

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

**Substantive Order Review Hearing
Friday 09 December 2022**

Virtual Hearing

Name of Registrant: Obianujunwa Virginia Ekwueme

NMC PIN 99F10730

Part(s) of the register: Registered Specialist Practitioner
Specialist Nurse – September 2014

Relevant Location: Manchester

Type of case: Misconduct

Panel members: Clive Chalk (Chair, lay member)
Marcia Smikle (Registrant member)
Claire Corrigan (Lay member)

Legal Assessor: Graeme Dalglish

Hearings Coordinator: Berivan Genc

Nursing and Midwifery Council: Represented by Anthony James, Case Presenter

Ms Ekwueme: Not present and not represented

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

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months)
to come into effect on 26 January 2023 in
accordance with Article 30 (1).**

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

At the outset of the hearing, the panel considered the written representation from Ms Limerick from the Royal College of Nursing (RCN) on behalf of Ms Ekwueme that this case be held entirely in private on the basis that proper exploration of Ms Ekwueme's case involves references made to her health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr James indicated that the application should be in part to the extent that any reference to Ms Ekwueme's health should be heard partly in private.

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 determined to go into private session in relation to Ms Ekwueme's health and when such issues are raised.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Ekwueme was not in attendance and that the Notice of Hearing had been sent to Ms Ekwueme's registered email address by secure email on 10 November 2022.

Mr James 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, dates and link to the hearing and, amongst other things, information about Ms Ekwueme's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Ekwueme 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 Ms Ekwueme

The panel next considered whether it should proceed in the absence of Ms Ekwueme. The panel had regard to Rule 21 and heard the submissions of Mr James who invited the panel to continue in the absence of Ms Ekwueme. He submitted that Ms Ekwueme had not voluntarily absented herself.

Mr James referred the panel to the letter sent from the RCN which stated that:

'Our members will not be attending the hearing, nor will they be represented. No disrespect is intended by their non-attendance. We have previously supplied a copy of [PRIVATE].'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Ekwueme. In reaching this decision, the panel has considered the submissions of Mr James, the representations made on Ms Ekwueme's behalf, and the advice of the legal assessor. It had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Ms Ekwueme has been engaging with the NMC proceedings;
- No application for an adjournment has been made by Ms Ekwueme;

- There is no reason to suppose that adjourning would secure her attendance at some future date before 26 January 2023 when the substantive order is due for a review; and
- There is a strong public interest including the NMC and Ms Ekwueme's own interest for the expeditious review of the case.
- Ms Ekwueme can request for an early review.

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

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order

This order will come into effect at the end of 26 January 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 13 January 2021. This was reviewed and varied on 12 November 2021 and the conditions of practice order was further reviewed on 27 January 2022 and continued for 12 months.

The current order is due to expire at the end of 26 January 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 were as follows:

'That you, a registered nurse:

- 1) *In or around May 2016, in your application for employment at the Blackpool Teaching Hospitals NHS Foundation Trust ("BTH")*

- a) *Failed to disclose that you were the Secretary and/or Director of the company Divinecall Care Limited from 2008 to 2013 (Proved)*
 - b) *Failed to disclose that you were a Director of the company Authentic Occupational Health Limited as of 10 December 2014 (Proved)*
 - c) *Proposed Mr A as a referee in the capacity of Employer/Line Manager (Proved)*
 - d) ...
 - e) ...
 - f) *Represented that “I am conversant and experience (sic) with Cohort OH software” (proved by way of admission)*
 - g) ...
- 2) *And your actions specified in charge 1 amounted to dishonesty and/or a lack of integrity in that*
- a) *You knew or ought to have known that it was wrong not to have disclosed that you were or had been a Director and/or Secretary, of companies you had cited as employers (Proved)*
 - b) *You knew or ought to have known that it was wrong to have proposed Mr A as a referee in the capacity of Employer/Line Manager when he never fulfilled that role (Proved)*
 - c) ...
 - d) ...
 - e)
 - f)
 - g) ...
 - h) ...
 - i) ...
- 3)
- 4) ...

- 5) *In or around November 2015, in an application for employment with Wrightington, Wigan and Leigh NHS Foundation Trust (“WWL”)*
- a) *You failed to disclose that at the relevant time you were Secretary of the company Divinecall Care Limited, cited as your current employer (Proved)*
 - b) *You failed to disclose at the relevant time that your husband was Director of the company Divinecall Care Limited, cited as your current employer (Proved)*
 - c) *You proposed Mr A as referee in the capacity of Employer/Line Manager (Proved)*
- 6) *And your action specified in charge 5 was dishonest and/or amounted to a lack of integrity in that*
- a) *You knew or ought to have known that it was wrong to have failed to declare that you were Secretary of the company you cited as your employer (Proved)*
 - b) *You knew or ought to have known that it was wrong to have failed to declare that your husband was Director of the company you cited as your employer (Proved)*
 - c) *You knew or ought to have known that it was wrong to have proposed Mr A as a referee in the capacity of Employer/Line Manager when he never fulfilled that role (Proved)*
- 7) *Having had an offer of employment from WWL withdrawn in around January 2016*
- a) *You approached colleague B who had provided an unfavourable reference and became verbally aggressive towards her when she refused to withdraw her concerns (Proved)*

- b) You attempted to persuade WWL that colleague B had given a more favourable explanation of what she had stated in her reference (**proved by way of admission**)
- 8) And your action specified in charge 7 b) was dishonest in that
- a) You knew that colleague B had not given a more favourable explanation of what she had stated in her reference (**Proved**)
- b) You knew that colleague B had refused to withdraw her concerns (**Proved**)
- c) You knew that it was wrong to suggest that colleague B had given a more favourable explanation of what she had stated in her reference when she had not done so (**Proved**)
- 9) On 21 September 2016, whilst working at BTH, you failed to demonstrate an adequate understanding of when it might be appropriate to administer adrenaline to a client (**Proved**)
- 10)...
- 11)...
- 12) ...
- 13) Whilst working at BTH, during a sickness review clinic on a date unknown, you disagreed with the advice given by colleague C in the presence of the client (**proved by way of admission**)
- 14) On 5 October 2016 whilst working at BTH, you caused client D, with a phobia of needles, to have bloods taken twice (**proved by way of admission**)
- 15) In respect of charge 14 you failed to apologise personally to client D and/or their relative (**proved by way of admission**)

16) *Whilst working at BTH, failed to conduct adequate Occupational Health consultations on or around the dates specified in Schedule 1, in that you*

- a) *Failed to adequately assess a client prior to administering an injection and/or (Proved)*
- b) *Failed to give adequate explanation to a client prior to administering an injection and/or (Proved)*
- c) *Failed to discuss relevant issues with the client and/or (Proved)*
- d) *Failed to give appropriate advice to a client (Proved)*

17) *Whilst working at BTH, failed to keep adequate records in relation to Occupational Health consultations on or around the dates specified in Schedule 2, in that you*

- a) *...*
- b) *Failed to document what was said or done during the consultation and/or (Proved)*
- c) *Failed to make sufficient notes commensurate with the content and duration of the consultation and/or (Proved)*
- d) *Failed to make any notes of the consultation in the client's records and/or (Proved)*
- e) *Failed to time/date/sign a patient history sheet (Proved)*

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.'

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

'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. In its consideration of whether you have remedied your practice, the panel took into account all the information before it. It bore in mind that both Mr Brahimi and Ms Fletcher-Smith agree that your fitness to practise remains impaired. It also considered that there is no information before it that suggests that you have satisfied all the conditions to demonstrate that you are not impaired.

The panel had regard to your offer of employment as a nurse at Burrswood House. It observed that you worked with the manager at Burrswood House when you were employed at Peel Care Home. The manager is aware of the conditions of practice order and has indicated in an email, dated 28 October 2021, that the clinical services manager and head of care will be supporting you throughout your initial induction. The manager has also indicated that she will support you as well.

The panel has had no new information which it considers undermines the previous finding of impairment in this case. It has seen no evidence that you have followed the previous panel's recommendations as to what this panel may have been assisted by. The panel has not been provided with information to suggest how you have complied with the conditions of practice order. There is no information to suggest that you are currently practising as a nurse and in the absence of this information the panel can only conclude that there remains a risk of patient harm. The panel also considered that the misconduct found proved in this case has not been remedied, therefore it decided that a finding of continuing impairment is necessary on the grounds of public protection.

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

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

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

'Having found your fitness to practise is currently impaired, the panel went on to consider whether to grant the application to vary condition 1 of the order. The panel was mindful of the fact that it had no information to permit it to consider any other sanction and it had no submissions from the parties in respect of any other sanction. The panel confined its deliberations to the issue of whether in light of the fact that condition 1 is now unworkable, it should be revoked, or varied.

The panel next considered whether imposing a 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 was of the view that a varied conditions of practice order is sufficient to protect the public and address the wider public interest. In varying the order, the panel decided to change condition 1 to allow you the opportunity to work as a registered nurse and address the concerns raised against your practice.

The panel determined that the varied conditions would allow you to return to practice safely and address the failings highlighted in this case. In addition, they are proportionate, measurable, and workable. The panel accepted that you are engaging with the NMC and are willing to comply with any conditions imposed. The panel accepted that you will have the opportunity to demonstrate that you can practise safely.

The panel had regard to the NMC's guidance on changing substantive orders with immediate effect.

Accordingly, the panel determined, pursuant to Article 30(2) to vary this conditions of practice order, which will come into effect immediately.

It decided to vary 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 must restrict your nursing employment to one single employer who is not an agency. You must notify and agree with the NMC prior to taking up any employment.*

- 2. You must work with your line manager/supervisor to create a personal development plan (PDP). Your PDP must address the concerns about:*
 - Medication management, vaccination and anaphylaxis;*
 - Record keeping and documentation;*
 - Consent for procedures;*
 - Professional interaction;*
 - Understanding of your employer's local processes, protocols and procedures;*
 - Duty of candour.*

You must meet with your line manager/supervisor at least every month to discuss your progress towards achieving your aims set out in your PDP. These meetings must be dated, recorded and sent to the NMC within one week of this meeting.

- 3. You must send your case officer a report from your line manager/supervisor every three months and before any NMC hearing or meeting. This report must show your progress towards achieving the aims set out in your PDP.*

4. *You must write a reflective piece addressing each of the concerns in which misconduct had been found.*
5. *You must undertake a recognised professional development course in the recognition and treatment of anaphylaxis within six months of the date of these conditions of practice order.*
6. *You must send your case officer the certificate of completion of this recognised professional development course within one month of completing the course.*
7. *You must keep the NMC 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 the NMC 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 agency you apply to or are registered with for work.*
 - 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.*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Ekwueme'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, and written submissions from the RCN. It has taken account of the submissions made by Mr James on behalf of the NMC. He outlined the background of the case and the outcome of the previous hearings.

Mr James referred the panel to the background of the case, charges and the conditions breached by Ms Ekwueme. He submitted that due to Ms Ekwueme's circumstances she not been able to fully comply with the order since the beginning of October to date and he submitted that there are concerns of her fitness to practise in that regard. Mr James also submitted that the panel cannot be satisfied that Ms Ekwueme has addressed all of the concerns.

Mr James submitted that an order is necessary on the grounds of public protection and public interest. He submitted that there are public protection concerns regarding medication administration and record keeping. He submitted that there continues to be a real risk of harm to public safety in relation to these concerns.

Mr James submitted that the issue of dishonesty is an attitudinal concern and therefore would affect Ms Ekwueme's fitness to practise. Mr James also submitted that a well-informed member of the public would be concerned if they knew that a nurse with these conditions and concerns would be allowed to practice without restriction.

Mr James invited the panel to extend the order to address the issues of fitness to practise to ensure the public is protected and to take the necessary action.

The panel also had regard to the RCN's written submissions:

*'A short while after Ms. Ekwueme authorised disclosure of **[PRIVATE]**.*

***[PRIVATE]** Ms. Ekueme was complying with her conditions of practice and was keen to demonstrate that she is fit to practise without impairment. To this end she has disclosed reflective pieces and evidence of up-to-date training with each monthly report from her manager which discussed her progress towards meeting the aims of her PDP.*

*Ms. Ekueme has co-operated with the NMC and has been keen to engage with the proceedings. She has always been responsive to our communications **[PRIVATE]**.*

Whilst the RCN have received a copy of the notice of hearing, we are unable to confirm our member has received notice of hearing and is happy for the hearing to proceed in their absence. They are keen to engage with the proceedings.'

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 Ms Ekwueme's fitness to practise remains impaired.

In its consideration of whether Ms Ekwueme has taken steps to strengthen her practice, the panel took into account all of the information before it namely, the monthly report from Ms Ekwueme's line manager, PDP plan, Ms Ekwueme's reflective piece and her new employment in a supportive environment since June 2022. However, the panel determined that although the reports and the reflective piece indicates developing insight, they do not show that the risk has substantially reduced as they lack detail in relation to what Ms Ekwueme could have done differently, her experience as a nurse and what this means in practice. Therefore, the panel decided that there is insufficient evidence to show sufficient improvement in Ms Ekwueme's practice.

The panel also had regard to Ms Ekwueme's line manager's report and letter of 14 September 2022 stating:

'Joy is going to do a reflection on professional interaction. She also needs to reflect on the way EAM works, particularly that there is no division between what carers do and nurses and how we all work as one team. There is still some training O/S communication, dignity and record keeping to be either delivered by Cath or myself. Joy needs to work on her administration of medication and taking lead on shift...

In the PDP there are some suggestions that Joy has worked through, at this current time though Joy is not leading any shifts or administering medication independently, these 2 areas that need developing.'

At this hearing, the panel acknowledged that Ms Ekwueme has engaged with the NMC proceedings and attempted to take positive action. However, concerns still remain, because she has not been able to show sufficient insight or remediation.

In all of these circumstances, this panel determined that Ms Ekwueme is still 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. Considering the insufficient insight, the panel determined that the dishonesty issue remains an attitudinal concern and there is still a risk of repetition in that regard. Therefore, the panel decided that a finding of continuing impairment on public interest grounds is also required in order to maintain public confidence in the profession.

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

Decision and reasons on sanction

Having found Ms Ekwueme'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.

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 Ekwueme'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 Ekwueme'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 imposing a further conditions of practice order on Ms Ekwueme's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be specific, proportionate, measurable and workable.

The panel determined that the current conditions are appropriate and practical conditions which address the duty of candour and clinical failings highlighted in this case. The panel accepted that Ms Ekwueme has been unable to comply with the conditions of practice due to her current circumstances but that she is engaging with the NMC and has been complying with the conditions imposed on 27 January 2022.

The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions that have been formulated to 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 Ms Ekwueme's case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order in the same terms as the current conditions for a period of 12 months due to Ms Ekwueme's current circumstances to allow her some time to engage with the conditions. This will come into effect on the expiry of the current order, namely at the end of 26 January 2023. It decided to impose the following conditions which it considered remain 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 restrict your nursing employment to one single employer who is not an agency. You must notify and agree with the NMC prior to taking up any employment.*

2. *You must work with your line manager/supervisor to create a personal development plan (PDP). Your PDP must address the concerns about:*
 - *Medication management, vaccination and anaphylaxis;*
 - *Record keeping and documentation;*
 - *Consent for procedures;*
 - *Professional interaction;*
 - *Understanding of your employer's local processes, protocols and procedures;*
 - *Duty of candour.*

You must meet with your line manager/supervisor at least every month to discuss your progress towards achieving your aims set out in your PDP. These meetings must be dated, recorded and sent to the NMC within one week of this meeting.

3. *You must send your case officer a report from your line manager/supervisor every three months and before any NMC hearing or meeting. This report must show your progress towards achieving the aims set out in your PDP.*

4. *You must write a reflective piece addressing each of the concerns in which misconduct had been found.*

5. *You must undertake a recognised professional development course in the recognition and treatment of anaphylaxis within six months of the date of these conditions of practice order.*

6. *You must send your case officer the certificate of completion of this recognised professional development course within one month of completing the course.*

7. *You must keep the NMC 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 the NMC 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 agency you apply to or are registered with for work.*
 - 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.*

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 January 2023 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 Ms Ekwueme 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.

The panel was mindful that Ms Ekwueme may also seek for an early review.

Any future panel reviewing this case may be assisted by:

- Ms Ekwueme's continued engagement with the NMC proceedings;
- Case study examples based on Ms Ekwueme's own experience in her practice to evidence how she has strengthened her practice for example in the management and administration of medication; and
- A comprehensive Reflective Piece addressing the issue of dishonesty by nurses and the impact this can have on patients, colleagues, employers and the general public.

This will be confirmed to Ms Ekwueme in writing.

That concludes this determination.