

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

**Substantive Hearing
Tuesday, 6 – Friday, 8 February 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant:	Olufemi Majaro
NMC PIN	00G1406O
Part(s) of the register:	Registered Nurse – Adult RN1 (18 July 2000)
Relevant Location:	Greenwich
Type of case:	Misconduct
Panel members:	Nicola Jackson (Chair, lay member) Jillian Claire Rashid (Registrant member) Louise Fox (Lay member)
Legal Assessor:	Jayne Salt
Hearings Coordinator:	Sharmilla Nanan
Nursing and Midwifery Council:	Represented by Simeon Wallis, Case Presenter
Mr Majaro:	Present and represented by Adewuyi Oyegoke, (Lay representative)
Facts proved:	Charges 1 and 2
Fitness to practise:	Impaired
Sanction:	Suspension order (9 months)
Interim order:	Interim suspension order (18 months)

Decision and reasons on when your oral evidence should be heard

The panel invited the parties to the hearing to make submissions about when it would be best to hear your oral evidence for its consideration.

Mr Wallis, on behalf of the Nursing and Midwifery Council (NMC), submitted that it may be best to hear your oral evidence regarding your intentions underlying the charges at the facts stage. He submitted that it is important for you to be cross examined on your intention to clarify whether you took the Sevoflurane to give to another hospital or whether you took it for your personal gain albeit there could be a gain either way.

Mr Oyegoke, your lay representative, submitted that your oral evidence regarding your intentions underlying the charges could be heard at the misconduct and impairment stage but acknowledged that your evidence regarding your intentions in relation to the charges could also be heard at the facts stage.

The panel accepted the advice of the legal assessor.

The panel considered the relevance of hearing evidence from you at the facts stage or if it should be heard at the misconduct and impairment stage. The panel took into account that it had your reflective piece which contained information regarding your motivation in relation to the dishonesty charge and concluded that your oral evidence would clarify the position of your intentions and motivation in relation to your dishonesty underlying the charges. The panel concluded that it would be fair to you to hear your oral evidence at the facts stage.

Details of charge

That you, a registered nurse:

- 1) On or around 4 November 2022 sought to retain one or more bottles of Sevoflurane.

2) Your actions at Charge 1 were dishonest in that you knew the Sevoflurane did not belong to you and you were not permitted to retain the same.

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

Admissions

After the charges were read, the panel heard from your lay representative, Mr Oyegoke, who informed the panel that you made admissions to charges 1 and 2.

Background

The charges arose whilst you were employed as an agency registered scrub nurse by Lewisham and Greenwich NHS Trust (the Trust). You had been working with the Trust for approximately three years through an agency, Care Providers (UK) Limited.

On 4 November 2022, whilst working at the Queen Elizabeth Hospital (the Hospital), you were seen carrying a white paper bag into the male staff changing area which was located next to theatre room. Witness 1, the Charge Nurse, who was changing in the male changing room, saw you placing the white paper bag into your personal bag.

Witness 1 asked you what was in the bag and you showed him two unused bottles of anaesthetic, prescription only medication, Sevoflurane (250mls in each bottle). Sevoflurane is not a controlled drug.

Witness 1 asked you why you were putting the medication into your personal bag and told you what you had done was wrong. You said that you were sorry and asked Witness 1 to give you a warning for this incident.

You later stated to Witness 2, the Clinical Site Manager, that you had found the medication in the corridor and your intention had been to return it to the operating theatre. Witness 2 stated to you, that you had been seen by Witness 1 putting the medication into your personal bag. You did not respond to this comment made by Witness 2. You were subsequently asked to leave the hospital.

You now accept that the account that you provided the hospital at the material time was not true. You have stated that you took the medication to provide it to another hospital as they were cancelling your shifts as they did not have Sevoflurane available.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Wallis on behalf of the NMC and by Mr Oyegoke.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had sight of the witness statements from the following witnesses who gave evidence on behalf of the NMC:

- Witness 1: [PRIVATE].
- Witness 2: [PRIVATE].

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and your lay representative.

The panel then considered each of the charges and made the following findings.

Charge 1

“That you, a registered nurse:

1) On or around 4 November 2022 sought to retain one or more bottles of Sevoflurane.”

This charge is found PROVED.

In reaching this decision, the panel took into account your oral evidence in which you admitted this charge. The panel considered that your admission was supported by the witness statements of Witness 1 and Witness 2, both who provided an account to the events that took place on 4 November 2022. The panel concluded that on 4 November 2022, you sought to retain one or more bottles of Sevoflurane. The panel therefore accepted your admission as sound and found charge 1 proved by admission.

Charge 2a)

“2) Your actions at Charge 1 were dishonest in that you knew the Sevoflurane did not belong to you and you were not permitted to retain the same.”

This charge is found PROVED.

The panel took into consideration that you admitted this charge and that you accept at the material time of the incident you did not provide the Hospital with a true account for your

intentions of why you took the medication. The panel therefore accepted your admission as sound and found charge 2 proved by admission.

The panel went on to consider your intentions and motivation in relation your dishonesty underlying the charges.

The panel considered your oral evidence. The panel considered your account that you found the medication in a paper bag in the corridor outside theatres to be implausible as medication of this type would be stored in a designated room. The panel was of the view that it was more likely than not that you took the medication from where it had been stored and sought to put it in your personal bag. It took into account that you would not reveal the name of the hospital that did not have this medication in stock, nor would you confirm which member of staff who told you that your shifts were being cancelled as a result of the hospital not having Sevoflurane available.

The panel considered your reflective statement in which you stated *“As ludicrous ...it may sound, the real reason for my misbehaviour was that there was this other hospital where I used to work that had my shifts on a number of occasions due to the fact that their sevoflurane was out of stock, in my myopic thought that if I take those from the Queen Elizabeth Hospital and give them, they may schedule more cases and I would have shifts.”* The panel considered your account to be implausible, in that you would find the exact drug in a paper bag which another hospital required in a corridor of the hospital in which you were working. It also considered it to be implausible that any medication which you took would be utilised by any other hospital without any due diligence.

The panel was of the view that despite knowing that your actions were wrong you attempted to come up with another explanation to diminishes the seriousness of your dishonesty.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Wallis invited the panel to take the view that the facts found proved were serious and amount to misconduct. He referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where your actions amounted to misconduct. He submitted that your conduct in charges 1 and 2 is a serious departure from the standards set out in the Code.

Mr Oyegoke submitted that misconduct needs to be looked at separately from impairment. He stated that it is the panel's professional judgement which should be applied to consider if there was misconduct. He reminded the panel that you have admitted misconduct.

Submissions on impairment

Mr Wallis moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Wallis referred the panel to the NMC guidance on impairment. He addressed the panel on the four limbs in the Dame Janet Smith's "test" in relation to this case. He submitted that your conduct is serious and difficult to put right as it relates to your attitude and the abuse of your position as a nurse for personal gain.

Mr Wallis noted that you have completed a course on Law, Ethics and Professional Accountability, that you have provided a reflective statement and a number of testimonials. He submitted that the panel should assess what weight it should attach to each of these items and reminded the panel that it has rejected some of your reflective statement in relation to your motivation and intention for your conduct.

Mr Wallis submitted that the insight you have provided is limited and noted that your reflective statement was completed in the last month. He submitted that you have failed to provide any broader consideration relating to the public interest aspect of this case. He invited the panel to make a finding of impairment on the grounds of public protection and of public interest.

Mr Oyegoke submitted that you have admitted both your wrong doing at an earlier stage and that your fitness to practise is impaired. He referred to the panel's findings on your motivation and submitted that the panel should still consider the insight you have displayed. He submitted that your conduct, whilst it might be a serious departure of the standards expected of a nurse and difficult to remediate, can be addressed and remediated.

Mr Oyegoke referred the panel to the bundle which was provided on your behalf. The bundle included your detailed reflective piece, a training certificate for 'Law, Ethics and Professional Accountability', dated 15 May 2023, and several positive testimonials. He reminded the panel of your oral evidence given under affirmation where you expressed remorse for your actions. He noted that the training course you completed was at a significant cost to you and the panel has information before it of the topics that were covered. He submitted that the panel should consider the timing of when you completed the course and that you sought to look for a solution to your wrongdoing. He noted that the authors of the testimonials, who are also members of the public, knew about the circumstances in which you found yourself before your regulator and despite this provided positive testimonials. He submitted that the panel should attach the appropriate weight when considering your insight and remediation.

Mr Oyegoke submitted that the risk of repetition is low. However, he accepted that there was a public interest in this case as the public would need to have confidence in the NMC as a regulator. He noted that you have not practised as a registered nurse since November 2022 and submitted that you should be provided with the opportunity to prove yourself as you have provided significant insight into your wrongdoing, and the risk of repetition is low.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments which included reference to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.2 act with honesty and integrity at all times...'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that your actions took place in a clinical setting and you took hospital property. The panel concluded that your actions outlined in the charges are serious, and were a fundamental breach of the trust and honesty expected of nurses.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses/midwives must be honest and open and act with integrity. 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) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel concluded that limbs b, c and d of Dame Janet Smith's "test" were engaged in both the past and the future.

The panel noted the negative impact your actions could have had on the Hospital; however it did not have any evidence before it that any patients would have been put at risk of harm, or were caused physical or emotional harm as a result of your misconduct. It took into consideration that your misconduct had breached the fundamental tenets of the nursing profession, namely that you had abused the position of trust afforded to you by your position as a nurse and had not acted honestly, therefore you brought the nursing reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find that charges relating to dishonesty were serious.

Regarding insight, the panel considered your oral evidence and written reflective statement. The panel took into consideration that you have made admissions to the charges, and you have demonstrated remorse for your actions. It took into consideration your action plan in case you found yourself in a similar position concerning a lack of shifts. In your reflective piece you state "*... as a registered nurse I am multi-tasking in that I can work in several different departments of the hospital including within the community and even in prison service where I have work in the past to the extent that I cannot be without shifts.*" [PRIVATE] However, the panel bore in mind that parts of your reflective piece focused on how your actions have impacted your personal circumstances rather than considering how your actions have negatively impacted your colleagues and the wider nursing profession. The panel concluded that your insight is still developing.

The panel was satisfied that the misconduct in this case is difficult to remediate; however it also considered that it is capable of being addressed. The panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account that you completed a workshop on 'Law, Ethics and Professional Accountability', on 15 May 2023, which you paid for yourself and lasted for eight hours and covered 68 topics. The panel also took into account that you have reflected on what you have learnt from the training. However, the panel was of the view that whilst the workshop may have covered some relevant topics to the concerns outlined in the charges these areas may not have been covered in detail. The panel concluded that you have partially strengthened your practice.

The panel considered the testimonials that you provided, and it bore in mind that you are not currently able to work as a registered nurse and therefore you did not provide a testimonial which contained information regarding your current work practice in a clinical setting. In your oral evidence, you stated that the authors of the testimonials are aware of the circumstances of this case. The panel noted that the testimonials you provided are positive and included a testimonial from a registered nurse who stated, "*Mr Majoro is well respected at work and is known for his humbly [sic] professionalism and clinical competency.*" The panel concluded that there are no public protection issues in the charges found proved and on this basis the panel therefore decided that a finding of impairment is not necessary on the grounds of public protection.

The panel considered whether there is a risk of repetition. It noted that whilst you may not pick up medication from a hospital corridor and place it in your bag again, it found your explanations about your motive to be implausible and the panel had concerns that you might be dishonest in the future. The panel concluded that there is a risk of repetition of dishonesty.

The panel bore in mind that the overarching objectives of the NMC are 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 as an informed member of the public would be very concerned to learn that a registered nurse had taken medication from a hospital and lied about it to a colleague and a manager.

In addition, 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 finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 9 months with review. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Wallis invited the panel to impose a striking-off order as it has found your fitness to practise currently impaired. He took the panel through the sanctions available to it and whether they were appropriate in the circumstances. He reminded the panel that any

sanction imposed must be proportionate. He referred the panel to the relevant NMC guidance and case law. He provided the panel with aggravating and mitigating features of the case. He submitted that a striking-off order would address the fundamental concerns identified about your practice, to maintain public confidence and to maintain standards in the profession.

Mr Oyegoke submitted that the panel must consider the sanctions in ascending order. He addressed the panel on the sanctions available to it. He submitted that in the circumstances of this case, a caution order may be appropriate. He submitted that the NMC's sanction bid of a strike off order did not consider what had been presented at the hearing. He acknowledged the need to address the public interest concerns which arise from the conduct outlined by the charges. However, he submitted that the panel should seek to balance the public interest against your own interests to ensure a proportionate sanction is imposed for this one-off incident. He provided the panel with information regarding your personal circumstances and submitted that you have practised as a nurse for approximately 30 years prior to this incident with no concerns. He submitted that in all the circumstances that a period of suspension with review would be appropriate.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of position of trust by an experienced nurse.

The panel also took into account the following mitigating features:

- This was an isolated, one off, incident.
- You provided a number of positive testimonials which included those from registered healthcare professionals.
- You have expressed genuine remorse for your actions during your oral evidence.

The panel considered the NMC guidance on “Considering sanctions for serious cases” dated 11 December 2023. The panel considered the circumstances of this case and that you abused your position of trust by attempting to retain hospital property dishonestly. The panel bore in mind that this was a one-off incident and was of the view that the dishonesty factors which would make the case more serious were not engaged in this case. The panel bore in mind that it found that you had not been candid about your explanation regarding your motive and intentions underlying your dishonesty. The panel concluded that your conduct was in the middle of the dishonesty spectrum.

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 interest concerns identified, an order that does not restrict your 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 your 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, given the attitudinal nature of the charges in this dishonesty case. The panel was of the view that the misconduct identified in this case was not something that can be addressed through retraining alone.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not address the public interest concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered the SG and identified some of the factors where a suspension order may be appropriate in light of the circumstances of this case. The panel was of the view that the facts proved, in which you dishonestly took property from the Hospital, related to an isolated single instance of misconduct but where a lesser sanction would not be sufficient.

The panel considered whether the evidence before it suggests you have a harmful deep-seated personality or attitudinal problems. It noted that you have tried to strengthen your practice by attending a training course on Law, Ethics and Professional Accountability, the remorse you have shown during the hearing and the testimonials which indicate your previous good practice.

The panel noted that in your oral evidence you indicated that you have not worked as a nurse since November 2022, and it took into account that it had no evidence before it that you have repeated the conduct underlying the charges found proved.

The panel was of the view that you do not currently pose a risk to patient safety nor did you prior to the incident outlined in the charges.

The panel was therefore satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, including the mitigation provided and that you have no previous regulatory concerns, the panel concluded that it would be disproportionate. The panel bore in mind that a striking-off order was not the only sanction available to mark the public interest and that there is a public interest in retaining an experienced scrub nurse on the NMC register. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your 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 noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

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 9 months was appropriate in this case to mark the seriousness of the misconduct found. The panel was of the view that this period would provide you with the opportunity to further develop your insight and continue to strengthen your practice.

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:

- Your continued engagement with the NMC and future attendance at the NMC review hearing.
- A reflective piece which addresses your developed insight into the issues raised by this hearing and the panel's findings.
- Evidence of any reading and training into the areas of concern raised by the panel, and your reflection of how you could apply your learning to your nursing practice.
- Testimonials from any unpaid or paid work you are currently undertaking.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the substantive order takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Wallis. He submitted that an interim suspension order is necessary on the ground of public interest, to uphold professional standards, for 18 months. He submitted that an interim order would cover any potential period of appeal.

The panel also took into account the submissions of Mr Oyegoke. He submitted that an interim order is imposed on the basis on necessity. He submitted that the engagement for

an interim order on the ground of public interest is high bar and is not met in this case. He submitted that he opposed the imposition of an interim order.

Decision and reasons on interim order

The panel was satisfied that an interim order is required in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any potential period of appeal.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.