

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

**Substantive Hearing
Monday, 12 August 2024 – Friday, 16 August 2024
Wednesday, 11 December 2024 – Friday, 13 December 2024**

Virtual Hearing

Name of Registrant:	Richard Brian Fenton
NMC PIN	90Y0496E
Part(s) of the register:	Registered Nurse Adult – RN1 (15 May 1993)
Relevant Location:	Stockton-on-Tees
Type of case:	Misconduct
Panel members:	Adrian Smith (Chair, lay member) Allwin Mercer (Registrant member) Stacey Patel (Lay member)
Legal Assessor:	Karen Rea
Hearings Coordinator:	Jessie Miller (12 – 16 August 2024) Dilay Bektashi (11 – 13 December 2024)
Nursing and Midwifery Council:	Represented by Ben Anson Jones, Case Presenter
Mr Fenton:	Present and represented by Liam Chin, of Crucible Law
Facts proved by admission:	Charge 3a
Facts proved:	Charge 1a, 1b, 1c, 1d, 1e, 2a, 2b, 2c, 3b, 4a, 4b i), 4b ii)
Facts not proved:	Charges 5a, 5b
Fitness to practise:	Currently impaired
Sanction:	Suspension order (12 months)

Interim order:

Interim suspension order (18 months)

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Jones, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of the stem of charge 2.

The proposed amendment was to add the words 'Person B'. It was submitted by Mr Jones that the proposed amendment would provide clarity and more accurately reflect the evidence.

That you, a registered nurse:

1. On or around 24 October 2022 made inappropriate comments to Colleague A including:
 - a. That a previous colleague 'had the biggest pair of tits going' or words to that effect;
 - b. That you wanted to grab that previous colleague's breasts and smother your face in them, or words to that effect;
 - c. That you had once been late due to being 'too busy having a good hard shag over the kitchen table' or words to that effect;
 - d. Graphic details of a sexual encounter with a woman;
 - e. 'Well I know you're easy' or words to that effect;

2. On or around 24 October 2022 made inappropriate comments to Resident B's wife, **Person B**, in that you said:
 - a. Some or all of the comments set out at charges 1a-d above;
 - b. In the presence of Resident B, 'I would just get a dildo' or words to that effect;
 - c. That she should watch pornography to manage grief or words to that effect

3. On or around 24 October 2022:
 - a. showed Colleague A picture of a sex toy;

- b. said, with reference to the picture at charge 3a, that Resident C 'needs one of these shoved up her vagina' or words to that effect;
- 4. Your conduct at one or more of charges 1 to 3 above harassed Colleague A in that:
 - a. It was unwanted conduct of a sexual nature and;
 - b. It had the purpose or effect of:
 - i. Violating Colleague A's dignity, or
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A
- 5. On or around 24 October 2022, following Resident A's unwitnessed fall:
 - a. Failed to call 111 or a GP;
 - b. Failed to take Resident A's observations.

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

Mr Chin, on your behalf, stated that this amendment is unopposed.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge

That you, a registered nurse:

1. On or around 24 October 2022 made inappropriate comments to Colleague A including:
 - a. That a previous colleague 'had the biggest pair of tits going' or words to that effect;
 - b. That you wanted to grab that previous colleague's breasts and smother your face in them, or words to that effect;
 - c. That you had once been late due to being 'too busy having a good hard shag over the kitchen table' or words to that effect;
 - d. Graphic details of a sexual encounter with a woman;
 - e. 'Well I know you're easy' or words to that effect;

2. On or around 24 October 2022 made inappropriate comments to Resident B's wife, Person B, in that you said:
 - a. Some or all of the comments set out at charges 1a-d above;
 - b. In the presence of Resident B, 'I would just get a dildo' or words to that effect;
 - c. That she should watch pornography to manage grief or words to that effect

3. On or around 24 October 2022:
 - a. showed Colleague A picture of a sex toy;
 - b. said, with reference to the picture at charge 3a, that Resident C 'needs one of these shoved up her vagina' or words to that effect;

4. Your conduct at one or more of charges 1 to 3 above harassed Colleague A in that:
 - a. It was unwanted conduct of a sexual nature and;
 - b. It had the purpose or effect of:
 - i. Violating Colleague A's dignity, or
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A

5. On or around 24 October 2022, following Resident A's unwitnessed fall:
 - a. Failed to call 111 or a GP;

- b. Failed to take Resident A's observations.

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

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

At the outset of the hearing, Mr Chin made a request that part of this case be held in private on the basis that proper exploration of your case involves reference [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Jones indicated that he did not oppose the application.

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.

Having heard that there will be reference [PRIVATE], the panel determined to hold these parts of the hearing in private in order to protect your privacy.

Decision and reasons on application for your camera to be turned off during witness evidence

At the outset of the hearing, Mr Jones indicated to the panel that Witness 1 had requested frequent breaks and that your camera remain turned off throughout the duration of her evidence. Mr Jones stated that Witness 1 [PRIVATE].

Mr Chin submitted that whilst he does not technically oppose this application, he stated that Witness 1 giving evidence via Microsoft Teams is already a special measure and should be taken into consideration by the panel. He went on to submit that you have attended and intend to participate completely in your hearing and have

a right to hear and see all of the evidence presented against you. Mr Chin did however note that it must be a fair hearing and best evidence must be achieved.

The panel accepted the advice of the legal assessor.

The panel determined that, in all the circumstances, it is fair and reasonable to ask that your camera remains off throughout the duration of Witness 1's evidence, in order to obtain her best evidence. The panel noted that giving evidence via Microsoft Teams is not a special measure, as this hearing was always scheduled as a virtual sitting and you will not be disadvantaged in any way as you will be able to see and hear Witness 1 whilst she gives evidence.

You stated that in order to maintain consistency and fairness, you would keep your camera turned off throughout all witness evidence. This was accepted by all parties.

Decision and reasons on application to admit written statement as hearsay evidence

The panel heard an application made by Mr Jones under Rule 31 to include parts of evidence that reference Person B. He submitted that the NMC had made sufficient efforts to obtain a written statement or oral evidence from Person B. However, she had declined to participate, despite initially agreeing to do so. On the final attempt at engaging her, Person B requested that the NMC does not contact her regarding this again, due to her advanced age, distress and vulnerability. The NMC accepted that this is a sufficient reason for non-attendance.

Mr Chin submitted that it would be unfair and unjust to admit evidence in relation to Person B as she has not provided a signed statement, nor is she able to give oral evidence that can be tested. He went on to state that if this evidence is accepted, it would be what Person B has allegedly relayed to Witness 2.

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 reference to *Thorneycroft v NMC [2014] EWHC 1565* and Rule 31 which 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 gave the application in regard to this careful consideration. The panel noted that Person B featured throughout both Witness 1 and 2's statements and whilst she would not be in attendance, determined that this evidence is not the sole and decisive evidence in relation to any specific charge.

The panel considered whether you would be disadvantaged by the NMC's position of reliance upon this evidence determined that, in all the circumstances, you would not. This is by reason of the fact that in their written statements, both Witness 1 and 2 had reported direct conversations they had with Person B, and the case of Witness 1, had claimed to have overheard conversations with Person B, and they could be cross examined on this.

The panel was of the view that it would be fair and reasonable to accept into evidence the written statement of Witness 1 and 2 in its entirety but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

You were referred to the NMC on 28 October 2022 by the Home Manager at Landona House Ltd, owners of Tollesby Hall Care Centre (the Home), where you were employed as a nurse from 4 October 2022.

It is said that on 24 October 2022, you spoke to the wife of a resident who was on end of life care about your personal sex life in explicit, shocking and graphic detail, including advising her to watch pornography to deal with grief.

It is also alleged that on the same day you spoke to female members of staff about your sex life in graphic and offensive language, and you used your mobile phone while on duty to show them sex toys which you said you intended to purchase.

It is also said that you made clinical errors in that you failed to call 111 or a GP, or take observations after a resident had an unwitnessed fall.

You were suspended from work on 26 October 2022 and resigned on 27 October 2022. In your resignation email, [PRIVATE].

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Chin who informed the panel that you made an admission in relation to charge 3a.

The panel therefore found charge 3a proved by way of your admission.

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 Jones, on behalf of the NMC and by Mr Chin, on your behalf.

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

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

- Witness 1/Colleague A: [PRIVATE]
- Witness 2/Colleague B: [PRIVATE]

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness oral and documentary evidence provided.

The panel then considered each of the disputed charges in turn and for each charge, took into account relevant witness testimony, submissions and the evidence before it. It made the following findings:

Charge 1

On or around 24 October 2022 made inappropriate comments to Colleague A including:

- a. That a previous colleague ‘had the biggest pair of tits going’ or words to that effect;

This charge is found proved.

The panel conducted a careful analysis of Witness 1’s statement and oral evidence. It noted that Witness one was reliable and clear in her evidence and further noted that her statement written the day after the event (25 October 2022) was consistent with her NMC statement and oral evidence. The panel was of the view that this evidence was credible and accepted Witness 1’s version of events.

The panel noted that in Witness 1’s initial ‘local’ statement, written on 25 October 2022, she stated:

‘Richard said “do you want to here [sic] something funny” I stated “okay go on then” he said “this was when I worked in the hospital on wards. Their was this ward sister and she had the most biggest pair of tits I have ever seen and I was fixed on them”’.

In Witness 1’s NMC statement, signed 6 April 2023, she stated:

'On 24 October 2022, I worked a shift at Tollesby Hall between 06:30 – 19:30. I do not recall the exact time, but at one point during my shift I was sitting in the staff office with Richard. Richard asked me whether I wanted to know something funny. I responded 'go on then'. Richard said that he previously worked on a ward in a hospital, around 20 years ago. Richard said that he was late to work one day, and the Ward Sister shouted at him for being late and had asked him to go to her office. Richard said that in the office, the Ward Sister informed him that being late to work was unacceptable. Richard then said that the Ward Sister 'had the most biggest pair of tits going', and said that he was fixated on them and could not stop looking at them.'

In her oral evidence, when asked how Witness 1 would describe her relationship with you, she stated *'I only knew him from work...before the incident happened, he was lovely. He was easy to talk to.'* The panel noted Witness 1's distress and upset when recalling these events, as well as requiring breaks in giving evidence.

In your oral evidence, when asked about this interaction, you stated *'The theatre sister there still a still a friend of mine. She's got a very big chest, which she didn't mind because that she said gave the men something to look at.'* When asked if you described a colleague of yours as having large breasts, you responded with *'that's correct'*. You went on to deny that you used the term *'biggest pair of tits going'*.

The panel considered the context of the conversation and determined that any remark of a sexual nature within a professional environment constitutes an *'inappropriate comment'*, giving 'inappropriate' its normal meaning; namely, that using this type of language in any setting, and especially within the nursing professional setting to a junior female nursing colleague, is unprofessional, out of any context and, thus, inappropriate.

In the panel's judgement, Witness 1's written and oral evidence was more credible, consistent and clear than yours.

Taking all of the evidence into account, the panel determined that, on the balance of probabilities, it is more likely than not that you made an inappropriate comment, or words to that effect, as set out in the charge.

This charge is found proved.

Charge 1b

On or around 24 October 2022 made inappropriate comments to Colleague A including:

- b. That you wanted to grab that previous colleague's breasts and smother your face in them, or words to that effect;

This charge is found proved.

The panel noted Witness 1's NMC statement she stated:

'...Richard then said that the Ward Sister 'had the most biggest pair of tits going', and said that he was fixated on them and could not stop looking at them. Richard then said if he could, he would have grabbed her breasts and smothered his face in them.'

The panel noted that this detail was not included in Witness 1's local statement, however in oral evidence when questioned about this, she stated that when the incident happened, she was just trying to get the information written down. The panel noted in oral evidence, Witness 1 showed reluctance and clear discomfort when asked to repeat what you had said. Witness 1 also stated that she struggled to say what was said out loud when initially reporting this. The panel accepted this to be a valid reason for omitting this detail for her local statement.

When asked if you had made this comment, under oath you responded by stating *'no, absolutely not, but I did say that as part of the joke, she's got a big chest'*.

In the panel's judgement, Witness 1's written and oral evidence was more credible, consistent and clear than yours.

Taking all of the evidence into account, and for the reasons set out in charge 1a, the panel determined that, on the balance of probabilities, it is more likely than not that you made an inappropriate comment, or words to that effect, as set out in the charge.

This charge is found proved.

Charge 1c

On or around 24 October 2022 made inappropriate comments to Colleague A including:

- c. That you had once been late due to being 'too busy having a good hard shag over the kitchen table' or words to that effect;

This charge is found proved.

In Witness 1's local statement, she stated:

'...Richard said I was have [sic] a right old good hard shag over the kitchen table I was proper thrusting her so she wouldn't be able to walk then I went down on her...'

In Witness 1's NMC statement, she reiterated the same detail as was in her local statement. In her oral evidence, Witness 1 seemed hesitant and anxious about providing graphic detail of this specific interaction with you. Under cross examination, it was put to her, on your behalf, that she had initiated the behaviour at that time, including pumping her fists and saying '*I bet you took her over the kitchen table and shagged her so she couldn't walk*'. Witness 1 became distressed and upset, and the hearing adjourned for a short break to allow her to compose herself again.

In your own oral evidence, under oath, you stated:

'I said, well, do you want to hear a funny tale about it? And that was when I told her a joke about being late. And this is the joke that she alleges where I became filthy mouthed.'

When asked to give more detail regarding this, you stated:

'It's a joke I use regularly and he and is partly based on a true story. When I first worked in operating theatres of Warsaw Manor, the theatre sister there, still a still a friend of mine, she's got a very big chest, which she didn't mind because that that she said gave the men something to look at. One day I was late for work, so she called me into the office and asked me why I was late. So I looked at her right in the eye, and said you don't want to know. She said "I do want to know why you late", I said "honestly, you don't want to know", she said "honestly, I want to know why are you late". I said, well, it's my birthday and I was having a....and she said "I don't want to know". That's the joke.'

You then stated that Witness 1 sat in her chair and pumped her arms up and down like *'Mrs Brown's Boys'* and stated that she said *'I bet you got her over the kitchen table and, you know, with me...and she just went off on this mad ride which was bizarre'*.

You claimed Witness 1 prompted you to provide as much detail as possible, to which you responded by stating:

'She said. 'I bet you pulled her apart from behind and you got the face in there, a good licking out. Did you do it till she couldn't walk the next day?' That type of comment, she was highly animated and excited by it, and I'm just stood there and went, 'no, I didn't.'

You further stated that *'this young lady was told the joke was risqué, was given the opportunity to say no'*.

In the panel's judgement, despite your justification of how the conversation started, the contents of this interaction were inappropriate and unsuitable for a professional environment. It also concluded that Witness 1 was unlikely to expect such detail when asked if she would like to hear a *'funny tale'* or *'joke'*.

The panel noted that you stated that it was Witness 1 who made the comments as set out in the charge. However, based on the evidence before it, including that of your oral evidence, it accepts Witness 1's version of events.

In the panel's judgement, Witness 1's written and oral evidence was more credible, consistent and clear than yours.

Taking all of the evidence into account, and for the reasons set out in charge 1a, the panel determined that, on the balance of probabilities, it is more likely than not that you made an inappropriate comment, or words to that effect, as set out in the charge.

This charge is found proved.

Charge 1d

On or around 24 October 2022 made inappropriate comments to Colleague A including:

- d. Graphic details of a sexual encounter with a woman;

This charge is found proved.

In Witness 1's local statement, she stated that, in addition to having used the words in relation to charge 1c above, you said the following:

'...Richard said...' ['because I was have [sic] a right old good hard shag over the kitchen table'] '...I was proper thrusting her so she

wouldn't be able to walk then I went down on her and had to pull her fanny apart to have a good lick in there...'

In Witness 1's NMC statement, she reiterated the same detail as was in her local statement.

In your oral evidence, during cross examination, when you were asked if you described a sexual encounter with a woman in any way or if you described any graphic sexual detail to Witness 1, you stated '*no, not at any point*'. You stated that it was Witness 1 who described graphic details of a sexual nature after you had begun conversation with her by telling a joke. When asked about this graphic detail, you stated that '*some people would think it was obscene. I didn't think it was particularly obscene.*'

The panel noted your version of events. However, in the panel's judgement, Witness 1's written and oral evidence was more credible, consistent and clear than yours.

Taking all of the evidence into account, and for the reasons set out in charge 1a, the panel determined that, on the balance of probabilities, it is more likely than not that you made an inappropriate comment, or words to that effect, as set out in the charge.

This charge is found proved.

Charge 1e

On or around 24 October 2022 made inappropriate comments to Colleague A including:

- e. 'Well I know you're easy' or words to that effect;

This charge is found proved.

The panel noted that in Witness 1's oral evidence, she stated that at the time of the incident, she was wearing leggings and felt exposed. In her NMC statement and in

her local statement, Witness 1 stated that in response to being called for assistance, she shouted *'I'm coming, I'm coming Alex'* and then heard you shout behind her, *'well, I know now you're easy'*.

The panel noted in your oral evidence, you stated *'I heard a noise and I heard Colleague A shout, 'I'm coming'. I made a flippant comment to that, which on reflection I realised was inappropriate and I apologise for that.'* When asked what the comment was, you stated *'I said my usual one would be 'easy tiger'. Like I say, I've now recognised the inappropriateness of that in the workplace and do regret doing it. She didn't seem to take any notice and a few seconds later she called out to me'*.

You denied saying *'well, I know you're easy'*. However, you acknowledged that the words *'easy tiger'* could be interpreted to have a double meaning and you further stated that the *'majority of people completely ignore it'*. You also acknowledged, under oath, that it could be used to *'describe someone approaching orgasm'*.

The panel noted that Witness 1 took this comment to be of a sexual nature. In the panel's judgement, this was entirely reasonable as contextualised by Witness 1 in her evidence. Therefore, the panel concluded that the comment made by a senior registered nurse to a more junior female healthcare employee was unreasonable, unexpected and, therefore, inappropriate.

The panel noted your explanation and your acknowledgement of your words (*'easy tiger'*) as being inappropriate in the workplace. However, based on the evidence before it and its findings of fact in the above charges, it accepted Witness 1's version of events as being more credible, consistent and clear than yours.

Taking all of the evidence into account, and for the reasons set out in charge 1a, the panel determined that, on the balance of probabilities, it is more likely than not that you made an inappropriate comment, *'well I know you're easy'*, or words to that effect, as set out in the charge.

This charge is found proved.

Charge 2a

On or around 24 October 2022 made inappropriate comments to Resident B's wife, Person B, in that you said:

- a. Some or all of the comments set out at charges 1a-d above;

This charge is found proved.

In oral evidence, Witness 1 confirmed that she could clearly hear the conversation between yourself and Person B. She also confirmed that she was in the nurses office with the door open. She stated that you had told Person B everything that you had previously told her and in response to this, she felt '*shocked*' and found it '*upsetting to hear*' because of what she was going through with her dying husband.

The panel also notes Witness 1's NMC statement in which she stated:

'I then heard Richard tell person be the exact same story he told me earlier that day, about the ward sister. Richard shared of the details about his sexual encounter. This was completely inappropriate. Person B is elderly and her husband was at the end of his life.'

In Witness 1's local statement, she stated:

'I heard Person B laugh and awkwardly say 'OMG (Oh my God) wow'. They both started walking back to Resident B's room.'

and

'Person B had stated he was very rude it made her feel very sick.'

The panel had sight of Witness 2's NMC statement in which she noted Person B's concerns as reported to her by Witness 1. Witness 2 stated that '*Person B was extremely shocked, horrified and disgusted*' as a result of her interaction with you.

In your oral evidence, you stated that you were having a conversation with Person B outside of the Resident B's room. You confirmed that this room is near the nurses'

office in which the door was kept open. You deny the charge in its entirety and stated that the conversation that took place was not as set out in the charge. You did however acknowledge that you repeated the 'joke' referred to at charge 1 above, to a colleague within the hearing of Person B.

The panel noted your position. However, based on the evidence before it and its findings of fact in the above charges, the panel accepted Witness 1 and 2's versions of these events as being more credible, consistent and clear than yours.

Taking all of the evidence into account, the panel determined that, on the balance of probabilities, it is more likely than not that you made the comments to Person B as set out in charges 1a, 1b, 1c and 1d, which were inappropriate for the reasons as set out above. Furthermore, those comments, as set out in charges 1a, 1b, 1c and 1d, were made to the vulnerable elderly relative of an end of life resident, which, in the panel's judgement, would have further distressed her in her time of grief and sadness, and which was confirmed by Witnesses 1 and 2, who had spoken to her. The panel gave some weight to this evidence, which was stated by Person B, the absent witness, to Witnesses 1 and 2, both of whom were present when she made her statements, and both of whom gave direct evidence of this during this hearing.

Charge 2b

On or around 24 October 2022 made inappropriate comments to Resident B's wife, Person B, in that you said:

- b. In the presence of Resident B, 'I would just get a dildo' or words to that effect;

This charge is found proved.

The panel noted Witness 1's NMC statement, in which she stated:

‘...However, Richard then proceeded to tell Person B that she did not have to stay single for the rest of her life. Person B then said something along the lines of, I probably with [sic] though because I will always love Resident B. Richard then said if he was Person B, ‘I would just get a dildo’. Richard said this in front of Resident B, who was slowly dying. Person B was also preparing for Resident B’s death. It was completely inappropriate. I do not recall Person B’s response, I was so shocked that I left instantly. I walked away and went to check on a different resident. I felt so uncomfortable’.

and

‘Resident B then said something along the lines of ‘how could he say that to me’ and did you know he turned around and said if I don’t find someone new, I could get a dildo.’

The panel also noted Witness 1’s clear discomfort when giving oral evidence and discussing this matter. She stated multiple times that she did not want to be present and was concerned that her presence would indicate that she condoned your comments. Witness 1 also gave a description of Person B’s demeanour upon hearing your comments and described her as being *‘pale and white as a ghost’*.

When you were cross examined and asked about this interaction, you stated that it was an *‘absolute fabrication’* and denied that it occurred.

The panel determined that, given its findings in relation to Witness 1’s credibility, consistency and clarity, and the detail of her evidence, the panel accepted her version of events as preferable to yours and more likely than your denial.

Taking all of this into account, the panel determined that on the balance of probabilities, it is more likely than not that you made an inappropriate comment as set out in the charge. That comment was made to a vulnerable, elderly relative of an end of life resident, which in the panel’s judgement, would have further distressed her in her time of grief and sadness, and which was confirmed by Witness 1, who had spoken to her. The panel gave some weight to this evidence, which was stated

by Person B, the absent witness, to Witness 1, both of who was present, heard the comment and gave direct evidence of this during this hearing.

This charge is found proved.

Charge 2c

On or around 24 October 2022 made inappropriate comments to Resident B's wife, Person B, in that you said:

- c. That she should watch pornography to manage grief or words to that effect

The panel noted Witness 2's NMC statement, signed 12 April 2023 in which she stated:

'I had a conversation with person B on a date between 27 October 2022 – 2 November 2022. Person B reported that she previously had a conversation with Richard about how to manage grief. Person B said that Richard had told her that a way of dealing with grief, from his personal experience, was to watch pornography. Richard had allegedly made reference to the fact that this is what his mother had done when his father passed away.

Person B was extremely shocked, horrified and disgusted. Person B was crying and found the incident that occurred offensive. As a result, she suffered emotional distress and upset.'

The panel noted that Person B reiterated this in her oral evidence.

When questioned regarding this, you stated under oath that when Resident B died, you felt particularly [PRIVATE]. You went on to clarify your recollection of events by stating:

[PRIVATE]. *I did not at any point say ‘Mrs B watch pornography’, I just wouldn’t do it. It’s a personal choice, it’s very personal and it’s just something that is so abhorrent to me that she misunderstood that.’*

The panel noted your version of events and your admission to bringing up pornography with a colleague, patient or patient’s family. It concluded that, in the context of a professional setting, this was entirely inappropriate, focusing, as it does, on sexual matters at a time when people are trying to cope with end-of-life situations.

Based on the evidence before it and its previous findings, the panel accepted the evidence of Witness 2 and determined that, on the balance of probabilities, it is more likely than not that you made a comment as set out in the charge.

This charge is found proved.

Charge 3b

On or around 24 October 2022:

- b. said, with reference to the picture at charge 3a, that Resident C ‘needs one of these shoved up her vagina’ or words to that effect;

This charge is found proved.

In Witness 1’s NMC statement, she stated *‘on the pole there was a dildo. Richard said something along the lines of Resident C just needs one of these shoved up her vagina.’*

Witness 1 also stated in her NMC statement, *‘As a result of my concerns, I spoke to [Colleague B]. I struggled to repeat what had happened as I was crying and so upset. [Colleague B] asked me to write a statement of my concerns...’.*

In her oral evidence, Witness 1 was asked about how she felt during this interaction, she stated that *'...you just wouldn't say it and I felt sick and disgusted and I didn't want to be around...'*

The panel noted your admission in relation to charge 3a, in which you admit to showing Witness 1 a picture of a sex toy. Witness 1 also stated in her NMC witness statement that after showing her this, you stated that you were going buy the sex toy for Resident C.

In your oral evidence, you stated that you were having a conversation with Witness 1 in relation to Resident C. You stated that you feel frustrated for people (like Resident C), and you wish that you could do more to help them. You then stated that Witness 1 responded to this by stating *'we could get her a rampant rabbit'*. You explained to the panel that you understood this to be a reference to the sex toy. You went on to state that *'it fits in historically with some forms of Victorian strange treatments, but it was just absurd'*.

The panel noted that you claimed that it was Witness 1 who made the comments as set out in the charge. However, based on the evidence before it, including that of your oral evidence, it accepted Witness 1's version of events. In the panel's judgement, Witness 1's written, and oral evidence was more credible, consistent and clear than yours.

Taking all of the evidence into account, and for the reasons set out in charge 1, the panel determined that on the balance of probabilities, it is more likely than not that you made a comment as set out in the charge.

This charge is found proved.

Charges 4a, 4b i) and 4b ii)

Your conduct at one or more of charges 1 to 3 above harassed
Colleague A in that:

- a. It was unwanted conduct of a sexual nature and;
- b. It had the purpose or effect of:
 - i. Violating Colleague A's dignity, or
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A

The panel considered each of these charges separately. It reflected on the evidence before it and the several examples of your conduct that, on the facts found proved and, in its judgement, were highly inappropriate and offensive.

The panel noted your evidence in that you stated that you asked Witness 1 if she wanted to hear a *'risqué'* joke. The panel is of the view that, despite this question, it is fair to assume that Witness 1 did not expect the conversation to be of such an explicit nature given the professional relationship and environment you were in. You further stated that your interaction with Witness 1 was *'banter'*.

The panel noted Witness 1's oral evidence and distress throughout. It further noted her NMC statement in which she stated:

'To be clear, I did not want to hear the story and I felt extremely uncomfortable.'

and

'I was in complete shock at what Richard had told me. [PRIVATE], and I felt awful as a result of hearing Richard's story. I felt like I had a tonne of bricks on top of my chest, my neck and chest felt tight. It was completely unprofessional.'

The panel concluded from Witness 1's clear, consistent and credible written and oral evidence, that this was unwanted conduct of a sexual nature. The panel determined that based on the clear, credible and consistent oral and written evidence of Witness 1, you had created *'an intimidating, hostile, degrading, humiliating or offensive environment'* for Witness 1 and violated her dignity. It further concluded that a reasonable member of the public would also be of the same view, and that there could be no other interpretation of the words that you had spoken to Witness 1. The

panel considered that your description of these events as including an atmosphere of *'banter'*, was, in the context of the evidence it has heard, unlikely and unrealistic. Therefore, the panel determined that your conduct at charges 1, 2 and 3 harassed Witness 1/Colleague A.

For these reasons, these charges are found proved.

Charge 5a

On or around 24 October 2022, following Resident A's unwitnessed fall:

- a. Failed to call 111 or a GP;

This charge is found not proved.

Witness 2's written and oral evidence was that Witness 1 had called 111 after your conversation with another nurse and whilst Witness 1 was present. This was also stated by Witness 1 in her oral evidence.

The panel had sight of the 'Falls Prevention Policy' for the Home, referred to in Witness 2's written and oral evidence. Whilst it observed that the policy stated that *'...all witnessed or unwitnessed falls, trips or found on floor medical advice must always be taken via Paramedics, GP or out of hours medical service....'*, it noted that this policy was undated and therefore cannot confirm that this policy was in place, or that you had knowledge of it, at the time of this incident. It also noted that you had only been employed with the Home for approximately three weeks at this time.

In your oral evidence, when asked under oath if in your nursing experience of over 30 years, it is usually mandatory to call 111 following a fall, you responded by stating *'I've never known this before without it being displayed in front of the phone or prominently displayed in the area and the reasons given...it is not standard practice'*. You further stated that Resident A *'didn't appear to have any injuries. She was not on blood thinners. So my clinical judgement would be that we would monitor, we*

would take a set of observations, we would monitor and any deterioration would then be escalated through to 999 for removal to A&E for assessment.'

The panel noted that no evidence was put before it that showed that you should have acted differently in relation to any duty of care owed by you.

The panel determined that the NMC has not discharged its burden of proof in respect of this charge. This charge is found not proved.

Charge 5b

On or around 24 October 2022, following Resident A's unwitnessed fall:

- b. Failed to take Resident A's observations.

This charge is found not proved.

The panel noted Witness 1's NMC statement in which she stated '*...I therefore went to get my observation kit, in order to take Resident A's observations...*'. When questioned under affirmation as to who should complete observations, Witness 1 responded by stating '*...it was always either the nurses or the senior healthcare assistant*'.

In your oral evidence, you also recalled that Witness 1 had collected an observation kit and commenced taking Resident A's observations.

The panel accepted that you did not believe that there was a requirement upon you to take Resident A's observations, as you were aware that Witness 1 had already commenced this action and it would not be logical to ask her to disengage from this process at that point.

The panel noted that no evidence was put before it that showed that you should have acted differently in relation to any duty of care owed by you.

For these reasons, this charge is found not 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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Your evidence

You provided a reflective piece and gave evidence under affirmation.

In response to Mr Chin's questions, you said that you meet with management daily to debrief and discuss any professional interactions with families. When engaging in potentially delicate conversations with families, you always have a care assistant present to uphold integrity for both parties. You said that you conduct thorough morning briefings with your team to provide clear direction.

Reflecting on the past two and a half years, you expressed that it has been challenging but has allowed for significant self-reflection. You believe that you have improved communication with individuals, as you have become more aware of how

the expression of words can be interpreted or misinterpreted. You said that management support has been outstanding, with families even commending management for their efforts. You conveyed your enjoyment in your work. You said that you have not denied the facts of the allegations and are working to prevent them from occurring again.

You said that you work at Parkville Care Centre, specifically in the Emeralds Unit, which focuses on nursing residents with dementia and challenging behaviours. Under your supervision, there are four care staff, two domestics, and approximately 60 staff members employed across the site, and that within your unit you are currently attending to 17 residents.

You said that your employer is aware of the ongoing proceedings against you. After the hearing, knowing it would be publicly accessible online, you gathered the team to explain the situation briefly and provided them with an opportunity to ask questions and offer feedback. You said that some team members were aware of the hearing and were very supportive.

You said that you have never denied the facts of the events and have strived to remain open throughout the process. You said that you maintained the integrity of the situation by refraining from naming individuals or discussing specific details. You apologised for putting yourself in a position that caused discomfort, offence, or upset to others, and that was never your intention.

You said you have taken this experience as a positive learning opportunity, developing new strategies to enhance team briefings, better observe individuals' reactions, seek feedback, and ensure everyone feels safe and secure. You said that when issues arise, you enquire politely but also respect boundaries, letting them know you are available for support, just as they are supportive of you and management.

Regarding how you handle grief-stricken relatives, you shared an instance where you spent a significant amount of time with a resident's daughter, discussing future planning and access for the family. You said you ensured a continuous supply of tea

and biscuits, provided a room for them to stay overnight if needed, and gently introduced the topic of funeral directors. Furthermore, for a gentleman nearing the end of his life, you coordinated video calls with his sons in the UK and Australia every other day to keep them updated.

You said you have been a registered nurse for 30 years and have worked in the care sector for approximately 37 years.

In response to questions about any concerns raised regarding your practise, you disclosed two incidents: one involving a medication error that you promptly acknowledged and accepted a warning for, and another involving a serious altercation where one resident died. You felt the investigation was poorly managed, and although the company initially decided on dismissal, the finding was later deemed incorrect, leading to your reinstatement at Parkville. You said that you fulfilled your duties and adhered to policies and procedures. While you acknowledge that you are not perfect and do make mistakes, you love working in this field and appreciate your colleagues.

When asked about concerns regarding your relationships with colleagues and your interactions with patients or families, you stated that there have been no such issues raised.

In response to panel questions, you said you reflected on the many lessons learned over time, acknowledging the *“world has changed”* since you began your career. You said *“As my son put it, now people can take offence in an empty room with nobody else there and it can be the simplest of things.”* You said that you understand that communication can lead to differing interpretations, and you actively seek clarification to ensure everyone is on the same page. For example, you recounted a situation from the previous day where an individual was having relationship troubles. Although you were not part of the conversation, you suggested that it might be best to hold the discussion away from the residents, to which they responded positively.

You also said that if you observe banter or joking that may not be appropriate, you would *“distract and divert”* the conversation to safer ground. You said that you grew

up with practical jokes in the workplace and that today's society is more compassionate about other people's emotive and social responses and you are trying to emulate this.

Regarding an incident involving two residents with dementia who were known to exhibit aggressive behaviour, you explained that one resident struck the other in a corridor between the lounge and dining area. At that time, you were in the nursing office approximately 20 metres away. The initial investigation concluded that you had not adequately supervised the shift because you had not recalled the details twelve days after the event. However, upon appeal, you said that it was determined that staffing levels were a management responsibility. Consequently, your dismissal was found to be unproven, and you were reinstated at Parkville.

Submissions on misconduct and impairment

Mr Jones referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Jones invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision. He identified the specific, relevant standards where your actions amounted to misconduct.

Mr Jones submitted that your actions were clearly sexual in nature and undoubtedly unwanted by Colleague A and Person B, particularly when you told Colleague A a graphic story about a sexual encounter, describing a previous colleague in a sexually explicit way. This included making inappropriate comments and showing a picture of a sex toy, stating that it should be shoved up a resident's vagina. He submitted that you violated Colleague A's dignity. Furthermore, he submitted that the graphic nature of the advice you provided to Person B at her husband's deathbed was deplorable. He said that these actions, committed by you in the course of your professional

practice, constitute totally inappropriate behaviour for a workplace setting, which would have resulted in a hostile working environment. He submitted that such behaviour is particularly inappropriate when dealing with a patient and their loved ones, especially when that patient is receiving end-of-life care. He concluded that it is evident your actions amount to conduct that falls short of what is expected of a registered nurse and represents behaviour that would be regarded as deplorable by a fellow practitioner.

Mr Jones submitted that these are very serious charges. Your behaviour is clearly concerning and breaches the NMC's Code of Conduct. He submitted that while the NMC accepts that not every breach of the code constitutes misconduct, he said that these are serious breaches, and even if they do not individually amount to misconduct, collectively they would.

Mr Jones then addressed the issue of impairment, emphasising the need for the panel to have regard to public protection and the wider public interest. This included the necessity of declaring and maintaining proper standards and ensuring public confidence in the profession and the NMC as a regulatory body, referencing the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Jones submitted that it has been proved that you relayed a graphic story to Person B, telling her at her dying husband's bedside that she should watch porn to cope with her grief and to acquire a sex toy. He submitted that not only was this inappropriate, but it also caused Person B significant upset and distress during her husband's final hours. He submitted that this could have caused harm to Resident B, who was present when those comments were made. Mr Jones also submitted that it has been found proved that you relayed graphic stories to Colleague A, which resulted in a hostile working environment. He submitted that this hostile work environment could have significantly risked the quality of care being provided due to the friction caused within the team, thereby increasing the risk to patients at the Home. He submitted that these actions are reprehensible and deeply concerning.

Mr Jones acknowledged that you have shown some remorse and insight into your behaviour; however, he submitted that you seem, in your evidence, to have placed part of the blame on Colleague A or your employers themselves. In your reflective piece, you briefly discuss the impact on Colleague A and Person B, which he suggested reflects a lack of insight into the personal impact you have had on them. He indicated that the charges suggest these issues stem from an attitudinal problem that needs to be fully addressed. Mr Jones therefore submitted that there is a clear risk of repetition of this behaviour, which could cause harm to patients under your care in the future, thereby posing a continued risk to public protection.

Mr Jones submitted that public interest concerns are clearly an issue as a result of the sexual nature of the charges that have been found proved. He submitted that a finding of impairment would be appropriate to uphold professional standards and conduct, as well as to maintain public confidence in the profession. Furthermore, he submitted that if you were found not to be impaired and allowed to return to practise without restriction, there is a real risk that members of the public who are aware of the allegations would lack confidence in seeking medical attention, should you act in the same manner towards them. He therefore submitted that a finding of impairment is necessary to uphold proper professional standards and conduct, and to maintain public confidence in the profession.

Mr Chin submitted that it is fair to say at this stage that, by virtue of your reflective piece, misconduct is accepted in this case, following the findings of fact from the last hearing. He invited the panel to consider the attitude you now show towards the misconduct charges, which ought to be properly taken into consideration. He made reference to relevant case law.

Mr Chin submitted that denial of misconduct at the outset of hearings is not a reason to increase the sanction and that denial of misconduct is not an absolute bar to a finding of insight. He submitted that the assessment of the extent of insight is a matter for the panel, which must weigh up all the evidence. He submitted that the role of this panel is not to punish you for your past misconduct, but is primarily concerned with the protection of the public and the public interest, including maintaining public confidence in the profession.

Mr Chin referred the panel to the NMC's guidance on insight and strengthened practice, which reminds panels to consider the following, distilled from the case of *Cohen and General Medical Council* [2008] EWHC 581 (Admin): whether the misconduct is capable of remediation, whether it has been remediated, and whether the misconduct is highly unlikely to be repeated. Mr Chin submitted that in the two years since this isolated incident in your previously unblemished 30-year career, your misconduct has been remediated.

Mr Chin invited the panel to find, in light of your remorse, remediation, insight, reflection, training, and previous good practice, that the risk of repetition of this misconduct is low. He submitted that the disciplinary and NMC proceedings have been a salutary experience, but that nothing can compare with living with the full comprehension of the impact of your actions. He submitted that you have clearly demonstrated a deep understanding of what you did wrong, why it was wrong, and have communicated to the panel how your practice has changed to ensure the misconduct is not repeated. You have reflected on the impact of your actions on Colleague A, Person B, and their families, your colleagues, the Home, and the wider nursing profession. Mr Chin submitted that you have considered the NMC Code of Conduct and developed significant insight into the consequences of your actions, which the panel can be confident will never be repeated.

Mr Chin submitted that this was a case of poor judgment in what was an unblemished 30-year career and, without seeking to avoid responsibility for your shortcomings, you have worked successfully at Parkville Care Centre without incident. The panel has been furnished with three references from colleagues that describe your character, emphasising your professionalism when dealing with patients and their families, and no concerns were raised over your current fitness to practise.

Mr Chin submitted that, in terms of the public interest, there has been a substantial period during which you have been exposed to an interim conditions of practice order. He submitted that this event took place in October of 2022 and that you have

been working under interim conditions since shortly after that time. There have been no concerns raised whatsoever, and certainly no allegations of a similar nature.

Mr Chin submitted that the panel has heard your oral evidence in great detail today and had the opportunity to ask you further questions about your current practise, as well as what you have learned from the events of 2022. You have been able to provide examples of how your practice has changed.

Mr Chin invited the panel to focus its minds on the necessity of these proceedings and the role they play. This is not to dwell on the deplorable actions that occurred two years and two months ago, but to evaluate the character you embody now, the professional you have become, and the benefits you offer to those who work with you. He referred the panel to the references submitted regarding how you help your fellow colleagues. The panel has also heard how you pay specific attention when dealing with matters of grief, and that patients and families have expressed gratitude for the way you fulfil your professional obligations.

Mr Chin invited the panel to conclude that you pose no ongoing risk of harm to patients or colleagues, and that your fitness to practise is not currently impaired on public protection grounds. He submitted that the panel may find that the public interest has already been satisfied by the disciplinary outcome. It has been two and a half years since these events took place, and there have been impositions of conditions of practice. In all the circumstances, a finding of impairment on public interest grounds is not necessary.

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor.

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In the panel's judgement your actions fell significantly short of the standards expected of a registered nurse, and your actions amounted to several breaches 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

The panel determined that you breached code 1.1 by making unwanted sexually charged comments to Colleague A throughout your shift. The panel determined that your comments not only demonstrate a blatant disregard for professionalism, but also undermine the fundamental principle of treating colleagues with kindness and respect. On the same date, you made further inappropriate comments to Person B, the wife of Resident B. These included comments outlined in charges 1a-d and, of great concern to the panel, in the presence of Resident B, who was facing end-of-life care. For the reasons outlined, the panel concluded that your conduct, taken as a whole, was deeply deplorable and highly offensive. This code applies to all charges due to the nature and impact of your comments.

3.2 recognise and respond compassionately to the needs of those who are in the last few days and hours of life

The panel concluded that your failure to demonstrate compassion and respect for those in a vulnerable situation, such as Resident B and Person B, reflects a significant breach of the code, specifically 3.2.

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 ... integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

The panel concluded that you engaged in highly inappropriate behaviour by showing Colleague A a picture of a sex toy and making a comment regarding Resident C, stating that she “*needs one of these shoved up her vagina,*” or words to that effect. The panel concluded that this behaviour contributed to a significantly hostile work environment, which, in turn, could deflect from full, safe and effective care given to the residents. The panel also concluded that your conduct, as described in charges 1 to 3, amounted to harassment towards Colleague A because it involved unwanted conduct of a sexual nature; it had the purpose or effect of violating Colleague A’s dignity and it contributed to creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The panel determined that your behaviour undermined both the trust placed in you as a professional and the dignity of your colleagues. The panel also determined that your actions not only negatively impacted Colleague A, but set a poor example for other staff and for the wider professions regulated by the NMC.

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

The panel noted that the behaviour as set out in the charges relating to Colleague A, Person B and Resident B and the description of the behaviour is identical, in all cases, to the law of the UK; for example, the Equality Act 2010, the Protection from Harassment Act 1997, and the Sexual Offences Act 2003.

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

The panel determined that your inappropriate comments to Person B, made during a critical and emotional time, demonstrate a lack of judgment and empathy, taking

advantage of her vulnerable state while managing the imminent loss of her husband. The panel concluded that your actions exacerbated both Resident B and Person B's vulnerabilities and Colleague A's position as a junior staff member.

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

The panel determined that your comments to Person B occurred while Resident B was receiving end-of-life care, evidences your lack of professionalism in crossing your professional boundaries by making highly inappropriate comments to a grieving relative within hearing range of her dying husband.

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 determined that as a nurse in charge during these events, your conduct fell short of what is expected of a professional nurse and sets a detrimental example to aspiring professionals regulated by the NMC.

For the reasons set out above, the panel concluded that the facts found proved, taken as a whole, amount to misconduct.

Decision and reasons on impairment

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

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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession.

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

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

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith’s “test” which reads as follows:

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

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

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

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

- d) ...

The panel concluded that limbs (a), (b) and (c) of the Dame Janet Smith factors are engaged. Through your misconduct, you have placed patients at unwarranted risk of harm, you brought the profession into disrepute and you have breached several of the fundamental tenets of the nursing profession. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find as extremely serious, charges concerning inappropriate and sexual comments made in the workplace. The panel concluded that the deplorable comments you made have had a significant impact on Colleague A, Person B and on the wider nursing professions.

The panel went on to consider whether you were liable in the future to place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession. In doing so, the panel assessed the available evidence about your levels of insight, remorse and remediation. The panel had regard to the factors set out in the case of *Cohen*. In the panel's judgement, the misconduct found proved consists of several occasions where you used inappropriate and sexual words. The panel concluded that this presents more challenges for remediation as your misconduct indicates a deep-seated attitudinal issue.

Regarding insight and the potential for remediation, the panel took into account your written reflection and your oral evidence in which you expressed some level of insight. The panel also considered three character references by the home manager and two registered nurses at Parkville Care Centre.

The panel noted that in your oral evidence you have shown some understanding of your actions and their effects on others. In oral evidence, you said: *"If I come across somebody else bantering, I would divert the conversation on to safer ground"*. You also said *"we have a society who is more compassionate about other people's emotive response and social response and I am trying to emulate that."* It noted that in your evidence you recognise that your inappropriate comments caused discomfort and you acknowledge that you need to be more mindful with your words. You said that you believe you have learnt from your past mistakes and you are committed to making sure they do not happen again. Additionally, the panel noted the support you receive from management and positive feedback from families.

While the panel acknowledged that you have shown some developing insight, it was not satisfied that you have demonstrated sufficient insight. In your oral evidence you said that you had a conversation with your son, who stated that *"people can take offence in an empty room,"*. The panel was concerned that you had repeated this in this hearing without qualification or criticism, which gave the panel the strong impression that this was also your own current view. This would suggest a failure to accept accountability for your actions and reflects a misunderstanding of the responsibility to adapt to societal expectations, particularly in a sensitive healthcare setting.

Additionally, you said *"I grew up in a workplace with practical jokes"* which indicates a minimisation of the seriousness of your behaviour and your lack of awareness regarding the necessity of maintaining professional boundaries. Moreover, the panel took into account your reflective piece, which states: *"I want to express my sincere apologies for the unintended consequences of my actions and words."* The panel noted that your reflective piece focuses on outcomes rather than the inappropriateness of your actions themselves. The panel therefore was not satisfied that you understand the deeper changes needed in your communication style. This raises concerns about whether you truly grasp the importance of changing how you interact with others, or whether your primary focus is limited to avoiding consequences, rather than deeply reflecting on the impact of your words. The panel also noted that in your reflective piece, you only briefly touched upon the impact on Colleague A and Person B, which

did not provide sufficient evidence of insight into the personal impact you have had on them.

The panel also noted that it had only limited up-to-date information about your current practice, such as further training. While you have presented three testimonials and have indicated that the authors are aware of the charges found proved against you, there is no evidence to support that claim.

In all the circumstances, the panel concluded that it was unable to determine that it was “highly unlikely” that the misconduct would be repeated in the future, as your reflection did not provide sufficient insight to mitigate the risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel considered that in the circumstances of this case, a finding of impairment was also required on wider public interest grounds. It determined that the proven charges and misconduct identified in this case are extremely serious. It considered that a reasonable and informed member of the public would be concerned if the panel was to conclude you are not impaired. Therefore, the panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made.

Having regard to all of the above, the panel was satisfied on the grounds of public protection and in the wider public interest that your 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 twelve months. The effect of this order is that the NMC register will show that your 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.

Submissions on sanction

Mr Jones outlined the aggravating factors: these included deeply inappropriate sexualised comments made to Colleague A and to Person B at her husband's deathbed; limited insight into the impact of your actions on both Colleague A and Person B; repeated conduct of a sexual nature occurring over the course of a single day; and conduct indicative of deeply seated attitudinal issues. He also outlined the mitigating features, which include the fact that this misconduct occurred over one day in a career spanning over 30 years; evidence of remorse; and [PRIVATE] that should be taken into account.

Mr Jones submitted that the NMC's sanction bid for this case is for a striking-off order. He invited the panel to consider the sanctions, starting with the least restrictive one, which is no further action in the caution order. Together, he submitted that these would be insufficient in light of the your misconduct. A caution order is the least restrictive sanction; however, given the seriousness of the concerns, it would not be an appropriate outcome in this case. Therefore, Mr Jones submitted that taking no action would be wholly inappropriate.

In respect to imposing a conditions of practice order, Mr Jones referred the panel to the NMC guidance. He submitted that there are no workable conditions that could adequately address the identified concerns or protect the public, and any potential conditions would effectively be tantamount to a suspension.

Mr Jones submitted that this was not a single incident of misconduct but rather several incidents repeated over the course of one day. He highlighted evidence of

deep-seated personality and attitudinal problems based on the nature of the charges. Furthermore, he submitted that you have shown limited insight into your impact on Colleague A and Person B, both in your reflective piece and in your oral evidence.

Mr Jones submitted that there is a significant risk of repeating this behaviour, although it must be noted that there is no evidence of such repetition since the incident. As a result of the multiple incidents of misconduct, the evidence of deep-seated personality and attitudinal problems, and the significant risk of recurrence, he submitted that a suspension order would not be appropriate in this case.

Regarding the striking-off order, Mr Jones referred the panel to the NMC guidance and the key considerations the panel must take into account, ultimately submitting that it is the only sanction sufficient in your case.

Mr Jones informed the panel that you are currently under a conditions of practice order since 24 November 2022.

Mr Chin referred the panel to the relevant case law. He invited the panel to consider the available sanctions and to work through them in order, imposing a sanction that is strictly necessary.

In taking the sanctions in turn, Mr Chin submitted that a caution order would mean that you could continue to practise without restrictions. He submitted that the panel may find this to be an inadequate sanction.

Mr Chin then moved on to the sanction of a conditions of practice order. He submitted that you have been working under conditions of practice for over two years, during which no issues or concerns have been raised about your ability to practise, and there has been no repetition of any of the conduct that occurred on that one day in October 2022, in what was a previously unblemished 30-year career. Mr Chin submitted that the panel has heard your evidence regarding your importance to your colleagues, your patients, and their families. He submitted that you have read

the reasons regarding your fitness to practise and have taken to heart the words of the panel. You now understand how you must continue to strengthen your practice.

Regarding your comment that “*offence can be taken in an empty room,*” Mr Chin confirmed that it was your son who made that statement. He submitted that, taken in context, you were acknowledging that the world is ever-evolving and changing, and this does not diminish your insight into how offence can be taken by your words. You were not seeking to minimise your conduct; rather, you were simply stating to the panel that the world was changing at that time.

Mr Chin submitted that you are due to start courses at your current place of work, although all of those are on hold pending the outcome of this hearing. He submitted that you hope to begin your Level 5 in social care and that your current workplace is eager to help you achieve a management position by providing all the necessary training and courses.

Mr Chin submitted that the NMC’s proposed sanction of a striking-off order in this instance is excessively harsh and wholly disproportionate. While he acknowledged that the misconduct was serious, he submitted that although you did not acknowledge in great detail how your actions have affected Colleague A, Resident B, and Person B, you now understand that deeper reflection and further training are required as a result of this process. He submitted that a striking-off sanction for someone who committed misconduct on one day in over a 30-year period would be hugely disproportionate and would deny the public and your future patients the care of a highly competent nurse. He submitted that in the two years you have worked under conditions, you have shown and demonstrated that this has had the desired effect. You have continued to work as a competent nurse and have provided care for patients, their families, and your colleagues without any issues being raised. In fact, some might argue that you have improved at your job as a result of these proceedings, highlighting that one of the key purposes of such proceedings is not to punish you for your misconduct, but rather to protect the public and serve the public interest.

Mr Chin acknowledged on your behalf that further reflection is needed, and you must undertake the courses you are set to pursue. He submitted that the panel may be fully satisfied that you are no longer impaired and therefore invited the panel today to impose a sanction of conditions of practice which will allow you to demonstrate your ability to address the concerns that the panel may have.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Deeply inappropriate sexualised language towards a vulnerable person and a junior colleague.
- Harmful impact on vulnerable residents, their relatives and a junior colleague.

The panel also took into account the following mitigating features:

- You have shown some remorse.
- The misconduct occurred during a single shift in your 30-year nursing career.
- [PRIVATE].

The panel carefully considered whether your developing insight should be viewed as a mitigating factor. The panel determined that it falls short for that conclusion to be drawn. In the panel's judgment, while you are heading in the right direction, you need to engage in deeper reflection on the true nature of the misconduct identified in this case and articulate how your inappropriate comments impacted Colleague A, Resident B, Person A and the nursing professions. This reflection should also

demonstrate how the risk of repetition could be truly reduced or obviated in the future.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered that imposing no action or issuing a caution offers no safeguards or means to monitor the registrant's progress, as there would be no review process in place.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*

- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel noted that the charges do not relate to your clinical practice. It also acknowledged that you are working under an interim conditions of practice currently and have practised without any issues.

However, in this hearing the panel has found the charges proved and determined that you are currently impaired. It had concluded that these matters are extremely serious and, thus, in this case, any mitigation should not downgrade or diminish the seriousness of the matters found proved. The panel concluded that you had limited insight, which, although developing, combined with the identified attitudinal concerns, makes it difficult at this time to formulate practical or workable conditions that would adequately address the risk of repetition and, thus, the risk the public. The panel concluded that if it was to formulate any conditions, those conditions would be likely to amount to a suspension.

The panel concluded that the charges found proved involved inappropriate and serious misconduct of a kind that, as the panel has identified, demonstrated a deep-seated attitudinal problem that is much more difficult to remediate.

For the reasons outlined, the panel concluded that imposing conditions on your registration would not adequately address the seriousness of this case, nor would it protect the public. The panel also determined that any conditions would undermine public confidence in the professions, their reputations and standards and in the regulatory process.

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

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

The panel found that your misconduct, especially the inappropriate and graphic sexual comments made to Colleague A and Person B while she was next to her husband, Resident B, who was receiving end-of-life care, amounted to serious breaches of the fundamental standards of professional conduct and behaviour expected of a registered nurse. It concluded that you showed limited insight into the severity and impact of your misconduct on Colleague A, Person B and on the wider public interest, including the effect on the professions and junior colleagues for whom you were responsible, whether nursing colleagues or not. The panel also concluded that your misconduct was a serious breach of many of the fundamental tenets of the nursing profession which brought the nursing profession into disrepute.

The panel also took into consideration that that this had been a single instance of misconduct in that it involved a course of action over one shift in a career spanning over 30 years. It took into further account that there has been no evidence of repetition of similar concerns since the incident.

The panel concluded from your oral evidence and the content of the limited references you had provided for this hearing that, on many occasions, you had been thought of as a well-liked and competent practitioner. The panel noted, for example, Colleague A's comment in her oral evidence that, before these matters, she considered that you had been "*a lovely man*" and that "*you could go to him with anything*". She stated that you had been supportive in the workplace and that point was echoed by Colleague C in her oral evidence.

In exercising the principle of proportionality and taking account of all the evidence before it, including the steps you have taken to begin to strengthen your nursing practice and your developing insight, the panel concluded that this seriousness of the misconduct was such as to demand a sanction to reflect that seriousness. The panel also considered that this would give you a chance to return to unrestricted nursing practice in the future should you so choose. In the panel's judgement, a suspension order is the only fair, proportionate and appropriate sanction to achieve both these objectives.

In reaching its decision, the panel also took into consideration more recent case law identifying the shortages of nurses in the NHS and the older case law principle of keeping valued nurses within the profession, rather than outside of it.

Although your misconduct raises questions about your attitude and professionalism, it was, in the panel's view, not to the extent that required your removal from the register. The panel was not satisfied that a striking-off order was the only sanction sufficient to protect the public and to address the public interest considerations in this case. Whilst the panel acknowledged that a suspension order may have a punitive effect, it would be unduly punitive and disproportionate in this case to impose a striking-off order. It was of the view that a striking-off order could deprive the public of a registered nurse who has the potential to sufficiently strengthen his nursing practice and return to safe and effective practice in the future. Therefore, a striking-off order would not serve the public interest considerations in this case.

Consequently, the panel was satisfied that, in this case, the misconduct is not fundamentally incompatible with remaining on the register and that public confidence

in the nursing profession could be maintained if you were not removed from the register.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction to protect the public and address the public interest in this case.

The panel concluded that a suspension order for a period of twelve months is necessary.

The panel also noted that you have been under an interim conditions of practice order for two years and three weeks. This means that your nursing practice has been restricted for that period of time to date. The panel concluded, for the reasons outlined above, that the matters found proved are so serious that any reduction, including a mathematical one (which method the panel has chosen not to undertake) from the maximum period of the suspension order of twelve months to reflect the interim conditions of practice order would be disproportionate. In the panel's judgement, any reduction in the maximum period would not offer the full protection that the public expects and deserves and, furthermore, it would undermine the public's confidence in the regulatory process, in the nursing professions, their reputations, and in the standards that the NMC maintains and upholds.

The panel considered that the imposition of the suspension order for the full twelve months, with a review before it expires, will not detract from the potential for you to return to eventual unrestricted practice, should you so choose. Therefore, for the reasons outlined, the panel determined that the most fair, proportionate and appropriate sanction shall be a suspension order of twelve months.

The panel noted the hardship a suspension order might cause you. However, for the reasons set out above, the panel determined that this is outweighed by the need to protect the public and by upholding the public interest in this case.

The panel decided that a review of this order should be held before the end of the period of the suspension order.

Before 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 may be assisted by:

- Your further attendance at a future review hearing.
- A reflective statement, using a model such as the Gibbs model of reflection, demonstrating sufficient insight into the severity and impact of your misconduct.
- Any updated references or testimonials attesting to your professionalism and conduct, in whatever role, professionally in any paid or unpaid work, following this hearing.
- Evidence of up-to-date relevant training courses undertaken in the areas of concern including in diversity, equality and inclusion, in sexual harassment and in effective communication.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28 day appeal notice period or after the appeal has been determined, whichever appropriate, the panel considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the suspension 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 Jones. He invited the panel to impose an interim suspension order for eighteen months on the basis that it is necessary for the protection of the public and otherwise in the public interest. This would also ensure that an interim suspension mirrors the sanction that the panel has imposed. Furthermore, he submitted that in the event that you lodge an appeal, the interim suspension order would remain in place until any such appeal has been determined. If you do not lodge an appeal then the interim suspension order would remain in place for 28 days from today.

Mr Chin submitted that you are currently working under an interim conditions of practice order and there have been no further concerns at this time. Given that no issues have been raised regarding any additional misconduct since the implementation of the interim conditions of practice order, he requested that these conditions remain in place during the period of notice of an appeal, or an appeal itself, ensuring at least some financial stability during either of those time periods.

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 matters found proved and the reasons for that as set out in its decision, including the reasons for imposing the sanction of a suspension 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, namely a 12 month suspension order. The panel determined that to impose an interim conditions of practice order in the period before any appeal has been resolved or during the 28 day notice period would be inconsistent and illogical in light of its reason for all its decisions in this case.

Therefore, for these reasons, the panel determined to impose an interim suspension order for a period of eighteen months to allow for any appeal to be determined, or to allow for the 28 day notice period if no appeal is taken forward.

That concludes this determination.