

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

**Substantive Order Review Meeting
Friday, 9 June 2023**

The Pharmaceutical Society of NI,
73, University Street, Belfast, BT7 1HL

Name of Registrant: Nomsa Lindiwe Mbelle

NMC PIN 04F0044O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (June 2004)

Relevant Location: Derbyshire

Type of case: Misconduct/Lack of competence

Panel members: John Vellacott (Chair, lay member)
Seamus Magee (Lay member)
Florence Mitchell (Registrant member)

Legal Assessor: Gerrard Coll

Hearings Coordinator: Max Buadi

Ms Mbelle: Not Present and not represented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on
25 July 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Ms Mbelle's registered email address by secure email on 28 April 2023.

The panel took into account that the Notice of Meeting provided details of the review including the fact that it would be heard no sooner than 5 June 2023 and the meeting will be conducted in private.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Mbelle has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a further period of suspension for 12 months. This order will come into effect at the end of 25 July 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 24 June 2022.

The current order is due to expire at the end of 25 July 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 2018 and/or 2019 failed to adequately preserve safety as a scrub nurse and surgical first assistant in that you:

1.1 On one or more occasions in 2018 and/or 2019, did not provide correct surgical

instruments on request **[FOUND PROVED]**

1.2 On an occasion in 2019 did not unpack surgical instruments correctly **[FOUND PROVED]**

1.3 On one or more occasions in 2019 were unable to count surgical instruments accurately **[FOUND PROVED]**

1.4 On one or more occasions, slept in Theatre while on duty **[FOUND PROVED]**

1.5 On an occasion in 2018 or 2019, prior to 21 March 2019, slept in a prosthesis store room while on duty **[FOUND PROVED]**

1.6 On or about 15 February 2019, wrote illegibly in the 'report of the operation' document **[FOUND PROVED]**

1.7 On or about 21 February 2019 risked compromising sterility in that you did not scrub-in correctly without prompting **[FOUND PROVED]**

2. On an occasion in 2018, bit Colleague A **[FOUND PROVED]**

And, in light of the above, your fitness to practise is impaired by reason of your lack of competence in respect of charges 1.1, 1.2, 1.3, and/or 1.6, and by reason of your misconduct in respect of charges 1.4, 1.5, 1.7, and/or 2.'

The original panel determined the following with regard to impairment:

The panel next went on to decide if as a result of Ms Mbelle's misconduct and lack of competence, her fitness to practise is currently impaired.

The panel noted that 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 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 found that as a result of Ms Mbelle's misconduct and lack of competence, patients were put at a risk of harm. The panel bore in mind the witness statements provided, many of which set out that colleagues had to step in on several occasions to prevent harm to patients. By putting patients (and at times colleagues) at a risk of harm, the panel also determined that Ms Mbelle breached the fundamental tenets of the nursing profession and brought its reputation into disrepute.

The panel was of the view that the misconduct and lack of competence in this case is capable of being addressed. However, the panel had no evidence that Ms Mbelle had taken any steps to address the concerns in her practice or demonstrate any insight into her failings. The panel did not have sight of any reflective piece from Ms Mbelle, any evidence of re-training, or any up-to-date information regarding her current practice. Further, Ms Mbelle has not engaged in the NMC's investigation or these proceedings. [PRIVATE].

Furthermore, the panel noted that Ms Mbelle's failings were across multiple areas of her practice and were repeated over a period of time. In the absence of any strengthening in her practice, the panel concluded that there is a risk of repetition. The panel therefore decided 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 this regard, the panel considered that public confidence in the profession would be undermined if a finding of impairment were not made. It therefore determined that a finding of impairment on public interest grounds is also required.

The original panel determined the following with regard to sanction:

'The panel then went on to consider whether a suspension order would be an appropriate sanction. It noted that Ms Mbelle's failings were repeated over a period of time and there has been no evidence that she has taken steps to strengthen her

practice. However, the panel also bore in mind that there has been no evidence of harmful deep-seated personality or attitudinal problems, and no evidence of repetition since events. The panel was satisfied that in this case, Ms Mbelle's misconduct and lack of competence was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, considered that the charges in this case were not sufficiently serious to remove her from the register. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be wholly disproportionate in Ms Mbelle'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 12 months was appropriate to both mark the seriousness of her actions and afford her with sufficient time to engage in proceedings.

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 would be assisted by:

- *Evidence from Ms Mbelle as to her future intentions to practise as a registered nurse in this country, and if she wishes to do so, then she should provide:*
 - *A reflective piece*

- [PRIVATE]
- Evidence of how Ms Mbelle has kept her practice up to date
- Ms Mbelle's attendance at the review hearing

This will be confirmed to Ms Mbelle in writing.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Mbelle'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.

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 Mbelle's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Mbelle had not provided any evidence of insight. At this meeting the panel had no further information from Ms Mbelle since her substantive hearing to demonstrate that the concerns of the substantive panel have been addressed. Ms Mbelle has not provided any information as to what she has been doing since the substantive hearing. She has not provided a reflective piece or any evidence of insight into her misconduct or lack of competence. She has not provided any evidence that she has taken steps to strengthen her practice.

In light of this lack of information and Ms Mbelle's lack of engagement, the panel determined that there remains a risk of harm to the public if Ms Mbelle was permitted to practise as a nurse without restriction, and concluded that her fitness to practise remains impaired on the grounds of public protection.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

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

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

Decision and reasons on sanction

Having found Ms Mbelle 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 Mbelle'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 Mbelle'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 Mbelle'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. It also noted that Ms Mbelle has still not engaged with the NMC or stated what her future intentions are pertaining to her practice as a registered nurse.

Additionally, Ms Mbelle has not provided evidence of insight or strengthened practice. The panel had no evidence before it that Ms Mbelle would comply with conditions of practice. It therefore concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Mbelle further time to fully reflect on her previous failings. The panel concluded that a further suspension order would be the appropriate and proportionate response and would afford Ms Mbelle adequate time to further develop her insight and take steps to strengthen their practice. It would also give Ms Mbelle an opportunity to inform the NMC of her future intentions to practise as a registered nurse in the United Kingdom.

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 to impose a suspension order for the period of 12 months. It considered this to be the most appropriate and proportionate sanction available.

The panel did not consider a striking off order to be appropriate at this hearing. However, it noted that this sanction would be open to a future reviewing panel.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 25 July 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 would be assisted by:

- *Evidence from Ms Mbelle as to her future intentions to practise as a registered nurse in this country, and if she wishes to do so, then she should provide:*
 - *A reflective piece*
 - *[PRIVATE]*
 - *Evidence of how Ms Mbelle has kept her practice up to date*
- *Ms Mbelle's attendance at the review hearing*

This will be confirmed to Ms Mbelle in writing.

That concludes this determination.