedy submitted that whilst Ms Moyo-Chianme had been given 28 days' notice of the hearing, she had not been provided copies of all the documents in support of the new matters. The witness statement of Ms 1 was served on Ms Moyo-Chiname on 13 April 2022 and her supplementary statement on 21 April 2023 and in the circumstances the requirement of Rule 11 (3)(b) had not been fully complied with.

Mr Kennedy reminded the panel of its power to regulate its own proceedings and to consider whether in the circumstances of this case they could rule that proper service had been made in accordance with the rules in relation to the new matters. However, he submitted that it was open to the panel to determine that proper service had not been made in relation to the new matters having regard to the chronology of the service of the witness statement of Ms 1 to Ms Moyo-Chiname.

As previously submitted, there was no such service issue in relation to the notice of the substance order review.

The panel accepted the advice of the legal assessor who advised the panel in relation to the requirement of Rule 11(3)(b) and (c).

The panel retired to consider whether proper service had been made in relation to both the substantive order review and the new matters. After careful consideration, it determined that proper service had being made in relation to the substantive order review. However, it

was not satisfied in relation to service regarding the new matters as Ms Moyo-Chiname had not been given 28 days notice in compliance with Rule 11(3)(b).

Decision and reasons on proceeding in the absence of Ms Moyo-Chiname

The panel next considered whether it should proceed in the absence of Ms Moyo-Chiname. The panel had regard to Rule 21 and heard the submissions of Mr Kennedy who invited the panel to continue in the absence of Ms Moyo-Chiname. He submitted that Ms Moyo-Chiname had voluntarily absented herself.

Mr Kennedy submitted that there had been no engagement at all by Ms Moyo-Chiname apart from one telephone call by her to her case officer with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Moyo-Chiname. In reaching this decision, the panel has considered the submissions of Mr Kennedy 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:

- No application for an adjournment has been made by Ms Moyo-Chiname;
- Ms Moyo-Chiname has not engaged with the NMC and has not responded apart from one telephone call to her case officer;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- This is a mandatory review of a substantive order of suspension and
- There is a strong public interest in the expeditious review of the case.

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

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 26 June 2023 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 6 months by a Fitness to Practise Committee panel on 25 November 2022.

The current order is due to expire at the end of 26 June 2023.

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 was as follows:

'That you, a registered nurse:

- 1) On one or more occasions between February 2020 and 27 August 2021:*
 - a) Failed to carry out allocated tasks;*
 - b) Failed to timeously and accurately record details of tasks carried out;*
 - c) Failed to book and/or carry out safeguarding follow-up appointments;*
 - d) Failed to keep your caseload up to date on the SystemOne case management system;*
 - e) Failed to attend meetings and or appointments with patients;*

- f) *Failed to communicate clearly and effectively in that you:*
- i) *Failed to provide patient(s) with adequate notice of cancelled appointments;*
 - ii) *Failed to communicate difficulties with your caseload to your colleagues and/or supervisors.*

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 next went on to decide if as a result of the misconduct, Ms Moyo-Chiname's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 considered that limbs a, b and c were engaged by Ms Moyo-Chiname's misconduct in this case.

The panel concluded that Ms Moyo-Chiname had in the past acted so as to put patients at an unwarranted risk of harm. The panel determined that her misconduct namely her failure to carry out allocated tasks; timeously and accurately record details of tasks carried out; book and/or carry out safeguarding follow-up appointments; and failure to communicate difficulties with colleagues breached fundamental tenets of nursing practice. Additionally, the panel was of the view that her misconduct is liable to bring the nursing profession into disrepute. In the panel's judgement, the public expect registered nurses and health visitors to adhere to the appropriate professional standards at all times and to safeguard the health and wellbeing of patients.

The panel however recognised that it had to make an assessment of Ms Moyo-Chiname's fitness to practise as of today. This involves not only taking account of past misconduct but also what has happened since the misconduct

came to light and whether she would pose a risk of repeating the misconduct in the future.

The panel had regard to the case of Cohen and considered whether the concerns identified in Ms Moyo-Chiname's nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether Ms Moyo-Chiname had provided evidence of insight and remorse.

The panel considered that Ms Moyo-Chiname's clinical concerns are capable of remediation. It considered remediation could have been demonstrated through acceptance of what went wrong, through showing an understanding of how Ms Moyo-Chiname's actions impacted on patients, colleagues, the reputation of the nursing profession and her regulator, through demonstration of apology and remorse and through demonstrating steps taken to ensure the behaviour would not be repeated in the future.

The panel then considered whether Ms Moyo-Chiname had remediated her misconduct. The panel determined that Ms Moyo-Chiname has not provided evidence of any remorse or strengthened practice. The panel also considered the information before it which suggests that despite Ms Moyo-Chiname having had significant support from her employer over a sustained period of time, she failed to sustain any improvements in her performance. Therefore, the panel determined that there is a risk of repetition of these actions and so there is a continued risk of harm to patients. The panel therefore decided 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.

The panel was satisfied that having regard to the nature of the misconduct in this case, “the need to uphold proper professional standards and public confidence in the profession would be undermined” if a finding of current impairment were not made. It was of the view that a fully informed member of the public would be concerned by Ms Moyo-Chiname’s misconduct should she be permitted to practice as a registered nurse in the future without some form of restriction.

Having regard to all of the above, the panel was satisfied that Ms Moyo-Chiname’s fitness to practise is currently impaired.’

The original panel determined the following with regard to sanction:

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 Ms Moyo-Chiname’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 Ms Moyo-Chiname’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 took into account the SG and considered that there was no evidence to suggest there was harmful deep-seated personality or attitudinal problems on Ms

Moyo-Chiname's part. It also considered that there were identifiable areas of Ms Moyo-Chiname's practice in need of retraining and further assessment.

The panel was of the view that a conditions of practice order could protect the public if they were workable. However, the panel noted that despite the provision of significant support, Ms Moyo-Chiname had been unable to sustain the required standards of care. In addition, the lack of engagement by Ms Moyo-Chiname with these proceedings left the panel unconvinced that conditions of practice that were workable could be identified at this time. It further noted that there has been no engagement from Chiname's with the NMC and there is no evidence to demonstrate a willingness to respond positively to retraining.

The panel concluded that the placing of workable conditions on Ms Moyo-Chiname's registration in these circumstances could not be formulated.

The panel then went on to consider whether a suspension order would be the appropriate sanction. The panel determined that, although there had been a clear breach of the fundamental tenets of the profession, the misconduct in this case is capable of remediation and was not fundamentally incompatible with Ms Moyo-Chiname remaining on the register. Whilst the panel had concerns about Ms Moyo-Chiname's insight, a period of suspension may allow her to reflect and develop appropriate insight. The panel determined that a suspension order would provide Ms Moyo-Chiname with the opportunity to demonstrate reflection and remediation. The panel was of the view that a suspension order would protect the public and would sufficiently mark the public protection and public interest elements of this case.

The panel further considered whether a striking-off order would be proportionate but, taking account of all the information before it, and noting that the misconduct identified is capable of remediation, the panel concluded that it would be disproportionate at this stage to strike Ms Moyo-Chiname's name off the register. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Moyo-Chiname's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order 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.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct. The panel considered this to be a sufficient period of time for Ms Moyo-Chiname to reflect and to demonstrate insight into her misconduct.

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 may be assisted by:

- Her engagement/attendance at the review hearing.*
- Evidence of keeping up to date with nursing/health visiting practice.*
- A reflective piece that demonstrates consideration of the impact of her actions on vulnerable patients and the steps she has taken to ensure no repetition of his misconduct in the future.*
- Character references and testimonials from any paid or unpaid work.'*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Moyo-Chiname'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 suitability to remain on the register without restriction. 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 Mr Kennedy on behalf of the NMC.

Mr Kennedy outlined the background to the case and referred the panel to the relevant parts of the bundle. He submitted that the previous panel found all the charges proved and found misconduct in relation to the charges with the exception of 1e and 1f(I). He submitted that the panel found that there was no evidence of remorse or strengthening of her practice and concluded that there was a risk of repetition.

Mr Kennedy submitted that it is self-evident that Ms Moyo-Chiname has not engaged in any way. She has not provided evidence of keeping up to date. He submitted that she has also not provided a reflective piece or character references to show that she has attempted to strengthen her practice or remediate her actions.

Mr Kennedy submitted that it is the NMC's position that in absence of any communication from Ms Moyo-Chiname, and no insight demonstrated, the risk of repetition remains. He submitted that in these circumstances, it is the NMC's position that an order remains necessary for the public protection and otherwise in the public interest.

Mr Kennedy also submitted that it is the NMC's position that a continuation of a suspension order is the appropriate outcome in this case.

The panel accepted the advice of the legal assessor.

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

The panel considered whether Ms Moyo-Chiname's fitness to practise remains impaired.

Today's panel has heard no new information that suggests that Ms Moyo-Chiname is no longer impaired. The panel determined that there is no evidence to conclude that Ms Moyo-Chiname is unlikely to repeat matters of the kind found proved at the substantive

hearing. In the absence of Ms Moyo-Chiname, in its consideration of whether Ms Moyo-Chiname has taken steps to strengthen her practice, the panel determined that there was no evidence of any steps taken to demonstrate insight or any training undertaken. It then determined that, in this case, a finding of continuing impairment is necessary on the grounds of public protection.

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

For these reasons, the panel finds that Ms Moyo-Chiname's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Moyo-Chiname's fitness to practise currently impaired, the panel then considered what, if any, order it should impose in this case. The panel noted that its powers are set out in Article 30(1) 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 issues identified, an order that does not restrict Ms Moyo-Chiname'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 Ms Moyo-Chiname'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 a conditions of practice on Ms Moyo-Chiname'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 bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. Further there is no indication that Ms Moyo-Chiname would be willing to comply with a condition of practice order. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Moyo-Chiname's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Moyo-Chiname further time to fully reflect on her previous misconduct. It considered that Ms Moyo-Chiname needed to gain a full understanding of the potential risks to vulnerable children which arose from her misconduct and how the misconduct of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel determined that a further twelve months suspension order would be the appropriate and proportionate response and would afford Ms Moyo-Chiname's adequate time to further develop her insight and take steps to strengthen their practice. It would also give Ms Moyo-Chiname's an opportunity to obtain testimonials in relation to any employment paid or unpaid undertaken since the substantive hearing.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined that a further suspension order for the period of twelve months would provide Ms Moyo-Chiname's with an opportunity to engage with the NMC, and the opportunity to reflect on her practice and develop insight into what went wrong. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 26 June 2023 in accordance with Article 30(1)

Before 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 may be assisted by:

- Her engagement/attendance at the review hearing.
- Evidence of keeping up to date with nursing/health visiting practice.
- A reflective piece that demonstrates consideration of the impact of her actions on vulnerable patient and the steps she has taken to ensure no repetition of his misconduct in the future.
- Character references and testimonials from any paid or unpaid work.'

This will be confirmed to Ms Moyo-Chiname's in writing.

That concludes this determination.