

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

**Substantive Meeting
Monday, 19 August 2024**

Virtual Meeting

Name of Registrant: Denish Devasia

NMC PIN: 21F1492O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 21 June 2021

Relevant Location: Gateshead

Type of case: Misconduct

Panel members: Anne Ng (Chair, lay member)
Jillian Claire Rashid (Registrant member)
Barry Greene (Lay member)

Legal Assessor: Ian Ashford-Thom

Hearings Coordinator: Ruth Bass

Facts proved by admission: Charge 1a and 1b

Facts proved: Charge 2a and 2b

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Suspension order with a review (12 months)**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Devasia's registered email address by secure email on 1 July 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, the time and date from which the meeting would take place, and the fact that this meeting would be heard virtually.

In light of all of the information available, the panel was satisfied that Mr Devasia has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

'That you a registered nurse:

- 1. On or around 3 October 2022, whilst working a night shift at Addison Court Care Home, you appropriated [PRIVATE]:*
 - a. Oxycodone.*
 - b. Midazolam.*

- 2. And your actions specified in charge 1 were dishonest in that:*
 - a. You knew that the medication did not belong to you.*
 - b. You knew that you had not been authorised to do so.*

And in light of the above your fitness to practise is impaired by reason of your misconduct.'

Background (as taken from the NMC master bundle)

'2. Mr Devisha was referred to the NMC on 5 October 2022 by the Operation Support Manager at Prestwick Care Group. Mr [Devasia] was employed as a Band 5 registered nurse at Addison Court, a nursing home part of Prestwick Care Group. Mr [Devasia] had been employed at Addison Court since August 2021. No previous concerns had been raised regarding Mr [Devasia] during his tenure at Addison Court.

3. On the night shift of 3/4 October 2022 Mr Devisha was the nurse in charge. At approximately 23:30 the On-Call Manager for Prestwick Care received a call from staff members at Addison Court. [PRIVATE].

4. Paramedics arrived at the scene following an emergency call [PRIVATE]. The paramedics attended the scene at 00:04 on 4 October 2022. [PRIVATE], a paramedic noticed the drug room was open, [PRIVATE].

5. The On-Call Manager, Director of Care, and another registered nurse also attended the scene where they met with paramedics [PRIVATE].

6. [PRIVATE].

7. Upon this advice, staff members checked the treatment room in Addison Court. [PRIVATE]. Oxycodone is a Scheduled 2 controlled drug, and Midazolam a Schedule 3 controlled drug. Both drugs can be, inter alia, used in end of life treatment and/or pain relief.

8. [PRIVATE].

9. Subsequently, at local level, it was discovered that Mr [Devasia] had appropriated the medication from a sharps bin. When asked how he obtained the medication, he explained that he had taken medications that belonged to a deceased patient. He explained that he took the medications [PRIVATE]. Following the internal disciplinary process, Mr [Devasia] was dismissed.

10. The police considered the matter, however, no further action was taken in light of Addison Court and Prestwick not wishing to pursue charges.'

Decision and reasons on facts

At the outset of the meeting, the panel had regard to an email from Mr Devasia dated 25 October 2022 which states:

'...I admits (sic) the allegations against me...'

The panel was satisfied that Mr Devasia had made full admissions to charges 1a and 1b. It therefore found charge 1 proved in its entirety, by way of Mr Devasia's admissions.

It was not clear to the panel whether Mr Devasia's admission set out in his email dated 25 October 2022 included the dishonesty charge in relation to charges 2a and 2b. The panel therefore went on to determine the remaining facts in relation to charges 2a and 2b.

In reaching its decisions on the remaining facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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

The panel had regard to the written statements of the following witness on behalf of the NMC:

- Ms 1: A paramedic who attended [PRIVATE] 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 documentary evidence provided by the NMC.

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

Charges 2a and 2b

'And your actions specified in charge 1 were dishonest in that:

- a. You knew that the medication did not belong to you.*
- b. You knew that you had not been authorised to do so.'*

These charges are found proved.

In reaching this decision, the panel took into account the witness statement of Ms 1 which states:

'8. [PRIVATE]. Then I noticed that where he was in the corridor it was right opposite the medicine room, and the medicine trolley was out. [PRIVATE].

9. [PRIVATE].

10. [PRIVATE]. At that point, I had a look in the drug room and that's when I noticed a syringe with a lady's name on (I cannot remember their name now). It was an end-of-life drug. I think it was a mixture of Oxycodone with something else. [PRIVATE]. He said they were a patient who had died a few days previous. [PRIVATE].'

The panel also had regard to two local interviews with Mr Devasia on 12 and 24 October 2022 where he made admissions to removing the prescribed drugs that had been disposed of into the sharps bin several days earlier.

The panel was satisfied from Ms 1's evidence, and the local interviews, that Mr Devasia knew that the medication he had taken belonged to someone else (a deceased patient), and that Mr Devasia had taken the drugs knowing that they did not belong to him and that he had not been authorised to do so.

The panel determined that Mr Devasia's actions, in knowingly taking medication that did not belong to him and he was not authorised to take, would be regarded as dishonest by the objective standards of ordinary decent people. It therefore found charges 2a and 2b proved.

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 Devasia's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the NMC's written representations on misconduct. The NMC referred the panel to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 (*Roylance*) 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.'*

The NMC invited the panel to take the view that the facts found proved amount to misconduct and referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision. The NMC identified specific, relevant standards of the Code where it submitted Mr Devasia's actions amounted to misconduct.

The NMC stated the following:

'16. It is therefore submitted that Mr Devisha's conduct at charges 1 and 2 inclusive fell far short of what is expected of a registered nurse. Mr Devisha significantly departed from the principles of promoting professionalism and trust by dishonestly misappropriating the medication [PRIVATE]. This conduct would be seen as deplorable by fellow practitioners and would damage the trust the public places in the profession.

...

20. As such, the NMC consider the misconduct demonstrated by Mr Devisha as serious.

Mr Devisha sought to circumvent these controls in that he: i) took the controlled drugs when they were not prescribed and/or intended for him, ii) [PRIVATE], iii) [PRIVATE], and iv) failed to close and lock the drugs rooms, thereby leaving service users and/or other staff members at risk. Moreover, his actions were dishonest in that he knew the medication was prescribed to a deceased patient, knew he was not entitled to take the medication, but did so anyway.'

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has been referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) (*Grant*) and is invited to find Mr Devasia's fitness to practise impaired on both public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance*, *Grant* and *Cohen v GMC* [2007] EWHC 581 (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 Devasia's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

20.4 keep to the laws of the country in which you are practising

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the breaches were fundamental and were sufficient to amount to misconduct as set out below.

The panel took into account that Mr Devasia had taken controlled drugs from his place of work that belonged to a deceased patient. Mr Devasia knew that these controlled drugs had not been prescribed to him and they were not his to take. [PRIVATE]. Mr Devasia also left the controlled drug cupboard open, so there was a further risk to patients that medication could have been taken or misused. Further, Mr Devasia's actions in taking the drugs were dishonest.

Considering all of the above, the panel was satisfied that Mr Devasia's actions would be seen as deplorable by fellow nurses. It determined that this was behaviour which did fall seriously short of the standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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/their fitness to practise is impaired in the sense that S/He/They:

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

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

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

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

The panel determined that limbs a, b, c and d of the “test” were engaged.

With regard to limb a, the panel found that by leaving the drug cabinet open [PRIVATE], patients were put at an unwarranted risk of harm. With regard to limb b, the panel was satisfied that Mr Devasia had breached fundamental tenets of the nursing profession; namely to *‘Prioritise people’* by *‘delivering the fundamentals of care effectively’*. With regard to limb c, the panel was satisfied that the breach of these fundamental tenets had brought the reputation of the nursing profession into disrepute. With regard to limb d, the panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

In considering whether Mr Devasia had demonstrated any insight into his misconduct, the panel had regard to his email 25 October 2022 where he admitted the charges. It also had regard to the local Investigation Meeting on 12 October 2022 and noted that Mr Devasia had also admitted his wrongdoing during the early stages of the local investigation and had shown some remorse for his actions. It noted in particular Mr Devasia’s comment that *‘There is no excuse for what I did. At the time, that was my thought process. I am really sorry for the consequences. I am really sorry.’*

During a further local interview on 24 October 2022, Mr Devasia also stated:

‘...I don’t have anything to defend. I know that I have made a huge mistake.’

The panel was of the view that Mr Devasia had shown remorse for his actions. However, it found Mr Devasia's insight into the potential impact on patients, his colleagues and the nursing profession to be lacking. The panel found that Mr Devasia had shown concern relating to possible personal consequences regarding his nursing career but had failed to demonstrate an understanding of how his actions put patients at a risk of harm, impacted his colleagues who were present, or impacted negatively on the reputation of the nursing profession. The panel also found that Mr Devasia had failed to demonstrate how he would handle the situation differently in the future. The panel therefore found Mr Devasia's insight into his misconduct to be introspective and limited.

The panel noted that there has been no engagement with the NMC from Mr Devasia since his email dated 25 October 2022. Mr Devasia had not provided any reflection to be considered by the panel, character references, or evidence of any steps he had taken to address the concerns. Further, the panel had no information regarding Mr Devasia's current working status. The panel therefore had no evidence of Mr Devasia having strengthened his practice before it to consider.

The panel was of the view that the misconduct in this case was not easily remediable. It had regard to its dishonesty finding, in Mr Devasia's taking of the controlled drugs, and found that this was behaviour that would be difficult to remediate.

In light of there being no evidence of Mr Devasia having strengthened his practice, and the limited insight found, the panel determined that there is a risk of the misconduct being repeated. It therefore found that a finding of impairment is necessary on the ground of public protection.

The panel bore in mind 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 took into account that whilst being the only registered nurse on duty, Mr Devasia dishonestly took

controlled drugs belonging to a deceased patient, [PRIVATE]. The panel was satisfied that members of the public, fully informed of the circumstances of this case, would be concerned by Mr Devasia's actions. It determined 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 Devasia's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of one year. The effect of this order is that the NMC register will show that Mr Devasia's registration has been suspended.

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

Representations on sanction

The panel noted that in the Notice of Meeting, dated 1 July 2024, the NMC had advised Mr Devasia that it would seek the imposition of a suspension order if it found Mr Devasia's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mr Devasia'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:

- Mr Devasia was the nurse in charge, and the only registered nurse on duty
- Mr Devasia had acted dishonestly in appropriating medication [PRIVATE]
- Mr Devasia demonstrated a lack of professionalism and trust
- Mr Devasia put patients at an unwarranted risk of harm
- Mr Devasia's actions caused his colleagues to divert their attention from patient care.

The panel also took into account the following mitigating features:

- Mr Devasia's misconduct was a single one-off incident
- [PRIVATE]
- Mr Devasia made early admissions at local and NMC level
- Mr Devasia has demonstrated remorse for his actions
- No actual harm to patients occurred.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection issues identified and 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 public protection issues identified and the seriousness of the case, an order that does not restrict Mr Devasia'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 Devasia's misconduct was not at the lower end of the spectrum and that a

caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Devasia'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 fact that the misconduct did not relate to Mr Devasia's clinical competence but related to his dishonest conduct in taking [PRIVATE] controlled drugs whilst on duty. The panel was of the view that there were no practical or workable conditions that could be formulated, which would adequately protect the public, given the nature of the charges in this case. It also noted that Mr Devasia has not engaged with the NMC since 25 October 2022, and was of the view that there was no evidence he would engage with a conditions of practise order in any event. Furthermore, the panel concluded that the placing of conditions on Mr Devasia's registration would not adequately address the seriousness of this case.

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

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

Whilst the panel acknowledged that Mr Devasia's insight into his misconduct was limited, it took into account that this was a case where there was a single instance of misconduct, and that there was no evidence of repetition since the incident. Further the panel was of the view that although it had made a finding

of dishonesty, there had been no repetition of the dishonest conduct. Further, in light of the early admissions made by Mr Devasia and the remorse demonstrated, the panel was of the view that there was no evidence of Mr Devasia having a deep-seated attitudinal issue. It was satisfied that in this case, the misconduct was not fundamentally incompatible with Mr Devasia remaining on the register.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. The panel took into account that this was a one-off incident where no patient had come to harm.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Devasia's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Devasia. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for the maximum period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A reflective piece addressing how Mr Devasia's misconduct impacted upon patients, family, colleagues and the nursing profession
- Testimonials and references from any paid or unpaid work
- Details of Mr Devasia's work whether paid or unpaid during the period of suspension
- Mr Devasia's engagement with the NMC process
- Attendance at any future hearing.

This will be confirmed to Mr Devasia in writing.

Interim order

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

Representations on interim order

The panel took account of the representations made by the NMC that:

'In the event that a sanction resulting in the restriction of Mr Devisha's practice is imposed, it is also necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order of 18 months to cover the appeal period.'

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to ensure that Mr Devasia is not able to work during the 28-day appeal period, or until any appeal lodged concludes.

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

That concludes this determination.