Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 15 May – Friday 19 May 2023

Virtual Hearing

Name of Registrant:	**Thankgod Reuben**
NMC PIN	01A1030O
Part(s) of the register:	RN1: Adult nurse (21 December 2000)
Relevant Location:	Hampshire
Type of case:	Misconduct
Panel members:	Rachel Childs (Chair, Lay member) John McGrath (Registrant member) Ian Dawes (Lay member)
Legal Assessor:	Nigel Pascoe KC
Hearings Coordinator:	Anya Sharma
Nursing and Midwifery Council:	Represented by Ryan Ross, Case Presenter
Mr Reuben:	Not present and unrepresented
Facts proved:	All
Facts not proved:	None
Fitness to practise:	**Impaired**
Sanction:	**Conditions of practice order (9 months)**
Interim order:	**Interim conditions of practice order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Reuben was not in attendance and that the Notice of Hearing letter had been sent to Mr Reuben by recorded delivery and by first class post on 12 April 2023.

Mr Ross, 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 allegation, 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 Reuben'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 of the information available, the panel was satisfied that Mr Reuben 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 Reuben

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

Mr Ross submitted that Mr Reuben has had a patchy engagement with the NMC to date, with the exception of the returned Case Management Form dated 8 November 2022, where Mr Reuben set out the dates to avoid for the substantive hearing.

Mr Ross also referred the panel to the Proceeding in Absence bundle which includes email correspondence pertaining to the numerous attempts made by the NMC to contact Mr Reuben and, at one stage, with his representatives at Unison.

Mr Ross submitted that there had been little engagement from Mr Reuben with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

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 Reuben. In reaching this decision, the panel has considered the submissions of Mr Ross 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 Reuben;
- Mr Reuben's previous limited engagement with the NMC seems to have ceased and he has not responded to any of the letters sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A number of witnesses have been scheduled to attend virtually today to give live evidence, others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, in addition to clients who need their professional services;
- The charges relate to events that occurred in 2020;

- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Reuben 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 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. Furthermore, the limited disadvantage is the consequence of Mr Reuben's decision 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 Reuben. The panel will draw no adverse inference from Mr Reuben's absence in its findings of fact.

Details of charge

That you, a registered nurse:

1. On 13 October 2020:

    1. Took hold of Patient A's right wrist:

        i. when there was no clinical need to do so. **[PROVED]**
        ii. or, in the alternative, with more force that was clinically required. **[PROVED]**

    2. Twisted Patient A's right wrist:

i. when there was no clinical need to do so. **[PROVED]**

ii. or, in the alternative, with more force that was clinically required. **[PROVED]**

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Ross under Rule 31 in regard to hearsay evidence which is currently before the panel. It also had regard to Mr Ross' written submissions. He invited the panel to admit the following hearsay evidence which the NMC wishes to rely on in support of the charges:

Patient A's accounts of the incident with Mr Reuben, as reflected in:

- The Witness Statement of Witness 1 at paragraph 5.
- The Witness Statement of Witness 2 at paragraph 4.
- The Witness Statement of Witness 3 at paragraph 4 and his police referral.
- The safeguarding referral of Witness 4 which was exhibited to his witness statement.

Mr Ross submitted that whilst it is not part of the NMC's case, the panel may wish to consider admitting the hearsay evidence of what Mr Reuben and his colleague said happened with Patient A, as reflected in:

- The Witness Statement of Witness 1 at paragraph 6.
- Witness 1's typed note, dated 13 October 2020, following her interview with Mr Reuben

Mr Ross referred the panel to Rule 31(1) of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004:

Evidence

31.—(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).

Mr Ross also referred the panel to the guidance of the High Court in the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin).*

The decision to admit the witness statements despite their absence required the Panel to perform [a] careful balancing exercise. In my judgment, it was essential in the context of the present case for the Panel to take the following matters into account:

(i) whether the statements were the sole or decisive evidence in support of the charges;
(ii) the nature and extent of the challenge to the contents of the statements;
(iii) whether there was any suggestion that the witnesses had reasons to fabricate their allegations;
(iv) the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;
(v) whether there was a good reason for the non-attendance of the witnesses;
(vi) whether the Respondent had taken reasonable steps to secure their attendance; and
(vi) the fact that the Appellant did not have prior notice that the witness statements were to be read.

Mr Ross also referred the panel to the NMC Guidance on hearsay evidence, in particular:

Hearsay

[…]

Most commonly, hearsay evidence will involve a witness reporting what they were told about something in issue by another individual who is not themselves a witness, or a statement being placed before a panel without the maker of the statement giving oral evidence.

Hearsay evidence is not in-admissible just because it is hearsay in our proceedings. However there may be circumstances in which it would not be fair to admit it, for example where it is the sole and decisive evidence in respect of a serious charge and it isn't 'demonstrably reliable' and not capable of being tested […]

Hearsay statements will usually carry less weight than oral evidence because it cannot be tested. Hearsay evidence may also be inadmissible where the weight which could be given to it in the circumstances of the case is zero, even where there is other evidence that could 'corroborate' (or support) it […] Although it's not possible to provide a complete list of situations where this could happen, one example is where the evidence of a crucial witness is hearsay, and the fact that the nurse, midwife or nursing associate can't challenge it is so unfair that nothing else in the hearing process can avoid the unfairness.

Mr Ross submitted that he accepts that if Mr Reuben attended this hearing, he may have wanted to challenge the evidence that Patient A has given to all these different witnesses. Mr Ross submitted that the panel would need to factor this into its decision making.

Mr Ross submitted that the panel would also need to factor in that the charges against Mr Reuben are serious and, if they are established, they will have an adverse impact on his professional career.

Mr Ross submitted that it is the NMC's view that the accounts that Patient A gave to various witnesses after the incident are not the sole and decisive evidence in support of

the charges. He submitted that the most important evidence is the recording that was made of what Patient A said after the incident had taken place and the photographs which were taken of the bruising,

Mr Ross submitted that it cannot be said that the evidence of Patient A's accounts of the incident with Mr Reuben is not demonstrably reliable. He submitted that four of the five witnesses who gave live evidence before the panel communicated with Patient A on 13 October 2020, and their accounts are broadly similar and consistent. Mr Ross set out that this is not a case where the evidence cannot be tested; all witnesses were present and were able to be cross-examined.

Mr Ross submitted that there is no suggestion before the panel that any witness had reason to fabricate their evidence. Mr Ross set out that one can recognise that there is a degree of friction between Patient A's family and the care home, but this does not explain Witness 1 and Witness 4's contemporaneous evidence in respect of what Patient A told them. Mr Ross submitted that Witness 1 and Witness 4 have no reason to fabricate their evidence before the panel and were just reporting what Patient A told them.

Mr Ross submitted that unlike the case of *Thorneycroft*, this is not the case where witnesses have provided statements and have not turned up to the hearing to give live evidence before the panel. All witnesses have provided live evidence to the panel.

The panel was of the view that the evidence before it is relevant and fair. It considered that Mr Reuben has been aware of the nature of all the evidence for some time, as he did respond to it in the completed case management form in November 2022.

The panel first considered the hearsay evidence before it relating to the accounts given by Patient A to other witnesses.

The panel determined that the evidence before it is not sole and decisive, as there is other evidence in the form of photographs and a recording of Patient A's own account of the incident.

In regard to fabrication, the panel noted that there has been some disagreement between the family of Patient A and the care home regarding the standard of care provided to Patient A. However, the panel was of the view that this did not mean that the family were likely to fabricate evidence. Furthermore, Patient A gave his account of the incident to Witness 1 prior to any discussion with his family. This confirmed to the panel that there was little likelihood that any of the witnesses had misrepresented their discussions with Patient A, given that their account was broadly consistent with that of Witness 1.

The panel noted that the allegations against Mr Reuben are serious and could have an impact upon Mr Reuben's career if proven. It noted that it will need to carefully consider each charge, taking into account of the evidence before it. The panel noted that Mr Reuben has voluntarily absented himself from these proceedings, despite it being arranged in a time to suit him.

The panel was therefore of the view that the hearsay evidence is relevant and fair, there is no suggestion of any bad faith or fabrication and the accounts are consistent with other evidence before the panel. It therefore determined to admit the hearsay evidence into evidence.

The panel next went on to consider the hearsay application in relation to the accounts given by Mr Reuben of what happened with Patient A. The panel was of the view that it is fair and relevant to admit this hearsay evidence. It considered that this evidence is not sole and decisive, as the panel has before it an incident report completed by Mr Reuben, Witness 1's witness statement, Witness 1's live oral evidence and Patient A's case note entry. The panel took into account that there is no reason consider that Witness 1 has fabricated her evidence, and that her witness statement and oral evidence have been fairly consistent. The panel also noted that Witness 1 was fair to Mr Reuben in her evidence. Witness 1 said many positive things about Mr Reuben as a nurse. Her description of him was balanced, and she said that she felt the incident was unfortunate rather than intentional. Witness 1 had also only known Patient A and Mr

Reuben for a short period of time, and there was little opportunity for her to form a view one way or another about either of them.

The panel again took into account that the allegations against Mr Reuben are serious and could have an adverse impact upon Mr Reuben's career.

The panel was of the view that this should be admitted as hearsay evidence, as it is highly relevant given that it is an account from Mr Reuben, being his account of what happened. This is particularly important given that he is not present at the hearing.

Decision and reasons on facts

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 Mr Ross on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mr Reuben.

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: Care Home Manager of Wessex Lodge Care Home
- Witness 2: Patient A's son
- Witness 3: Patient A's grandson

- Witness 4: Ambulance Technician at South Central Ambulance Service NHS Foundation Trust

- Dr 1: GP working into Wessex Lodge Nursing Home at the time of the incident

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 the NMC.

Whilst the panel fully recognises the background of the case, it has firmly concentrated on the evidence of what did and did not happen on 13 October 2020.

The panel noted that the incident, which took place on 13 October 2020, did not have any independent witnesses. The panel also noted that in Mr Reuben's case management form dated 8 November 2022, he referenced his 34 years of experience as a nurse, stating that if the incident involving Patient A on 13 October 2020 were true, it would be a 'wicked action'. The panel do not have any other evidence before it of any other regulatory concerns or issues relating to Mr Reuben's nursing practice.

However, there are conflicting accounts about what happened on 13 October 2020. Mr Reuben has provided an account of events in his written incident report on 13 October 2020 which was inconsistent with the account he gave to Witness 1, in relation to whether or not Patient A stood up and in relation to whether Patient A twisted his own wrist. Mr Reuben explained that the injury to Patient A was caused by banging his wrist on the chair. The panel do not have a definitive answer about the kind of chair that was in the room. Dr 1 in his evidence told the panel that there were chairs in that room which had wooden arms. The panel have had sight of photos which show Patient A sitting in a chair with wooden arms, although it is a red chair and the notes made by Witness 1 regarding the events describe it as a green chair.

The panel considered that it has heard evidence from five witnesses who broadly present the same consistent version of events that Patient A had provided. Patient A was clear in his recollection that Mr Reuben had grabbed his arm and twisted it to make him drop his inhaler. The panel has heard from all of the witnesses that Patient A was lucid, and the effects of his dementia fluctuated, but on the day in question, 13 October 2020, Patient A seemed to be in a good state in terms of his dementia. This is supported by the fact that Patient A approached Witness 1 quickly after this incident took place to report what had happened.

Even the day after the incident occurred, Patient A's account of events to Dr 1 was consistent and not vague. The panel is of the view that there is no reason why Patient A would have fabricated that situation, despite his dementia and health issues. The panel has before it photographs of extensive bruising which appeared soon after the incident, a recording of Patient A's account to his son and contemporaneous written records, all of which support Patient A's account. Patient A's conduct before and immediately after the incident appeared to be consistent with someone who believed he had been harmed by Mr Reuben.

The panel considered the written notes of the event on 13 October 2020, where it states that Patient A was very clear when speaking to Ms 1 in the lift that *'[Mr Reuben] grabbed hold of my wrist'* and *'look what [Mr Reuben] has done to me'* whilst showing his arm. When speaking to Witness 1, Patient A stated that Mr Reuben had *'grabbed hold of my wrist and twisted it'.* The panel noted that all witnesses were of the view that Patient A's account was contemporaneous, clear, cogent and consistently repeated.

Taking all of this into account, the panel were satisfied that it prefers Patient A's version of events.

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

Charge 1a

That you, a registered nurse:

1.On 13 October 2020:

a. Took hold of Patient A's right wrist
    i. when there was no clinical need to do so
    ii. or, in the alternative, with more force that was clinically required

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, including the photographs and documentary evidence.

The panel considered that there was no clinical need for Mr Reuben to take hold of Patient A's right wrist. It noted that while it had been agreed that Patient A should not retain his inhaler, there was no need to remove it forcibly from him and there were other alternative courses of action which were available to Mr Reuben.

The panel considered the written and oral evidence of Witness 1 in this regard. The panel noted that Witness 1 in her witness statement had set out the following:

> *'… I would have advised on this occasion that [Mr Reuben] left Patient A with the inhaler and returned a short time later to request it back or ask another member of staff to try on his behalf. In a care home environment there is no need to rush things as this can serve to confuse our residents with dementia'*

The panel was therefore of the view that there is no evidence before it that justified Mr Reuben's physical intervention to remove Patient A's inhaler from him and there was no clinical need to do. The panel considered that as there was no clinical need or reason for Mr Reuben to take hold of Patient A's wrist, therefore no force was required.

The panel therefore find this charge proved.

Charge 1b

b. Twisted Patient A's right wrist:
    i. When there was no clinical need to do so.
    ii. Or, in the alternative, with more force that was clinically required

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Patient A, Witness 1, Witness 2, Witness 3, Witness 4 and Dr 1. The panel also took into account its decision and reasons in relation to charge 1a.

The panel considered the contemporaneous accounts from all of the witnesses of Patient A's account of the incident and what had happened. The panel noted that the same account had been given by Patient A to several people, some of whom knew him well and others who did not, and this account remained clear and consistent over the course of the next 24 hours. The panel noted that it had evidence before it that Patient A was lucid and coherent on the day of the incident. It took into account Dr 1's witness statement, which sets out that Patient A's account *'was quite definite and not vague or unsure'*.

The panel considered Witness 1's oral evidence about what Patient A had told her, as well as the contemporaneous note dated 13 October 2020 which was made shortly after the incident. Patient A had told Witness 1 that Mr Reuben had grabbed his wrist and *'…twisted it with both hands. I then dropped it as he had hurt my arm'.*

The panel also had the opportunity to listen to the voice recording of the conversation between Patient A, Witness 2 and Witness 3 which also took place shortly after the incident had taken place. It noted that Patient A had used the same form of words when describing the incident, in that Mr Reuben had *'twisted my arm' and that it 'really hurt'.* The panel also had sight of images which were taken during a Facetime video call with Witness 2 immediately after the incident, which shows the bruising on Patient A's wrist.

The panel in this regard took into account the oral evidence of Dr 1, who told the panel that the bruises in the photographs were not old given the colour of the bruise.

The panel noted that Patient A's family were not happy with the standard of care that Patient A was receiving at the Home but considered Witness 1's evidence in which she confirmed that Patient A went to speak to her prior to phoning his family on 13 October 2020. There is therefore no suggestion of manipulation or fabrication on part of the family Patient A had already communicated that his arm had been grabbed and twisted before he spoke to any family member.

The panel therefore find this charge proved. Whilst it is proved, the panel do not consider that the evidence suggests a deliberate malicious act. The panel felt unable to establish that this was intentional twisting or a twisting that occurred as Mr Reuben tried to get the inhaler. It considered that there is not enough evidence to say that Mr Reuben tried to deliberately harm Patient A, but Patient A's account is clear that he was hurt as a result of Mr Rueben's actions.

The panel considered that Mr Reuben had been instructed to remove the inhaler from Patient A, as there had been previous difficulties when Patient A misplaced his inhaler and could not find it when it was needed. It noted that it had heard evidence from Witness 1 and Dr 1 that Mr Reuben's communication was not always clear. Dr 1 explained *'I have heard of a few incidents where his judgement and communication has been poor, mostly when placed in a position of higher responsibility than perhaps he should be'.*

The panel was therefore of the view that on the balance of probabilities it was more likely than not that Mr Reuben, having been instructed to not allow Patient A to remain with his inhaler, tried to remove the inhaler when Patient A had decided that he wanted to keep it. The panel have heard evidence from Witness 1 that there were other options, for example to leave the inhaler with Patient A, go back another time, get someone else to do it, that Mr Reuben could have taken.

Further, as explained in its findings in relation to Charge 1, the panel is satisfied that there was no clinical need for Mr Reuben to twist Patient A's arm to get him to drop the inhaler, given that there were other courses of action open to him at this point. The panel was of the view that the use of force was wholly unnecessary given all the circumstances.

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 Reuben'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 suitability to remain on the register unrestricted.

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 Reuben'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 Ross 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 Ross identified the specific, relevant standards where Mr Reuben's actions amounted to misconduct.

Mr Ross invited the panel to conclude that both charges are sufficiently serious to amount to misconduct, particularly charge 1b. He submitted that there was unwanted contact between Mr Reuben and a patient who was highly vulnerable. Mr Ross submitted that the panel may be of the view that this is a one-off incident but should take into consideration the seriousness of the facts found proved. He set out that the panel has had sight of photographs of Patient A's bruising, who was a vulnerable and perhaps at times somewhat confused patient, and it appears that force was used against him to extract the inhaler.

Submissions on impairment

Mr Ross 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).

Mr Ross submitted that the panel must consider both past misconduct and the present day and ask itself whether fitness to practise has been and currently remains impaired by that misconduct. He submitted that it is the NMC's case that Mr Reuben does remain impaired.

Mr Ross submitted that in Mr Reuben's mitigation, he has had no regulatory issues with the NMC up until this point. Mr Reuben had stated in the case management form dated November 2022 that he has been practising as a nurse for 34 years.

Mr Ross informed the panel that there are no interim conditions of practice on Mr Reuben's nursing practice but set against that the panel will want to weigh the fact that there is no evidence before it of any insight or remorse by Mr Reuben. Mr Ross submitted that it is therefore the NMC's view that this points to a risk of repetition.

Mr Ross submitted that Mr Reuben's engagement with the NMC has been limited and somewhat patchy. He submitted that whilst it appears to be a one-off incident, it was however very serious involving unwanted contact with a highly vulnerable patient.

Mr Ross submitted that the panel should consider public protection and the public interest.

In regard to public protection, the panel may wish to weigh up whether the public are put at risk by a potential repetition of this conduct by a registrant who has shown no insight or remorse. In regard to public interest, the panel may wish to consider what an informed member of the public would make of this situation, were they to learn all of the findings. Mr Ross invited the panel to conclude that an ordinary member of the public would be troubled, and this would have an adverse impact not only on the regulator but also on the profession more widely.

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, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

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

> *You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld…*
>
> *1 Treat people as individuals and uphold their dignity*
> *To achieve this, you must:*
> *1.1 treat people with kindness, respect and compassion*
> *1.2 make sure you deliver the fundamentals of care effectively*
> *1.5 respect and uphold people's human rights*
>
> *4 Act in the best interests of people at all times*
> *To achieve this, you must:*
> *4.2 make sure that you get properly informed consent and document it before carrying out any action*
>
> *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*
> *20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that whilst this is a one-off incident, the charges in this case are serious. Patient A, a highly vulnerable patient, was caused real harm and distress as a result of Mr Reuben's misconduct, which caused an injury. His actions were wholly unnecessary and inappropriate given that there were clear alternative ways in which Mr Reuben could have handled the situation. A nurse of his experience would have been expected to understand this.

The panel was of the view that Mr Reuben's actions did fall seriously short of the conduct and standards expected of a nurse and therefore amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Reuben's fitness to practise is currently 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. 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 is of the view that a vulnerable patient was put at real risk and was caused physical and emotional harm as a result of Mr Reuben’s misconduct. Mr Reuben’s misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mr Reuben has not attended the hearing and has not provided the panel with any evidence of insight, reflection, remediation, relevant training undertaken, or testimonials which address the regulatory concerns. The panel considered that Mr Reuben has not demonstrated any remorse and has not provided an apology, even in the contemporaneous accounts at the time of the incident. The panel had regard to the fact that Mr Reuben has a long career and there are no

other regulatory concerns which relate to his nursing practice as far as the panel is aware.

The panel recognises Mr Reuben's right to dispute how Patient A suffered the bruising to his right wrist. The panel also noted that there has been no evidence provided of any empathy or understanding on Mr Reuben's part, that Patient A was a vulnerable person who suffered injury, pain and distress as a result of Mr Reuben's actions.

The panel was satisfied that the misconduct in this case is potentially capable of being addressed, but it had no evidence before it that Mr Reuben had taken any steps to do so. The panel was of the view that as harm has been caused in the past, a real risk remains that potential harm could be caused in the future.

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

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is also required because an informed member of the public would be concerned to learn that a nurse who has injured a vulnerable elderly patient, causing significant bruising to his wrist, was permitted to practise unrestricted without having addressed the misconduct.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Reuben's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of nine months with a review. The effect of this order is that Mr Reuben's name on the NMC register will show that he is subject to a conditions of practice order and anyone who enquires about his registration will be informed of this order.

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 Ross informed the panel that the NMC is seeking the imposition of a conditions of practice order to run for a period between six and nine months with a review. He referred the panel to the aggravating and mitigating features of the case.

Mr Ross set out that in considering sanction, the panel will need to consider whether the least severe sanction sufficiently addresses the concerns that have been identified.

Mr Ross submitted that the panel may decide not to take any action at all, but the NMC would say that this is not an appropriate sanction in light of the panel's finding of current impairment. Further, the panel might want to consider whether a caution order is appropriate. Mr Ross submitted that the panel will take into consideration the fact that a caution order is only really appropriate when there is no risk to the public.

Mr Ross submitted that it is the NMC's view that a conditions of practice order would be the most appropriate sanction. He referred the panel to the NMC Sanctions Guidance, which sets out that a conditions of practice order might be considered best when there are no deep-seated attitudinal problems, where there is no evidence of general incompetence, when the nurse is willing to learn and improve and where there are identifiable areas for improvement.

Mr Ross submitted that when dealing with these four features in this case, it can be said that there is no evidence of deep-seated attitudinal concerns and no evidence of general incompetence. Mr Ross submitted that the NMC takes a neutral stance on whether Mr Reuben is willing to learn and improve as he has to date had limited engagement with the NMC. He submitted that there are identifiable areas for improvement.

Mr Ross submitted that the NMC does not have a position as to what the conditions of practice may be. He submitted that the panel may be of the view that Mr Reuben would benefit from some training in effective communication skills, training relating to elderly patients or patients who suffer from mental health problems, or patients who suffer from dementia. Mr Reuben may also benefit from regular meetings, with a line manager, supervisor, or a mentor figure who could work with him to create and implement a plan to ensure that he meets the relevant criteria in his clinical practice.

Mr Ross submitted that the panel may be of the view that a suspension order might be appropriate, but this is usually only when there are attitudinal problems, and there is no evidence of that in this case.

Mr Ross submitted that the NMC seek a conditions of practice order for a period between six and nine months with a review, which would allow Mr Reuben sufficient time to comply with conditions and provide evidence of doing so.

Decision and reasons on sanction

Having found Mr Reuben'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:

- Abuse of a position of trust in respect of dealing with a vulnerable elderly patient in a care home during the Covid-19 pandemic
- Lack of insight into failings
- Lack of remorse
- Lack of remediation
- Mr Reuben's misconduct caused actual harm to a vulnerable elderly patient in respect of physical and emotional upset, alongside significant bruising to the hand

The panel considered that there were no mitigating features in this case.

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 Reuben'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 Reuben's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Reuben's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential … to respond positively to retraining;*
- *…*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel consider that there is no evidence of deep-seated personality issues in Mr Reuben's case. It took into account that the regulatory concerns do seem to centre on Mr Reuben's ability to communicate with patients who are suffering from dementia or have some mental health difficulties and were therefore of the view that some retraining in communication, for example, may assist. The panel further noted that there is no wider evidence of general incompetence.

The panel was of the view that it is in the public interest to return effective nurses to practice, and this is the least restrictive sanction. The panel considered it could formulate conditions which would sufficiently protect the public. It considered that it was in the public interest that, with appropriate safeguards, Mr Reuben should be able to return to practise as a nurse. It therefore determined that this is the most proportionate sanction to put in place.

The panel had regard to the fact that this was a one-off incident which occurred in 2020 and that, other than on this occasion, Mr Reuben has had an unblemished career of 34 years as a nurse.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Reuben's case as there were no wider concerns about Mr Reuben's practice. In the last analysis, the panel consider that this is not about the deliberate infliction of cruel violence to an elderly vulnerable patient, but rather, a very bad professional misjudgement: failing to consider perfectly satisfactory alternative courses of action, resulting in the totally inappropriate execution of what the registrant believed was his professional duty to remove the inhaler from Patient A.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

> 'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.
>
> 1. You must keep the NMC informed about anywhere you are working by:
>   a) Telling your case officer within seven days of accepting or leaving any employment.
>   b) Giving your case officer your employer's contact details.
>
> 2. You must keep the NMC informed about anywhere you are studying by:

a) Telling your case officer within seven days of accepting any course of study.
b) Giving your case officer the name and contact details of the organisation offering that course of study.

3. You must immediately give a copy of these conditions to:
   a) Any organisation or person you work for.
   b) Any agency you apply to or are registered with for work.
   c) Any employers you apply to for work (at the time of application).
   d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
   e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

4. You must tell your NMC case officer, within seven days of your becoming aware of:
   a) Any clinical incident you are involved in.
   b) Any investigation started against you.
   c) Any disciplinary proceedings taken against you.

5. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
   a) Any current or future employer.
   b) Any educational establishment.
   c) Any other person(s) involved in your retraining and/or supervision required by these conditions

6. You will send the NMC a report seven days in advance of the next NMC hearing or meeting from either:
    - your clinical supervisor
    - your line manager.
    - mentor or supervisor.

7. You must ensure that you are directly supervised any time you are working by another registered nurse until such time that your manager or supervisor deems you competent to practice independently and safely.

8. You will not work as a nurse without supervision until you have completed relevant training in respect of:
    - Caring for elderly patients with dementia and their mental health
    - Physical intervention
    - Communication skills with patients.

9. You will send your NMC case officer evidence that you have successfully completed the training detailed in condition 8.

10. You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about caring for elderly patients with dementia and their mental health, physical intervention and communication skills with patients. You must:

    - Send your NMC case officer a copy of your PDP seven days before the next NMC hearing
    - Send your case officer a report before the next NMC hearing. This report must show your progress towards achieving the aims set out in your PDP.

11. You must prepare a reflective statement in advance of your next NMC hearing. Your reflective statement should address the regulatory concerns identified by the panel.

The period of this order is for nine months. The panel has decided that this period of time is necessary to enable Mr Reuben to address the regulatory concerns identified. The panel is unclear regarding Mr Reuben's current employment status and a period of nine months would enable him to work with an employer to comply with the conditions of practice order. Furthermore, the panel was of the view that nine months would satisfactorily address the public interest concerns.

Before the order expires, a panel will hold a review hearing to see how well Mr Reuben has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mr Reuben's engagement with the NMC
- Mr Reuben's attendance at a future NMC hearing
- Evidence of up-to-date training addressing the regulatory concerns
- Evidence of Mr Reuben's compliance with the conditions of practice prior to the next NMC hearing
- Up-to-date testimonials and references from those that Mr Reuben works with.

This will be confirmed to Mr Reuben in writing.

Interim order

As the conditions of practice 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 Reuben's own interests until the conditions of practice order takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Mr Ross. He submitted that the NMC seek an interim conditions of practice order on identical terms and for the same reasons given at the sanction stage, which will cover the 28-day appeal period until the substantive conditions of practice order comes into place.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months to cover the 28-day appeal period.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Mr Reuben is sent the decision of this hearing in writing.

That concludes this determination.