Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 4 September – Friday 8 September 2023
Wednesday 1 November 2023 – Thursday 2 November 2023
Thursday 21 December 2023

Virtual Hearing

Name of Registrant:	Andrei Cristian Juchi
NMC PIN	16D0124C
Part(s) of the register:	Registered Adult Nurse – Adult Nursing (April 2016) Nurse Independent / Supplementary Prescriber (November 2019)
Relevant Location:	West Northamptonshire
Type of case:	Misconduct
Panel members:	Birju Kotecha (Chair, Lay member) James Kellock (Lay member) Frances Clarke (Registrant member)
Legal Assessor:	Jayne Salt (4 – 8 September 2023) Andrew Young (1 – 2 November 2023 and 21 December 2023)
Hearings Coordinator:	Abbey Cornwell (4 – 8 September 2023) Nandita Khan Nitol (1 – 2 November 2023) Zahra Khan (21 December 2023)
Nursing and Midwifery Council:	Represented by Beverley Da Costa, Case Presenter
Mr Juchi:	Present and represented by Wafa Shah, instructed by Royal College of Nursing (RCN)
Facts proved:	Charges 1a, 1b, 1c, and 1d(i)
Facts not proved:	Charges 1d(ii), 1e(i), 1e(ii), and 2
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

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

On day one of the hearing, at the onset of Patient A's evidence, Ms Shah made a request that this case be held partially in private on the basis that proper exploration of Patient A's case involves reference to their [PRIVATE] and private matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Da Costa indicated that she supported the application to the extent that any reference to Patient A's [PRIVATE] and private matters 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 in connection with the [PRIVATE] and private matters of Patient A as and when such issues are raised.

Details of charge (as amended):

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:
a. made contact with Patient A via Facebook;
b. [PRIVATE];
c. on an unknown date made a video recording of Patient A [PRIVATE];
d. on 10 June 2021 whilst conducting an electrocardiogram ('ECG') on Patient A you:
    i. failed to offer a chaperone;
    ii. [PRIVATE];
e. on 9 July 2021 whilst conducting an electrocardiogram ('ECG') on Patient A you:
    i. failed to offer a chaperone;
    ii. [PRIVATE];

2) Your conduct at charge 1(d)(ii) and/or 1(e)(ii) was sexually motivated in that you sought sexual gratification.

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

Background

The charges arose whilst you were employed as a Mental Health Practitioner at [PRIVATE] (the Practice).

You were referred to the NMC on 23 December 2021 by the practice manager at the Practice where you were working one day a week as a Mental Health Practitioner since 13 April 2021. Whilst working at the Practice you would provide care to patients with mental health conditions. At the same time, you were also working as a registered nurse at Kettering General Hospital.

The Practice received a letter from Patient A [PRIVATE]. [PRIVATE]

Patient A also alleged that you performed an electrocardiogram (ECG) on them. While the ECG was performed with Patient A's consent, you allegedly did not offer her a chaperone and [PRIVATE].

The Practice Manager investigated the concerns and you confirmed that you had been [PRIVATE]. You also confirmed that the relationship had begun with Patient A whilst she was being treated by you professionally at the Practice.

The Practice suspended you on [PRIVATE] whilst they completed their internal investigation.

Following the internal investigation by the Practice, you were dismissed on [PRIVATE].

Decision and reasons on application to admit further evidence

On day 3 of the hearing, and further to panel questions, Ms Shah requested the panel admit further evidence of Facebook exchanges between you and Patient A. Ms Shah submitted that such evidence was relevant and would assist in the panel's assessment of your credibility. She also submitted that it would be fair to admit such evidence given the wider importance of credibility across the various charges.

Ms Da Costa, on behalf of the NMC, resisted Ms Shah's application. She submitted that the application was just prior to the panel retiring to determine the facts. Even if relevant, she submitted that to admit the evidence would not be fair. In particular, she submitted that Patient A's evidence had concluded, and it was not known whether they could be recalled giving evidence, at this stage. If Patient A could not be recalled, there would be no opportunity to put such new evidence to them and otherwise allow them to clarify or challenge its contents.

The panel heard the advice and accepted the advice of the legal assessor in relation to Rule 31 of the NMC Fitness to Practice Rules.

The panel decided to deny the application to admit the evidence at the final point of the fact-finding stage. Given the context and purpose of the panel's questions it deemed any such evidence to be of limited relevance. The panel concluded that the NMC's bundle had been agreed at the outset of the hearing, Ms Shah had had sight of the bundle and could have served relevant evidence at a much earlier opportunity. The panel considered it would be unfair to admit the evidence at this stage since it would require Patient A to be recalled. The panel also recognised that Patient A had found giving evidence distressing. It was also not established if Patient A was available today and to adjourn the hearing would not be fair or proportionate given the limited relevance of the material.

Decision and reasons on application to amend the charge

The panel heard an application at the conclusion of the evidence made by Ms Da Costa, on behalf of the NMC, to amend the wording in the stem of charge 1).

The proposed amendment was to change the date range in charge 1) from 2 June 2021 and 31 January 2022 to 2 June 2021 and 31 August 2021. Ms Da Costa submitted that the proposed amendment would more accurately reflect the evidence.

Proposed amendment of the charge

'That you, a registered nurse:

1) Between 2 June 2021 and ~~31 January 2022~~ **31 August 2021**. breached professional boundaries in that you:

The panel heard submissions from Ms Shah, made on your behalf. Ms Shah submitted that there is no objection to amending the dates in the stem of charge 1. Ms Shah submitted that you have not accepted that the relationship went on until January 2022.

Ms Shah submitted that she understands that the NMC wishes to amend the charge dates of stem 1) to 31 August 2021. However, [PRIVATE].

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel retired to make its decision and was of the view that such an amendment, as applied for, was in the interests of justice. [PRIVATE]. Noting the evidence, the panel considered that the end of the calendar month August 2021 was an appropriate time window that better captured the likely duration of the relationship.

The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the NMC's proposed amendment. In light of the evidence, the panel determined it more appropriate to allow the NMC amendment to ensure further clarity and accuracy.

Decision and reasons on facts

At the outset of the hearing, Ms Shah informed the panel that in relation to charge 1a) you accepted that you made contact on Facebook but that the initial contact was instigated by Patient A. [PRIVATE].

Noting that the submissions amounted to partial admissions and the request for additional factual findings, the panel concluded that the NMC was still required to prove both charges.

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 oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Practice Manager at the Centre
- Patient A: Patient A

The panel also heard evidence from you under affirmation.

The panel considered the witness and documentary evidence provided by both the NMC and you including your remediation bundle which was submitted at this stage. Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

Before making its findings, the panel noted the stem of charge 1 and its reference to breaching professional boundaries. It had sight of the relevant evidence, namely, the Practice's Policies and otherwise used its own knowledge of healthcare professional boundaries in making its decisions. The panel noted that Ms Shah did not dispute that the factual particulars would entail a breach of professional boundaries.

The panel's approach to the facts was to, first, consider the alleged factual particulars at a)-e) and determine whether they were proved. The panel then returned to whether any

particulars found proved entailed a breach of professional boundaries. The panel's method plainly recognised that no breach of professional boundaries could arise if the underlying facts were not proven.

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

Charge 1a)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:
   a) made contact with Patient A via Facebook;

This charge is found proved.

In reaching this decision, the panel had particular regard to the Facebook messenger screenshot dated [PRIVATE] where you and Patient A exchanged messages.

The panel first considered whether you made contact with Patient A on Facebook. The panel found this fact proved considering your admission and the clear evidence in the screenshot of the Facebook messenger conversation dated [PRIVATE]. The screenshot confirms you had responded to messages from Patient A on both the evening of [PRIVATE].

However, on the invitation of Ms Shah, the panel were asked to determine who instigated the contact by way of a Facebook friend request. Ms Shah maintained that Patient A did so. Ms Da Costa, on behalf of the NMC, maintained that it was you.

The panel considered the Facebook messenger exchange and in particular where Patient A stated the following:

'I get suprice [sic] to see invite in the morning'

The panel also had regard to Patient A's oral evidence in which they stated that their comment was referring to your invitation to be a friend on Facebook and was not any reference to a forthcoming face to face surgery appointment.

The panel had regard to your oral evidence in that you stated you received a Facebook request from Patient A and accepted it despite not knowing the identity of the person sending it. The panel noted your evidence that you only became aware of who the person was, on realising the message above referred to an invitation to the surgery, as the surgery sends out text messages to people notifying them of appointments.

The panel considered whether it was you or Patient A that initiated the Facebook friend request. The panel found the natural and ordinary interpretation of the wording within the Facebook messenger exchange was that the 'invite' referred to was a Facebook friends' invitation from you. The panel made no finding on your motive behind instigating the friend's request or whether you knew the identity of Patient A at the point of request.

The panel found your explanation to be less likely given your evidence that you did not know when the surgery would send out appointments. Similarly, the panel found that if the message were to be in relation to an appointment it would be unlikely Patient A would have said they were surprised given that you had confirmed in a telephone consultation with Patient A on 2 June 2021, that a face-to-face appointment was needed.

The panel considered Ms Shah's arguments in paragraph 10 of her written submissions.

The panel did not accept that the first message sent by Patient A of *'Hey'* made it more likely that they initiated the Friend request. The panel found that an initial greeting may equally have been as a result of accepting a friend request first. Nor did the panel accept that any inferences about knowledge of Patient A's identity can be drawn from a mere response of 'Hi'.

The panel considered that whilst your responses on 8 June 2021 clearly acknowledge their status as a patient, it did not necessarily follow that you had deduced Patient A's identity after you had read their message about being 'suprice [sic] to see invite…', but, instead their identity could have been deduced at any time prior.

The panel took into account the Facebook messenger screenshot and Patient A's evidence that you had sent them a Facebook friend request first which had been consistent across their written complaint in [PRIVATE], her interview with the Practice Manager in [PRIVATE], her witness statement in [PRIVATE], and during cross-examination in oral evidence in the hearing.

Based on the balance of probabilities the panel found it is more likely than not the Facebook friend request was sent by you.

The panel considered that social media contact with a patient with known mental health issues, a few days after your first telephone consultation, and a few days prior to your first face to face consultation was a breach of professional boundaries. In any event, the panel noted that charge 1a) was substantially admitted and you recognise, in your remediation evidence, that social media contact can deteriorate professional relationships between nurse and patient.

In light of the above, the panel finds this charge 1a) proved.

Charge 1b)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:
   b) engaged in a [PRIVATE] with Patient A

This charge is found proved.

[PRIVATE]
In light of the above, the panel finds this charge 1b) proved.

Charge 1c)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:

c) [PRIVATE];

This charge is found proved.

[PRIVATE].

Accordingly, the panel found this charge proved.

Charge 1(d) (i)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:
    d) on [PRIVATE] whilst conducting an electrocardiogram ('ECG') on Patient A you:
        I. failed to offer a chaperone;

This charge is found proved.

In reaching this decision, the panel took into account the documentary evidence which included Patient A's consultation records on '[PRIVATE]', including the ECG nurse template where the chaperone checklist was found, and both your and Patient A's oral evidence.

The panel considered Patient A's consultation records where you had not recorded in either the tick box or free text box that you had in fact offered a chaperone to Patient A on [PRIVATE].

The panel also had regard to Patient A's account that had no chaperone had been offered to them on [PRIVATE]. In Patient A's complaint letter to the Practice they stated:

> *'After second appointment where he did ECG for me without asking if I want a* [PRIVATE]*…'*

The panel considered that this was likely to refer to the first time an ECG was carried out which was on [PRIVATE].

In oral evidence Patient A confirmed that you had not offered them a chaperone before performing an ECG. The panel took into consideration that Patient A had been consistent in all of their accounts about a chaperone not being offered and found them to be credible and reliable in respect of this charge.

The panel had regard to your evidence that you had in fact offered a chaperone but forgot to tick the boxes. In your evidence you mentioned you were not familiar with the systems and that you had also failed to complete the ECG template. The panel also noted that by the time of the appointment you had been working at the surgery, including working with relevant systems, for approximately two months. You also said in your evidence that you would see 15-20 patients a day, and would typically carry out 3-4 ECGs per shift.

In light of the above, and in the absence of contemporaneous documents that you had offered a chaperone, the panel concluded that it was more likely than not that you did not offer a chaperone when you should have.

The panel considered the chaperone policy in place at the Practice which you were under a duty to uphold. The panel noted the policy clearly indicates that chaperones can assist in protecting patients from potential abuse and otherwise help secure their comfort during personal and intimate clinical examinations, like the conduct of an ECG. The panel considered that chaperones can help in managing the professional boundaries between nurse and patient. Accordingly, the panel found that a failure to offer a chaperone was to overlook such important considerations and was in itself, a breach of professional boundaries.

Charge 1(d)(ii)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:

d) on [PRIVATE] whilst conducting an electrocardiogram ('ECG') on Patient A you:

ii. asked Patient A to [PRIVATE] without clinical justification;

This charge is found NOT proved.

[PRIVATE] therefore found it not proved in its entirety.

Charge 1(e)(i)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:

e) on [PRIVATE] whilst conducting an electrocardiogram ('ECG') on Patient A you:

i. failed to offer a chaperone;

This charge is found NOT proved.

The panel was required to first determine whether an ECG had taken place on [PRIVATE]. The panel noted, in your oral evidence, you had denied conducting an ECG on [PRIVATE].

The panel was not satisfied that an ECG was carried out on [PRIVATE]. There was no documentary evidence of an ECG being conducted in the free text of Patient A's consultation records on [PRIVATE] nor in the ECG template. The panel took into account that the ECGs on the [PRIVATE] had been recorded but there was no reference to an ECG on [PRIVATE]. The panel also noted there was no ECG print-out in the evidence before it.

The panel took into account that Patient A had not mentioned an ECG being performed in her complaint letter to the Practice and had not mentioned the ECG in the investigation meeting that took place in [PRIVATE]. Whilst it is mentioned in the later

witness statement, the panel found Patient A's evidence on this charge overall less reliable.

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

Charge 1(e)(ii)

That you, a registered nurse:

1) Between [PRIVATE] breached professional boundaries in that you:
    e) On [PRIVATE] whilst conducting an electrocardiogram ('ECG') on Patient A you:
        ii. [PRIVATE] without clinical justification;

This charge is found NOT proved.

Having found charge 1(e)(i) not proved then this charge falls away and therefore not proved.

Charge 2)

That you, a registered nurse:

2) Your conduct at charge 1(d)(ii) and/or 1(e)(ii) was sexually motivated in that you sought sexual gratification.

This charge is found NOT proved.

Having found charges 1(d)(ii) and 1(e)(ii) not proved this charge falls away and is therefore not proven.

Interim order

Having reached the end of the allotted time without concluding this matter, the panel invited submissions on whether an interim order is necessary to cover the period

between adjourning today and when this hearing resumes. The panel was mindful that 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.

Submissions on interim order

Ms Da Costa invited the panel to impose an interim suspension order for 18 months. She submitted an interim order is necessary on the grounds of public protection and it is otherwise in the public interest. She referred to the panel's decision on facts and submitted that the charges found proved are very serious and raise public protection concerns. Ms Da Costa submitted that this is a case, given the nature and seriousness of the charges found proved, where an interim order is also required on public interest grounds.

Ms Shah submitted that an interim order is not necessary in these circumstances. She submitted that the facts found proved did not relate directly to your clinical practice and that you have demonstrated remorse and full insight into your actions. Ms Shah submitted that you do not pose a risk to the public and therefore an interim order should not be imposed on public protection grounds. She submitted that for an interim order to be imposed on public interest grounds alone there is a high bar which has not been met in this case. Ms Shah submitted that if the panel is minded to impose and interim order then an interim conditions of practice order would be the most proportionate order.

The panel accepted the advice of the legal assessor.

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 and nature of the facts 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 nature and seriousness of the charges it has found proved. The panel therefore imposed an interim suspension order

for a period of 18 months due to cover the period between this hearing going part heard and when it is able to resume to conclude these matters.

Hearing resumed on 1 November 2023

On the first day of the resumed hearing of this case, when the panel expected to hear submissions on the issue of impairment, Ms Shah made an oral application on behalf of the registrant for the panel to reopen the facts stage of the hearing and to reconsider all the facts found proved against the registrant, namely charges 1(a), 1(b), 1(c) and 1(d)(i), all of the other facts having been found not proved. The application was supported by a written skeleton argument dated 31 October 2023. Ms Shah also provided the panel with a recording of Facebook screenshots which, she stated, had been made by you which demonstrated that it was Patient A who first sent a friend request to you on Facebook.

The skeleton argument was served on Ms Da Costa, counsel for the NMC, yesterday. The panel previously sat for 5 days for the hearing on facts between 4 and 8 September 2023.

Application by Ms Shah to re-open the facts stage and/or recuse itself

Ms Shah provided both written and oral submissions. She gave an overview of her skeleton argument which referred to relevant case law. Ms Shah submitted that the inherent jurisdiction of public bodies in revisiting previous factual findings is not limited to corrections under the slip rule.

Ms Shah submitted that public bodies have the inherent jurisdiction and power to revisit and revoke any decision vitiated by a fundamental mistake as to the underlying facts upon which the decision in question was predicated. Ms Shah submitted that it is a matter for the panel to decide whether it should indeed exercise that power, considering that there is a fundamental mistake of fact which has found its way in the panel's factual determination. She added that the fundamental mistake of fact was for the panel to find that you sent the Facebook invitation to Patient A considering the video that had now been produced.

In response to panel questions, Ms Shah submitted that the panel assessment of credibility was crucial to all the charges found proved and should it find Patient A's account of the Facebook friend request to be unreliable, then this would undermine their account in respect of the other charges. She submitted that Patient A was adamant and repeatedly stated in their evidence that you had sent the Facebook invitation rather than them sending one to you.

Further answering to panel questions, Ms Shah said that if the panel determines that there has been any fundamental mistake such that the facts can be reopened, the panel should then go on to consider recusing itself. It should do so by asking whether a fair-minded and informed observer would conclude that there is a real prospect of bias on the part of the present panel because of its earlier determination on facts.

Finally, Ms Shah submitted that the panel should exercise its powers in the public interest with fairness in mind as to whether it finds a fundamental mistake of fact and that this mistake could cause a miscarriage of justice.

Response by Ms Da Costa

Ms Da Costa opposed the application and submitted that it was never the NMC's original case as indicated by the wording of charge 1a), that you sent the Facebook request first. She added that the wording of the charge was plain and simple and was confined to the making of contact via Facebook rather than who initiated the contact. Ms Da Costa further highlighted that who initiated the contact on Facebook is a satellite issue.

With respect to the recording of screen shots, Ms Da Costa submitted that the recording was not conclusive. She stated that the panel would need to consider the provenance of that video, how it came into existence, when and under what circumstances. She submitted that the NMC may wish to undertake further investigations into what the recording established, including making enquiries of Facebook and potentially recalling Patient A to give further evidence.

Finally, Ms Da Costa submitted that, at no stage, did the NMC case rest on who initiated the contact. The NMC's case in respect of charge 1a) was about contact on Facebook and that such contact breached professional boundaries.

Panel's decision and reasons on application for the panel to re-open the facts stage and/or recuse itself

The panel heard and accepted the advice of the legal assessor. Based on the Legal assessor's advice the panel asked itself four questions in determining this application:

1) Does the recording of Facebook screenshots amount to 'clear and incontrovertible' evidence that Patient A sent the Facebook request rather than you?
2) If it was clear and incontrovertible evidence, does this amount to a fundamental mistake of fact as to the underlying facts of charge 1a)?
3) What effect might this new evidence have on the panel's other findings of fact?
4) Is it in the interests of justice to grant your application, due consideration being given to fairness to you and the NMC?

The panel first acknowledged that its powers to reopen its findings on facts should be exercised in very limited circumstances.

Having viewed the recording, the panel acknowledged that it was strong evidence which supported the claim that Patient A made the initial contact with you through Facebook. However, the panel did not consider the evidence to be incontrovertible in the sense of not being open to challenge. The panel noted the NMC first had notice of this application yesterday and has therefore had no opportunity to carry out an investigation of its own in order to test the reliability of this evidence.

In any event, turning to the second question, even if the evidence was both clear and incontrovertible, the panel did not consider it to be a fundamental mistake of fact. The specific finding of who made the initial contact was ancillary and subsidiary and not part of the charge. Any such mistake was not fundamental because the charge would still be found proven. The panel noted that the mischief in the charge was the fact of the contact and not the person who initiated it.

Given that the panel has found that there has not been a fundamental mistake of fact and the argument related to an ancillary point to charge 1a) only, the panel found that even if the new evidence had been admitted, it would have made no difference to its previous findings in relation to charges 1b), 1c) and 1d)i).

In reaching this conclusion, the panel took into account the question of fairness to both the NMC and to you. For the reasons outlined above, the panel has decided to dismiss the application.

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

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.'

Submissions from Ms Da Costa on misconduct and impairment

Ms Da Costa invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The NMC code of professional conduct: standards for conduct, performance and ethics (2004)' (the Code) in making its decision. She then directed the panel to specific paragraphs and standards and identified where, in the NMC's view, your actions amounted to a breach of those standards.

Ms Da Costa referred the panel to Patient A's witness statement [PRIVATE].She specifically referred to passages in the witness statement including the following excerpt:

'[PRIVATE].'

Ms Da Costa submitted that the above statements from Patient A along with their oral evidence clearly indicates that your conduct affected them, and it is continuing to affect them. She submitted that the panel should consider and recognise the harm that has been caused by you as a result of your conduct while treating a [PRIVATE].

Ms Da Costa submitted that your actions fell below the standards expected of a registered nurse and invited the panel to find that your actions amount to serious misconduct.

Ms Da Costa 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. She referred the panel to the cases of *Cohen v GMC* [2015] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). She submitted that limbs a), b) and c) of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by your past actions.

Ms Da Costa submitted that your past actions have put patients at unwarranted risk of harm, brought the nursing profession into disrepute and that you have breached one or more of the fundamental tenets of the profession.

Referring to the case of *Cohen*, Ms Da Costa submitted that your misconduct is not easily remediable due to the nature of your misconduct and the underlying attitudinal issues revealed by your conduct. She submitted that the conduct involved a serious departure from what would have been expected from a Registered Nurse and put Patient A at risk of harm. In referring to Patient A's witness statement and oral evidence, Ms Da Costa reiterated that Patient A suffered harm, which was continuing, including a decline in [PRIVATE].

Regarding the references you have provided, Ms Da Costa submitted that whilst these are positive and describe you as a good nurse and a good colleague, they do not address the serious misconduct found proved, which was attitudinal in nature. She submitted that the concerns do not relate to your clinical practice or ability as a nurse, however, you have not remediated the concerns in this case and that there is a risk of repetition.

Ms Da Costa invited the panel to consider all of the evidence before it and she submitted that given the seriousness of the misconduct, not making a finding of current impairment would undermine confidence in the nursing profession and the NMC as the regulator. She submitted that a fully informed member of the public would expect a finding of current impairment to be made, given the seriousness of the concerns.

Ms Da Costa invited the panel to find that your fitness to practise is currently impaired, on public protection and public interest grounds.

Ms Shah's submissions on misconduct and impairment

Ms Shah accepted on your behalf that the facts found proved amounted to misconduct. Ms Shah submitted that the panel may take the view that the allegations are so serious that there are grounds for a finding of current impairment on public interest basis.

In respect of public protection impairment, Ms Shah referred the panel to the various testimonials, training certificates and references you have provided and submitted that there is no risk of repetition.

Ms Shah submitted that you expressed deep remorse and regret during your oral evidence and in your reflection statement. She added that you sincerely apologise to Patient A, colleagues and members of the public for your conduct. She highlighted excerpts from your reflective statement, including your acknowledgement of wrongdoings, your complete lack of professional judgement and how you consider you have disappointed the entire healthcare system.

Ms Shah referred to some of the testimonials where the referees spoke highly of you and stated that you are an excellent clinician, easy to talk to and supportive.

Ms Shah submitted that you recognised the fact that it was not just one incident but rather a series of failures. She added that you recognized that you should not have accepted the Facebook request and you should not have engaged in a conversation [PRIVATE]. Ms Shah stated that you are committed to updating yourself and have provided additional reflections and training certificates. Ms Shah reminded the panel that you had engaged with these proceedings and cooperated at the outset of the original investigation.

Based on all of the above, Ms Shah requested the panel to make a finding that there is no risk of repetition on public protection.

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Cohen v GMC* [2007] EWHC 581 (Admin).

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

The panel first considered whether the charges found proved amount to misconduct. 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 breaches of the Code. Specifically:

'1.1 treat people with kindness, respect and compassion

6.2 maintain the knowledge and skills you need for safe and effective practice (in relation to charge 1d)i) only)

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice
To achieve this, you must:
19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public.

20 Uphold the reputation of your profession at all times
To achieve this, you must:
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers
20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

Consideration of misconduct within each charge

Charge 1a)

The panel considered you action in relation to contacting Patient A via Facebook in determining whether your failings amounted to misconduct. [PRIVATE] was a serious breach of the Code at paragraph 20.10 and the NMC guidance on social media, irrespective of who initiated the contact. Therefore, the panel determined that your conduct in charge 1a) amounted to serious misconduct.

Charge 1b)

[PRIVATE], you exhibited a clear breach of professional and ethical standards which undermines the trust and integrity of the healthcare profession and thus amounted to serious misconduct.

Charge 1c)

[PRIVATE]. Therefore, your conduct in charge 1c) amounted to serious misconduct.

Charge 1d)i)

The panel carefully considered your action in this charge which pertains to conducting an ECG on Patient A without offering a chaperone. The panel determined that conducting an ECG on a patient without offering a chaperone when one is appropriate shows a disregard towards the established protocols for patient safety and professional conduct. The panel was of the view that it is essential for healthcare professionals to adhere to guidelines and ensure the well-being and comfort of patients, especially during sensitive procedures like ECG. In the panel's judgement, conducting such procedures without offering a chaperone raises concerns about patient safety and professional ethics. The panel accepts that failing to offer a chaperone to a patient would not necessarily amount to serious misconduct, but the panel concluded that it did so in these circumstances, given Patient A's [PRIVATE]. Accordingly, the panel found this charge amounted to serious misconduct.

In all the circumstances, the panel concluded that your actions at charges 1a), 1b), 1c) and 1d)i), fell far below the professional standards expected of a registered nurse and would be regarded as deplorable by your fellow colleagues and members of the public.

The panel, therefore, determined that your actions in charges 1a), 1b), 1c) and 1d)i), breached the Code and were sufficiently serious to amount 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.

The panel considered the NMC Guidance on impairment which indicated that the panel must ask itself whether your ability to practise kindly, safely and professionally is impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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:

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

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

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) ...'

The panel in its assessment, determined that the first three limbs of the *Grant* test are applicable to this case, both in terms of you past actions and the risk of reoccurrence.

The panel determined that your failures in not maintaining professional boundaries caused actual harm to Patient A. The panel was of the view that the role of a nurse carries significant responsibility in upholding patient care, their best interests and ensuring safety and well-being.

The panel determined that your misconduct had breached some of the fundamental tenets of the nursing profession and that your actions brought the reputation of the profession into disrepute.

The panel then considered the factors set out in the case of *Cohen v GMC* [2007] EWHC 581 (Admin). It went on to consider whether you remained liable to act in a way that would put patients at risk of harm, would bring the profession into disrepute and breach the fundamental tenets of the profession in the future. In doing so, the panel considered whether there was sufficient evidence of insight and remediation.

The panel first considered whether your conduct was capable of being remedied. The panel considered the guidance FTP 13a, in the NMC's Fitness to Practice Library which stated that inappropriate personal or sexual relationships with patients, service users or other vulnerable people may not be possible to address by way of remedial steps such as training.

The panel noted that there may be some circumstances in which engaging in a sexual relationship with a patients could be remediable e.g., where a relationship is formed, and it is only known subsequently that the person was a patient.

The panel noted you had commenced your relationship with Patient A after a clinical consultation [PRIVATE]. Accordingly, the panel found that your conduct would be very difficult to remediate and there would need to be a high level of insight and remediation.

The panel found your act in recording Patient A [PRIVATE] because it amounted to an additional attitudinal concern involving a breach of trust and violation of Patient A's basic dignity.

The panel considered that your failure to offer a chaperone was capable of remediation and saw material in the bundle that suggested there was sufficient insight and remediation. The panel considered that this failure would be unlikely to be repeated.

Regarding insight, the panel determined that you have limited insight into your failures. For example, in your latest reflection statement presented today, where you expressed your '*sincere regrets and sadness for…hurting patient's feelings'* when it was obvious from Patient A's oral evidence that the position was much worse.

The panel considered your remediation bundle prepared in connection with this hearing. The panel acknowledged that you have demonstrated some insight into your wrongdoing and have expressed remorse and offered apologies and made admission in respect of charges 1a) and 1b). However, it is undermined by the fact that there is no detailed account of why you (a nurse) acted as you did towards your patient, what insight you have gained as to the impact on Patient A and why these actions were unacceptable. The panel has heard little from you as to how you would behave differently if you were faced with a similar situation in the future.

In terms of strengthening of practice, whilst the panel acknowledged your training records, testimonials and references provided, it had insufficient evidence before it to allay its concerns. The panel found that none of the referees mentioned any knowledge of the charges and were restricted to your clinical practice as a nurse. The panel was of the view that you remained liable to act in a way which could place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. Accordingly, the panel concluded 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 concluded, given the seriousness of your misconduct, the nature of it, that it occurred in the work context and with a vulnerable patient under your care, that public confidence in the profession and in the regulator would be undermined if a finding of impairment were not made in this case. Therefore, the panel also 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 on both public protection and public interest grounds.

Sanction

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

In reaching this decision, the panel 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 had particular regard to ‘Factors to consider before deciding on sanctions’, ‘Considering sanctions for serious cases’, and ‘Available sanction orders’,

including those on suspension orders and striking-off orders. Given the nature of this case and the panel's findings, it also had regard to Professional Standards Authority Guidance titled 'Clear sexual boundaries between healthcare professionals and patients' (2008).

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Da Costa submitted, on behalf of the NMC, that it is appropriate to impose a striking-off order in this case.

In relation to aggravating features, Ms Da Costa submitted that this was a significant breach of professional boundaries involving [PRIVATE]. She submitted that you have exhibited limited insight to your misconduct and that your actions were very serious which caused harm to Patient A.

In relation to mitigating features, Ms Da Costa submitted that there has been an admission of breaching professional boundaries [PRIVATE]. However, she submitted that you continue to deny some of the facts in relation to the charges.

Ms Da Costa submitted that taking no action or imposing a caution order would not be the appropriate nor proportionate order as the charges found proved are serious matters. She submitted that these sanctions would not be in the public interest either.

Ms Da Costa submitted that a conditions of practice order is a more suitable sanction for those cases that include clinical concerns and identifiable areas to ensure that nurses can be supported to safer practice. However, as of your case, Ms Da Costa submitted that this order would not be appropriate as there are no concerns relating to your clinical ability or practice, but instead there are attitudinal concerns. She submitted that the misconduct is serious in respect of charges 1b and 1c.

Ms Da Costa submitted that a suspension order is not sufficient to address the seriousness of the concerns identified and to meet the NMC's overarching objective. She submitted that the seriousness of the matters found proved in this case requires more than temporary removal from the register and that your actions amounted to a serious departure from what is expected of a nurse by breaching professional boundaries.

Ms Da Costa submitted that a striking-off order is the only appropriate and proportionate order that does not undermine the trust and confidence in the profession. She submitted that the nature and seriousness of misconduct called into question your integrity and professionalism. She submitted that the imposition of a striking-off order will send a clear message by enforcing public protection and addressing the public interest.

Ms Da Costa reminded the panel that Patient A is still suffering from serious harm as a consequence of your misconduct. [PRIVATE]. She submitted that your behaviour is fundamentally incompatible with remaining on the NMC register.

Ms Da Costa therefore invited the panel to impose a striking-off order.

Ms Shah referred the panel to your recent documents that it was provided with today, prior to the commencement of the sanction stage. These documents were two Safeguarding Certificates both completed on 15 December 2023, a testimonial from a former colleague dated 8 December 2023, and your further reflective piece of 7 pages. [PRIVATE].

Ms Shah submitted that your recent reflective piece demonstrates an increased level of insight. She submitted that, throughout the reflective piece, you have wholeheartedly accepted all accountability for your actions, expressed regret, and accepted that you breached professional boundaries. She submitted that you have also acknowledged that your actions were the result of attitudinal concerns and recognise that there is an underlying attitudinal problem that led to your behaviour.

Ms Shah submitted that you have further demonstrated numerous areas that you have had the chance to reflect on, and that this shows that you do recognise the full extent of harm that you caused to Patient A. She submitted that you recognise that [PRIVATE].

She submitted that you also recognise that your failure amounted to a breach of professional boundaries, and that it has affected the overall image of all those working in the health profession.

Ms Shah submitted that you recognise that you put your own needs and desires above what was required of you as a professional. She submitted that your actions were a violation of trust and that you accept that you did not do what you were supposed to be doing, which was focusing on]PRIVATE]. She submitted that you have demonstrated extreme regret [PRIVATE]. Despite you maintaining your innocence in respect of charge 1c, she highlighted your reflective piece which states:

[PRIVATE]

Ms Shah submitted that, [PRIVATE], you ensure that you continue to think about your actions and the reasons for your behaviour, and to also remind yourself that such conduct should never happen again. [PRIVATE] is your way of preventing repetition of such conduct and to address safeguarding issues.

In relation to mitigating features, Ms Shah submitted that, at the outset of the hearing, you have admitted the allegations to the extent that you fully recognised that you should not have been in a relationship with Patient A. She also submitted that you have fully engaged with this process, [PRIVATE]. She told the panel that you are deeply committed to your profession, and that the panel can see, from your recent testimonial, that you potentially have much to offer to the profession and are clinically sound.

Ms Shah submitted that a suspension order would be the appropriate and proportionate order in these circumstances, as opposed to a striking-off order. She submitted that a suspension order would have a huge professional impact on you as it demonstrates that you have engaged in unacceptable conduct. She submitted that it is in the public interest for a good nurse to return to nursing. Further, she submitted that a striking-off order would be disproportionate as you have engaged with the regulatory process, made attempts to remediate your failures, and demonstrated insight.

Ms Shah therefore invited the panel to impose a suspension order for a period of up to 12 months.

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.

With new information before it, the panel reconsidered your insight into the concerns found proved. Using your further seven-page reflection, the panel found that your insight had developed since the panel's determination on impairment. In respect of the finding on charge 1c, you continue to maintain your innocence, but the panel found you had nonetheless demonstrated sufficient insight into its seriousness and its potential for harm.

However, in respect of charge 1b, the panel found the insight still to be incomplete and lacking precision. Your reflections did not address why you felt it acceptable to [PRIVATE]. The panel also found insufficient consideration of the risk posed by [PRIVATE]. Nor have you provided it with any detailed reflections on how you might manage comparable situations in future [PRIVATE]. The panel recognised that you, in your reflections, had acknowledged the impact on Patient A but other aspects such as [PRIVATE] were not clearly addressed.

The panel took into account the following aggravating features:

- Abuse of a position of trust and professional boundaries
- Under-developed insight into your failings
- Conduct which caused harm to [PRIVATE] (Patient A)
- Embarked on a deliberate and continued relationship with Patient A [PRIVATE]
- [PRIVATE]

The panel also took into account the following mitigating features:

- Your admission of the relationship with Patient A and partial admission in respect of [PRIVATE]
- Your engagement in NMC proceedings
- You have undertaken some relevant training
- You have expressed remorse and apologised
- Testimonials attesting to your clinical practice, including a new testimonial from a someone who was aware of the nature of these proceedings

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.

The panel 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 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 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 your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case which do not relate to any concerns regarding your clinical practice. The misconduct identified in this case was not something that can be adequately addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be the appropriate sanction. The SG states that a 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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*

In this particular case, the panel determined that a suspension order would not be the sufficient, appropriate, or proportionate sanction. The panel considered that this was not a single instance of misconduct but an ongoing serious breach of professional boundaries [PRIVATE], and which clearly demonstrated attitudinal concerns and caused harm to the patient. [PRIVATE]. As noted above, the panel found your insight to be incomplete into concerns that were inherently difficult to remediate.

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

'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 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?'*

The conduct, as highlighted by the facts found proved, was a very significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register [PRIVATE]. The panel was of the view that to allow you to continue practising would undermine public

confidence in the profession and in the NMC as a regulatory body and corrode professional standards.

Balancing all of these factors, including your admissions and your reflective pieces, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to you bringing the profession into disrepute by your actions, 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 you 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 your 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 Ms Da Costa. She submitted that the NMC is seeking the imposition of an interim suspension order for a period of 18 months to cover any appeal period until the striking-off order takes effect.

Ms Da Costa submitted that an interim suspension order is necessary on the grounds of public protection and is also otherwise in the wider public interest.

The panel also took into account the submissions of Ms Shah. She submitted that you opposed the NMC's application to impose an interim suspension order. [PRIVATE].

Ms Shah submitted that it would be appropriate to impose either an interim conditions of practice order, or no order at all, for the appeal period.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the nature of the charges found proved and 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.

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

That concludes this determination.