Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

10 – 13 July, heard as a physical hearing,

14 – 17 July 2023 the hearing was heard as virtually

20 – 21 November 2023 the hearing was heard virtually

22 April 2024 the hearing was heard virtually

21-22 October 2024 the hearing was heard virtually

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

Name of registrant:	**David Nivet Egea**
NMC PIN:	12I2835E
Part(s) of the register:	RNA: Registered Nurse – (sub part 1) Adult – Level 1 13 September 2012 Recordable qualifications: V300: Nurse independent / supplementary prescriber - 22 September 2017
Relevant Location:	Reading
Type of case:	Misconduct
Panel members:	Nicola Dale (Chair, Lay member) Anne Grauberg (Registrant member) Sally Underwood (Registrant member)
Legal Assessor:	Cyrus Katrak Grame Sampson (22 April 2024 onwards)
Hearings Coordinator:	Tyrena Agyemang (10-17 July 2023) Clara Federizo (20-22 November 2023) Vicky Green (22 April 2024) Audrey Chikosha (21-22 October 2024)
Nursing and Midwifery Council:	Represented by Shekyena Marcelle-Brown, Case Presenter Represented by Mohsin Malik, Case Presenter (22 April)

	Represented by Ben Edwards, Case Presenter (21-22 October 2024)
Mr Egea	Present (July 2023 only) and represented by Jim Olphert, instructed by the RCN Not present and not represented (21-22 October 2024)
Facts proved:	Charges 1a, 1c, 2, 3, 4 and 5
Facts not proved:	Charge 1b
Fitness to practise:	Impaired
Sanction:	Strike off
Interim order:	**Interim Suspension order (18 months)**

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

At the outset of the hearing, Mr Olphert made a request on behalf of Mr Egea that this case be held partially in private on the basis that proper exploration of Mr Egea's case involves references to his and his partner's health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Marcelle-Brown on behalf of the NMC indicated that she supported the application to the extent that any reference to Mr Egea's health and the health of his partner should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session as and when issues relating to Mr Egea's, and his partner's health are raised in order to maintain their privacy.

Details of charge

That you, a registered nurse and Clinical Lead at Berkshire Healthcare NHS Foundation Trust ("the Trust"):

1. On a date between 4 April 2016 and 3 September 2019:
    a. administered one unit of blood to Patient A when two units were prescribed; **Found proved**
    b. disposed of a unit of blood in the sink; **Found not proved**
    c. did not raise a Datix to indicate the unit of blood was disposed of; **Found proved**

2. Signed to confirm that two units of blood were administered to Patient A when one was provided; **Found proved**

3. Asked Nurse A to countersign that two units of blood were administered to Patient A when one was provided; **Found proved**

4. Your actions in charge 2 and/or 3 were dishonest in that you knew you had not provided the patient with two units of blood and intended to cover up what had happened; **Found proved**

5. Your actions as specified in charges 1(b) and/or 1(c) and/or 2 and/or 3 were in breach of the duty of candour in that you were not open and honest in relation to what happened on this date; **Found proved**

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

An application in relation to Nurse A's physical attendance on 12 July 2023

At the outset of the hearing, Mr Olphert, made an application regarding Nurse A's physical attendance. He explained that it was not an explicit application for an adjournment of the hearing, but that it was an application that may result in an adjournment.

Mr Olphert submitted that as Nurse A is the registrant and she is also an NMC witness, she should be here at the hearing in person to give her evidence. He told the panel that at the case management stage, a request was made on your behalf that the hearing should be in person. He told the panel that there was no option on the case management form for you to formally request Nurse A to attend the hearing in person, but you made the inference that if the hearing was in person that all the witnesses attending would also be in person.

Mr Olphert submitted that he is aware that the panel do not have the power to request Nurse A to attend the hearing in person and he referred the panel to the 'Nursing and

Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules), specifically 2ZA, which states:

> *Meetings and hearings arranged under these Rules may be conducted using audio or video conferencing facilities*

Mr Olphert submitted that according to the rules, the panel may deal with the hearing virtually where there is a vulnerable witness, but he stated this is not the case in this matter.

Mr Olphert submitted that there are circumstances when evidence can be given remotely, but there are no express rules in relation to the manner in which evidence can be given to a panel. He submitted that panels could hear evidence in whatever method it deems appropriate, but he submitted that the panel today should first consider the rules where there is a dispute regarding the manner in which a witness gives evidence. He told the panel that a hybrid hearing can only apply when there is agreement between the parties.

Mr Olphert submitted that if the panel are not in agreement with him, then he invited the panel to consider fairness to you. He told the panel that Nurse A's evidence is central to the NMC's case and that the panel may think her evidence is the only evidence in this case. Mr Olphert submitted that the only way to decide if there is any fact in Nurse A's evidence is to test her credibility.

Mr Olphert submitted that there is no better way to assess a witness' credibility than to hear their evidence in person. He told the panel that you have travelled from Spain to attend in person to give your evidence, nevertheless, he is unable to question Nurse A in person as she is not physically attending the hearing.

Mr Olphert submitted that the proper approach is that Nurse A attends the hearing in person to give her evidence. He further submitted that if the panel are with him, then the hearing should be adjourned, and arrangements made for Nurse A to attend the hearing in person.

Nurse A told the panel that when she enquired as to whether she could attend the hearing virtually, she was told that she could attend the hearing virtually, as she is unable to leave Spain and come to the UK. She told the panel that she works full time managing a nursing team, as a nurse herself and due to nursing shortages in Spain, she is unable to leave Spain to attend the hearing in person.

[PRIVATE]

Ms Marcelle-Brown submitted that there is numerous guidance available to panels regarding evidence and how it may be heard by panels during hearings. One of the methods, she told the panel, is via video link.

Ms Marcelle-Brown told the panel that the Royal College of Nursing (RCN), who represent you, requested for Nurse A to attend the hearing to give evidence and they were made aware that Nurse A would be attending the hearing virtually. She submitted that there is no disadvantage to you by Nurse A attending the hearing virtually as this is routinely done in NMC hearings.

Ms Marcelle-Brown submitted that there is no disadvantage to you, by Nurse A attending the hearing virtually. She submitted that based on the guidance, Nurse A's evidence can be properly put forward for the panel's consideration, the credibility of her evidence should be based on the content and not on her demeanour and she will be seen and heard clearly on the screen.

The panel accepted the advice of the legal assessor, who referred the panel to relevant case law including, *YI v AAW* [2020] CSOH 76, and *R (oao SS (Sri Lanka) v The Secretary of State for the Home Department* [2018] EWCA Civ 1391.

The panel considered the submissions of Mr Olphert and Ms Marcelle-Brown and Nurse A's submissions in relation to this application.

The panel considered that there would be no unfairness to you or Nurse A and nothing would be lost by the panel hearing Nurse A's evidence virtually. The panel acknowledged Mr Olphert's submissions and your personal circumstances, however it considered that should the hearing be adjourned today, that Nurse A would still be unable to attend at a later date as she is working full time.

The panel was aware that a witness' demeanour should not be taken into consideration when hearing witness evidence. The panel acknowledged that you were expecting Nurse A to attend the hearing in person and that you have made arrangements to travel from Spain to attend the hearing physically. The panel noted that whilst you requested an in person hearing during the case management stages, this does not follow that while the hearing is in person all the witnesses would also be in person.

The panel considered that there is nothing lost by Nurse A attending the hearing virtually. The panel noted that Nurse A requested to attend virtually, the NMC agreed to this, and the panel found that there would be limited adverse impact on the quality of her evidence by her attending virtually and a high likelihood of her not attending at all, if she was required to attend in person.

In light of this, taking the information into consideration, the panel decided to reject Mr Olphert's application to hear from Nurse A physically in person.

Decision and reasons on application of no case to answer

The panel considered an application made by Mr Olphert on your behalf, that there is no case to answer in relation to the charges before the panel. This application was made under Rule 24(7).

Mr Olphert's Submissions

In relation to this application, Mr Olphert submitted that all the charges stem from charge 1 and the subsequent charges will only stand if there is a case to answer in respect of charge 1.

Mr Olphert submitted that the key part of this case is whether the second unit of blood was administered to Patient A or not. He submitted that, should the panel decide there is no case to answer in respect of charge 1, then all other charges must fall away too.

Mr Olphert referred the panel to the NMC Guidance on Evidence, specifically guidance on No Case to Answer and submitted that the panel must consider whether the evidence in relation to the charges when taken at its highest, could not properly result in facts being found proved against you.

Mr Olphert submitted that Nurse A stated that she had raised a number of concerns on a number of occasions with her colleagues and that she had provided written evidence and taken part in a significant number of interviews for an internal investigation, however, he submitted that evidence of this is not before the panel.

Mr Olphert told the panel that Witness 1's evidence outlined that Nurse A had told her that you intentionally threw away the blood. This he submitted, was in direct contrast to Nurse A's evidence when she told the panel that the bag containing a unit of blood broke accidently. Notwithstanding those inconsistencies, Mr Olphert submitted that the evidence of Witness 1, who had carried out a holistic assessment of the evidence, was simply inherently weak or vague on each of the facts.

Charge 1a

Mr Olphert submitted in relation to charge 1a that Nurse A could only give weak and vague evidence on this charge to the panel. He reminded the panel that Nurse A's evidence was that the GP would sign several prescriptions for Patient A to receive blood transfusions depending on Patient A's condition and circumstances on each occasion. He submitted that there was no specific reference to the exact prescription during the time in question and the panel simply do not have any evidence of what exactly was prescribed on this occasion.

Mr Olphert referred to the RIO notes and told the panel that the notes appear to demonstrate that the units were given consistently in line with whatever the prescription was on the day of transfusion. This he submitted, the panel may think is contradictory to Nurse A's evidence, as she told the panel that the GP would sign a number of prescriptions, and they would administer accordingly or that they would administer the blood based on what Patient A's current haemoglobin readings were.

Mr Olphert submitted that this is inherently implausible and is contradicted by the RIO notes. He further submitted that there is no evidence before the panel as to what the exact prescription for Patient A was on the day in question, and therefore the panel have no evidence to conclude that 2 units of blood were prescribed.

Mr Olphert submitted that the evidence in respect of whether or not only one unit was administered was inherently weak and vague.

Charge 1b

Mr Olphert told the panel that Nurse A could not give evidence with certainty as to what actually happened to the blood bag as she admitted in her oral evidence that she wasn't present in the area at the time. He submitted that the only reference to disposal of blood down a sink was within the evidence of Witness 1. And therefore, he submitted that there is simply no evidence and the evidence that is before the panel is tenuous and inconsistent.

Charge 1c

Mr Olphert submitted that many of the charges are, by their definition, '*parasitic'* by necessity. If the blood incident didn't happen, there couldn't have been a need for a Datix to have been completed. He submitted that Nurse A's evidence was that she did not know if a Datix was completed and the most she could say was that a Datix wasn't completed in her presence. He told the panel that Witness 1's evidence was that when questioned in the internal investigation, you were able to clearly explain the process of

completing a Datix, but this he stated does not assist the panel in determining whether one was completed for this incident.

Therefore, Mr Olphert submitted, taking the NMC's case at its highest, there is simply no evidence to assist the panel in determining this question one way or the other.

Charge 2

Mr Olphert told the panel that the limited evidence given by Nurse A on this charge was that you had influenced her to sign and confirm that two units of blood were administered to Patient A and that you had also signed to confirm. He told the panel that there is no documentary evidence to support that this incident actually happened and nor can it be speculated whether the evidence exists.

Mr Olphert submitted that Nurse A's account was inherently vague. He further submitted that the task for the panel is to decide whether or not there is a case to answer in respect of charge 1 which will determine whether the outcome for the subsequent charges.

Charge 3

Mr Olphert reminded the panel that this charge can only exist, if the panel find there is a case to answer on charge 1a. He told the panel that you never asked Nurse A to countersign that two units were administered when only one was given to Patient A. He told the panel that there is not sufficient evidence before the panel in order for it to find this charge proved.

Charges 4 and 5

Mr Olphert did not seek to make any submissions on these charges as he submitted, they are parasitic and must fall away if the core factual particulars fall away in relation to charge 1. He submitted that Nurse A's evidence is demonstrably inaccurate from the evidence of Witness 1 and the other surrounding circumstances. He further submitted

that the evidence which the panel have heard in respect of the blood bag is simply so tenuous or inconsistent that these charges should not be allowed to remain before the panel.

Ms Marcelle-Brown's Submissions

Ms Marcelle-Brown submitted that it is the NMC's case that there is a case to answer in respect of the charges. She also referred the panel to the case of *R v Galbraith* (1981) 73 Cr App R 124. She submitted that in reaching its decision, the panel needs to consider whether there is evidence of a sufficient quality which, taken at as high as could support the charges. She referred the panel to the NMC guidance in DMA-6, which states:

> *Where the strength or weakness of our evidence depends on the weight it should be given, a submission that there is no case to answer is likely to fail. That issue is best considered after all the evidence has been heard.*

Ms Marcelle-Brown submitted that the likelihood of the charges being found proved is best considered after the panel has heard all the evidence and not before. She addressed the panel on the first limb of the test in Galbraith and submitted that this limb relies on whether there is sufficient evidence to find the facts proved. She told the panel that the evidence comes from Nurse A in the local Trust investigation and from the NMC's investigations.

Ms Marcelle-Brown told the panel that Nurse A is a witness of fact, as she was working with you on the date in question and in the absence of contemporaneous notes, or CCTV and she was able to give evidence as to what happened on that day. She submitted that it is Nurse A's evidence that only one unit of blood was given to Patient A, that you disposed of the second unit of blood and thereafter the patient's records were falsified.

Ms Marcelle-Brown submitted that as there are no contemporaneous notes, the strength and/or weakness of the evidence amounts to Nurse A's credibility and the weight that

the panel should attach to her evidence with reference to the guidance. Ms Marcelle-Brown submitted that there is clear evidence to support each charge.

Charge 1a

Ms Marcelle-Brown submitted in relation to charge 1a, that Nurse A gave clear evidence that only one unit of blood was administered and that was irrespective of whether concerns were raised at the time of the incident. She told the panel that Nurse A had raised general concerns about your conduct rather than specifically about this incident and it was only until she made a formal complaint that this incident came to light. Ms Marcelle-Brown referred the panel to Nurse A's witness statement in which she states two units of blood were normally administered to Patient A, and that they were '*about to give the patient her second unit of blood'.* She submitted that this evidence supports the NMC's case that two units of blood were to be administered to Patient A and only one was given.

Charge 1b

Ms Marcelle-Brown referred the panel to Nurse A's local investigation interview notes in which Nurse A explains that Patient A was prescribed two units of blood and the patient's test results on the day in question dictate whether two units were required, but Nurse A was clear during the interview that two units were required on the day in question.

Ms Marcelle-Brown submitted that Nurse A's evidence was that you were cleaning up, as you told her that a bag of blood had broken and that it would have been messy. She then referred the panel to the evidence of Witness 1, who told the panel that Nurse A stated in her interview that you threw the blood down the sink before returning to the patient with an empty unit. Ms Marcelle-Brown submitted that this evidence further supports Nurse A's live evidence.

Ms Marcelle-Brown referred the panel to the investigation meetings notes dated 7 November 2019, in which you state you were unaware of the policy for disposal of damaged blood units. Ms Marcelle-Brown submitted that this is evidence that supports you did not dispose of the blood bag correctly.

Charge 1c

Ms Marcelle-Brown submitted in relation to charge 1c, that Nurse A was clear she did not witness you complete a Datix for this incident. Her evidence was not unclear on this point in that she was unsure whether or not you completed a Datix at a later time or date, she told the panel that she could not give evidence on this point as she had not witnessed you complete the Datix. However, she submitted that the panel heard evidence from Witness 1 that there was no Datix completed that related to this incident.

Charges 2 and 3

Ms Marcelle-Brown submitted that Nurse A gave clear evidence that two nurses were required to sign the treatment chart when blood was administered to a patient and she was also clear in her evidence that from the outset, both you and Nurse A signed those charts.

Ms Marcelle-Brown told the panel that Nurse A was clear that you pressured her to counter sign the chart to confirm that two units of blood were administered to Patient A in order to hide the incident with the broken bag of blood. Ms Marcelle-Brown submitted that even if there were records and evidence to support this charge, it would not assist the panel as it would only show falsified records.

Charges 4 and 5

Ms Marcelle-Brown agreed with Mr Olphert's submission that charges 4 and 5 are for the panel to decide whether or not there is sufficient evidence in order to find these charges proved. She submitted that these charges depend on the factual element of the charges being found proved in order for these charges to apply. She submitted that

Nurse A gave clear evidence that you told her to sign the treatment plan in order to conceal that the second unit of blood had not been administered, such that you did not have to wait for a second bag of blood to be delivered to the unit and also so you did not have to complete a Datix report.

Ms Marcelle-Brown submitted that it is clear Nurse A did not report this incident at the time, including to the patient, as it was first disclosed when she when raised concerns about your conduct more than a year later.

Ms Marcelle-Brown submitted that there is a case to answer in respect of all the charges and that there is evidence, which when taken at its highest would support each charge. She further stated that this is a case of one nurse's word against another and the strength and weakness of the evidence depends on the weight that the panel attached to it and the credibility of Nurse A.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether any or sufficient evidence had been presented.

The panel considered all the evidence before it and was of the view that there had been sufficient evidence to support the charges at this stage. The panel had regard to the test as set out in the case of *R v Galbraith* which states:

> *"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence."*

The panel acknowledged that the NMC's primary witness, Nurse A, has given evidence in these proceedings and it considered her evidence was not of a tenuous nature.

Further, the panel considered that the strength or weakness of the NMC's evidence depended upon the weight the panel would ultimately give to each witness and accordingly considered this issue best left until after all the evidence had been heard.

As such, the panel was not prepared, based on the evidence currently before it, to accede to an application of no case to answer. Therefore, the panel decided that there was a case to answer in respect of all the charges.

Decision and reasons on facts

The panel acknowledged that Nurse A had made two admissions to the charges against her, but it was not bound by the admissions due to the nature of the case. The panel determined that if, after hearing all the evidence, it preferred your evidence and found the charges not proved, then the charges in relation to Nurse A could not be found proved and the admissions would be groundless.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Marcelle-Brown and by Mr Olphert.

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 heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: The Named Professional for Safeguarding and the Trust Investigator Officer

- Nurse A: Band 5 nurse at Berkshire Healthcare NHS Foundation Trust ("the Trust").

The panel also heard evidence from you under affirmation.

Background

The charges arose whilst you were employed as a Band 7 registered nurse at Berkshire Healthcare NHS Foundation Trust ("the Trust").

In September 2019, during a local investigation into a formal complaint about bullying made against you by Nurse A, in giving examples of incidents of bullying, she included allegations that you had damaged and thrown away a unit of blood prescribed for Patient A. This resulted in Patient A being administered one unit of blood instead of the two that had been prescribed. Nurse A claimed that she falsified the patient's record, as she had been pressured by you to do so, to indicate that the second unit of blood had been administered when it had not been. Nurse A alleges that you asked her to countersign the documents regarding the blood administration. This incident allegedly occurred 12-18 months prior to the September 2019 local investigation. Due to the lack of detail around dates, and the frequency that Patient A was receiving blood it was not possible to identify which entry was alleged to be falsified. Nurse A could also not recall the week, month or year that this incident allegedly took place. She did not record anything or inform anyone at the time.

In November 2019, you resigned from your post. On 18 December 2019, your disciplinary hearing took place during which allegations that you had falsified Patient A's treatment chart to indicate that two units of blood were administered when only one was given and that you had disposed of the other unit were considered as confirmed by Witness 1. You denied the allegations and both you and Nurse A maintained your respective positions on these allegations throughout the investigative process regarding the administration of the second unit of blood to Patient A.

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 Mr Olphert.

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

Charge 1a

> *'1. On a date between 4 April 2016 and 3 September 2019:*
> *a. administered one unit of blood to Patient A when two units were prescribed'*

This charge is found proved.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

The panel referred to the witness statement of Nurse A, which states how many units of blood this patient was to be given:

> *'We would normally give her two units of blood every other week with some exceptions (if the patient went on holiday or staffing capacity for example). The clinic was held on Tuesday's which meant we could not see the patient's HB level prior to ordering the units of blood because the blood sample would be taken on Monday's and was then sent to the hospital. We would have to book a courier and call the blood bank. That is why we always ordered two units of blood.'*

The panel referred to evidence from Witness 1, where during the local investigation, Nurse A stated:

> *'We signed two units on prescription and gave one unit.'*

The panel heard oral evidence from Nurse A that you told her that the second unit of blood had broken when you went to collect it.

Then the panel heard oral evidence from you that this incident simply did not happen.

Despite the panel not having a specific time or date of the incident, the panel preferred the evidence of Nurse A that only one unit of blood was given when two were prescribed. The panel considered Nurse A's reasons for making these allegations. The panel considered Nurse A evidence and noted she would have known that only administering one unit of blood when two units were prescribed would have serious professional consequences for her and that there was nothing for her to gain by making the allegations. It therefore found this charge proved on the balance of probabilities.

Charge 1b

> *'1. On a date between 4 April 2016 and 3 September 2019:*
> *b. disposed of a unit of blood in the sink'*

This charge is found NOT proved.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

The panel noted that the evidence given by Witness 1, was not able to provide any evidence of how the blood may have been disposed of.

The panel acknowledged your denial of this charge. It also took into account Nurse A's evidence that she did not witness you dispose of the unit of blood.

The panel had no other evidence to support how you disposed of the unit of blood and whether it was in sink or other means.

The panel therefore finds this charge not proved on the balance of probabilities.

Charge 1c

'1. On a date between 4 April 2016 and 3 September 2019:
c. did not raise a Datix to indicate the unit of blood was disposed of'

This charge is found proved.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

You told the panel during your oral evidence that a Datix had not been raised for this incident as it did not happen. The panel also had no evidence of a Datix raised in relation to this incident.

The panel referred to the witness statement of Nurse A in which she states:

'The registrant and I were about to give the patient her second unit of blood. The registrant went to collect the blood from the blood fridge, which is in a ward far away from our clinic (10 minutes away as stated previously). When [Mr Egea] *returned he was very nervous, he said he broke the unit of blood.* [Mr Egea] *said he could not deal with the Datix (the risk management information system to collect and manage data for adverse events) because he will have problems.* [Mr Egea] *influenced me to sign saying the broken unit of blood was given to the patient and the registrant signed also.'*

The panel also referred to the evidence of Witness 1, who confirmed in her oral evidence that a Datix had not been raised in relation to this incident.

The panel was therefore satisfied that a Datix had not been raised. This charge is found proved.

Charge 2

'2. Signed to confirm that two units of blood were administered to Patient A when one was provided'

This charge is found proved.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

The panel took into account its decision at charge 1a having found that Patient A was administered one unit of blood, when two units were prescribed.

Notwithstanding the wording of the charge the panel also found there was a requirement to sign and countersign the blood administration.

The panel took into account Nurse A's evidence where she states in her witness statement:

'[Mr Egea] *influenced me to sign saying the broken unit of blood was given to the patient and* [Mr Egea] *signed also.'*

The panel acknowledged your response to the charge and that you state the incident did not happen. However, the panel, taking all the evidence into account bore in mind that although it did not have a specific time or date of the incident, the panel preferred the evidence of Nurse A for the reasons given in charge 1a, and therefore finds this charge proved on the balance of probabilities.

Charge 3

'3. Asked Nurse A to countersign that two units of blood were administered to Patient A when one was provided'

This charge is found proved.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

The panel referred to evidence from Witness 1, where during the local investigation, Nurse A stated:

> *"We signed two units on prescription and gave one unit."*

In seeking to understand the context of the incident, the panel accepted the evidence of Nurse A that she was acting under your instructions. The panel referred to Nurse A's witness statement where she states:

> '[Mr Egea] *tried to be friendly, but he had to be pleased all the time. As long as I (and other members of the team) made him happy all was well. If we questioned him, he would get angry… which made me quiet and want to please him.*
>
> *It seemed as though it was nice for him to have the power to make people please him. If you made him happy you would get more jobs, but he would ignore those who did not do exactly what he said.*
>
> *…*
>
> [Mr Egea] *was very manipulative and because he was my senior I was always scared to say anything because there was no proof.*
>
> *I was quite new to the team at the time and I had never experienced the type of behaviour displayed by the registrant before. I didn't realise that anything was happening, I eventually saw that things were not right in a lot of ways and I could not cope with it any longer.*

The panel acknowledged the context Nurse A described in her witness statement, that she wanted to *'please'* you and that she was scared of upsetting you. The panel also found that there was an unequal power dynamic between you, with you being the more senior and experienced nurse (Band 7 versus Band 6). It determined that this evidence supports the assertion that Nurse A acted on your instructions to countersign the patient's records.

As in charge 1a, the panel took into account that by making this admission there would be serious professional consequences for Nurse A and that there was nothing for her to gain by making this assertion thus adding weight to her evidence.

The panel having preferred the evidence of Nurse A, therefore finds this charge proved in that you did ask Nurse A to countersign that two units of blood were administered to Patient A when one was provided.

Charge 4

> *'4. Your actions in charge 2 and/or 3 were dishonest in that you knew you had not provided the patient with two units of blood and intended to cover up what had happened'*

This charge is found proved.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

The panel accepted Nurse A's account that you knew Patient A was prescribed two units of blood and that only one unit had been administered when you both signed to confirm the administration of the second unit of blood. The panel was of the view that you also would have known your conduct as found proved in charges 2 and 3, as an experienced nurse with a number of years of practice, was not what is expected of a registered nurse. The panel found that you made a decision to sign that two units of blood had been given, when you had full knowledge that in fact only one unit had been

given. The panel considered that you would have also been aware of the potential impact on Patient A and the seriousness of covering up that the patient did not receive both units of prescribed blood.

Further the panel considered that an ordinary, decent person would consider your actions to be dishonest.

Taking all this into account, the panel therefore finds this charge proved on the balance of probabilities.

Charge 5

> *‘5. Your actions as specified in charges 1(b) and/or 1(c) and/or 2 and/or 3 were in breach of the duty of candour in that you were not open and honest in relation to what happened on this date’*

This charge is found proved only in respect of charges 1c, 2 and 3.

In reaching this decision, the panel took into account your oral and documentary evidence, the evidence of Witness 1 and of Nurse A.

The panel considered that you would have been aware that Patient A had sufficient capacity to understand that she should have had two units of blood, when she was only given one and that she was not made aware of the situation.

The panel noted that no Datix had been raised in relation to this incident and that had not been disclosed to anyone, until Nurse A raised it.

If it had not been for Nurse A, the panel is of the view that this incident, which had the potential to put patients at a real risk of harm, may never have come to light. You would have been aware of your duty to disclose an incident such as this to the appropriate parties, but you chose not to.

The panel therefore, on the balance of probabilities, finds this charge proved in relation to charges 1c, 2 and 3.

Proceeding in absence for the purpose of receiving the panel's decision on facts

The hearing resumed on 20 November 2023, neither registrant was present. Ms Marcelle-Brown made submissions to the panel in relation to proceeding in the absence of both registrants for the purpose of receiving the panel's decision on facts, neither registrant was present. She referred the panel to the documentation before it which shows that Notice was sent to Mr Egea on 24 July 2023 along with details in relation to this hearing. She submitted that service has been affected in accordance with the rules. She invited the panel to proceed in Mr Egea's absence for the purposes of receiving the panel's decision on facts.

[PRIVATE]

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

The panel accepted the submissions and was satisfied that Notice was served. It made a decision to proceed in the absence of both registrants in order to hand down its decision on facts but was mindful that a different position may be taken with regards to the next stage of the hearing.

Decision and reasons on application to adjourn the hearing

[PRIVATE]

[PRIVATE]. It also would be unfair to proceed in Mr Egea's absence without being able to contact him or take informed instructions from Mr Egea as he is not in fit state to participate to advance his best case. Mr Olphert submitted this could result in potential unfairness towards Mr Egea. Further, Mr Olphert submitted that he would accept any proposition to continue to hear the two cases together so there would be no inherent

unfairness between the registrants. Mr Olphert invited the panel to adjourn this hearing and agree a future resuming date to give Mr Egea the opportunity to attend and give evidence.

Ms Marcelle-Brown did not oppose the application made by Mr Olphert. She confirmed the NMC's position that in this case, where the facts found proved found 'joint fault', the panel may consider the need to hear the next stage of the process together or separately. She submitted that both cases are inextricably linked and should remain heard together in the interest of fairness to both parties. She submitted that the panel may consider the attendance and engagement of the parties in the proceedings, and highlighted for the panel that should it make a decision to adjourn, the potential unfairness of this on Nurse A is limited as she has previously stated that she would only attend as an NMC witness and otherwise not take part in the hearing. Any unfairness to Nurse A would be outweighed by the fairness to the overall proceedings in ensuring the overarching objective is met.

Ms Marcelle-Brown invited the panel to consider the public interest in this case being dealt with expeditiously. However, she outlined there are no further witnesses to be called from the NMC and the panel may also consider that Mr Egea wishes to provide evidence at the misconduct and impairment stage. She submitted the decision whether to adjourn was a matter for the panel.

The panel heard and accepted the advice of the legal assessor in relation to adjournment as well as proceeding in the absence of one or both registrants.

[PRIVATE]. The panel noted that Mr Egea wishes to continue to engage in the proceedings, and it is in the interest of fairness to Mr Egea that he is fit to participate in proceedings and that his evidence is heard. An adjournment would be the only fair way to provide Mr Egea with an opportunity to attend.

The panel considered that, because the facts of Nurse A's case is so interlinked with this case, it could prejudice one or the other if these are heard separately. The panel determined to hear both cases jointly and adjourn the proceedings in both instances.

The panel was mindful that it is in the interest of the public that the case is dealt with expeditiously. It noted that there are no witnesses due to give evidence and although it could be potentially unfair to Nurse A that the process is delayed, the panel noted that Nurse A has voluntarily disengaged with the proceedings. The panel balanced this potential unfairness with fairness to the overall proceedings and concluded any unfairness due to a delay would be extremely limited.

The panel considered that allowing an adjournment is reasonable in such difficult unexpected circumstances and in line with the NMC's value of kindness. Thus, it concluded that in these specific circumstances adjournment was a fair, kind and proportionate decision.

Accordingly, the panel will adjourn the proceedings and this case will be re-listed and a future date will be arranged.

Considerations on interim order following adjournment

Whilst the panel heard no application from the NMC to impose an interim order, the panel considered whether an interim order was necessary following its decision to adjourn the hearing until it resumes at a future date.

The panel considered the charges found proved to be serious in nature, particularly as these include dishonesty.

The panel was mindful of the length of time since the incident (up to eight years) and that it had not yet considered misconduct or impairment. Solely for the purposes of considering whether, in light of the adjournment, an interim order was necessary the panel was not satisfied at this stage that there is a real risk of significant harm to the health, safety or wellbeing of patients, visitors or colleagues nor that an order is required in the public interest.

The panel has therefore decided that it is not necessary in all the circumstances to impose an interim order at this stage.

The NMC may ask for this decision to be reviewed if any new evidence becomes available that may be relevant to your case.

[This hearing resumed on 22 April 2024]

Decision and reasons on application to adjourn

At the outset of the resumed hearing Mr Olphert, on behalf of Mr Egea, made an application to adjourn this hearing pursuant to Rule 32 of the Rules. He referred the panel to a translated medical letter dated 15 April 2024. [PRIVATE]

[PRIVATE]

Mr Olphert referred the panel to the NMC guidance on *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023). He addressed the panel on the relevant factors to consider in deciding whether or not to adjourn this hearing. In respect of the public interest in the efficient disposal of cases, Mr Olphert submitted that the allegations date back to 2016-2019 and the case was not listed to be heard until 2023. He submitted that as the facts stage has now concluded, there is no potential inconvenience to any witnesses as all of the NMC witnesses have been heard.

[PRIVATE]. Mr Olphert submitted that Mr Egea should be given the opportunity to give evidence on current impairment and potential sanction which he cannot do if he is absent through entirely understandable circumstances. [PRIVATE]. He submitted that in these circumstances, paramount importance must be given to Mr Egea, who is keen to participate, and that he would be prejudiced if the hearing was to proceed in his absence. Mr Olphert therefore invited the panel to adjourn this hearing.

[PRIVATE]

Mr Malik, on behalf of the NMC, opposed this application. [PRIVATE]. Mr Malik reminded the panel of the public interest in the expeditious disposal of cases and submitted that adjourning this hearing would cause further delay. He invited the panel to proceed in the interests of justice.

The panel accepted the advice of the legal assessor.

The panel had regard to the NMC guidance *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023). In deciding whether or not to adjourn this hearing, the panel had regard to all of the relevant factors, including the following:

- ***The public interest in the efficient disposal of the case***

  There is a public interest in considering fitness to practise allegations swiftly, in order to protect the public, and maintain confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.

- ***The potential inconvenience***

  Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date.

- ***Fairness to the nurse, midwife or nursing associate***[3]

  Postponing a hearing may allow a nurse, midwife or nursing associate, who is unable to attend original hearing dates, to attend a future hearing and give their

evidence in person. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.

In respect of these factors the panel made the following determination:

The public interest in the efficient disposal of the case.

The panel was mindful of the expeditious disposal of cases, it noted that the allegations date back to 2016 and that this case was not listed to be heard until 2023.

The potential inconvenience

Having already made its determination on the facts of this case, the panel noted that there are no further witnesses to be called and therefore no inconvenience in respect of this point.

Fairness to the nurse, midwife or nursing associate

The panel noted that Mr Egea had previously attended and fully engaged in this hearing and he appears to be keen to continue to engage and to attend. [PRIVATE].

Having regard to all of the above, the panel decided to grant this application. The case against Mr Egea is adjourned to the 21-23 October 2024 with a time estimate of three days. If however, it becomes clear by 31 August 2024 that a further adjournment is sought upon the same medical grounds, then the matter can be vacated without attendance for a new date to be fixed.

Decision and reasons on application to sever the hearing

Having decided to adjourn the hearing in respect of Mr Egea’s case, the panel invited submissions on whether to sever this hearing and to continue with the linked case of Nurse A.

Mr Malik submitted that as the facts stage has concluded and in the light of Mr Egea's circumstances it would be appropriate to now consider his and Nurse A's case separately.

Mr Olphert submitted that given the uncertainty in respect of Mr Egea's health condition and that the panel has made its determination on the facts it is possible for these cases to now be considered separately. He submitted that any risk of prejudice can be managed as the panel will remain the same for both Mr Egea and Nurse A.

The panel accepted the advice of the legal assessor.

The panel determined that given the change in circumstances it was now appropriate to sever the two cases and to proceed to consider the case of Nurse A separately and carefully manage any risk of prejudice. Whilst the panel has decided to adjourn Mr Egea's hearing for good reason, it determined that there was no good reason to delay proceeding with the case of Nurse A. The panel noted that Nurse A has indicated that she does not wish to further engage in these proceedings. The panel was of the view that severing these cases and concluding the case of Nurse A as soon as possible would be in both Nurse A's interest and the public interest in the expeditious disposal of hearings.

[This case resumed on 21 October 2024]

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this resumed hearing that Mr Egea was no longer represented, nor in attendance and that the Notice of Hearing letter had been sent to Mr Egea's registered email address by secure email on 8 May 2024.

Mr Edwards, 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 charges, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Egea's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all the information available, the panel was satisfied that Mr Egea has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Egea

The panel next considered whether it should proceed in the absence of Mr Egea. It had regard to Rule 21 and heard the submissions of Mr Edwards who invited the panel to continue in the absence of Mr Egea. He submitted that Mr Egea had voluntarily absented himself.

Mr Edwards submitted that there had been no engagement by Mr Egea with the NMC in relation to these latest proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. Mr Edwards referred the panel to emails dated 25 September 2024, 3 October 2024 and 16 October 2024 from the NMC to Mr Egea requesting his attendance at today's hearing, none of which had been replied to. He also referred the panel to a call log dated 16 October 2024 when there was a call made to Mr Egea regarding his attendance at the hearing, but the call went straight to voicemail. Mr Edwards submitted that Mr Egea has completely ceased engagement from the NMC. He submitted that the NMC has made all reasonable efforts to secure Mr Egea's attendance but have received no response from Mr Egea.

Mr Edwards also submitted that there is a need for the expeditious conclusion of this case. He submitted that this case has been ongoing for a significant amount of time now

and it is in the interest of the public and in Mr Egea's own interest to conclude this matter.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Egea. In reaching this decision, the panel has considered the submissions of Mr Edwards, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Egea;
- Mr Egea has not engaged with the NMC since the last hearing in April 2024 and has not responded to any of the correspondence sent to him about this hearing;
- Mr Egea has not provided any reason as to why he is not present at today's hearing
- The NMC has made numerous attempts to try and secure Mr Egea's attendance
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Egea in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the

NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. The panel noted that it had heard from Mr Egea directly at the facts stage. Furthermore, the limited disadvantage is the consequence of Mr Egea's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Egea. The panel will draw no adverse inference from Mr Egea's absence.

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 Mr Egea's 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, Mr Egea's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard 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.' Mr Edwards also referred the panel to *Calheam v GMC* [2007] EWHC 2606 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin)

Mr Edwards invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Mr Edwards identified the specific, relevant standards where Mr Egea's actions amounted to misconduct namely, 8, 8.3, 8.5, 10, 10.3, 14, 14.1, 14.2, 14.3, 16, 16.3, 20, 20.1, 20.2

Mr Edwards submitted that the facts found proved amount to misconduct both individually and cumulatively. He submitted that there have been findings of dishonesty and there were breaches of the duty of candour as well as a failure to be open and honest.

Mr Edwards submitted that Mr Egea's actions are serious. Mr Edwards submitted that other practitioners would find Mr Egea's actions deplorable and put patients at an unwarranted risk of harm.

Furthermore, Mr Edwards submitted that Mr Egea appears to have coerced another registrant that had been previously linked to this case. Mr Edwards submitted that Mr Egea acted dishonestly in persuading his colleague to countersign that two units of blood had been administered to Patient A when only one was provided in order to please him. Mr Edwards invited the panel to find that this suggest that Mr Egea had an undue influence over his colleague. Mr Edwards also invited the panel to consider that Mr Egea's actions amounted to bullying and reminded the panel of its findings on the facts:

> *'The panel acknowledged the context Nurse A described in her witness statement, that she wanted to 'please' you and that she was scared of upsetting*

you. The panel also found that there was an unequal power dynamic between you, with you being the more senior and experienced nurse (Band 7 versus Band 6). It determined that this evidence supports the assertion that Nurse A acted on your instructions to countersign the patient's records.'

In light of these submissions, Mr Edwards therefore invited the panel to make a finding of misconduct in this case.

Submissions on impairment

Mr Edwards 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and Cohen v GMC [2008].

Mr Edwards submitted that all limbs of the Grant test are engaged in this case which are 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.'*

Mr Edwards submitted that Mr Egea put patients at unwarranted risk of harm as a result of his conduct. Mr Edwards submitted that Mr Egea's conduct, dishonesty and lack of candour at the time of the incident brought the nursing profession into disrepute. Mr Edwards also submitted that Mr Egea breached one of the fundamental tenets of the profession to act with honesty and integrity at all times. Further, he submitted that by virtue of the panel's findings of fact, Mr Egea had acted dishonestly.

Mr Edwards submitted that some of the charges are easily remediable. However, he submitted that the charges of dishonesty are more difficult to remediate although not impossible. Mr Edwards submitted that the panel has had no information before it to demonstrate that Mr Egea had engaged in further training, reflected on his actions to show insight or understanding. Mr Edwards submitted that because the panel has nothing to suggest that Mr Egea has learnt from his previous failings, there is nothing to suggest that he will not repeat this conduct in the future if faced with similar circumstances.

Mr Edwards invited the panel to find that Mr Egea's fitness to practise is currently impaired today on both public protection and public interest grounds. Mr Edwards submitted that there is nothing before the panel to suggest that Mr Egea has strengthened his practice nor is there any evidence of reflection.

Mr Edwards submitted that there remains a substantial risk that Mr Egea will repeat the behaviour in the future. As such, he invited the panel to find that Mr Egea' fitness to practice is impaired at this time by reason of his misconduct.

The panel accepted the advice of the legal assessor.

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 Mr Egea's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Egea's actions amounted to several breaches of the Code. Specifically:

> *'**10 Keep clear and accurate records relevant to your practice***
> *This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records. To achieve this, you must::*
> *10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements'*
>
> ***14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place***
> *To achieve this, you must*
> *14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm*
> *14.2 explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers*
> *14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly*
>
> ***20 Uphold the reputation of your profession at all times***

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people'

The panel recognised that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the facts found proved are serious and involve failings related to Mr Egea's clinical practice and dishonesty. The panel noted that Mr Egea's actions involved multiple breaches of the NMC Code including fundamental tenets of the nursing profession.

The panel bore in mind the NMC Guidance FTP-2A on Misconduct and FTP-3 on Determining Seriousness. The panel noted that seriousness is a spectrum and, having found charges of dishonesty relating to patient care proved, determined that the seriousness is on the greater end of the scale. Furthermore, manipulating another colleague to engage in dishonest practice also heightens the seriousness of this conduct. The panel was of the view that Mr Egea's actions indicate serious attitudinal issues.

In light of its findings on fact, and taking into account the above guidance, the panel determined that there was a potential risk of harm to patients as a result of Mr Egea's conduct. The panel determined that fellow practitioners would find Mr Egea's actions deplorable. It determined that Mr Egea's actions fell far short of the standards expected of a registered nurse and breached fundamental tenets of the nursing profession.

The panel therefore found that Mr Egea's actions amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Egea's 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 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:

e) 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

f) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

g) 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

h) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel determined that all four limbs of the test are engaged in this case.

The panel finds that Patient A was put at risk of harm as a result of Mr Egea's dishonest misconduct. Mr Egea's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that Mr Egea has not provided any reflective documents to demonstrate an understanding of his actions and how they impacted Patient A, his colleagues and the reputation of the nursing profession. The panel also noted it had no evidence before it of remorse or acceptance of the panel's findings regarding the charges found proved.

The panel was of the view that some of the misconduct in this case is capable of being addressed. In particular, the panel identified that the first two charges, relating to clinical

errors, are easily remediable, but accepted Mr Edwards's submissions that the charges related to dishonesty and in coercing a nurse to also be dishonest, are more difficult to address. The panel had no evidence before it to demonstrate remediation. It also had no evidence to support that Mr Egea has strengthened his practice since this incident.

The panel therefore determined that there is a risk of repetition based on the lack of remediation, strengthened practice and insight. The panel could not be reassured that Mr Egea is not currently liable to repeat this behaviour in the future especially when the behaviour involves serious attitudinal concerns that appear to not have been remediated. The panel therefore found 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 determined that a finding of impairment on public interest grounds is required because a well-informed member of the public would be concerned to find that a registered nurse's fitness to practise is not considered to be impaired after having found charges of dishonesty and clinical failings proved. 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 Mr Egea's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Egea's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Egea off the register. The effect of this order is that the NMC register will show that Mr Egea has been struck-off the register.

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 Edwards submitted that the NMC are seeking a striking-off order. He submitted that the charges proved are serious and, in light of the finding of impairment, there are a number of aggregating factors that increases the risk and seriousness of this case. Mr Edwards submitted that there are no mitigating factors in this case and invited the panel to consider the following aggravating factors:

- Mr Egea breached his professional duty of candour
- Mr Egea's misconduct put Patient A at risk of harm
- The misconduct in this case involves dishonesty in a clinical setting
- Mr Egea abused his position and influence
- Mr Egea has not demonstrated any insight into his failings

Mr Edwards referred the panel to NMC guidance SAN-2 *'Considering sanctions for serious cases'* which reads:

> *'…Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*
>
> - *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*

- *misuse of power*
- *vulnerable victims*
- *….'*

Mr Edwards submitted that the dishonesty in this case is at the higher end of the scale. In light of this, he referred the panel to NMC guidance SAN-3E in relation to striking-off orders which states:

> *'This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:*
> - *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
> - *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not struck off from the register?*
> - *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards'*

Mr Edwards submitted that the concerns raise fundamental questions about Mr Egea's professionalism and that the public confidence in nursing profession cannot be maintained if Mr Egea is not struck off register. Mr Edwards submitted that Mr Egea's actions amounted to bullying and indicate deep seated attitudinal issues. Mr Edwards submitted that strike-off is therefore the only sanction that would protect the public and maintain professional standards.

Mr Edwards then addressed the imposition of a suspension order. He submitted that a suspension would not appropriately manage concerns or uphold public interest. Mr Edwards submitted that temporary removal from the register would not be appropriate in these circumstances as Mr Egea has exhibited behaviours that are fundamentally incompatible with remaining on the register. Mr Edwards submitted that Mr Egea abused his position of power to coerce a junior staff member to be dishonest to cover

up his own error. Mr Edwards submitted that Mr Egea’s actions therefore did not only have an impact on him but also another member of staff who has also faced regulatory proceedings in relation to this incident.

Mr Edwards submitted that the other sanctions available to the panel would not be appropriate in this case. He submitted that no workable conditions can be formulated to manage the risk of further dishonesty occurring in the future or address the attitudinal concerns. Mr Edwards therefore submitted that any lesser sanction would also be entirely inappropriate and not proportionate in light of the seriousness of the concerns and risks identified.

Mr Edwards therefore invited the panel to impose a striking-off order.

Decision and reasons on sanction

Having found Mr Egea’s 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:

- The impact of Mr Egea’s continuous denial on another registrant.
- Mr Egea abused a position of influence to coerce a more junior nurse to be dishonest
- Lack of insight into his failings
- Conduct which put Patient A at risk of suffering harm.
- The misconduct in this case involves dishonesty in a clinical setting

The panel also took into account the following mitigating features:

- This was a one-off spontaneous incident
- There is no evidence of personal gain

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 Mr Egea'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 Mr Egea's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mr Egea's registration would be a sufficient and appropriate response. The panel is of the view that whilst the clinical aspects of Mr Egea's failings could be addressed through conditions, there are no practical or workable conditions that could be formulated to address the dishonesty and the abuse of his position which cannot be addressed through retraining. The panel were also mindful that Mr Egea has shown no insight or evidence of strengthening his practice and has now disengaged from these proceedings. Furthermore, the panel concluded that the placing of conditions on Mr Egea's registration would not adequately address the seriousness of this case and would not protect the public or 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 noted that whilst this was a single instance of misconduct, the seriousness and nature of the misconduct as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breaches of fundamental tenets of the profession evidenced by Mr Egea's actions are fundamentally incompatible with Mr Egea remaining on the register. Furthermore, Mr Egea has not demonstrated any insight and therefore poses a significant risk of repeating similar behaviour in the future.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mr Egea's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr

Egea’s actions were very serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Egea’s actions in bringing the profession into disrepute by adversely affecting the public’s view of how a registered nurse should conduct himself, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

The panel considered that this order was 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.

This will be confirmed to Mr Egea in writing.

Interim order

As the striking-off 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 Mr Egea’s own interests until the striking-off sanction 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 Edwards. He submitted that an interim suspension order is the only appropriate interim order in light of the panel imposing a substantive suspension order. Mr Edwards submitted that an interim order is necessary for all the same reasons that it imposed the substantive striking-off order.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise 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 due to cover the appeal period.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Mr Egea is sent the decision of this hearing in writing.

That concludes this determination.