

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

**Substantive Hearing  
Tuesday, 3 December 2024 – Monday, 16 December 2024**

Virtual Hearing

**Name of Registrant:** Daniel Yates

**NMC PIN** 11G0041W

**Part(s) of the register:** Nurses part of the register Sub part 1  
RNMH: Mental health nurse, level 1 (08  
September 2011)

**Relevant Location:** Suffolk

**Type of case:** Misconduct

**Panel members:** Debbie Hill (Chair, Lay member)  
Timothy Kemp (Registrant member)  
Alex Forsyth (Lay member)

**Legal Assessor:** Graeme Henderson

**Hearings Coordinator:** John Kennedy

**Nursing and Midwifery Council:** Represented by Eilish Lindsay, Case Presenter

**Mr Yates:** Not present and unrepresented

**Facts proved:** Charges 1a, 2, 3, 4a, 4b, 5, 6a, 6b, 7, 8, 9a, 9b,  
9c, 9d, 10a, 11, 12, 13a, 13b, 13c, 13d, 14a,  
14b, and 14c

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

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

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Yates was not in attendance and that the Notice of Hearing letter had been sent to Mr Yates' registered email address by secure email on 24 October 2024.

Ms Lindsay, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Yates' right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Yates has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Mr Yates**

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

Ms Lindsay submitted that there had been no engagement at all by Mr Yates with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Yates. In reaching this decision, the panel has considered the submissions of Ms Lindsay and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Yates;
- Mr Yates has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Five witnesses are due to attend 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;
- The charges relate to events that occurred in 2021;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Yates in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However,

in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Yates' decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Yates.

### **Details of charge (unamended)**

That you, a registered nurse:

- 1) In respect of Person A:
  - a) On an unknown date between January 2021 and February 2021, during a night shift:
    - i) told them that it would be a better way to learn the ECG if you practised on them without them wearing a top;
    - ii) insisted that they perform ECG training on you.
- 2) Your actions in charge 1) were sexually motivated in that you sought sexual gratification.
- 3) Your actions in charge 1) were harassing in that you engaged in unwanted conduct, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

- 4) On an unknown date between November 2020 and March 2021, in the TV room in the presence of Person A and patients commented, "she's hot," or words to that effect in respect of an actress on TV.
- 5) In respect of Person B:
  - a) On an unknown date between February 2021 and April 2021, during a night shift:
    - i) closed the curtains in the clinic room;
    - ii) requested that they remove their top to perform ECG training;
    - iii) touched their breast area with your hand;
    - iv) asked them to move the cup of their bra down when placing the pads;
    - v) when placing the pads below their breast area, you moved their bra upwards;
    - vi) had them practice an ECG test on you.
  - b) On an unknown date between February 2021 and April 2021:
    - i) whilst talking to them about parts of the body where you can take a pulse, pointed to your groin and said, "go home and try it yourself" or words to that effect;
    - ii) on or around the next day, asked if they had found their pulse point in their groin and when they said they hadn't you laughed;
    - iii) asked if they had a boyfriend and they answered yes and when they told you how long for said, "that's too long for your age" or words to that effect;
    - iv) touched their back when they were sat down in the computer room.
- 6) Your actions in charge 5) were sexually motivated in that you sought sexual gratification.
- 7) Your actions in charge 5) were harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and

the conduct had the purpose or effect of violating Person B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

8) In respect of Person C:

a) On 6 May 2021,

- i) told them that it was better to carry out the ECG test on them, rather than on patients;
- ii) closed the curtains in the ward;
- iii) requested that they remove their scrub and vest top to perform ECG training;
- iv) touched their body when placing the sticky pads including the top of their breast area;
- v) told them the results of the ECG test were abnormal;
- vi) told them they needed to cut back on eating KFC;
- vii) whilst they were giving an injection to a patient, asked them, "does your boyfriend slap your arse when you walk down the street" or words to that effect;
- viii) when they answered no, said, "what the fuck is wrong with him" or words to that effect.

9) Your actions in charge 8) were sexually motivated in that you sought sexual gratification.

10) Your actions in charge 8) were harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

11) In June 2021, prior to conducting an ECG test on a female patient, removed their clothing without:

- a) Explaining to the patient why you were doing so;

- b) their consent and despite their protestations;
- c) offering them a covering to preserve their dignity.

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

## **Background**

The charges arose whilst Mr Yates was employed as a registered nurse by Norfolk and Suffolk NHS Foundation Trust between January 2021 and June 2021. Allegations by student nurses were made that during this time Mr Yates acted inappropriately in a sexualised nature while training on how to carry out an electrocardiogram (ECG), and that he made other inappropriate sexually motivated comments at other times.

## **Application and decision on Special Measures**

The panel, of its own volition, made a decision under Rule 23 to apply special measures for hearing the witness evidence of Person A, Person B, and Person C. In order to protect the anonymity of the witnesses the panel decided that their evidence should be heard wholly in private session.

Although the names of Person A, Person B and Person C had been anonymised in the charges it was clear that each of them wished to be referred to by their first name when giving evidence. The safest course, to protect their anonymity, would be for their evidence to be heard in private.

Ms Lindsay indicated that she was fully supportive of the suggested special measures.

The panel heard and accepted the advice of the legal assessor who referred to Rule 23 of the Rules.

The panel determined that since all three of these witnesses were providing evidence in support of charges that were allegations of a sexual nature. As such they could be categorised as 'vulnerable witnesses'. It noted that one special measure listed in Rule 23 was for the panel to hear their evidence in private.

The panel therefore determined that the above special measures will apply to the evidence of Person A, Person B, and Person C, and directed that the transcript of the evidence reflect this decision.

### **Application and decision on amending the charges**

At the close of the NMC's case Ms Lindsay made an application under Rule 28 to amend the charges. She submitted that these amendments as applied for would assist in making the charges more accurate and reflect the evidence heard. They would add additional charges of an alleged abuse of a position of power by Mr Yates in regard to Person A, Person B, and Person C. The effect of the amendment would be to add clarifying words to charges 1 and 6. There is an additional sub charge to 10a, and a new charge 4, charge 9, and charge 13. As a result of the addition of the new charges the charge sheet will be renumbered, for the avoidance of doubt the charge numbering in the following paragraph reflects the new numbering.

The charge will read as below:

'That you, a registered nurse:

1) In respect of Person A:

- a) On an unknown date between January 2021 and February 2021, during a night shift:
  - i) told them that it would be a better way to learn the ECG if you practised on them without them wearing a top **and/or bra**;
  - ii) insisted that they perform ECG training on you **with your top off**.

2) Your actions in charge 1) were sexually motivated in that you sought sexual gratification.

3) Your actions in charge 1) were harassing in that you engaged in unwanted conduct, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

**4) Your actions at charge 1) were an abuse of a position of power in that:**

- a) you were the assessor/mentor of Person A and you sought to abuse said position by seeking to perform an ECG test on them without a top and/or bra; and**
- b) when they refused, instructed them to perform an ECG test on you without a top.**

5) On an unknown date between November 2020 and March 2021, in the TV room in the presence of Person A and patients commented, "she's hot," or words to that effect in respect of an actress on TV.

6) In respect of Person B:

- a) On an unknown date between February 2021 and April 2021, during a night shift:
  - i) closed the curtains in the clinic room;
  - ii) requested that they remove their top to perform ECG training;
  - iii) touched their breast area with your hand;
  - iv) asked them to move the cup of their bra down when placing the pads;
  - v) when placing the pads below their breast area, you moved their bra upwards;
  - vi) had them practice an ECG test on you **with your top off**.

- b) On an unknown date between February 2021 and April 2021:
  - i) whilst talking to them about parts of the body where you can take a pulse, pointed to your groin and said, “go home and try it yourself” or words to that effect;
  - ii) on or around the next day, asked if they had found their pulse point in their groin and when they said they hadn’t you laughed;
  - iii) asked if they had a boyfriend and they answered yes and when they told you how long for said, “that’s too long for your age” or words to that effect;
  - iv) touched their back when they were sat down in the computer room.
  
- 7) Your actions in charge **6)** were sexually motivated in that you sought sexual gratification.
  
- 8) Your actions in charge **6)** were harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
  
- 9) Your actions at charge 6) were an abuse of a position of power in that:**
  - a) you were the assessor/mentor of Person B;**
  - b) Person B was a nursing student during their placement on the ward;**
  - c) You sought to abuse said position by performing an ECG test on them without a top; and**
  - d) instructed them to perform an ECG test on you without a top.**
  
- 10) In respect of Person C:
  - a) On 6 May 2021,

- i) told them that it was better to carry out the ECG test on them, rather than on patients;
- ii) closed the curtains in the ward;
- iii) requested that they remove their scrub and vest top to perform ECG training;
- iv) touched their body when placing the sticky pads including the top of their breast area;
- v) told them the results of the ECG test were abnormal;
- vi) told them they needed to cut back on eating KFC;
- vii) Insist that they perform ECG training on you with your top off;**
- viii) whilst they were giving an injection to a patient, asked them, “does your boyfriend slap your arse when you walk down the street” or words to that effect;
- ix) when they answered no, said, “what the fuck is wrong with him” or words to that effect.

11) Your actions in charge **10)** were sexually motivated in that you sought sexual gratification.

12) Your actions in charge **10)** were harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person C’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

**13) Your actions at charge 10) were an abuse of a position of power in that:**

- a) you were the assessor/mentor of Person C;**
- b) Person C was a nursing student at the relevant time;**
- c) You sought to abuse said position by performing an ECG test on them without a top; and**
- d) instructed them to perform an ECG test on you without a top.**

14) In June 2021, prior to conducting an ECG test on a female patient, removed their clothing without:

- a) Explaining to the patient why you were doing so;
- b) their consent and despite their protestations;
- c) offering them a covering to preserve their dignity.

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

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

The panel decided that the amendments as applied for were fair and relevant. They provided a greater reflection of the evidence contained in the bundles. Having previously been satisfied that Mr Yates was served all the bundles of evidence, the panel were of the view that the allegations made in the new charges were already in the documentation that had been served. It was clear that the complaints were being made of Mr Yates whilst he was supervising these three student nurses who were younger than he was. The panel concluded that there is no unfairness to him in making these amendments at this stage and that the amendment could be made without injustice.

Therefore, the panel accepted all the amendments as applied.

### **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 Ms Lindsay on behalf of the NMC and by Mr Yates' written submissions.

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: Trust Manager who instructed the local investigation
- Witness 2: Senior nurse manager at the Trust
- Witness 3: Person A
- Witness 4: Person B
- Witness 5: Person C

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who referred a number of cases including *Kuzmin v GMC* [2019] EWHC 2129 (admin); *PSA v GMC and Onyekde* [2023] EWHC 2391 (Admin); and *Altemini v GMC* [2024] EWHC 1731 (admin).

It considered the witness and documentary evidence provided by both the NMC and Mr Yates.

In regard to all charges the panel had sight of a self-referral form and the Personal Contact and Employment Details (PCED) and Context Form dated 23 June 2022 from Mr Yates to the NMC. This self-referral related to a criminal investigation by the police of Mr Yates in relation alleged sexual assault against the persons listed in the charge. In the event no further action was taken.

The panel noted that the charges being considered do not take into account any criminal activity and the panel drew no adverse inference from the fact that Mr Yates was

investigated by the police. Mr Yates offers a simple denial of criminal activity and does not directly challenge any of the witness evidence. Therefore, the panel was only able to place a limited weight on Mr Yates' statements.

The panel also noted that the Trust interviewed Mr Yates in respect of the allegations made by the three witnesses of fact. He did not deny, in these local statements, that he was in a room, on his own with each of them when ECGs were being carried out.

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

### **Charge 1**

1) "In respect of Person A:

- a) On an unknown date between January 2021 and February 2021, during a night shift:
  - i) told them that it would be a better way to learn the ECG if you practised on them without them wearing a top and/or bra;
  - ii) insisted that they perform ECG training on you with your top off."

### **This charge is found PROVED**

The panel considered both sub-charges together as they occurred on the same shift and as part of the same training incident.

The panel heard in their oral evidence and witness statement that Witness 3 stated:

*'The ECG test was done on a night shift (date not remembered but it was between January 2021 and February 2021). [Mr Yates] led it and said it would be a better way to learn the ECG if he practiced on me without my top.*

*[Mr Yates] said that we would tell ladies with bigger boobs to take off their bra when doing the ECG test as it's easier. Even though [Mr Yates] didn't tell me to take off my bra, I think he was indirectly suggesting that I should take off my bra so he could do the ECG test on me as I have a bigger chest.*

*I said no to having the ECG test done on me as it felt like the only option was to remove my clothing. [Mr Yates]'s comment also made me feel like he would ask me to take off my bra. [Mr Yates] accepted my response. [Mr Yates] then insisted that I practice on him.'*

The panel noted that this is consistent with the local statement Witness 3 provided to the Trust as part of their investigation. The panel considered that Witness 3 was a reliable witness and preferred their account to the one offered by Mr Yates.

Therefore, the panel found this charge proved in its entirety.

## **Charge 2**

- 2) Your actions in charge 1) were sexually motivated in that you sought sexual gratification.

### **This charge is found PROVED**

In reaching this decision, the panel waited, until it had considered all of the factual allegations, before it reached a determination on this issue.

The panel took into account the actions found proved in charge 1. As well as the two other charges found proved involving similar conduct (6a) and 10). It noted that there was a pattern of behaviour where three female student nurses, younger than him, under his supervision were instructed, by him, to participate in ECG training without a chaperone in an isolated room.

The panel noted that Mr Yates had not provided any alternative or explanation for his motivation. The panel considered that the act of wanting to conduct an ECG on a female with their whole top exposed, perform an ECG on a female after she had removed some clothing or to have an ECG performed on oneself while naked on the upper part of the body is highly likely to have been motivated by seeking sexual gratification.

The panel had regard to evidence of the regular and well-established clinical practice of how to perform an ECG within the Trust. The best practice for training student nurses would have been to watch a registered nurse perform an ECG on a patient. The student nurse would then be expected to perform it on the patient with supervision. It was unacceptable that Mr Yates should perform the training without a chaperone. There was no live evidence, or evidence in the local investigation, to suggest that this practise was acceptable.

The panel concluded that there was no logical reason for acting in the way found proved other than seeking sexual gratification.

Therefore, the panel found this charge proved.

### **Charge 3**

- 3) Your actions in charge 1) were harassing in that you engaged in unwanted conduct, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

### **This charge is found PROVED**

The panel considered that in their statement Witness 3 stated:

*'When I started the ECG test on [Mr Yates], I felt uncomfortable and awkward. I wanted it to be over quickly. I was thinking what if someone walked in, it would look strange seeing me do the ECG test on my mentor laying on a hospital bed without his top on with his hairy chest.'*

The panel noted this was consistent with their oral evidence and is sufficient to indicate harassing behaviour from Mr Yates that made them feel intimidated and uncomfortable. Therefore, the panel found this charge proved.

#### **Charge 4**

- 4) Your actions at charge 1) were an abuse of a position of power in that:
  - a) you were the assessor/mentor of Person A and you sought to abuse said position by seeking to perform an ECG test on them without a top and/or bra; and
  - b) when they refused, instructed them to perform an ECG test on you without a top.

#### **This charge is found PROVED**

The panel considered this charge in its totality as it relates to the same incident as part of the training and assessment process.

The panel noted that Mr Yates was acting in a position of power as Witness 3's mentor and that he had the ability to fail their assessment which would have an impact on their successfully passing the placement. The panel heard in oral evidence that Witness 3 felt they were unable to refuse out of a concern they would fail their placement.

The panel considered that all of this is indicative of an abuse of power as Mr Yates was in a position of authority and seniority and used it to achieve his sexual gratification.

Therefore, this charge is found proved in its entirety.

### **Charge 5**

- 5) On an unknown date between November 2020 and March 2021, in the TV room in the presence of Person A and patients commented, “she’s hot,” or words to that effect in respect of an actress on TV.

### **This charge is found PROVED**

The panel noted that Witness 3 stated in their witness statement:

*‘On one occasion, I was in the TV room during one of my shifts with [Mr Yates]. An actress appeared on the TV and [Mr Yates] said commented on that she’s hot. I thought it was an inappropriate thing to say in front of patients and a student nurse.’*

The panel considered the evidence of Witness 3, in this matter to be reliable and consistent with their earlier statements.

Therefore, this charge is found proved.

### **Charge 6a**

- 6) In respect of Person B:
  - a) On an unknown date between February 2021 and April 2021, during a night shift:
    - i) closed the curtains in the clinic room;
    - ii) requested that they remove their top to perform ECG training;
    - iii) touched their breast area with your hand;
    - iv) asked them to move the cup of their bra down when placing the pads;

- v) when placing the pads below their breast area, you moved their bra upwards;
- vi) had them practice an ECG test on you with your top off.

### **This charge is found PROVED**

The panel considered this charge and the enumerated sub-charges together as they relate to the same incident.

The panel heard from Witness 4 who stated in their witness statement:

*'I don't remember the exact date but sometime during my placement at Abbeygate Ward, [Mr Yates] suggested that we should do an ECG test. This was during a night shift. I agreed and I was happy to learn how to do it.*

*Later in the middle of the night, we went into the clinic room. [Mr Yates] drew the curtains and got the ECG test and bed set up, we were alone in the room. [Mr Yates] said I can show you how to do it by doing it on you and you can practice on me.*

*[Mr Yates] asked me to take off my top which I did. I was wearing my bra. [Mr Yates] said to me if I was a patient, he would ask them to remove their bra. I felt uncomfortable removing my top and didn't feel like I could say no to him. He was my assessor and I was trying to impress him.*

*When [Mr Yates] was placing the pads on, he was very particular about placing them correctly on the ribs. I produce a copy of the body map [...]. The map shows the areas of my body where he touched whilst placing the pads. When he went around my left side, he asked me to move the cup of my bra down slightly when placing the pads. When he placed the pads below my breast area, he moved my bra upwards.*

*After he completed the ECG test on me, he gave me the print out. Then we swapped places and he let me do the ECG test on him.'*

The panel also had regard to the local investigation where Witness 4 stated:

*'Before the training started [Mr Yates] told me I could do one on him afterwards for the practice, he immediately laid down and took his top off and I grabbed the ECG machine and was looking at the sensors and where to place them and the training continued.'*

The panel considered this together with the produced body map which indicated where a sensor was placed on Witness 4's breast area. It found the witness to be consistent with their local statement to the Trust, and the description of events that they gave to the police.

Therefore, the panel found this charge proved in its entirety.

### **Charge 6b**

- b) On an unknown date between February 2021 and April 2021:
  - i) whilst talking to them about parts of the body where you can take a pulse, pointed to your groin and said, "go home and try it yourself" or words to that effect;
  - ii) on or around the next day, asked if they had found their pulse point in their groin and when they said they hadn't you laughed;
  - iii) asked if they had a boyfriend and they answered yes and when they told you how long for said, "that's too long for your age" or words to that effect;
  - iv) touched their back when they were sat down in the computer room.

## **This charge is found PROVED**

The panel considered this charge and the enumerated sub-charges together as they relate to the same incident.

The panel heard Witness 4 who stated that:

*'On a night shift (date not remembered), I was in the TV room with [Mr Yates] and he was talking about parts of the body where you can take a pulse, he mentioned the groin area. [Mr Yates] pointed to his groin and said go home and try it yourself. He didn't appear to be joking or laughing at the time.*

*The next time/shift I saw him, [Mr Yates] asked if I tried it at home. I said no I didn't! [Mr Yates] responded by laughing.*

*Another time, [Mr Yates] asked me if I had a boyfriend, I answered yes. He asked for how long. When I told him, he said 'that's too long for your age'.*

*There were times when [Mr Yates] would touch my back when I was sat down in the computer room. I don't know if it was intentional or not but I thought it was unnecessary.'*

The panel considered that this evidence was consistent with the local statement provided as part of the Trust investigation and that there was no reason to doubt this account of the incident. This incident is more likely than not to have occurred later than events set out in charge 1. Person B was significantly younger than Person A and less likely to refuse the demand of Mr Yates that they should remove their top. Although age was one factor that made them vulnerable another factor was that they had already been told by Mr Yates, at a midpoint review of their placement, that their performance was not up to standard. Person B was therefore under greater pressure to do what Mr Yates wanted.

Therefore, the panel found this charge proved in its entirety.

### **Charge 7**

- 7) Your actions in charge 6) were sexually motivated in that you sought sexual gratification.

### **This charge is found PROVED**

The panel considered the same reasons for charge 3, noting that this was conduct towards Witness 4, but found it raised substantially the same issue as decided in charge 3.

The panel also considered in charge 6b) the nature of the discussion about finding pulses in the groin area and asking questions about a boyfriend involved unacceptable invasions of privacy and crossing professional boundaries. There was no other explanation for Mr Yates' motivation for this behaviour other than it gave him sexual gratification. The same could be said for touching Witness 4 on the back.

Therefore, this charge is found proved.

### **Charge 8**

- 8) Your actions in charge 6) were harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

### **This charge is found PROVED**

The panel considered in their witness statement Witness 4 stated:

*'I was in the middle of my placement and [Mr Yates] took me into the computer room and said he wanted to see an improvement. He wasn't telling me how to improve and was putting me down. He said I shouldn't be sitting around talking to patients. Despite other staff members coming into the room, he carried on belittling me. I was talking to patients because it was at the beginning of my course and it was during Covid. [Mr Yates] made me feel like a bad student, I had to take a minute to myself. I was crying in the bathroom because of the way he had spoken to me.'*

The panel considered this to be demonstrative of a hostile and intimidating working environment that Mr Yates had created for Witness 4 that had a profound negative impact on them. Therefore, the panel found this charge proved.

### **Charge 9**

- 9) Your actions at charge 6) were an abuse of a position of power in that:
- a) you were the assessor/mentor of Person B;
  - b) Person B was a nursing student during their placement on the ward;
  - c) You sought to abuse said position by performing an ECG test on them without a top; and
  - d) instructed them to perform an ECG test on you without a top.

### **This charge is found PROVED**

The panel considered this charge in its entirety as it relates to the same incident.

The panel noted that the same reasons in finding charge 4 proved apply in this charge, with the only substantial difference being it was actions towards Witness 4. Further the panel noted that as above at charge 8 Mr Yates acted in a way that belittled Witness 4 at

the midpoint of their placement, adding to the feeling that they had to comply with Mr Yates' requests in order to pass the assessments.

Therefore, this charge is found proved.

## **Charge 10**

10) In respect of Person C:

a) On 6 May 2021,

- i) told them that it was better to carry out the ECG test on them, rather than on patients;
- ii) closed the curtains in the ward;
- iii) requested that they remove their scrub and vest top to perform ECG training;
- iv) touched their body when placing the sticky pads including the top of their breast area;
- v) told them the results of the ECG test were abnormal;
- vi) told them they needed to cut back on eating KFC;
- vii) Insist that they perform ECG training on you with your top off;
- viii) whilst they were giving an injection to a patient, asked them, "does your boyfriend slap your arse when you walk down the street" or words to that effect;
- ix) when they answered no, said, "what the fuck is wrong with him" or words to that effect.

### **This charge is found PROVED**

The panel considered this charge and the enumerated sub-charges in their entirety as it relates to the same shift.

The panel considered that in their witness statement and oral evidence Witness 5 stated:

*'[Mr Yates] bought [sic] up doing the ECG test. At that time, I didn't particular want to do it as I didn't want it done on myself. [Mr Yates'] rational was that I would understand and learn the ECG test better if it was done on myself.*

...

*[Mr Yates] closed the curtains in the ward and asked me to take off my scrub. I took my scrub top off, I was wearing a loose vest top. ...*

*When [Mr Yates] was putting on the sticky pads, I rolled up my top. I had my bra on, [Mr Yates] commented that if I was a patient, he would've asked me to take my bra off.*

...

*[Mr Yates] would have touched my body when he was placing the sticky pads. One of the sticky pads was placed above my breast.*

...

*After the ECG test, [Mr Yates] looked at the results and said they were abnormal. When I asked how, he said I need to cut back on eating KFC, he meant it as a joke.'*

The panel also had sight of a body map showing the placement of the sticky pads at the breast area.

Additionally in the statement given by Witness 5 to the Police they stated:

*'Once [Mr Yates] removed the electrodes, I thought I was done, but then he told me that it was my turn to perform an ECG. I did not say anything as I thought he is my practice assessor and I need to do what he wants me to do, so I just performed the ECG like he asked me to do and then left the room when I had finished.'*

The panel also heard in the witness statement:

*'[Mr Yates] made an inappropriate comment when I was giving an injection to a patient. [Mr Yates] asked "does your boyfriend slap your arse when you walk down the street." I answered no and [Mr Yates] said "what the fuck is wrong with him?"'*

The panel found that there was no reason to doubt the account given by Witness 5, which was consistent with their local statement to the Trust. Therefore, this charge is found proved.

### **Charge 11**

11) Your actions in charge 10) were sexually motivated in that you sought sexual gratification.

### **This charge is found PROVED**

The panel considered the same reasons for charge 3, noting that this was conduct towards Witness 5, but found it involved substantially the same issues as above.

The panel also considered the sub charges found proved that were not related to the ECG incident. It considered that these involved an unacceptable invasion of privacy which involved discussing with Witness 5 about their relationship with their boyfriend. This involved a crossing of professional boundaries which could only be explained by sexual motivation.

Therefore, this charge is found proved.

### **Charge 12**

12) Your actions in charge 10) were harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Person C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

### **This charge is found PROVED**

The panel noted that in their witness statement Witness 5 stated:

*'... the experience made me feel really uncomfortable, it felt like he was taking advantage of me, he was my assessor and I was a student. It felt wrong.'*

The panel considered this to be demonstrative of a hostile and intimidating working environment that Mr Yates had created for Witness 5 that had a profound and long-lasting negative impact on them. Therefore, the panel found this charge proved.

### **Charge 13**

- 13) Your actions at charge 10) were an abuse of a position of power in that:
- a) you were the assessor/mentor of Person C;
  - b) Person C was a nursing student at the relevant time;
  - c) You sought to abuse said position by performing an ECG test on them without a top; and
  - d) instructed them to perform an ECG test on you without a top.

### **This charge is found PROVED**

The panel considered this charge in its entirety as it relates to the same incident.

The panel noted that the same reasons in finding charge 4 proved apply in this charge, with the only substantial difference being it was actions towards Witness 5. Further the panel noted that as above at charge 12 Mr Yates acted in a way that Witness 5 felt they had no choice as Mr Yates was their assessor. Person C was around the same age as Person B.

Therefore, this charge is found proved.

#### **Charge 14**

14) In June 2021, prior to conducting an ECG test on a female patient, removed their clothing without:

- a) Explaining to the patient why you were doing so;
- b) their consent and despite their protestations;
- c) offering them a covering to preserve their dignity.

#### **This charge is found PROVED**

The panel noted that in their statement to the police Witness 5 stated:

*'When I was working on the ward and a new female patient arrived and they needed an ECG to be completed YATES went to her and started to get her undressed, so he could complete the ECG. I could see that a male helping her get undressed was distressing her so I stepped over to help as the female was calling for me and wanted me to help her and assist her.*

*I expected YATES to step back and let me help but he did not, and he did not say anything to the female and ignored what she was saying.'*

The panel noted that there was no reason to doubt this account of events. They provided the same account to the Trust at interview and also did so in live evidence. Therefore, this charge is found proved in its entirety.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Yates' fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

### **Submissions on misconduct**

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

Ms Lindsay 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.

Ms Lindsay identified the specific, relevant standards where Mr Yates' actions amounted to misconduct. She submitted that sections 1.1, 1.5, 2.5, 2.6, 20.1, 20.2, 20.3, 20.5, and 20.8 of the Code had been breached by Mr Yates and that this amounted to serious misconduct.

### **Submissions on impairment**

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

Ms Lindsay submitted that limbs a, b, and c of the test set out in *Grant*, quoted below, apply in this case. She submitted that by acting in ways to seek his sexual gratification under the guise of training Mr Yates took advantage of the three student nurses placing them at unwarranted risk of harm. In addition, Mr Yates inappropriate comments about colleagues' personal life in front of patients and his actions at charge 14 put patients at risk of harm. She submitted that it is both in the public protection and otherwise in the public interest that a finding of impairment be made.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, and *Cohen v GMC* [2008] EWHC 589 (Admin).

### **Decision and reasons on misconduct**

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

The panel was of the view that Mr Yates' actions did fall significantly short of the standards expected of a registered nurse, and that Mr Yates' actions amounted to a breach of the Code. Specifically:

*'1.1 treat people with kindness, respect and compassion*

*1.5 respect and uphold people's human rights*

*2.5 respect, support and document a person's right to accept or refuse care and treatment*

*2.6 recognise when people are anxious or in distress and respond compassionately and politely*

*3.1 pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages*

*4.2 make sure that you get properly informed consent and document it before carrying out any action*

*5.1 respect a person's right to privacy in all aspects of their care*

*9.1 provide honest, accurate and constructive feedback to colleagues*

*9.4 support students' and colleagues' learning to help them develop their professional competence and confidence*

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

*20.2 act with honesty and integrity at all times, 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*

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Yates' actions breached significant and numerous parts of the Code and amount to misconduct.

The panel noted that charge 5, if considered independently, does not in itself amount to misconduct. It considered that while this behaviour was unacceptable it was not sufficiently serious to justify a finding of misconduct.

However, with all other charges the panel found that Mr Yates' actions do fall significantly short of the expected conduct and standards expected of a nurse and amounted to misconduct.

### **Decision and reasons on impairment**

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

In coming to its decision, the panel had regard to the guidance in 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.'*

In this regard the panel considered the test approved by Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 76, she said:

*'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 finds that patients were put at risk and were likely caused physical and emotional harm as a result of Mr Yates' misconduct. Mr Yates acted in a way which

ignored the consent of patients to treatment. Mr Yates ignored the patient's repeated requests for him to stop in terms of removing her clothing and performing an ECG, and did not act in the best interest of the patients. In addition one of the findings involved misconduct whilst a patient was being injected which was carried out with an unacceptable risk to patient safety and well-being.

The panel determined that the student nurses who were under Mr Yates' supervision and mentorship were put at risk and caused harm which has had a lasting impact on them. The panel found that Mr Yates abused his position of trust as the student nurses mentor/assessor in exerting pressure on the individuals to consent to wholly inappropriate ECG training which the panel found was demeaning. Mr Yates' misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel were aware that it had to consider whether the misconduct was capable of remediation, that steps had been taken to remediate. The panel was unable to form a view on the issue of whether or not Mr Yates was capable of remediating his behaviour. In the absence of any contribution from him there was no evidence that he was capable of remedying his misconduct.

Regarding insight, the panel considered that Mr Yates has shown no insight or remediation into his actions at all. He has not demonstrated any attempts to strengthen his practice. Therefore, the panel is of the view that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel concluded that public confidence in the profession would be undermined if a finding of impairment given the seriousness of this case and therefore also finds Mr Yates' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Yates' 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 Mr Yates off the register. The effect of this order is that the NMC register will show that Mr Yates 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. The panel accepted the advice of the legal assessor.

### **Submissions on sanction**

Ms Lindsay informed the panel that in the Notice of Hearing, dated 24 October 2024, the NMC had advised Mr Yates that it would seek the imposition of a striking-off order if it found Mr Yates' fitness to practise currently impaired.

### **Decision and reasons on sanction**

Having found Mr Yates' 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:

- Flagrant abuse of a position of trust
- Lack of insight into failings
- A pattern of escalating misconduct over a period of time
- Increasing seriousness of misconduct over time
- Premeditated, targeted and predatory behaviour which had a lasting negative impact on those impacted
- Behaviour which jeopardised patient well-being and care

The panel considered that there are no mitigating features in this case. The panel noted that within Mr Yates submissions he suggested a mitigating feature that the ward was exceptionally busy; however, the panel did not consider this to be in any way mitigatory in these circumstances.

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

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

The panel next considered whether placing conditions of practice on Mr Yates' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Yates' registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that the Mr Yates' misconduct was not a single incidence but involved a repetition of serious incidents of a sexual nature. Mr Yates' has provided the NMC with no evidence of insight and, accordingly there is a material risk of repeating behaviour. It considered that Mr Yates' misconduct was fundamentally incompatible with him remaining on the register.

In this particular case, the panel determined that 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?*

Mr Yates' actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel concluded that due to the lack of insight and remorse there is a high risk of repetition and of harm to patients and colleagues. The panel was of the view that the findings in this particular case demonstrate that Mr Yates' actions were serious and to allow him 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. Mr Yates' behaviours blighted the educational experiences of three student nurses, caused a patient psychological harm and impacted their well-being. The panel determined that Mr Yates' actions and behaviours have brought the profession into disrepute. 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.

### **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 Mr Yates' own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Lindsay. She submitted that an interim suspension order of 18 months is appropriate to provide for the protection of the public and the public interest during any potential appeal period.

### **Decision and reasons on interim order**

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any potential appeal period.

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

This will be confirmed to Mr Yates in writing.

That concludes this determination.