

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

**Substantive Order Review Hearing  
Tuesday, 23 January 2024**

Virtual Hearing

**Name of Registrant:** Tolulope Adewunmi Akintunde

**NMC PIN:** 11B0120E

**Part(s) of the register:** Registered Nurse – Sub part 1  
Learning Disabilities Nursing – 7 September 2011

**Relevant Location:** West Sussex

**Type of case:** Misconduct

**Panel members:** Adrian Blomefield (Chair, Lay member)  
Shorai Dzirambe (Registrant member)  
Matthew Wratten (Lay member)

**Legal Assessor:** Gerard Coll

**Hearings Coordinator:** Eyram Anka

**Nursing and Midwifery Council:** Represented by Selena Jones, Case Presenter

**Miss Akintunde:** Not present and not represented at this hearing

**Order being reviewed:** Suspension order (6 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (6 months) to come into effect on  
28 February 2024 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 Miss Akintunde was not in attendance and that the Notice of Hearing had been sent to Miss Akintunde's registered email address by secure email on 27 November 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Akintunde'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 Miss Akintunde 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 Miss Akintunde**

The panel next considered whether it should proceed in the absence of Miss Akintunde. The panel had regard to Rule 21 and heard the submissions of Ms Jones who invited the panel to continue in the absence of Miss Akintunde. She submitted that Miss Akintunde had voluntarily absented herself because she was informed of the details of this hearing and numerous attempts have been made to contact her by officers at the NMC.

Ms Jones submitted that there had been no recent engagement at all by Miss Akintunde 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. She submitted that there is a strong public interest in the expeditious review of this case.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Akintunde. In reaching this decision, the panel has considered the submissions of Ms Jones and the advice of the legal assessor. It has had regard to 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 Miss Akintunde;
- Miss Akintunde has not engaged with the NMC and has not responded to any of the letters or emails sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; 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 Miss Akintunde.

### **Decision and reasons on review of the substantive order**

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 28 February 2024 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 28 July 2023.

The current order is due to expire at the end of 28 February 2024.

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) On 20 April 2020, between 1:30am and 2:40am, failed to conduct within eyesight observation of Patient A.*
  
- 2) On 20 April 2020, between 1:30am and 2:40am, slept on duty, or prepared to sleep on duty.'*

The original panel determined the following with regard to impairment:

*'The panel found that limbs a, b and c of the Grant test are engaged in this case. At the time of the incident, Miss Akintunde's misconduct placed Patient A at unwarranted risk of harm, brought the nursing profession into disrepute and breached fundamental tenets of the nursing profession, relating to adequate patient care.*

*The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Miss Akintunde's misconduct was remediable and whether she had strengthened her nursing practice.*

*Regarding insight, the panel was of the view that Miss Akintunde has failed to show insight into her conduct. It noted that Miss Akintunde has failed to demonstrate insight on the impact of her conduct on Patient A, her colleagues and the nursing profession. The panel was concerned that Miss Akintunde did not demonstrate any understanding of the seriousness of her failings. Miss Akintunde did not provide any information about actions she would take if similar scenarios should occur in future or to prevent such situation in future.*

*In considering whether Miss Akintunde had strengthened her nursing practice, the panel had regard to the case of Cohen v GMC [2008] EWHC 581 (Admin), where the court addressed the issue of impairment with regard to the following three considerations:*

- a. *'Is the conduct that led to the charge easily remediable?*
- b. *Has it in fact been remedied?*
- c. *Is it highly unlikely to be repeated?'*

*The panel was of the view that Miss Akintunde's misconduct was generally capable of remediation. However, it noted that there was no evidence before it to indicate that Miss Akintunde had strengthened her nursing practice in the areas of concern. Although Miss Akintunde has had limited engagement with these proceedings, she has not provided any evidence of training nor testimonials to demonstrate any positive steps she had taken to remediate her behaviour and strengthen her nursing practice.*

*In light of this, this panel determined that there is a risk of repetition of Miss Akintunde's behaviour and there remains a risk of harm to the public. 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.*

*The panel had regard to the serious nature of Miss Akintunde's behaviour and determined that public confidence in the profession would be undermined if a finding of impairment were not made in this case. For this reason, the panel determined that a finding of current impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if Miss Akintunde were permitted to practise as a registered nurse without restrictions.*

*Having regard to all of the above, the panel was satisfied that Miss Akintunde'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. It had found that Miss Akintunde presents a continuing risk to patients, had breached more than one fundamental tenet of the nursing profession and her misconduct would undermine the public's trust in nurses if she is allowed to practise without restrictions. Therefore, 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 Miss Akintunde'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 Miss Akintunde'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 placing conditions of practice on Miss Akintunde'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 the SG, in particular:*

*'Conditions may be appropriate when some or all of the following factors are apparent:*

- .....;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- .....;*
- Potential and willingness to respond positively to retraining;*
- .....*

- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.'*

*The panel was of the view that given its findings in this case, any form of training could not address the concerns identified. It noted that any conditions that could be formulated, would be so restrictive that it would be tantamount to a suspension order.*

*Therefore, the panel determined that given the seriousness of the concerns and Miss Akintunde's lack of insight into her conduct, there are no practical or workable conditions that could be formulated. Accordingly, a conditions of practice order would not address the risk of repetition and this poses a risk of harm to patients' safety and the public.*

*Consequently, the panel decided that any conditions of practice order would not be appropriate in this case and would not protect the public nor be in the public interest.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:*

- *'A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *.....*
- *.....*

*The panel considered that Miss Akintunde's conduct was a breach of fundamental aspects of nursing practice and posed a real risk of harm to Patient A. It noted that Miss Akintunde has failed to demonstrate insight into the seriousness of the concerns and there was no evidence to show that Miss Akintunde has taken any positive steps to strengthen her nursing practice. This poses a risk of repetition.*

*However, notwithstanding this, the panel noted that this was a single instance of misconduct, there was no evidence of harmful deep-seated personality or attitudinal problems and no evidence of repetition of behaviour since the incident. It was satisfied that in this case, that the misconduct was not fundamentally incompatible with remaining on the register.*

*Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction. It was satisfied that a suspension order for a period of six months would protect the public and address the public interest in this case. It decided that this order is necessary to mark the seriousness of the misconduct, 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 considered whether a striking-off order would be proportionate but, taking account of all the information before it including that this was a single instance of misconduct, the panel concluded that such an order would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Akintunde's case to impose a striking-off order.*

*The panel noted the hardship such an order may cause Miss Akintunde. However, this is outweighed by the public interest in this case.*

*The panel decided that a review of this order should be held at the end of the period of the suspension order.*



*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.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Miss Akintunde'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. It has taken account of the submissions made by Ms Jones on behalf of the NMC.

Ms Jones invited the panel to confirm the current order and allow it to continue. She submitted that there remains a prima facie case and since the last review there has been no evidence of an increase or decrease in risk, such as to warrant the amendment or discharge of the current order.

Ms Jones drew the panel's attention to the previous panel's note outlining the kind of evidence Miss Akintunde could provide that would assist this panel in making its decision. She submitted that Miss Akintunde has not satisfied any of the recommendations suggested by the previous panel.

Ms Jones submitted that in the absence of additional information or evidence to demonstrate insight, there remains a risk of repetition and consequently a risk of harm to patients. Therefore, she submitted that the current order is the sufficient and proportionate to protect the public and meet the public interest.

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 Miss Akintunde's fitness to practise remains impaired.

The panel noted that Miss Akintunde has not provided any evidence to demonstrate insight into her misconduct. Although Miss Akintunde was prompted by the previous panel to provide a reflective statement, this panel has no information before it to suggest that she has addressed the regulatory concerns, demonstrated remorse, or strengthened her practice. Therefore, the panel determined that Miss Akintunde's level of insight has not changed since the previous hearing.

The panel determined that the facts relate to a serious incident in terms of the risk of harm to a vulnerable patient. However, it had regard to the previous panel's indication that Miss Akintunde's misconduct is remediable and she could return to practice.

The panel was of the view that that without any information from Miss Akintunde as to her level of insight, there remains a risk of repetition because there is nothing before the panel to indicate that she can now practice kindly, safely and professionally. Additionally, due to Miss Akintunde's lack of engagement with these proceedings the panel has no evidence that the risk of repetition has not been reduced. 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 was of the view that an informed member of the public would be alarmed if a nurse with such charges was permitted to practice without demonstrating the appropriate level of insight and minimal engagement. 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 Miss Akintunde's fitness to practise remains impaired.

## Decision and reasons on sanction

Having found Miss Akintunde'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 Miss Akintunde'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 Miss Akintunde'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 Miss Akintunde'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. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Miss Akintunde's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Akintunde further time to fully reflect on her previous misconduct. The panel concluded that a further 6 months suspension order would

be the appropriate and proportionate response and would afford Miss Akintunde adequate time to further develop her insight and take steps to strengthen their practice.

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 6 months would provide Miss Akintunde with an opportunity to engage with the NMC and provide evidence demonstrating her insight and her strengthened practice. The panel was mindful that the previous panel noted that the misconduct was remediable and with the right evidence provided, Miss Akintunde could be restored to the register.

The panel also considered imposing a strike-off order but decided that an extension of the suspension order would be more appropriate in these circumstances. However, it noted that a continued lack of engagement from Miss Akintunde might mean that a future panel may consider a more serious sanction.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 February 2024 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:

- A reflective piece demonstrating Miss Akintunde's insight into the concerns, the context of her behaviour, the impact of her behaviour on colleagues, Patient A and the nursing profession, as well as any steps taken to strengthen her practice in areas of concern.
- Any references or testimonials of current and previous paid and unpaid work attesting to Miss Akintunde's capability to perform her duties; and
- Miss Akintunde's engagement and attendance at the review hearing.

This will be confirmed to Miss Akintunde in writing.

That concludes this determination.