Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Meeting
Tuesday, 09 July 2024 – Wednesday, 10 July 2024

Virtual Meeting

Name of Registrant:	**Kimberley Hepburn-Lewis**
NMC PIN	19F0307O
Part(s) of the register:	Nurses part of the register Sub part 1 RN1: Adult nurse, level 1 (14 June 2019)
Relevant Location:	Camden
Type of case:	Misconduct/[PRIVATE]
Panel members:	Tracy Stephenson (Chair, lay member) Janet Williams (Registrant member) Carson Black (Lay member)
Legal Assessor:	Mark Ruffell
Hearings Coordinator:	Audrey Chikosha
Facts proved:	Charges 1, 2a, 2b, 3 and 4
Fitness to practise:	Impaired
Sanction:	**Striking off order**
Interim order:	**Interim Suspension Order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mrs Hepburn-Lewis's registered email address by secure email on 31 May 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was to be held virtually.

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

Details of charge

That you, a registered nurse,

1. [PRIVATE].
2. [PRIVATE] or otherwise:
    a. On 8 December 2020, slept on duty and did not prioritise care while you were directly responsible for Patient C.
    b. On 16 January 2022, slept on duty and did not prioritise care while you were directly responsible for Patient B.
3. Inaccurately recorded that you had completed observations of Patient B when you had not.
4. Your actions at charge 3 were dishonest in that you intentionally made inaccurate records in Patient B's notes with the intention that any subsequent reader would believe the notes to be accurate.

AND, in light of the above, your fitness to practise is impaired by reason of [PRIVATE] or your misconduct at charge 2 and your misconduct at charges 3 to 4.

Background

Mrs Hepburn-Lewis was referred to the NMC on 4 February 2022 by Voyage Care ('The Agency'). She was employed by Voyage Care as a Community Home Care Nurse from 3 November 2021 until 1 February 2022. The referral sets out concerns regarding Mrs Hepburn-Lewis failing to provide care to one or more patients in accordance with their care plan, poor record keeping and dishonesty. The referral sets out the following allegations:

a) On 16 January 2022, Mrs Hepburn-Lewis was booked to provide home care to Patient B, a 6-year-old child who has a tracheostomy and requires nocturnal invasive ventilation. Patient B was due a feed at midnight and at approximately 12am- 12.30am her father, who was sleeping in a room adjacent to hers, heard the alarm on her feeding pump. He does not remember how long the alarm went on for, but he fell asleep after it stopped.
    - At approximately 2am Patient B's father heard the ventilator machine alarming. He did not initially do anything as he thought Mrs Hepburn-Lewis was suctioning Patient B's airway, but the alarm kept sounding for approximately 15 to 20 minutes. He felt concerned and decided to go into Patient B's room to see if she needed help.
    - As Patient B's father opened the door to the room, he saw Mrs Hepburn-Lewis in asleep in the carers chair. He walked over to Patient B who was awake. She had pulled her tracheostomy tube out, so it was completely removed from her airway. Mrs Hepburn-Lewis did not hear Patient B's father come into the room and only woke up when he was comforting and talking to Patient B. Upon review of Patient B's documentation completed by the Registrant, it became apparent that she had partially completed the observation chart up to 7am including probe changes.
b) On 8 December 2020 the Registrant was seen to be asleep whilst holding a baby, Patient C, in the special care nursery at the Royal Free Hospital. Relatives of another baby alerted another registered nurse also working in the special care nursery at the time about Mrs Hepburn-Lewis sleeping.

[PRIVATE].

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

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and from Mrs Hepburn-Lewis.

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

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

- Witness 1: Colleague 1 in relation to charge 2a
- Witness 2: Colleague 2 in relation to charges 2b and 3.
- Witness 3: Parent B. Parent of Patient B in relation to charges 2b and 3.
- [PRIVATE]: [PRIVATE].

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

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

[PRIVATE]

Charge 2a)

"As a consequence of [PRIVATE] or otherwise:

a. On 8 December 2020, slept on duty and did not prioritise care while you were directly responsible for Patient C"

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague 1 and [PRIVATE]. The panel noted that Colleague 1 provided her initial report of the incident dated 8 July 2022 which reads as follows:

' On 8/12/2020, I was on a long day shift working in the Special care nursery. While I was attending to my patient one of the relatives of another baby on the unit in the same room brought it to my attention that my colleague [Mrs Hepburn-Lewis] was sleeping, and she was holding a baby in her arms. I quickly called out to my colleague to wake her up and told her to put the baby back into the cot as it was not safe for the baby. She told me she wasn't sleeping and continued to deny the incident. A few minutes later, I walked into the managers office and reported what had just taken place…'

The panel noted her statement remained consistent with her most recent statement dated 6 September 2023.

[PRIVATE]

This charge is therefore found proved.

Charge 2b)

"As a consequence of [PRIVATE] or otherwise:

b. On 16 January 2022, slept on duty and did not prioritise care while you were directly responsible for Patient B."

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague 2 and Parent B. The panel noted that Parent B stated:

> '*At around 02:00, I noticed that the ventilator machine was alarming quite a lot. It does alarm pretty much every five seconds after the tracheostomy tube is removed. You must remove the tracheostomy tube to allow you to suction [Patient B's] airway. It takes about 10 seconds to suction and then replace the tracheostomy tube. Once the tracheostomy tube is back in place, the ventilator alarm stops. I did not do anything initially as I thought [Mrs Hepburn-Lewis] was probably just suctioning airway, but the alarm kept going for about 15 to 20 minutes…*
>
> *I opened the door to room and [Mrs Hepburn-Lewis] was sat slumped in the carer's chair. She was facing me as I walked through the door, a couple of metres from bed which was on the left-hand side. [Mrs Hepburn-Lewis], [Patient B] and I were the only people in the room. [Mrs Hepburn-Lewis'] eyes were closed, and she was asleep. She had covered herself with what I think was her jacket…*
>
> *Kimberley did not wake up or open her eyes for at least another 30 seconds while I was in the room…The most worrying thing was that the alarm had woken me in another room, but not [Mrs Hepburn-Lewis] who was in the room with the alarming ventilator. The doors to room and to mine were both closed but I had still managed to hear it.'*

The panel noted that this was not the first instance of Mrs Hepburn-Lewis falling asleep while on duty. [PRIVATE] there is evidence to suggest that she was preparing to fall asleep. The panel noted that Mrs Hepburn-Lewis had a jacket over her, which suggested that she had made herself intentionally comfortable.

The panel also noted that Mrs Hepburn-Lewis had not completed her care duties prior to falling asleep.

The panel bore in mind the statement of Parent B which states:

> *'At around 02:00, I noticed that the ventilator machine was alarming quite a lot. It does alarm pretty much every five seconds after the tracheostomy tube is removed. You must remove the tracheostomy tube to allow you to suction* [Patient B's] *airway. It takes about 10 seconds to suction and then replace the tracheostomy tube. Once the tracheostomy tube is back in place, the ventilator alarm stops. I did not do anything initially as I thought* [Mrs Hepburn-Lewis] *was probably just suctioning* [Patient B's] *airway, but the alarm kept going for about 15 to 20 minutes. It was then that I was concerned and thought something was not right, so decided to get up and go into* [Patient B's] *room to check if* [Mrs Hepburn-Lewis] *needed any help.*
>
> *I opened the door to room and* [Mrs Hepburn-Lewis] *was sat slumped in the carer's chair. She was facing me as I walked through the door, a couple of metres from bed which was on the left-hand side.* [Mrs Hepburn-Lewis], [Patient B] *and I were the only people in the room. [Mrs Hepburn-Lewis's] eyes were closed, and she was asleep. She had covered herself with what I think was her jacket. I did not notice anything about* [Mrs Hepburn-Lewis's] *breathing as the alarm was too loud.* I *walked over to* [Patient B] *who was awake. She was laying down in her bed with her eyes wide open. She was not crying but she was lethargic and pale*. [Patient B] *had pulled out her tracheostomy tube, so it was completely removed from her airway but remained around her neck. The tracheostomy tube was what was supposed to be maintaining her airway…'*

And:

> *'I also noticed that* [Patient B] *was still connected to the extension set from her feed which would have finished around 00:30. At the end of the feed, the feeding tube should have been flushed and the extension set removed. I flushed and removed the extension set myself…'*

The panel also had before it, Mrs Hepburn-Lewis's response to the allegations in which she states:

'At approximately 0300 [Patient B] *woke (no crying) and was pulling at the straps. | suctioned her via the tracheostomy-minimal output and changed her diapers. After which, I sat down after going over to the ventilator (which was still beeping even though I was just by the ventilator). I saw when the father entered the room and went over. At that time, he stated that I was sleeping. To which I responded that I wasn't that I just sat down after trying to figure out why the ventilator was going off constantly.'*

The panel acknowledged that Mrs Hepburn-Lewis denies being asleep and claims that she was prioritising the care of the patient. However, the panel noted that there is contradictory information in Mrs Hepburn-Lewis's evidence. The timing of the incident differs from what was reported by both Patient B's parents and the Call log from the Agency. The timing of the call saying she had been asked to leave is shown as 02:15 on 16 January 2022, however Mrs Hepburn-Lewis said that Patient B had woken up at 03:00 and she had tended to her needs. Had Mrs Hepburn-Lewis been awake she would have known that the displaced tracheostomy tube was the cause of the continuous alarm. She would not have had to sit down to figure out the reason.

The panel was therefore of the view that she [PRIVATE] made herself comfortable to go to sleep while on duty and did not prioritise the care of Patient B.

The panel therefore concluded that on the balance of probabilities this charge is found proved.

Charge 3)

"Inaccurately recorded that you had completed observations of Patient B when you had not."

This charge is found proved.

The panel had before it Patient B's invasive ventilation observation chart from the night in question. The panel noted that Mrs Hepburn-Lewis had pre-populated the chart between 03:00 and 07:00 for:

- Trachy tapes intact and secure
- CYP on ventilator
- IPAP/EPAP being delivered or CPAP
- Humidifier water level
- Sat's Probe Site

The panel had no information before it in support or otherwise that the observations before 02:00 had been done in accordance with Patient B's care plan. However, noting that by 02:15, Mrs Hepburn-Lewis had been asked to leave Patient B's home, the panel determined that she had not carried out any of the observations between 03:00 and 07:00 as recorded in the chart.

The panel therefore found this charge proved.

Charge 4)

> "Your actions at charge 3 were dishonest in that you intentionally made inaccurate records in Patient B's notes with the intention that any subsequent reader would believe the notes to be accurate"

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 2 as well as Mrs Hepburn-Lewis's response and reflection in relation to the incident.

Colleague 2 in her witness statement highlighted the importance of the invasive ventilation observations and that pre-populating them in advance means that the information was not accurate nor was it a true reflection of the care given to the patient.

Furthermore, the panel noted that Mrs Hepburn-Lewis said that she had pre-populated the chart '*to save time so there was not so much for her to complete when the hourly checks were due'.*

The panel had before it the invasive ventilation chart which demonstrated that Mrs Hepburn-Lewis had pre-populated the chart between 03:00 and 07:00 for:

- Trachy tapes intact and secure
- CYP on ventilator
- IPAP/EPAP being delivered or CPAP
- Humidifier water level
- Sat's Probe Site

The panel noted that she had signed that the Trachy tapes were intact and secure. Following her handover, Mrs Hepburn-Lewis was aware that Patient B had a tendency to pull out her tracheostomy tube and therefore she knew there was potential that the tapes would not be intact and secure throughout the night. In fact, Parent B gave evidence that on checking on Patient B at 02:00 that the tracheostomy tube had been removed, presumably while Mrs Hepburn-Lewis was asleep. Therefore, by pre-populating the chart Mrs Hepburn-Lewis had misrepresented the situation as it existed prior to Parent B entering the room.

The panel also noted that Mrs Hepburn-Lewis had completed all the observations checks shown at 02:00. However, Parent B in his witness statement said that he had heard the ventilator alarm sounding for 20 minutes prior to entering Patient B's room at approximately 02:00. At that time, he found Mrs Hepburn-Lewis asleep and took over care of Patient B. He then asked Mrs Hepburn-Lewis to leave the house and the panel noted that the call confirming this was logged at 02:15 by the Agency. Therefore, the panel concluded that these observations were not carried out at 02:00 as recorded in the invasive ventilation observation chart by Mrs Hepburn-Lewis.

In light of this, the panel was of the view that an ordinary person knowing what Mrs Hepburn-Lewis had done in completing these notes would consider that she had acted dishonestly.

The panel therefore found this charge proved.

Fitness to practise

[PRIVATE].

The panel also considered whether the facts found proved in respect of charges 2b -4 amount to misconduct and, if so, whether Mrs Hepburn-Lewis' 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 and in the NMC as a regulatory body. 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.

Representations on misconduct and impairment

The panel had before it the NMC's written submissions which reads as follows:

> *'8. [PRIVATE].*
>
> *9. Charge 2 is pleaded in the alternative as there are two possible explanations for the conduct alleged.*
>
> *10. [PRIVATE].*
>
> *11. Secondly, that the Registrant made a conscious decision to disregard patient care, and sleep whilst on duty.*
>
> *12.* [PRIVATE]

13. Regarding Patient C, the Registrant was seen to be holding them whilst sat in a reclining chair that had been reclined a little. Upon being woken by her colleague, the Registrant appeared startled and shocked. She said "I wasn't sleeping" but did not give any explanation as to what she was doing if not sleeping.

14. Regarding Patient B, the Registrant completed Patient B's observation chart ahead of time, and then proceeded to go to sleep. Completing Patient B's observation chart ahead of time may be indicative of a considered choice to go to sleep rather than it having happened unintentionally. Why, the panel may ask rhetorically, would a nurse pre-fill in an observation chart if their intention and expectation was that they would be observing throughout the night and could therefore fill it in as they went?

15. [PRIVATE].

16. [PRIVATE]

17. Charges 3 and 4 are misconduct charges.

18. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct: '[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

19. As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively

> *'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*
> *And*

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

20. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.

The NMC Code:

21. The NMC considers the following provisions of the 2015 Code have been breached:

1 Treat people as individuals and uphold their dignity.
To achieve this, you must:
1.2 make sure you deliver the fundamentals of care effectively.
1.4 make sure that any treatment, assistance, or care for which you are responsible is delivered without undue delay.

10 Keep clear and accurate records relevant to your practice.
10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.

13 Recognise and work within the limits of your competence.
13.1 accurately identify, observe, and assess signs of normal or worsening physical and mental health in the person receiving care.
13.4 take account of your own personal safety as well as the safety of people in your care.

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice.
19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place.

20 Uphold the reputation of your profession at all times.

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.

[PRIVATE].

22. The NMC submit that breaches of the Code amount to misconduct and are serious. Misconduct in any area of nursing practice places patients at risk, and by inaccurately recording that observations had been completed when they had not been, other professionals and third parties looking at the records, would be led to believe that observations had been properly completed. Ultimately, this might mean an accurate picture of the patient's current health status is not given, resulting in a potential deterioration of the patient's condition or unnecessary pain and suffering.

23. Honesty and integrity are the cornerstones of the nursing profession and the Registrant's dishonest conduct is a significant departure from the standards of a registered nurse.

24. The public interest is engaged as the Registrants misconduct has the potential to damage public confidence in the profession.

25. The Registrant's conduct and behaviour is such that it amounts to misconduct.

Impairment

26. The NMC's guidance explains that impairment is not defined in legislation but is a matter for the panel to decide. There is no burden or standard of proof.

27. The panel must consider whether the Registrant's fitness to practice is currently impaired by reason of [PRIVATE] and misconduct. There is no statutory definition of fitness to practice.

28. 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?"*

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

30. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

31. When determining whether the Registrant's fitness to practice is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

> *1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
> *2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
> *3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
> *4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

32. The NMC submits that points 1, 2, 3 and 4 can all be answered in the affirmative in this case.

> *1. The Registrant's actions of sleeping on duty and making inaccurate entries in patient records, placed patients at risk of harm. Similar actions in the future could lead to a further risk of harm if not addressed.*

2. Nurses occupy a position of privilege and trust and are expected to be professional at all times. Patients, their families and colleagues must be able to trust nurses who must make sure that their conduct justifies both their patients' and the public's trust in the profession, at all times. The Registrant's actions are liable to bring the profession into disrepute.

3. The Registrant has breached the fundamental tenets of the profession by not providing safe and effective care to patients and by prepopulating patient observations.

4. The dishonest conduct whilst in a position of trust highlights the risk the Registrant poses and the likelihood that the dishonest conduct would be repeated.

33. Patient B's father placed a high level of trust in the Registrant to care for his child who has a number of health ailments and for whom he is unable to care for without some level of support from professionals. Patient B's father should be able to place unimpeachable trust in professional nurses who provide care for Patient B. He should be able to see that nurses looking after Patient B have the right attitude and genuinely care.

34. The Registrant's conduct must have significantly undermined the trust Patient B's father feels he can place in professionals. This must be unbearable for him as it is not possible for him to care for Patient B without some professional help.

35. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

36. The Registrant initially engaged with the NMC investigation [PRIVATE].

37. [PRIVATE]

38. [PRIVATE]

39. [PRIVATE]

40. The Registrant has not taken any action to demonstrate remorse or insight to allay the concerns that the conduct would not be repeated. Whilst reflection and training may not fully remediate the situation, it can provide evidence of remorse and willingness to remedy the concerns, which the panel can then use to assess risk and impairment. In this case, there has been no evidence put forward by the Registrant. Therefore, the concerns remain, and the panel are left with limited information to assess impairment.

41. The NMC note that the Registrant has not worked since the concerns were raised. As such, a risk of repetition remains.

Public interest:

42. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

"In determining whether a practitioner's fitness to practice 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."

43. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.

44. In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

45. However, there are types of concerns that are so serious that, even if the professional addresses the behavior, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.

46. The NMC consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior. The Registrant's conduct engages the public interest because the public would be shocked to hear that a registered professional acted dishonestly and recorded observations that she had not actually taken, in order to be able to sleep whilst on duty. The public rightly expects nurses to always perform their duties safely, honestly, and behave in a professional manner. The absence of a finding of impairment risks undermining public confidence in the profession.
In coming to its decision, the panel had regard to the case of Roylance v GMC (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.'

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on impairment (Charges 1 and 2a)

[PRIVATE]

Decision and reasons on misconduct (Charges 2b, 3, and 4)

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

The panel was of the view that Mrs Hepburn-Lewis 's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Hepburn-Lewis 's actions amounted to a breach of the Code. Specifically:

> ***'1 Treat people as individuals and uphold their dignity.***
> *To achieve this, you must:*
> ***1.2*** *make sure you deliver the fundamentals of care effectively.*
> ***1.4*** *make sure that any treatment, assistance, or care for which you are responsible is delivered without undue delay.*
>
> ***10 Keep clear and accurate records relevant to your practice.***
> ***10.3*** *complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.*
>
> ***13 Recognise and work within the limits of your competence.***
> ***13.1*** *accurately identify, observe, and assess signs of normal or worsening physical and mental health in the person receiving care.*
> ***13.4*** *take account of your own personal safety as well as the safety of people in your care.*
>
> ***19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice.***
> ***19.1*** *take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place.*
>
> ***20 Uphold the reputation of your profession at all times.***
> ***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.*

[PRIVATE].'

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 Mrs Hepburn-Lewis's actions at charges 2b, 3 and 4 fell short of the standards expected of a registered nurse.

The panel noted that in relation to charge 2b, Mrs Hepburn-Lewis had intentionally made herself comfortable to fall asleep and neglected her care duties for a particularly vulnerable patient. The panel also noted that according to Colleague 2 there was a real risk of harm that may have been caused had Parent B not intervened. The panel noted that Colleague 2 said in her witness statement that:

'[Parent B] stated that once he had reinserted the tube and suctioned Patient B's airway, her colour/palor improved, and she became settled. If Patient B was pale, this would have been likely due to prolonged decannulation leading to a lack of respiratory support via the ventilator'.

And

'She could have eventually stopped breathing and gone into respiratory arrest requiring basic life support. The outcome could have been fatal. The tracheostomy is an artificial airway that enables effective ventilation/breathing.'

The panel therefore determined that this conduct amounted to misconduct.

In relation to charge 3, the panel noted that a fellow nursing colleague would find pre-populating vital observations to be deplorable. It was of the view that regardless of the fact that Mrs Hepburn-Lewis said she did this to save time, the records were inaccurate and misrepresented the facts. The panel in particular were concerned that when Parent B entered the room, the Trachy tapes were not intact as recorded, a vital observation as Patient B was known to pull the Tracheostomy tube out. The panel therefore found that this amounted to misconduct.

In relation to charge 4, the panel noted that a finding of dishonesty is very serious and in breach of the position of trust that nurses have with patients. Observation charts of a vulnerable patient had been signed to indicate that they were true and accurate when they were not.

The panel therefore found that this charge also amounted to misconduct.

The panel found that Mrs Hepburn-Lewis 's actions at charges 2b, 3 and 4 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment (Charges 2b, 3 and 4)

The panel next went on to decide if as a result of the misconduct, Mrs Hepburn-Lewis 's fitness to practise is currently impaired.

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

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

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

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

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

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

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

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

The panel determined that all four limbs of the test are engaged.

The panel finds that vulnerable patients were put at risk of physical harm as a result of Mrs Hepburn-Lewis 's misconduct. The panel also noted that Patient B and Parent B suffered emotional harm as she was *'distressed'* and Parent B noted that he *'did not feel safe'*

leaving Patient B in Mrs Hepburn-Lewis's care. Mrs Hepburn-Lewis 's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that Mrs Hepburn-Lewis has no insight into her misconduct. Colleague 2 provided a brief note from Mrs Hepburn-Lewis in relation to the incident at charge 2b. The panel was not satisfied that this note demonstrated any meaningful insight into her actions. It noted that she denies sleeping on duty despite having been seen by Parent B. Furthermore, the panel noted that the CGAP observed that:

> *'She has some insight into her condition but less into the impact it has on her abilities to perform nursing duties'*

The panel had no information before it to illustrate that Mrs Hepburn-Lewis has strengthened her practice or reflected since the incident. Furthermore, dishonesty is very difficult to remediate especially when Mrs Hepburn-Lewis has not provided any information to the panel demonstrating that she recognises the seriousness of her actions.

In addition, the panel is of the view that there is a risk of repetition based on her lack of insight, constant denial of sleeping on duty and [PRIVATE].

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

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

The panel determined that a finding of impairment on public interest grounds is required because a well-informed member of the public would be shocked to find that a registered nurse facing these charges in relation to particularly vulnerable patients and dishonesty is

deemed to fit to practise safely, kindly, and professionally. The panel shared the view of the NMC that the public rightly expects nurses to always perform their duties safely, honestly, and behave in a professional manner and the absence of a finding of impairment risks undermining public confidence in the profession. The panel therefore also finds Mrs Hepburn-Lewis ’s fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Hepburn-Lewis’ fitness to practise is currently impaired.

Sanction

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

Representations on sanction

The panel had sight of the written submissions from the NMC regarding sanction;

'The NMC considers the following sanction to be proportionate: Striking-off order

48. The aggravating features in this case include:

- *Lack of insight.*
- *Patients put at a real risk of significant harm.*

49. No mitigating factors have been identified.

50. As per the NMC's guidance on sanction, all available sanctions have been considered starting with the least severe:

50.1 ***Taking no further action:***
This sanction would not be appropriate as there are no exceptional circumstances that would warrant taking no action if found currently impaired.

50.2 ***Caution Order:***
Considering the seriousness of the concerns in this case, a caution order is not appropriate. Caution orders are suitable where the concerns are at the lower end of the spectrum of impaired fitness to practise.

50.3 ***Conditions of Practice Order:***

This sanction is appropriate in cases where there are identifiable areas of the nurses practice that can be addressed through retraining or assessment. The guidance says conditions may not be suitable unless the nurse has shown potential and willingness to respond positively to retraining. The Registrants actions of prepopulating observations so that she could sleep whilst on duty and the dishonesty related to this cannot be addressed through conditions.

[PRIVATE].

In any event, the Registrant has not demonstrated a willingness to abide by or engage with conditions.

50.4 ***Suspension Order:***
The misconduct in this case cannot be described as a single instance and the Registrant's actions suggest there may be deep-seated personality or attitudinal problems. The dishonesty is directly linked to the Registrant's clinical practice. In relation to Patient B, if the panel consider the Registrant made a conscious decision that she was going to sleep whilst on duty her actions placed Patient B at considerable risk of harm and significantly undermined the trust Patient B's father places in professionals.

The NMC guidance on considering sanction for serious cases states that honesty and integrity are of central importance to a nurse, midwife or nursing associate's practice.

50.5 ***Striking-off Order:***
A striking-off order is the most appropriate sanction. As per the NMC guidance: "..allegations of dishonesty will always be serious and a nurse who has acted dishonestly will always be at some risk of being removed from the register….Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *Vulnerable victims*
- *Direct risk to people receiving care*

- *Premeditated, systematic or longstanding deception*

The Registrant's decision to inaccurately record that she had completed observations for Patient B when she had not, placed Patient B, a vulnerable, infant patient, at a direct risk of harm. Her actions were premeditated and, if the panel consider the Registrant made a conscious decision to sleep whilst on duty, done with the intention to complete observations ahead of time to avoid anyone detecting that she went to sleep during her shift and into believing that observations were completed on time.

The Registrant's misconduct is fundamentally incompatible with continued registration. A striking-off order is the only appropriate sanction to protect patients, members of the public and to maintain professional standards.'

The panel heard and accepted the advice of the legal assessor. He referred the panel to the cases of Parkinson v NMC [2010] EWHC Admin 1898 and Bolton v Law Society [1994] 1WLR 512.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Lack of insight into failings
- A repetition of misconduct
- Conduct which put vulnerable patients at risk of suffering harm.
- Attitudinal concerns

The panel could not identify any mitigating features in this case.

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

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

The panel next considered whether placing conditions of practice on Mrs Hepburn-Lewis' 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 regarding dishonesty identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Hepburn-Lewis 's 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 conduct, in light of the facts found proved, was not a single incident of misconduct, the dishonesty of Mrs Hepburn-Lewis indicated attitudinal problems and in the panel's view, there remains a significant risk of repeating this behaviour.

The panel noted that there had been no evidence of Mrs Hepburn-Lewis' remorse or recognition of the impact of her actions on Patient B and her family. Instead, the panel was concerned that Mrs Hepburn-Lewis was persistent in her denial and did not take adequate steps to ensure that she was working to the standards expected of a registered nurse. [PRIVATE].

The panel noted that Mrs Hepburn-Lewis' misconduct in this case was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Hepburn-Lewis' actions is fundamentally incompatible with Mrs Hepburn-Lewis 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?*

Mrs Hepburn-Lewis' actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register.

The panel was of the view that the findings in this particular case demonstrate that Mrs Hepburn-Lewis 's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel noted that Mrs Hepburn-Lewis' dishonesty, together with her lack of insight, the absence of evidence of her strengthened practice and her lack of engagement with these proceedings raises fundamental questions about her professionalism. Not prioritising the care of a particularly vulnerable patient while being her sole caregiver undermines public confidence in the nursing profession. The panel was of the view that Mrs Hepburn-Lewis' misconduct was a serious breach of the position of trust by falsifying documents in relation this vulnerable patient and fell significantly short of the standards expected of a registered nurse.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Hepburn-Lewis' actions in bringing the profession into disrepute by adversely affecting Patient B's parents and the wider public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

Interim order

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

Representations on interim order

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

> *'51. If a finding is made that the Registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed, the NMC consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.*
>
> *52. If a finding is made that the Registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible. The NMC consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.*
>
> *53. The purpose of an interim order is to cover the gap between the making of any substantive order and the statutory appeal window or any actual appeal. Should no appeal be lodged, or an appeal be resolved, the interim order would fall away'*

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 due to ensure the protection of the public and meet the public interest during the period of appeal.

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

That concludes this determination.

This will be confirmed to Mrs Hepburn-Lewis in writing.