

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

**Substantive Order Review Hearing
Wednesday 12 April 2023**

Virtual Hearing

Name of registrant: **Gines Nsamba Mabonzo Younga**

NMC PIN: 06A1231E

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

Relevant Location: Plymouth

Type of case: Misconduct

Panel members: Mary Hattie (Chair, Registrant member)
Marcia Smikle (Registrant member)
Carolyn Tetlow (Lay member)

Legal Assessor: Lucia Whittle-Martin

Hearings Coordinator: Maya Khan

Nursing and Midwifery Council: Represented by Amy Hazlewood, Case
Presenter

Mrs Younga: Not present and not represented

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice (18 months) to come
into effect on 26 April 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 Mrs Younga was not in attendance and that the Notice of Hearing had been sent to Mrs Younga's registered email address on 2 March 2023.

Ms Hazlewood, 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 heard and 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 means of joining the virtual hearing and, amongst other things, information about Mrs Younga's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all of the information available, the panel was satisfied that Mrs Younga 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 Mrs Younga

The panel next considered whether it should proceed in the absence of Mrs Younga. The panel had regard to Rule 21 and heard the submissions of Ms Hazlewood who invited the panel to proceed in the absence of Mrs Younga.

Ms Hazlewood referred to an email from Mrs Younga dated 3 March 2023 which stated:

'Thank you for sending me the same invite I was send last week even after I shared the reason why I am unable to attend. Looking at what was send there is nothing different as the outcome predicted by my unite solicitor that after 6

months with conditions on practice the next outcome is be be struck off the Registry in 2 years.

I am at peace with your plan. I have to excuse myself on the date chosen for the review planned before 6 months as agreed last meeting. The calendar has many dates but it seems like this is plan so I have to choose. This date has been planned long before you suggest the same date. As I cannot change that date i would like to excuse myself at your meeting [sic]

Ms Hazlewood informed the panel, after speaking to the NMC case officer, that efforts had been made to secure a date for Mrs Younga to attend a hearing. She therefore invited the panel to proceed in Mrs Younga's absence.

The panel heard and accepted the advice of the legal assessor.

The panel took into account the email trail between the NMC case officer and Mrs Younga between 21-24 February 2023.

The panel noted the email dated 21 February 2023 from Mrs Younga informing the NMC case officer that she could not attend the original date scheduled in March 2023 for the hearing as she would be out the country. Mrs Younga's emails stated:

'When this was discussed at the Hearing it was said to review in 6 not 5 months for this reason I made plan to travel end of march and be back after Easter. It looks like the plan is to do this meeting without me. If this is an invite then please let make it as planned end April. If there are more urgent needs then I will have to excuse myself'

'I will be going to Africa and the village I will go has no Internet. For this reason I have to excuse myself'

The same day, 21 February 2023, the NMC case officer replied to Mrs Younga stating:

'The current order began on 27 October 2022 and expires at the end of 26 April 2023. We normally review orders 4-6 weeks before the order expires, there is nothing illegal about that. If the next panel decide to extend or replace the order, the new order will only begin after the expiry of the old one (unless the panel has reason to start the new order with immediate effect). So, the order will run for the full 6 months..'

'It is a virtual hearing, so you can attend from anywhere in the world as long as you have a suitable device. Details of how to join is on the first page of the notice of hearing. You can also attend by telephone. We have not made plans to have the hearing without you. As I said the review is taking place at the normal and correct time, I can understand why you believe the panel's words are misleading but the review is taking place in the normal time span.'

On 23 February 2023 the NMC case officer emailed Mrs Younga stating:

'The hearing will be re-listed for a date after easter. Please make yourself available to attend. I will let you know the exact date when I receive it from the listings team'

Later that day, the NMC case officer emailed Mrs Younga again informing her of the proposed date:

'The hearing is listed for 12 April 2023. You will receive the formal notice of hearing and bundle of documents in due course.'

and Mrs Younga replied:

'As discussed from the the 27 Oct 2023 to 27 April 2023 will not make 6 months yet. Also the 12 will not be able to attend. Please propose another days'

On 24 February 2023, the NMC case officer emailed Mrs Younga stating:

'We are going to stick with the relisted hearing date, the 12th of April 2023.

We hold reviews 4-6 weeks before the end of the order/the expiry and we send the notice at least 29 days before the expiry date. In previous correspondence you confirmed you would be available after Easter, and you didn't provide any dates to avoid. We cannot keep changing the hearing date as the order needs to be reviewed before the expiry.

We hope you can attend on 12 April but if you can't please provide full reasons and an explanation which will be shared with the panel'

and Mrs Younga replied:

'I cannot attend on that particular date as I have another hearing to attend on the same day'

In the absence of any further information about what *'hearing'* Mrs Younga was referring to in her email, the panel instructed Ms Hazlewood to make enquiries about whether Mrs Younga was attending another NMC hearing today. Ms Hazlewood informed the panel that Mrs Younga had no other cases with the NMC and there was no other hearing for her to attend today at the NMC.

The panel decided to proceed in the absence of Mrs Younga. In reaching this decision, the panel considered the submissions of Ms Hazlewood. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. In particular it noted that:

- The original date of the hearing had been postponed until after Easter at Mrs Younga's request, to ensure that she had an opportunity to attend the hearing;
- a second date (today) was proposed for Mrs Younga to attend the hearing which she was also unable to attend;

- Mrs Younga has informed the NMC that she has received the Notice of Hearing and confirmed she is aware of the hearing to proceeding in her absence;
- Mrs Younga had been informed that the order would be reviewed before its expiry;
- there is a strong public interest in the expeditious review of the substantive order which is due to expire in two weeks and if not reviewed by 26 April 2023 the order would automatically lapse; and
- there was insufficient time for the required 28 days' notice to be given before 26 April 2023.

In these circumstances, the panel decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Younga.

Decision and reasons on review of the substantive order

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

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

This is the first review of a substantive conditions of practice order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 28 September 2022.

The current order is due to expire at the end of 26 April 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:

Details of charge

That you a registered nurse;

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

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

2. Having examined Child A's growth was faltering failed to:

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

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

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

(a) Completing records within 24-hours after the visit. **Proved by admission**

(b) Documenting the reason why they were recorded more than 24-hours after the visit. **Proved by admission**

(c) Documenting that the entry was written retrospectively. **Proved by admission**

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

6. On one or more occasions between September 2019 and December 2019 incorrectly mislabelled visits in patient records. **Proved by admission**

7.

8.

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

(a) A child in need meeting.

(b) A clinic meeting.

10.

11. ...

In light of the above your fitness to practise is impaired by your misconduct

The original panel determined the following with regard to impairment:

'The panel acknowledged your commitment to nursing as a profession, that it is your "dream job", and that you do have an appetite to return. It was satisfied that there are no deep-seated attitudinal issues in this case.

The panel was satisfied that the misconduct in this case is capable of remediation. It carefully considered the evidence presented to it in determining whether or not you have remedied your practice. The panel noted that you have now not practised as nurse for over twelve months. You have not demonstrated that you have undertaken recent relevant training courses to improve your skills or keep up-to-date, or

appropriately reflected on the charges, although the panel noted that you did undertake some training courses whilst you were employed in 2021. The panel determined that you had not sufficiently strengthened your practice since the events set out in the charges to satisfy it that your misconduct had been remedied at this stage.

Further, the panel found that there remains a risk of repetition of the misconduct due to the multiple instances of concern set out in the charges, the seriousness of the concerns, your limited insight into your failings, and the lack of evidence regarding measures that you have taken to strengthen your practice.

Taking all relevant matters into account, the panel therefore determined that a finding of impairment of your fitness to practise 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.

The panel determined that a finding of impairment on public interest grounds is required because a well-informed and reasonable member of the public would be concerned to learn, in the light of the misconduct found, that you were permitted to practise without restriction. Health Visitors are at the very forefront of society's care for children under school age, and the public rightly expects their practice to be competent, effective, and accurately recorded, and that they should be alert to safeguarding concerns at all times.

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

The original panel determined the following with regard to sanction:

'The panel was satisfied that your case falls within these parameters. Conditions of practice can satisfactorily mitigate the risks which have been identified and the imposition of such an order will also satisfy the public interest concerns arising from your misconduct. The panel also considered that conditions of practice would be in your own interests as they would provide structure and support for you when you are able to return to practice, after what will have been a significant absence. Also, the opportunity to safely return a nurse to clinical practice is in the public interest.'

The panel was of the view that to impose a suspension order or a striking-off order would be 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.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Younga'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 Ms Hazlewood.

Ms Hazlewood outlined the background of the case and reminded the panel of the decision taken at the substantive hearing. She outlined the charges found proved and admitted at the substantive hearing.

Ms Hazlewood submitted that the decision as to whether Mrs Younga's fitness to practise remained impaired was a matter for the panel.

Ms Hazlewood informed the panel that there were two fundamental issues that Mrs Younga has faced which may have limited her ability to comply with the conditions of practice order. Ms Hazlewood referred the panel to the previous panel's determination and subsequent email correspondence which made references to Mrs Younga's [PRIVATE] preventing her from remediating the issues identified in her practice. Ms Hazlewood also referred to a letter dated 19 December 2022 from SpaMedica informing Mrs Younga that the job offer she had initially received had now been withdrawn due to her having a conditions of practice order on her registration. She also referred to the evidence in the bundle indicating that Mrs Younga had applied unsuccessfully for five jobs. Ms Hazlewood therefore submitted that in the absence of Mrs Younga working in a clinical environment she is unable to demonstrate that she has fully remediated the concerns identified in her practice.

Ms Hazlewood submitted that consequently there remains a risk of repetition of the behaviour found proved. She submitted that, as there has been no material change in circumstances, Ms Younga remains impaired and is not suitable to practise unrestricted.

Ms Hazlewood submitted that the panel might wish to extend the conditions of practice order in order to allow Mrs Younga sufficient time to address her health issues, gain

employment, engage fully with the conditions and demonstrate her ability to practise safely and effectively to a future panel.

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 practise.

The panel considered whether Mrs Younga's fitness to practise remains impaired. The panel noted it had no new evidence before it today to suggest otherwise.

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

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

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

[PRIVATE]

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

Decision and reasons on sanction

Having found Mrs Younga'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 Mrs Younga'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 Mrs Younga'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 Mrs Younga's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account that the concerns identified in Mrs Younga's practice were remediable and that she had been taking steps to try to obtain employment. She has shown willingness to return to nursing but has been unable to gain employment. The panel was of the view that a conditions of practice order remains sufficient to protect patients.

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

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

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

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

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

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

3. You must work with your line manager, mentor or supervisor (or nominated deputy) to create a personal development plan (PDP). Your PDP must address the concerns about record keeping and safeguarding You must:
 - send your case officer a copy of your PDP within 4 weeks of commencing a role as a registered nurse.
 - Meet with you line manager, mentor or supervisor (or nominated deputy) at least every 4 weeks to discuss your progress towards achieving the aims set out in your PDP
 - Send your case officer a report from your line manager, mentor or supervisor (or nominated deputy) at least 14 days before the next review hearing. This report must show your progress towards achieving the aims set out in your PDP
4. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.
5. You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
6. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
7. a) You must within 14 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

b) You must within 14 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

8. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at 1 to 7 above, to them:

- Any organisation or person employing, contracting with or using you to undertake nursing work.
- Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.
- Any prospective employer (at the time of application) where you are applying for any nursing appointment.
- Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

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

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

Any future panel reviewing this case would be assisted by:

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

This will be confirmed to Mrs Younga in writing.

Before the order expires, a panel will hold a review hearing to see how well Mrs Younga has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

This will be confirmed to Mrs Younga in writing.