Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Virtual Hearing

Wednesday 6 November 2024

Thursday 12 December 2024 – Friday 20 December 2024

Faculty of Health and Life Sciences

Joel Joffe Building - Delta 900 Oxford Brookes University, Welton Rd, Swindon SN5 7XQ

Tuesday 10 December 2024

Name of Registrant:	**Lesley Dougherty**
NMC PIN:	80H1365E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – (September 1998) Registered Nurse – Sub Part 2 Adult Nursing – (December 1982)
Relevant Location:	Swindon
Type of case:	Misconduct
Panel members:	Dave Lancaster (Chair, Lay member) Melanie Lumbers (Registrant member) Matthew Wratten (Lay member)
Legal Assessor:	Andrew Granville-Stafford (6 November 2024) Nigel Ingram (10 – 20 December 2024)
Hearings Coordinator:	Charis Benefo
Nursing and Midwifery Council:	Represented by Uzma Khan, Case Presenter (6 November 2024) Represented by Benjamin D'Alton, Case Presenter (10 – 20 December 2024)

Mrs Dougherty:	Not present and unrepresented
Outcome of special measures hearing on 6 November 2024:	Reasonable adjustments agreed in respect of Patient A Panel agreed to the presence of a supporter for Mrs Dougherty, but reserved a decision on the duration of the session
Facts proved:	Charges 1, 2 and 3
Facts not proved:	Charges 4 and 5
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 partly in private

At the outset of the hearing, Ms Khan, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held partly in private on the basis that proper exploration of Mrs Dougherty's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 decided to hold in private the parts of this hearing that involve reference to [PRIVATE], as and when such issues are raised in order to [PRIVATE].

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Dougherty was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 1 October 2024.

Ms Khan submitted that the NMC had complied with the requirements of Rules 11 and 34.

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 Mrs Dougherty's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Dougherty 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 Mrs Dougherty

The panel next considered whether it should proceed in the absence of Mrs Dougherty. It had regard to Rule 21 and heard the submissions of Ms Khan who invited the panel to continue in the absence of Mrs Dougherty.

Ms Khan referred the panel to the record of the telephone call between Mrs Dougherty and her NMC Case Officer on 6 November 2024, which indicated that Mrs Dougherty is content for the hearing to proceed in her absence. Mrs Dougherty stated that she would provide written submissions instead of attending in person at a later date.

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'*.

The panel has decided to proceed in the absence of Mrs Dougherty. In reaching this decision, the panel has considered the submissions of Ms Khan, the representations from Mrs Dougherty, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 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 Mrs Dougherty;

- Mrs Dougherty has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Four witnesses are due to attend on the next scheduled dates of the hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- 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 Mrs Dougherty in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no formal response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel also considered that it would be assisted by Mrs Dougherty's offer of producing written submissions instead of attending the hearing.

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 Mrs Dougherty's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Dougherty. The panel will draw no adverse inference from Mrs Dougherty's absence in its findings of fact.

Details of charge

That you, a registered nurse:

1) On 12 December 2022 administered intravenous saline to Patient A without prescription or consultation from a suitable qualified professional.

2) On 12 December 2022 failed to administer prescribed Cyclizine to Patient A who had requested this medication.

3) On 12 December 2022 failed to escalate and or seek advice on Patient A's management plan when it would have been clinically appropriate to do so in the light of it being reported to you that Patient A had made herself sick.

4) On 12 December 2022 you told Patient A you had administered cyclizine when you knew you had administered Saline.

5) Your actions at charge 4 were dishonest in that you intended to mislead Patient A as to what medication had been administered to them.

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

Decision and reasons on application for adjustments in the hearing

[PRIVATE]

This will be confirmed to Mrs Dougherty in writing.

Decision and reasons on proceeding in the absence of Mrs Dougherty

The hearing resumed on 10 December 2024 and the panel considered whether it should proceed in the absence of Mrs Dougherty. It had regard to Rule 21 and heard the submissions of Mr D'Alton, on behalf of the NMC, who invited the panel to continue in her absence.

Mr D'Alton reminded the panel of its previous decision that service of Notice of Hearing had been effective. He referred the panel to the email correspondence between Mrs Dougherty and the NMC dated between 5 November 2024 and 5 December 2024, and the telephone note of a call with her NMC Case Officer on 5 December 2024. Mr D'Alton submitted that Mrs Dougherty had made it clear that she did not want to be in attendance at the hearing as [PRIVATE].

Mr D'Alton submitted that Mrs Dougherty had indicated that she is content for the hearing to proceed in her absence. He asked the panel to consider that Mrs Dougherty had provided written submissions setting out her position in respect of the matters in this case.

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'*.

The panel decided to proceed in the absence of Mrs Dougherty. In reaching this decision, the panel considered the submissions of Mr D'Alton, the written representations from Mrs Dougherty, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones (Anthony William)* and *General Medical Council v Adeogba,* 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 Mrs Dougherty;
- Mrs Dougherty has confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Three witnesses are due to attend to give live evidence, in particular [PRIVATE];
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- 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 Mrs Dougherty in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Dougherty at her registered email address. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. Further, Mrs Dougherty had provided written submissions in respect of the allegations.

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 Mrs

Dougherty’s decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Dougherty. The panel will draw no adverse inference from Mrs Dougherty’s absence in its findings of fact.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr D’Alton under Rule 28 to amend the wording of charges 1, 2 and 4.

Mr D'Alton submitted that following a review of Patient A’s witness statement dated 3 July 2023, it appeared that there might have been three separate occasions on two separate shifts where Mrs Dougherty administered medication that was not Cyclizine to Patient A, where she had specifically asked for Cyclizine.

The proposed amendment was to widen the scope of the alleged conduct, although the mischief of the charge would not change. It was submitted by Mr D’Alton that the proposed amendment would provide clarity and more accurately reflect the evidence of Patient A.

Mr D'Alton submitted that the documentary evidence in this case had been served on Mrs Dougherty in good time and she had time to consider and respond to it. He reminded the panel that Mrs Dougherty had provided written responses in the documents before it. Mr D'Alton submitted that the NMC had taken steps to ensure that Mrs Dougherty had been notified of this application. He submitted that the proposed amendments did not present undue unfairness to Mrs Dougherty and did not substantially differ from the allegations put to her.

Mr D'Alton told the panel that the NMC was seeking to amend charges 1, 2 and 4 as follows:

"That you, a registered nurse:

1) On **or around** 12 December 2022**, on one or more occasions** administered intravenous saline to Patient A without prescription or consultation from a suitable qualified professional.

2) On **or around** 12 December 2022**, on one or more occasions** failed to administer prescribed Cyclizine to Patient A who had requested this medication.

3) ...

4) On **or around** 12 December 2022**, on one or more occasions** you told Patient A you had administered cyclizine when you knew you had administered Saline.

5) ...

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

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was satisfied that the proposed amendment would better reflect Patient A's evidence about the concerns. It noted that the amendments would not change the mischief of the core allegations, but widen the charges to more than one possible occasion of the alleged conduct (namely on 5 December 2022 and 12 December 2022). The panel took into account that Mrs Dougherty had been provided with Patient A's witness statement in advance of the hearing and she provided responses to the allegations which included reference to events on 5 December 2022, although not

specifically in relation to the charges. It therefore considered that Mrs Dougherty was aware of the concerns set out by Patient A. The panel noted that Mrs Dougherty was not in attendance at the hearing, but it had heard that the NMC had informed her of its intention to make this application.

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Mrs Dougherty and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to provisionally allow the amendment, as applied for, to ensure clarity and accuracy, subject to the receipt of any response from Mrs Dougherty about it by 12:00 that day.

Mrs Dougherty did not provide a response that day, however, on 12 December 2024 she sent an email to her NMC Case Officer with an account of what took place with Patient A. The email also stated:

> '*...These charges are becoming more extreme by the minute. I wish to make myself perfectly clear here ...*'

Mr D'Alton submitted that Mrs Dougherty's email alleviated any unfairness to her by amending the charges. He submitted that Mrs Dougherty had provided an explicit response in respect of the new charges. Mr D'Alton submitted that the amended charges reflected the evidence of Patient A and Witness 2 that there was possibly more than one occurrence of the alleged conduct. He submitted that it was in the interest of public protection for the panel to consider this as part of its decision and that it could take into account both the NMC and Mrs Dougherty's positions.

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

The panel was satisfied that Mrs Dougherty, in her email dated 12 December 2024, did not specifically oppose the proposed amendment to the charges, but had used it as an

opportunity to expand on her defence. The panel decided to allow the amendment to charges 1, 2 and 4.

Decision and reasons on application to admit the hearsay evidence of Mrs Dougherty's witnesses

Mr D'Alton informed the panel that Mrs Dougherty had provided statements which amounted to hearsay evidence from three individuals in support of her case. They comprised of three employment tribunal statements from Witness 5, Witness 6 and Witness 7, and an email from Witness 5 dated 16 April 2023.

Mr D'Alton submitted that Mrs Dougherty had never explicitly set out that she was applying for these statements to be admitted into evidence. However, the NMC had considered that by sending them as part of her response to the allegations, Mrs Dougherty was asking for the statements to be admitted into evidence under Rule 31. Mr D'Alton submitted that in some ways, these statements acted as character references but they also spoke to the matters in issue as they effectively made allegations in respect of Patient A's behaviour and the Trust's treatment of Mrs Dougherty.

Mr D'Alton asked the panel to take into account the principles set out in *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) in making its decision.

i. *'whether the statements were the sole and 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*

vii. *the fact that the Appellant did not have prior notice that the witness statements were to be read.'*

Mr D'Alton submitted that the NMC opposed the admission of these statements on three main grounds. He submitted that Mrs Dougherty had made no apparent efforts to secure the attendance of these individuals and in fact, she had not attended the hearing herself.

Mr D'Alton submitted that the statements were of limited relevance, as they spoke largely to Mrs Dougherty's allegations about the Hospital, the Trust and the Trust's investigation process. He submitted that they were written for employment tribunal proceedings, not these NMC proceedings. Mr D'Alton submitted that none of the statements spoke directly to the issue of Mrs Dougherty administering Cyclizine to Patient A. He accepted, however, that Witness 6's statement provided a first-hand account of him working with Mrs Dougherty on 5 December 2202, where he overheard a conversation between Mrs Dougherty and a particularly difficult patient about her not administering the full dose of Cyclizine. Mr D'Alton submitted that in fairness, the panel may want to give that some consideration.

Mr D'Alton submitted that the accounts in these statements were damaging and prejudicial to Patient A and there was no opportunity to challenge this evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel considered the application in regard to the hearsay evidence of Mrs Dougherty's witnesses. The panel noted that, although Mrs Dougherty had chosen not to attend this hearing, she had provided written responses to the allegations, as well as the

statements of Witness 5, Witness 6 and Witness 7 in support of her case. It was of the view that were Mrs Dougherty in attendance, it is likely that she would want the panel to consider the statements.

The panel considered that Mrs Dougherty is unrepresented in these proceedings. It took into account [PRIVATE]. The panel decided that in fairness to Mrs Dougherty, it should take into account her submissions and any documents she felt would be relevant to her case, but that it would need to consider what weight it ought to place on any such documents.

The panel noted that the statements were not the sole and decisive evidence on any of the charges. The panel took into account that the statements had not been prepared in anticipation of being used in these proceedings (referencing further documents which were not before the panel) and they were of limited value in relation to relevance to the actual charges. However, they provided background contextual information and spoke to the relevant dates of the concerns.

The panel noted that the three statements from Witness 5, Witness 6 and Witness 7 had been produced for an employment tribunal, and there was no evidence before it to suggest that their accounts had been fabricated. The panel had no information about attempts made by Mrs Dougherty to secure the attendance of these witnesses.

The panel considered the unfairness to the NMC in admitting these statements. It noted that these witnesses had made strong assertions about Patient A and that there would be no opportunity to challenge their evidence. However, the panel determined that any unfairness would be mitigated by the fact that the NMC's live witnesses could be questioned in light of the accounts in the statements.

In these circumstances, the panel came to the view that it would be fair to accept into evidence the hearsay statements of Mrs Dougherty's witnesses (which were relevant to

the context around the charges), but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Further, Mr D'Alton invited the panel to accept the witness statement of Witness 4 formally into evidence. The panel acceded to this application in light of the fact that Witness 4's evidence was non-controversial as she simply produced a document.

Details of charge [as amended]

That you, a registered nurse:

1) On or around 12 December 2022, on one or more occasions administered intravenous saline to Patient A without prescription or consultation from a suitable qualified professional.

2) On or around 12 December 2022, on one or more occasions failed to administer prescribed Cyclizine to Patient A who had requested this medication.

3) On 12 December 2022 failed to escalate and or seek advice on Patient A's management plan when it would have been clinically appropriate to do so in the light of it being reported to you that Patient A had made herself sick.

4) On or around 12 December 2022, on one or more occasions you told Patient A you had administered cyclizine when you knew you had administered Saline.

5) Your actions at charge 4 were dishonest in that you intended to mislead Patient A as to what medication had been administered to them.

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

Background

The NMC received a referral in respect of Mrs Dougherty on 1 March 2023. Mrs Dougherty first entered onto the NMC's register on 29 December 1982.

The allegations in this case arose whilst Mrs Dougherty was employed as a Staff Nurse by the Great Western Hospitals NHS Foundation Trust (the Trust) at Great Western Hospital (the Hospital).

In late 2022, Patient A was admitted onto the Daisy Unit (the Unit) at the Hospital following issues relating to infection and swelling of a cannulation sight in her arm. Patient A was prescribed antibiotics to help deal with infection, but these purportedly made her feel sick and she was prescribed Cyclizine. This was to be given to Patient A as needed, but could not be given more frequently than once every eight hours.

It is alleged that on two occasions on or around 12 December 2022, Patient A asked Mrs Dougherty to administer her prescribed Cyclizine, however Mrs Dougherty did not administer it to Patient A and proceeded to give her intravenous saline, which was not prescribed, instead. Mrs Dougherty allegedly told Patient A in terms that she had administered Cyclizine when she knew she had administered saline.

Mrs Dougherty also allegedly failed to escalate and or seek advice on Patient A's management plan when it would have been clinically appropriate to do so in the light of it being reported to her that Patient A had made herself sick.

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 D'Alton on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mrs Dougherty.

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:

- Patient A/Witness 1: Patient on the Unit who was the originator of the allegations against Mrs Dougherty;
- Witness 2: Staff Nurse on the Unit at the time of the concerns; and
- Witness 3: Senior Sister and Endoscopy Manager at the Trust who conducted the internal investigation into the concerns.

The panel also took account of the witness statement from the following witness on behalf of the NMC:

- Witness 4: Assistant People Partner in HR at the Trust.

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

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

Charge 1

That you, a registered nurse:

1) *On or around 12 December 2022, on one or more occasions administered intravenous saline to Patient A without prescription or consultation from a suitable qualified professional.*

This charge is found proved.

In reaching this decision, the panel considered the NMC's position that Mrs Dougherty carried out the alleged conduct on three separate occasions during her shift on 5 December 2022 and the night shift of 12/13 December 2022.

The panel determined that the NMC had not discharged its burden of proof in relation to the allegation that saline was administered to Patient A on 5 December 2022. The panel took into account the evidence from Patient A but determined that this alone coupled with Mrs Dougherty's denial in her correspondence to the NMC was insufficient to prove this allegation.

In relation to the first alleged instance during Mrs Dougherty's night shift on 12 December 2022, the panel took into account Mrs Dougherty's responses to the allegation during the Trust's investigation and in her correspondence to the NMC.

The panel noted the minutes from the Trust investigation meeting with Mrs Dougherty on 16 January 2023 which stated:

'*[Mrs Dougherty]: ... I thought, do you know what, I'm going to let her see I'm doing something for her rather than her kicking off, so I thought*

the only thing I can do that's not going to harm her is hang up a bag of saline even if to increase the flow a bit.

[Witness 3]: *Okay – so did you get that prescribed?*

[Mrs Dougherty]: *No, because we never have it prescribed.*'

The panel also had regard to the regulatory concerns response form which was signed by Mrs Dougherty and dated 31 July 2023. In response to the regulatory concern that she '*administered intravenous saline to a patient without a prescription or consultation from a suitable qualified professional*', Mrs Dougherty stated '*Yes i administered a 100ml bag of saline*'.

In Mrs Dougherty's statement for employment tribunal proceedings dated 6 August 2024, it stated:

'*That being so, I said I'm going to put something up that's going to make you feel better.' What I gave to the patient was just saline. The saline was in a bag which was hung up. Saline is a harmless substance which would hydrate the patient, who I thought had recently been sick. I administered saline because of a belief that I would be at imminent risk of physical harm if I had responded differently.*

Seeing the bag hanging up, [Witness 2] (who was working on that particular shift) asked 'what's this?' I replied, where the patient could hear, 'I am giving the patient saline because she has just been sick.' No further comment was made by [Witness 2] or the patient.'

Further, in the email dated 12 December 2024, Mrs Dougherty stated:

'*I admit to putting up saline to placate the patient which I am truly ashamed and embarrassed about .*'

The panel therefore accepted Mrs Dougherty admission that she administered intravenous saline to Patient A on one occasion during her night shift on 12 December 2022.

The panel took into account Patient A's witness statement dated 3 July 2023 which stated:

> '*The following day, on a date I cannot recall, I went into theatre for my second operation. After the operation, I was put back onto the Unit. At a time I cannot recall, Mrs Dougherty gave me the unknown medication again but this time through a bottle which was hung up on hanger pole and not through a needle and syringe. I again knew this was not cyclizine because my arm was not stinging but I did not question Mrs Dougherty on this because I knew she would tell me it was. However, I did tell her I had lost some of the liquid because the bottle was leaking. Mrs Dougherty proceeded to say 'you haven't lost much'.*'

In addition, Witness 2's witness statement dated 13 July 2023 stated:

> '*I therefore clamped the medication bag, which is essentially putting a clip on the medication bag to stop the medication running through the IV tube. As I clamped the medication bag, I found a sticker on the bag, that had "placebo" written on it and, on looking into this further I found that it was actually saline in the medication bag and, that no cyclizine was being administered.*'

Both Patient A and Witness 2 confirmed these accounts in oral evidence. The panel was therefore satisfied, based on Mrs Dougherty's own admission and the evidence of Patient A and Witness 2, that Mrs Dougherty administered intravenous saline to Patient A.

The panel had regard to Patient A's medication chart which indicated that saline had not been prescribed for Patient A. In addition, there was no record in Patient A's notes that it had been administered on 12 December 2022.

Witness 3 told the panel in oral evidence that intravenous saline required a prescription to be administered. She stated that Mrs Dougherty was not a nurse prescriber, but even if she was, intravenous saline would need to be prescribed on Patient A's chart for it to be administered. In the minutes from the Trust investigation meeting with Mrs Dougherty on 16 January 2023, Mrs Dougherty indicated that she was not aware that intravenous saline required a prescription and she was taken to the Trust's Medicine Administration Policy. This policy confirmed that intravenous saline must be prescribed and checked by two nurses prior to administration to a patient. Witness 3 stated in her witness statement that when questioned as part of the internal investigation:

> '*Mrs Dougherty was unsure she could have accessed this policy through our intranet and Mrs Dougherty explained she had never read it. However, Mrs Dougherty should have been aware of the policy.*'

Witness 3 told the panel that Mrs Dougherty should have accessed and read the policy as it was part of the IV training that she would have completed.

In light of this evidence, the panel was satisfied that Mrs Dougherty administered the intravenous saline to Patient A without prescription or consultation from a suitable qualified professional on 12 December 2022.

In relation to the second alleged instance during the night shift of 12/13 December 2022, the only evidence before the panel was Witness 2's evidence that she saw Mrs Dougherty writing out a label. Witness 2 in her statement said:

> '*... As far as I am aware, Ms Dougherty again administered saline to Patient A when her second dose of cyclizine was due.*'

However, in oral evidence Witness 2 was unable to provide any further evidence about what the label was and she admitted that she did not witness Mrs Dougherty administering intravenous saline a second time.

The panel therefore found charge 1 proved only in relation to one instance on 12 December 2022.

Charge 2

That you, a registered nurse:

2) *On or around 12 December 2022, on one or more occasions failed to administer prescribed Cyclizine to Patient A who had requested this medication.*

This charge is found proved.

In reaching this decision, the panel first considered whether Mrs Dougherty had a duty to administer Cyclizine to Patient A whilst she was admitted on the Unit. The panel noted Patient A's prescription which listed Cyclizine as PRN (when required) which could either be administered by injection or tablets on request but no more than every eight hours. The panel was therefore satisfied that Patient A was entitled to Cyclizine whenever she asked for it and so there was a duty on Mrs Dougherty to administer it.

The panel considered the NMC's position that Mrs Dougherty carried out the alleged conduct on two separate occasions during her shifts on 5 December 2022 and 12 December 2022.

In relation to 5 December 2022, the panel noted that Patient A had to be readmitted to the Hospital following an infection from surgeries to her arm. The evidence before the panel was that Patient A was familiar with surgeries and the hospital environment, and she was aware of what medications she was entitled to. Patient A told the panel that she had been prescribed very strong antibiotics and painkillers which caused her to feel nauseous or "*sick*". The panel took into account the entries for 4 and 5 December 2022 in Patient A's medical notes about an incident involving her care. However, the panel did not have sight of the medication charts for this day. The panel was therefore not satisfied that there was

sufficient evidence to prove that on 5 December 2022, Mrs Dougherty failed to administer prescribed Cyclizine to Patient A who had requested this medication.

In relation to 12 December 2022, the panel noted that Patient A was very particular and proactive in relation to requesting Cyclizine. The panel considered that Mrs Dougherty was aware of this and in particular, it noted her statement for employment tribunal proceedings dated 6 August 2024, which stated:

> '*This patient was known for frequently requesting Cyclizine. Cyclizine is an anti-sickness medication which can only be taken three times a day.*'

The panel took into account Patient A's prescription which indicated that the last administration of Cyclizine was at 12:55 on 12 December 2022, and so it could be administered again from 20:55. There was no evidence that Cyclizine was administered again following the dose at 12:55.

The panel had regard to Patient A's witness statement dated 3 July 2023 which stated:

> '*The following day, on a date I cannot recall, I went into theatre for my second operation. After the operation, I was put back onto the Unit. At a time I cannot recall, Mrs Dougherty gave me the unknown medication again but this time through a bottle which was hung up on hanger pole and not through a needle and syringe. I again knew this was not cyclizine because my arm was not stinging but I did not question Mrs Dougherty on this because I knew she would tell me it was. However, I did tell her I had lost some of the liquid because the bottle was leaking. Mrs Dougherty proceeded to say 'you haven't lost much'.*
> *...*
> *My concerns with Mrs Dougherty's conduct were that she did not give me my prescribed medication, cyclizine. Mrs Dougherty could have administered me anything which could have meant I might not be here today. Nurses should not inject patients with medication they have not asked for or have been prescribed.*

You are in hospital to feel better but Mrs Dougherty not giving me my prescribed cyclizine meant I felt really sick.'

The panel also considered Mrs Dougherty's statement for employment tribunal proceedings dated 6 August 2024, which stated:

'*Seeing that particular patient, and hearing from a colleague that the patient was again requesting medication, [PRIVATE].*

...

[PRIVATE], I told the patient something to the effect of 'I can't give you cyclizine because you're not due yet'. This was because I thought that the patient may well have had Cyclizine whilst in theatre. In addition, [Colleague A] had said that the patient had put her fingers down her throat.

I thought that, if the patient had received Cyclizine in theatre, it would not be safe to administer more because, as said previously, the maximum frequency for Cyclizine is every 8 hours. In addition, if the patient had been sick, it would be necessary to know what remained in her system before administering oral Cyclizine. [PRIVATE].

That being so, I said I'm going to put something up that's going to make you feel better.' What I gave to the patient was just saline. The saline was in a bag which was hung up. Saline is a harmless substance which would hydrate the patient, who I thought had recently been sick. I administered saline because of a belief that I would be at imminent risk of physical harm if I had responded differently.'

Witness 2 told the panel that she approached Mrs Dougherty about her concerns around Patient A's medication during the night shift on 13 December 2022. In her witness statement dated 13 July 2023, Witness 2 stated that:

'*Ms Dougherty didn't say too much during this conversation apart from that she wanted to test Patient A's [PRIVATE] and how she would respond to receiving*

saline. I am not quite sure what she meant by that and, I didn't want to cause any animosity on the ward and so I did not question Ms Dougherty any further.'

The panel determined that based on Patient A's medical notes, prescription, oral evidence, Witness 2's evidence and Mrs Dougherty's own evidence, Mrs Dougherty did not administer Cyclizine to Patient A when she requested it during the night shift on 12 December 2022.

On this basis, the panel determined that Mrs Dougherty failed to administer prescribed Cyclizine to Patient A who had requested this medication on 12 December 2022. It therefore found charge 2 proved only in respect of this date.

Charge 3

That you, a registered nurse:

3) *On 12 December 2022 failed to escalate and or seek advice on Patient A's management plan when it would have been clinically appropriate to do so in the light of it being reported to you that Patient A had made herself sick.*

This charge is found proved.

In reaching this decision, the panel first considered whether Mrs Dougherty had a duty to escalate and or seek advice on Patient A's management plan when it would have been clinically appropriate to do so in the light of it being reported to her that Patient A had made herself sick. The panel had heard from Witness 3 that Mrs Dougherty's first step should have been to discuss the matter directly with the patient, after being informed of it by Colleague A. Witness 3 said that after speaking directly to Patient A, Mrs Dougherty should have escalated the issue to the doctor and then make a referral to the mental health team to understand why Patient A was making herself sick. The panel was therefore satisfied that there was a duty on Mrs Dougherty.

The panel took into account Mrs Dougherty's statement for employment tribunal proceedings dated 6 August 2024, which stated:

> '*On 12th December 2022, the patient was on Daisy Ward again. A colleague, [Colleague A], told me that the patient had been seen putting her fingers down her throat and was now requesting medication.*'

In light of this, the panel was satisfied that at the relevant time, Mrs Dougherty had knowledge that Patient A was making herself sick.

The panel noted the minutes from the Trust investigation meeting with Mrs Dougherty on 16 January 2023 which stated:

> '*[Mrs Dougherty]: ...When I wasn't on shift, she was making herself sick, and she was asking everyone for IV Cyclizine, which they were giving her.*'

However, the panel took into account that there was no reference to self-induced vomiting in Patient A's medical notes for 12 December 2022. This was confirmed in the Trust's summary report dated 7 February 2023, which stated:

> '*LD said that the HCA on duty that night had informed LD that she had witnessed the patient physically making herself sick, prior to requesting her medication. However, this was not recorded in the patients nursing notes*'.

The minutes of Mrs Dougherty's Trust investigation meeting went on to state:

> *[PRIVATE]*

[Mrs Dougherty]: *I don't know whether she actually had it on her notes that she was mental, but I know from the way she was reacting to me, she had a problem, a serious problem …*

[Witness 3]: *So what does our policy say on that kind of thing? What – where on the policy does it say you can put up fluids without being prescription because you feel it is the right thing to do?*

[Mrs Dougherty]: *I didn't even think about it to be honest, but I just wanted to help her. I wanted to get her – to make her feel like I was doing something.*

...

[Mrs Dougherty]: *So I thought, what is a way that I can show her that I'm not ignoring her, that I'm obviously tending to her as an individual patient. I wasn't making any judgement against her or anything like that. I wanted to help her. I wanted her to be seeing that I was caring for her and I thought to myself, what can I do that won't harm her, I knew it wouldn't harm her, it wouldn't make any difference apart from adding in more fluids when she had made herself sick. I thought actually, the only thing I can do is put up a bag of saline just to make her see I wasn't ignoring her. That was my rationale.*'

The panel considered that it was Mrs Dougherty's belief that Patient A was making herself sick and then requesting medication for sickness. Witness 3 told the panel in oral evidence that she would have expected Mrs Dougherty to record this in the nursing notes, the handover and Patient A's medical notes. However, there was no evidence before the panel that Mrs Dougherty spoke to Patient A about the concern that she was making herself sick, that she recorded it, or that she sought advice in respect of it.

The panel determined that Mrs Dougherty chose unilaterally to substitute the prescribed medication with saline without any consultation with either the patient or her colleagues, nor did she escalate to other staff when it would have been appropriate to do so. When challenged directly in terms by Witness 2, [PRIVATE] *and how she would respond to receiving saline*'. The panel in considering this response, took into account that Mrs Dougherty has no qualification in mental health nursing, nor was there any evidence before the panel to suggest that the patient had any [PRIVATE].

The panel therefore determined that Mrs Dougherty failed to escalate and or seek advice on Patient A's management plan when it would have been clinically appropriate to do so in the light of it being reported to her that Patient A had made herself sick on 12 December 2022.

Charge 4

That you, a registered nurse:

4) *On or around 12 December 2022, on one or more occasions you told Patient A you had administered cyclizine when you knew you had administered Saline.*

This charge is found NOT proved.

In reaching this decision, the panel considered the NMC's position that Mrs Dougherty carried out the alleged conduct on separate occasions, both during her shift on 5 December 2022 and on the night shift of 12/13 December 2022.

The panel first considered the evidence to support the allegation that Mrs Dougherty did not administer Patient A's Cyclizine on 5 December 2022, specifically the evidence from Patient A that:

> '*I told Mrs Dougherty that I knew she had not given me cyclizine but she carried on telling me she had.*'

The panel also noted Patient A's nursing records for 5 December 2022 which stated that Patient A accused nursing staff of not being given her full Cyclizine dose.

In contrast, it was Mrs Dougherty's position which was set out in her statement for employment tribunal proceedings dated 6 August 2024 that:

> *'The patient maintained the view that I had not given her the correct dose and I had put it straight in the bin, which was not true.*'

The panel could not be satisfied on a balance of probabilities and without further documentary support for either account (such as a medication chart), that the charge was made out in relation to 5 December 2022.

In relation to 12 December 2022, the panel noted Patient A's oral evidence that she had asked for Cyclizine and when Mrs Dougherty came to administer something to her, she did not ask Mrs Dougherty about what she was administering because she did not think Mrs Dougherty would give an honest answer following their interaction on 5 December 2022. Furthermore, the panel gave particular weight to Patient A's confirmation that Mrs Dougherty did not tell her that she was administering Cyclizine.

Patient A stated that she initially assumed that the medication Mrs Dougherty was administering was Cyclizine, but realised it was not when Patient A said that her arm did not sting in the same way that it would when Cyclizine was administered to her.

The panel when considering this charge noted the minutes from the Trust investigation meeting with Mrs Dougherty on 16 January 2023 which stated:

> '*[Witness 3]: When you put up fluids and she believed it was something*

[Mrs Dougherty]: *Yes, she believed I was trying to help her. She didn't know what it was, but she didn't ask and I didn't tell her and I said when I put it up that if she continued to feel sick and be sick, we can give you an antiemetic. There was no, no way that I made her believe she was having anything, at all. I never said that to her and to be honest, the statement that you got from [Witness 2], I presume it was, because we did have a discussion about it.*'

The evidence from Patient A and Mrs Dougherty was consistent in setting out that Mrs Dougherty did not tell Patient A what she was administering and Patient A did not ask Mrs Dougherty what she was administering to her after she requested Cyclizine.

The panel was of the view that the evidence indicated that Mrs Dougherty misled Patient A by administering saline to her when she had requested Cyclizine, and by not informing her that saline was being administered. However, the panel considered that the wording of the charge was very specific in alleging that Mrs Dougherty 'told' Patient A that she had administered Cyclizine when she knew she had administered saline.

In this regard, the panel could not find this charge proved based on:

- Mrs Dougherty's evidence that she did not tell Patient A what she was administering;
- Patient A's evidence that she did not ask Mrs Dougherty what she was administering; and
- Witness 2's evidence that she did not hear Mrs Dougherty say anything to Patient A about what she was administering.

Charge 5

That you, a registered nurse:

5) *Your actions at charge 4 were dishonest in that you intended to mislead Patient A as to what medication had been administered to them.*

This charge is found NOT proved.

In reaching this decision, the panel took into account its findings at charge 4.

Having found on the balance of probabilities that Mrs Dougherty did not act as alleged at charge 4, the panel was satisfied that charge 5 could not be made out.

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

Submissions on misconduct

Mr D'Alton invited the panel to take the view that the facts found proved amount to misconduct. He referred to the cases of *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Calhaem v GMC* [2007] EWHC 2606 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr D'Alton submitted that Mrs Dougherty's actions fell short of the professional standards expected and he referred to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code). He highlighted the parts of the Code that Mrs Dougherty had breached, namely 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 3.3, 4.2, 8.1, 8.2, 8.3, 8.5, 8.6, 10.2, 13.2, 13.3, 14, 16.1, 18.1 and 20.2.

Mr D'Alton submitted that while not every breach of the Code will amount to misconduct, in administering Patient A saline instead of the Cyclizine she was prescribed; misleading Patient A in doing so; and failing to make an appropriate referral in respect of Patient A making herself sick, Mrs Dougherty's actions amounted to misconduct. He submitted that this conduct fell short of that expected of a registered practitioner in the circumstances and represented conduct which would be regarded as deplorable by a fellow practitioner.

Submissions on impairment

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

Mr D'Alton submitted that Mrs Dougherty's conduct posed a serious risk of harm, breached fundamental tenets of the nursing profession, and was liable to bring both the profession and the NMC as its regulator into disrepute.

Mr D’Alton submitted that Mrs Dougherty’s actions amounted to serious safeguarding concerns which could have been important to Patient A's treatment and care. He reminded the panel of Patient A’s evidence, where she spoke to the impact of Mrs Dougherty’s actions on her. Mr D'Alton accepted that Mrs Dougherty’s actions did not appear to have adversely impacted Patient A's [PRIVATE], however he submitted that if similar actions were allowed to be repeated in respect of other patients, this would pose a very serious risk of harm.

Mr D'Alton acknowledged that Mrs Dougherty had made some partial admissions in respect of her actions. He submitted, however, that she appeared to show very little insight or acknowledgement of the impact and seriousness of her actions. Mr D'Alton submitted that Mrs Dougherty had provided significant amounts of written evidence for the panel, but this focussed largely on her own situation, difficulties at the Hospital and difficulties with Patient A, rather than reflecting on and addressing any potential remediation in respect of her actions and considering the potential impact of her conduct.

Mr D'Alton submitted that given Mrs Dougherty’s lack of remediation and her failure to effectively address and acknowledge where she went wrong, there was a significant risk that she may act similarly in the future. He submitted that there was a real and ongoing risk to patient safety and therefore a finding of impairment was necessary.

In relation to the public interest, Mr D'Alton submitted that Mrs Dougherty had breached numerous tenets of the nursing profession through her actions. He submitted that many of these tenets were fundamental to safe and effective practice, including appropriate communication, escalation and referral, and safe medication administration practice. Mr D'Alton submitted that given the seriousness of the matters found proved, Mrs Dougherty’s actions brought the nursing profession into disrepute. He submitted that if similar actions were repeated, there was a risk of the profession being brought further into disrepute.

Mr D'Alton submitted that a member of the public aware of Mrs Dougherty’s actions would be seriously concerned and potentially lose confidence and trust in the profession, should

a finding of impairment against Mrs Dougherty not be found. He submitted that a finding of impairment was necessary to maintain confidence in the profession and the NMC as a regulator.

Mr D'Alton acknowledged that the panel did not find charge 5, which related to dishonesty, proved. He submitted that it would therefore not be fair or reasonable for the NMC to rely on the fourth limb of Dame Janet Smith's "*test*" which was referred to in the case of *CHRE v NMC and Grant*. Mr D'Alton submitted that whilst Mrs Dougherty's actions were found to be misleading and that was a relevant factor, the NMC was not relying on dishonesty in this case.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. This included: *CHRE v NMC and Grant.*

Decision and reasons 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.'*

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

*'**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

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

2.2 recognise and respect the contribution that people can make to their own health and wellbeing

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

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

13 Recognise and work within the limits of your competence

To achieve this, you must:

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

13.2 make a timely referral to another practitioner when any action, care or treatment is required

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs

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.'

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

The panel considered each of the charges which had been found proved in turn and their context to determine whether both, individually and collectively, they amounted to misconduct.

The panel took into account that Mrs Dougherty had failed to administer Patient A's prescribed medication when it was due; administered intravenous saline without any appropriate prescription or consultation; and failed to report and appropriately escalate concerns about Patient A's self-induced vomiting.

The panel considered that Mrs Dougherty has been a registered nurse since 1982, and that she would have been well aware of what was expected of her. It noted that Mrs Dougherty made her own uninformed judgements of what Patient A did and did not need, even though her medical notes clearly set out the extent of her condition at the time and the planned care management.

The panel took into account Mrs Dougherty's position that Patient A was a particularly difficult patient on the Ward, although the panel itself had the advantage of hearing from Patient A in evidence and found her pleasant and co-operative with the panel. It noted that Mrs Dougherty reported that there had been some issues between the two throughout Patient A's time on the Ward. The panel considered that despite this, as a registered nurse, Mrs Dougherty should not have treated Patient A any differently or made assumptions about her condition. The panel was of the view that it was not Mrs Dougherty's place to determine whether or not Patient A was nauseous and whether she actually needed Cyclizine. It determined that denying a patient their prescribed medication and then administering medication which was not prescribed was unacceptable. The panel

was satisfied that Mrs Dougherty's actions at the charges found proved would be regarded as deplorable by fellow practitioners.

In all the circumstances, the panel was satisfied that Mrs Dougherty's actions at charges 1, 2 and 3 fell seriously short of the conduct and standards, both individually and collectively, expected of a registered 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, Mrs Dougherty'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 February 2024, 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 make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

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

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

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

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

The panel determined that limbs a), b) and c) are engaged in this case. The panel found that whilst no actual harm to Patient A was documented, there was a risk of harm to Patient A's physical and [PRIVATE] as a result of Mrs Dougherty's misconduct. Mrs

Dougherty's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Whilst the panel did not find dishonesty proved and therefore limb d) was not engaged in this case, the panel did find that there was serious misleading conduct underlying the charges found proved.

The panel considered the factors set out in the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin):

- whether the misconduct is capable of being addressed;
- whether it has been addressed; and
- whether the misconduct is highly unlikely to be repeated.

The panel determined that the misconduct in this case is capable of being addressed, particularly in relation to the issues of medication administration and the escalation of patient care. The panel was satisfied that this could be addressed through reflection and training. However, the panel considered that the misleading nature of Mrs Dougherty's interaction with Patient A around withholding her prescribed medication and substituting it with saline which was not prescribed, would be more difficult to address. Based on the evidence before the panel and the absence of direct evidence from Mrs Dougherty, the panel was concerned that these behaviours might be indicative of an attitudinal issue.

In respect of whether the misconduct has been addressed, the panel first considered Mrs Dougherty's insight. It noted that Mrs Dougherty had shown some remorse in her email dated 12 December 2024 which stated that:

> '*I admit to putting up saline to placate the patient which I am truly ashamed and embarrassed about*'.

However, the panel considered that throughout her responses to the concerns, Mrs Dougherty's focus was on recounting what took place and highlighting the impact on herself. Mrs Dougherty had not demonstrated an understanding of how her actions impacted Patient A and put Patient A at a risk of harm. She had not demonstrated sufficient understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession, nor did she sufficiently demonstrate how she would handle the situation differently in the future. The panel therefore determined that Mrs Dougherty has shown insufficient insight into her misconduct.

In addition, there was no evidence before the panel of steps taken by Mrs Dougherty to address the concerns and strengthen her practice through training and reflection.

As such, the panel could not be satisfied that Mrs Dougherty's misconduct would not be repeated in the future. It therefore found that there remains a risk of repetition and that a finding of current impairment of fitness to practise is necessary on the grounds 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 determined that a finding of impairment on public interest grounds is required to mark Mrs Dougherty's misconduct and to uphold proper professional standards. The panel considered that a well-informed member of the public as well as a fellow practitioner would be concerned if a finding of impairment were not made in a case where a registrant had committed misconduct in fundamental areas of nursing practice, and there was an ongoing risk of repetition.

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 found Mrs Dougherty's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was not satisfied that at this stage, Mrs Dougherty can practise kindly, safely and professionally. It therefore determined that Mrs Dougherty's fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

In the Notice of Hearing, dated 1 October 2024, the NMC had advised Mrs Dougherty that it would seek the imposition of a striking-off order if the panel found her fitness to practise currently impaired.

Mr D'Alton submitted that the following mitigating factors were present in this case:

- Mrs Dougherty made partial admissions to the concerns;
- [PRIVATE]; and
- The charges relate to occurrences on a single shift in relation to a single patient.

Mr D'Alton submitted that in terms of aggravating factors:

- Mrs Dougherty has demonstrated a lack of insight and remediation;
- Mrs Dougherty abused a position of trust in relation to a vulnerable patient;
- Mrs Dougherty could have put Patient A at serious risk of suffering harm;
- There was an attitudinal issue.

Mr D'Alton submitted that a sanction was necessary to protect the public and meet the public interest, given the seriousness of Mrs Dougherty's actions, which could have put a vulnerable patient at risk and damaged her confidence in the profession.

Mr D'Alton referred to the case of *PSA v NMC & Judge* [2017] EWHC 817 (Admin) and submitted that the points identified in that case indicated that the appropriate sanction in this case is a striking-off order.

Mr D'Alton submitted that Mrs Dougherty had explicitly disregarded procedures and Patient A's request, and failed to escalate a situation which could have affected how the patient was cared for. He submitted that by doing so, Mrs Dougherty breached fundamental tenets of the nursing profession and this brought her professionalism into question.

Mr D'Alton submitted that this case involved seriously misleading actions by Mrs Dougherty. He referred to the NMC guidance on '*Considering sanctions for serious cases*' (reference: SAN-2), where '*misuse of power*' and '*direct risk to people receiving care*' are listed as relevant factors in the consideration of whether a nurse should be allowed to remain on the register. Mr D'Alton submitted that even if Patient A was a difficult patient, this should not have affected her care, choices and involvement in her care. He submitted that Mrs Dougherty should not have made a unilateral decision without considering this. Mr D'Alton submitted that in the circumstances, where there appeared to be an attitudinal issue, there was a risk of repetition and Mrs Dougherty had shown no insight, the only appropriate sanction would be a striking off order.

Mr D'Alton submitted that if the panel was to consider that Mrs Dougherty's misconduct was not so significant that it warrants a striking-off order, then the only other appropriate sanction would be that of a suspension order for a period of six months with review to mark the seriousness of the misconduct and to give Mrs Dougherty time to reflect and engage if she so wishes.

In response to questions from the legal assessor, Mr D'Alton confirmed that Mrs Dougherty was subject to an interim conditions of practice order, which she had not engaged with as she had not been practising as a nurse.

The panel accepted the advice of the legal assessor, who highlighted the case of *Clarke v GOC* [2017] EWHC 54 (Admin) and the circumstances where a registrant has a stated intention to retire.

Decision and reasons on sanction

Having found Mrs Dougherty'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:

- Mrs Dougherty abused a position of trust in respect of Patient A.
- Mrs Dougherty has demonstrated minimal insight.
- Mrs Dougherty's conduct put people receiving care at a risk of harm.

The panel also took into account the following mitigating features:

- The misconduct related to a number of instances on one shift in Mrs Dougherty's 30-year career as a registered nurse.
- [PRIVATE].

In considering the seriousness of Mrs Dougherty's misconduct, the panel had regard to the NMC guidance on '*how we determine seriousness*' (reference: FTP-3) which sets out:

'*Some behaviours are particularly serious as they suggest there may be a risk to people receiving care; examples include:*

- *conduct or poor practice which indicates a dangerous attitude to the safety of people receiving care,*
- *...*
- *misconduct otherwise involving cruelty, exploitation or predatory behaviour, such as abuse or neglect of children and/or vulnerable adults.*'

The panel also considered the NMC guidance on '*Serious concerns which are more difficult to put right*' (reference: FTP-3a) and '*Serious concerns which could result in harm if not put right*' (reference: FTP-3b).

Mrs Dougherty substituted Patient A's prescribed medication with medication that was not prescribed and in doing so, did not follow the correct protocol around the administration of that medication whilst also misleading Patient A as to what medication was being administered. In addition, she failed to escalate the issue regarding Patient A's reported self-induced vomiting to other colleagues. The panel determined that these significant and potentially dangerous actions by Mrs Dougherty demonstrated extremely poor practice.

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 Mrs Dougherty'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 Mrs Dougherty'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 Mrs Dougherty's registration would be a sufficient and appropriate response. It was mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that the misconduct in this case related to Mrs Dougherty's clinical practice which, in theory, could be addressed through retraining.

However, the panel considered the context and seriousness around Mrs Dougherty's misconduct and the attitudinal issues identified. It also considered Mrs Dougherty's minimal insight and lack of strengthened practice. In addition, Mrs Dougherty had indicated in her correspondence to the NMC that '*[she] sees [herself] as retired*' and will not be returning to nursing practice. The panel noted that Mrs Dougherty had been subject to an interim conditions of practice order, but did not comply with it as she did not practise during the period it was in force. There was therefore no evidence before the panel that Mrs Dougherty would be willing to comply with a substantive conditions of practice order.

The panel determined that the placing of conditions on Mrs Dougherty's registration would not adequately address the seriousness of this case and would not protect the public or meet the public interest.

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

The panel noted that Mrs Dougherty's actions were instances of misconduct on one shift with one specific patient. However, it considered that there was evidence of an attitudinal problem in relation to Mrs Dougherty's misleading behaviour towards Patient A, as well as her minimal insight and unwillingness to reflect and address the issues. The panel took into account that there was no evidence of repetition of Mrs Dougherty's behaviour, although she had chosen not to practise since her suspension from the Trust. Mrs Dougherty demonstrated minimal insight, and the panel consequently found that she poses a significant risk of repeating her behaviour.

The panel was not satisfied that temporary removal from the register would reflect the seriousness of the case. It considered that a well-informed member of the public would take the view that Mrs Dougherty, who was an experienced nurse in a position of authority, abused trust in respect of medication administration and misled a patient. The panel considered that notwithstanding the fact that these instances took place on one shift, there was nothing to suggest that placed in the same situation again, Mrs Dougherty would not repeat the behaviour placing patients at risk of actual harm.

Mrs Dougherty's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the

serious breach of the fundamental tenets of the profession evidenced by Mrs Dougherty's actions is fundamentally incompatible with Mrs Dougherty remaining on the register.

In addition, Mrs Dougherty had provided within her written correspondence to the NMC that she no longer intends to return to nursing practice, considers herself retired and consequently would not engage with any future reviewing panel. The panel considered that a suspension order would serve no useful purpose and leave the future of Mrs Dougherty's nursing practice unresolved.

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

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

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

The panel considered that the regulatory concerns in this case raise fundamental questions about Mrs Dougherty's professionalism. The panel determined that public confidence in the profession would be undermined if Mrs Dougherty was not removed from the register. It was of the view that members of the public and other nurses would be most concerned to learn that Mrs Dougherty acted in the way that she did and then failed to provide any insight and a willingness to strengthen her practice.

The panel concluded that a striking-off order is the only sanction which will be sufficient to protect patients, members of the public, and maintain professional standards because a

lesser sanction would not reflect the seriousness of the misconduct in this case, nor address the ongoing risk of repetition identified by the panel.

Mrs Dougherty's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Dougherty's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mrs Dougherty's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this 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 Mrs Dougherty 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 Mrs Dougherty's own interests until the substantive striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr D'Alton. He invited the panel to make an interim suspension order for a period of 18 months to cover any appeal period until the substantive striking-off order takes effect. He submitted that such an order is necessary for the protection of the public and is otherwise in the public interest

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 Mrs Dougherty cannot practise unrestricted before the substantive striking-off order takes effect, not to impose an interim suspension order would be inconsistent with the panel's earlier finding. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.