

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

Substantive Meeting

Tuesday 23 - Wednesday 24 July 2024

Virtual Hearing

Name of Registrant:	Anne Ndlovu
NMC PIN:	12K0981E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing (Level 1) – 1 November 2013 Nurse Prescriber (Level 1) – 9 February 2022
Relevant Location:	Leicester
Type of case:	Misconduct
Panel members:	Shaun Donnellan (Chair, Lay member) Jane Jones (Registrant member) Kevin Connolly (Lay member)
Legal Assessor:	Alain Gogarty
Hearings Coordinator:	Monsur Ali
Consensual Panel Determination:	Accepted
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Conditions of practice order (6 months) with a review
Interim order:	Interim conditions of practice 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 Ndlovu's registered email address by secure email on 4 July 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was heard virtually. It also noted the email from Mrs Ndlovu's Royal College of Nursing (RCN) representative dated 23 July 2024 stating that they are content with the short notice and happy for the panel to proceed and consider the CPD agreement.

In the light of all of the information available, the panel was satisfied that Mrs Ndlovu 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, between 1 March 2022 and 30 June 2022:

- 1) Prescribed an Ozempic pen (Semaglutide) to Patient A without clinical justification and/or at an incorrect starting dose of 1mg weekly in light of Patient A's BMI.*

- 2) Failed to provide Patient A with adequate written and/or verbal instructions regarding the Ozempic pen (Semaglutide) in that it was unclear:*
 - a) How to administer the Ozempic Pen (Semaglutide);*
 - b) What dosage to take.*

3) *Failed to discuss the Ozempic pen (Semaglutide) prescription with Patient A's GP.*

4) *Offered and/or provided the following regulated services without being appropriately registered for them by the CQC:*

- a) Ozempic pen (Semaglutide) injections for weight loss;*
- b) Endoscopic ear wax removal.*

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Mrs Ndlovu.

The agreement, which was put before the panel, sets out Mrs Ndlovu's full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case is considered to be a 6-month Conditions of Practise Order, with review before expiry.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The facts

3. Mrs Ndlovu appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse – Mental Health and has been on the NMC register since 01 November 2013. On 09 February 2022 Mrs Ndlovu

additionally entered the NMC register as an Independent & Supplementary Nurse Prescriber.

4. Ozempic is an injectable prescription only medication indicated for the treatment of adults with insufficiently controlled type 2 diabetes mellitus as an adjunct to diet and exercise. It contains the active substance Semaglutide. It helps the body reduce blood sugar levels only when blood sugar is too high and can help prevent heart disease. It is typically prescribed to patients with a body mass index ('BMI') of over 30. Ozempic® is used:

- on its own – if a patient's blood sugar is not controlled well enough by diet and exercise alone, and they cannot use metformin (another diabetes medicine) or*
- with other medicines for diabetes – when they are not enough to control a patient's blood sugar levels.*

5. The starting dose for Ozempic is 0.25mg once a week for 4 weeks, after which the dose is increased to 0.5mg once a week. After another 4 weeks, the dose may be increased to 1mg per week to further improve glycaemic control. After at least 4 weeks with a dose of 1mg once weekly, the dose may be increased to 2mg once weekly to further improve glycaemic control if required. The slow increase in dose is necessary to reduce the risk of patients developing side effects from the treatment, specifically gastrointestinal side effects such as vomiting, diarrhoea, constipation, abdominal pain etc., as well as fatigue and headaches.

6. On 02 March 2022 Mrs Ndlovu submitted a sign off form for Ozempic® to Acre Pharmacy. By signing the form, Mrs Ndlovu confirmed that as a prescriber of Ozempic, she would have:

- Determined the patient(s) BMI is [sic] and (have) used (your) professional judgement to decide whether this value is suitable to prescribe Ozempic...;*

- *Discussed with the patient the associated off-label usage, potential side effects and adverse reactions;*
- *Provided details to the patient of who to consult if they experience side effects or adverse reactions;*
- *(You have) agreed to keep in regular contact with patient to discuss treatment.*

7. On or around 30 March 2022 Patient A, a then 42-year-old female, was seen by Mrs Ndlovu at Aesthetics and Beauty by Anne, of which Mrs Ndlovu is the individual operator. Mrs Ndlovu subsequently prescribed Patient A a 3ml1mg/0.74ml Ozempic pen. Patient A had no clinical need for the drug i.e., she is not diabetic, and her BMI as last recorded by the GP in November 2021 was 22.68and therefore within the normal range. The Ozempic® pen was delivered to Patient A a day or two later in the post.

8. On the morning of 31 March 2022 Patient A used the full 1mg Ozempic® injection i.e. 3ml. The correct dose was 0.25mg. Patient A then became very unwell with vomiting, she could not eat, she had no energy and experienced tingling and numbness in her arms, which continued into the following day. Patient A called 999 because they were feeling so unwell. Patient A also contacted Mrs Ndlovu, who went to Patient A's home and administered liquid glucose, after which Patient A's condition improved rapidly. Patient A however, continued to feel nauseous and was having occasional palpitations for about 8 days following the injection.

9. Patient A visited De Montfort Surgery ('the Surgery') on 05 April 2022 with the intention of seeking reassurance after feeling unwell. The Surgery retained the Ozempic® pen, noting that the dispensing label had no directions for use.

10. On 12 April 2022, the Surgery's pharmacist contacted the Care Quality Commission ('CQC') to enquire as to how to raise concerns about a private provider (beautician) who had supplied a prescription of Ozempic® which was

inappropriate and had resulted in distress to the patient. Further details were provided to the CQC on 21 April 2022.

11. On 26 April 2022 the enquiry was assigned to CQC Inspector, PG, for further investigation. This was because the alleged provider in the Surgery's complaint was referred to as 'Anne Luxeria', who was not registered with the CQC. PG conducted an initial assessment of the provider, using information on websites and social media platforms and established that the provider appeared to be Mrs Ndlovu via Aesthetics and Beauty by Anne. PG confirmed that Mrs Ndlovu was registered with the NMC as a nurse, with additional qualifications in independent prescribing.

12. PG did not find information on the provider website about prescribing of weight loss medication.

13. PG considered that a regulated activity may have taken place, specifically the regulated activity of 'treatment of disease, disorder, or injury'.

14. Schedule 1 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 defines treatment of disease, disorder or injury as:

"This regulated activity covers treatment related to disease, disorder or injury by a:

- health care professional*

- social worker in the case of mental health treatment*

- multi-disciplinary team that includes a listed health care professional*

- multi-disciplinary team that includes a listed social worker where the treatment is for a mental disorder*

It includes a wide range of treatment, such as, but not limited to, emergency treatment, ongoing treatment for long-term conditions, treatment for a physical or

mental health condition or learning disability, giving vaccinations/immunisations, and palliative care.

This regulated activity applies to the treatment of disease, disorder or injury in any setting.”

15. PG spoke to Patient A on 16 May 2022. Patient A told PG that they had sought the Ozempic pen from Mrs Ndlovu to lose weight. Patient A confirmed that Mrs Ndlovu had given them some brief instructions, but not instructions on how to administer Ozempic® and what dosage to take.

16. PG subsequently further reviewed the Facebook page of Aesthetics and Beauty by Anne. They found pictures of ear irrigation using endoscopic equipment being carried out. The CQC consider earwax removal as a regulated activity if the patient and a listed healthcare professional both agree that there is a problem that needs an intervention; and the treatment is carried out by a listed healthcare professional.

17. On 01 June 2022 the CQC wrote to Mrs Ndlovu, advising that by virtue of the earwax removal services being offered and/or performed and the prescription of Ozempic® for weight loss, a criminal offence as per Section 10 of the Health & Social Care Act 2008 was suspected. A referral was also submitted to the NMC.

18. On 24 June 2022 the CQC received a completed response form from Mrs Ndlovu, in which they advised that they had ceased delivery of the regulated activities on 06 June 2022. In the covering email, they stated:

‘I was misinformed by the pharmacy I use in regards to [sic] requiring CQC registration for the prescribing of the weight loss medication.

I’ve now read the CQC guidelines and have discontinued with immediate effect both the prescription of weight loss products as well as the ear care treatment.’

19. On 07 July 2022 PG checked the websites and social media accounts of Aesthetics and Beauty by Anne and found no further evidence that a regulated

activity was continuing. PG further checked CQC customer relationship management system and found no further reports of concerns. They were sufficiently satisfied that Mrs Ndlovu was no longer delivering any regulated activities and the risks to the public using the service were greatly reduced. Due to the limitations in the evidence and the apparent short length of operation, the investigation was closed with no further action. That day, PG wrote to Mrs Ndlovu confirming that CQC would be taking no further action in relation to the s10 breach.

20. On 04 July 2022 a panel of the NMC's Investigating Committee imposed an interim conditions of practise order ('ICOPO') on Mrs Ndlovu's registration. They have since been unable to practise as a non-medical prescriber nor prescribe any medication.

21. On 11 April 2024, through their representatives, the Royal College of Nursing ('RCN'), Mrs Ndlovu admitted the charges and impairment in full.

Misconduct

22. The facts amount to misconduct.

23. Lord Clyde in *Roylance v General Medical Council* [1999] UKPC 16 provides guidance when considering what could amount to 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 rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

24. Further assistance may be found in the comments of Jackson J in *R (Calhaem) v General Medical Council* [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'.

25. At the relevant time, Mrs Ndlovu was subject to the provision of **The Code: Professional standards of practice and behaviour for nurses and midwives(2018)** ("the Code"). It is agreed that the following provisions of the Code have been breached in this case:

Prioritise people

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

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it

Practise effectively

6 Always practise in line with the best available evidence

To achieve this, you must:

6.1 make sure that any information or advice given is evidence-based, including information relating to using any health and care products or services

6.2 maintain the knowledge and skills you need for safe and effective practice

8 Work cooperatively

To achieve this, you must:

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

Preserve safety

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

To achieve this, you must:

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

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

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

Promote professionalism and trust

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

26. In 2018 the NMC adopted the Royal Pharmaceutical Society's ('RPS') Prescribing Competency Framework (2016) as the standards of competence for prescribing practice. The RPS refreshed the framework in September 2021, which the NMC adopted in November 2021. The relevant sections of both frameworks include (as per the numbering in the September 2021 framework):

4 Prescribe

4.1. Prescribes a medicine or device with up-to-date awareness of its actions, indications, dose, contraindications, interactions, cautions and adverse effects.

4.2. Understands the potential for adverse effects and takes steps to recognise, and manage them, whilst minimising risk.

4.3. Understands and uses relevant national, regional and local frame works for the use of medicines.

5 Provide information

5.1. Assesses health literacy of the patient/carer and adapts appropriately to provide clear, understandable and accessible information.

5.2. Checks the patient's/carer's understanding of the discussions had, actions needed and their commitment to the management plan.

5.3. Guides the patient/carer on how to identify reliable sources of information about their condition, medicines and treatment.

5.4. Ensures the patient/carer knows what to do if there are any concerns about the management of their condition, if the condition deteriorates or if there is no improvement in a specific timeframe

5.5. Encourages and supports the patient/carer to take responsibility for their medicines and self-manage their condition.

6 Monitor and review

6.1. Establishes and maintains a plan for reviewing the patient's treatment.

6.2. Establishes and maintains a plan to monitor the effectiveness of treatment and potential unwanted effects.

Prescribe safely

7.1. Prescribes within own scope of practice, and recognises the limits of own knowledge and skill.

7.2. Knows about common types and causes of medication and prescribing errors, and knows how to minimise their risk.

7.3. Identifies and minimises potential risks associated with prescribing via remote methods.

Prescribe professionally

8.2. Accepts personal responsibility and accountability for prescribing and clinical decisions, and understands the legal and ethical implications.

8.3. Knows and works within legal and regulatory frameworks affecting prescribing practice.

8.4. Makes prescribing decisions based on the needs of patients and not the prescriber's personal views.

8.6. Works within the NHS, organisational, regulatory and other codes of conduct when interacting with the pharmaceutical industry

Prescribe as part of a team

10.1. Works collaboratively as part of a multidisciplinary team to ensure that the transfer and continuity of care (within and across all care settings) is developed and not compromised

27. The Parties agree that the facts amount to misconduct. The misconduct in this case relates to the prescription of medication for unlicensed use to a patient in

which it was not clinically justified. Mrs Ndlovu failed to provide Patient A with dosage and administration information to allow them to take the medication safely, resulting in Patient A suffering an overdose. Furthermore, Mrs Ndlovu did not inform nor discuss with Patient A's GP the Ozempic® prescription. Separately, Mrs Ndlovu offered and/or performed services that are designated regulated activities when they were not authorised to, contrary to legislation. Mrs Ndlovu's actions and omissions were a serious departure from the standards expected of a registered nurse and independent/supplementary prescriber and demonstrate failings in fundamental nursing practice. These failings are likely to present a risk to patients in the future if they are not addressed.

Impairment

28. Mrs Ndlovu's fitness to practise is currently impaired by reason of their misconduct.

29. The NMC's guidance at DMA-1 explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. 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?"

30. Guidance can also be found in case law. The following considerations were suggested by Dame Janet Smith in her Fifth Report from Shipman and approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J; 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 professions 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 professions; and/or

d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future?

31. The Parties have also considered the comments of Cox J in Grant at paragraph 101:

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.”

32. In this case, limbs (a), (b), and (c) are engaged. Taking the limbs in turn:

Limb (a)

33. Ozempic® is not licenced in the UK for weight loss. It is only licenced for use in adults with insufficiently controlled type 2 diabetes. By prescribing it to patients when it is not clinically indicated, there is a risk that there will consequently be insufficient supply for those who need it. On 18 July 2023 the Department of Health and Social Care issued a National Patient Safety Alert (Ref: NatPSA/2023/008/DHSC), advising that there were intermittent shortages of Ozempic® contributed to by an increase in demand for off-label indication i.e. the management of obesity. The clinical indications of shortages for patients with type 2 diabetes include erratic blood glucose control, with the potential to increase diabetes-related complications, including the risk of future cardiovascular events and diabetic ketoacidosis. Furthermore, prescribing for patients when it is not clinically justified, risks exposing those patients to unnecessary side effects.

34. Medicines are prescribed when clinically indicated. Medication dosage refers to the amount of medication that a patient should take at one time, as a certain level is

required to be effective. Too much medication can have devastating consequences for patients. Patients need to be made aware of how much of a medication to take to ensure that they safely receive the maximum benefit.

35. In this case Mrs Ndlovu prescribed Ozempic® to Patient A when it was not clinically indicated i.e., they are not diabetic and had a normal BMI. On prescribing Mrs Ndlovu failed to provide Patient A with the relevant information i.e., how to administer the medication and how much to take. Furthermore, they did not discuss the prescription with Patient A's GP. As a result of their actions Patient A self-administered an overdose of Ozempic®, causing them to become seriously unwell for approximately two days and they continued to experience aftereffects for approximately a week.

36. The CQC consider earwax removal as a regulated activity as per Schedule 1 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 if the patient and a listed healthcare professional both agree that there is a problem that needs an intervention; and the treatment is carried out by a listed healthcare professional. The National Institute for Health and Care Excellence's ('NICE') guidance on Hearing loss in adults: assessment and management (

Limb (b)

37. Mrs Ndlovu's conduct has brought the profession into disrepute. The misconduct in this case is serious because Mrs Ndlovu prescribed medication to a patient when it was not clinically indicated, failed to provide said patient with sufficient information to allow them to administer the medication safely, resulting in Patient A suffering from an overdose, and offered and/or provided a regulated service to the public when she was not authorised to do so. The clinical nature of Mrs Ndlovu's offending is closely linked to her nursing practice and this, the Parties agree, further exacerbates the degree to which Mrs Ndlovu's actions have brought the professions into disrepute. This behaviour undoubtedly damages the reputation of the nursing profession.

Limb (c)

38. Ensuring that medication prescribed is appropriate, providing information to the patient to enable them to ingest the medication safely, and ensuring that they are authorised to carry out medical procedures, are underpinned by the fundamental tenets of the profession of prioritising people, practising effectively, preserving safety and promoting professionalism and trust. They also relate to basic nursing knowledge. Mrs Ndlovu's actions and/or omissions demonstrate a significant departure from the standards expected of a registered nurse and independent/supplementary nurse prescriber.

39. The Parties note that impairment is a forward-thinking exercise.

40. 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.

41. Having regard to the NMC's guidance 'Can the concern be addressed?' (FTP-14A), The Parties agree that the misconduct in this case is remediable. The misconduct involved safety of clinical practice and related to failings in discrete and easily identifiable areas.

Remorse, reflection, insight, training and strengthening practice

42. The Parties next considered if Mrs Ndlovu has reflected and taken opportunities to show insight into what happened.

43. In their response to the Case Examiners dated 18 May 2023, it states:

'Ms Ndlovu accepts that she did provide the prescription in question...The issue in this case is that the patient's BMI was not within the range of what

would be indicated, and Ms Ndlovu accepts responsibility for this. She has reflected on this decision in the enclosed statement.

It is further accepted that Ms Ndlovu could have done more to ensure the patient was aware of how to administer the medication. Whilst Ms Ndlovu instructs that she verbally informed the patient of how to do this, she accepts that she should have followed this up in writing to ensure there was no confusion.

Ms Ndlovu is a qualified non-medical prescriber and she did undertake a consultation with the patient prior to prescribing the semaglutide. She does accept, however, that there should have been discussions with the patients GP about the prescription.

Overall, Ms Ndlovu accepts that she did not follow best practice in her prescribing practice on this occasion.

...

Ms Ndlovu has continued to practice through her aesthetics business. There have been no further concerns, although it is noted that she has not undertaken further prescribing as a result of the interim conditions of practice order.

Ms Ndlovu has reflected on her actions and, in our submission, demonstrated insight into the concerns.'

44. In their attached reflective statement, it goes on to state:

'...As a clinician, I should not have allowed my good relationship with the client overlook my clinical judgement on the decision to prescribe this medication to a client whose BMI was 22...

She attended an appointment with me for a facial treatment and spoke of her concerns of struggling to lose weight for her upcoming wedding. I mentioned Ozempic to her as I had previously seen good results with it. She asked for the treatment and I communicated with the pharmacy who issued the prescription to her home address. At that point I had given verbal instructions to client A on administration. On reflection, I should have ensured that written clear instructions should have been given as well as a note on the prescription as the medication was delivered straight to her home address from the pharmacy.

I do realise and am aware that I did prescribe this medication aesthetically to the client and it was not medically indicated. This could have led to grave consequences if assistance was not provided on time. I should have consulted with the client's General Practitioner initially before prescribing this medication. The client should have been encouraged to focus on healthy diet and exercise as a means to losing the weight they wanted... I should have considered the impact this has on my profession and how a nurse in a similar position as I would have or is expected to act as I continue to be registered with the NMC and am accountable for any of my actions or omissions. Nurse prescribing is not widely utilised within the UK, and my actions could impact further on the public trust on nurse prescribing as a whole.

An online prescription was completed for the client and I should have ensured that all the details that are required within safe prescribing were included... Major consequence of medication error such as failing to provide adequate information on administration leads to patient dissatisfaction and a growing lack of trust to the profession. I am truly apologetic for my actions and am aware of my failings in regards to this.

Since Conditions of Practice have been placed, I have ceased to prescribe as I am taking this matter very seriously and would not want to compromise client safety or impact on my nursing pin.

I have since been looking at journals and researching more online on the impact of medication errors and how to avoid these. I am willing to work with the NMC in order to ensure I restore public confidence in me as a prescribing nurse and as part of these I have ensured that I adhered to the conditions of practice that have been placed on my registration.'

45. The Parties therefore consider that Mrs Ndlovu has demonstrated insight and remorse.

Public protection impairment

46. The Parties are conscious that consequent to the ICOPO imposed on 04 July 2022, Mrs Ndlovu has not been able to act as a non-medical prescriber nor prescribe medication. They have thus been unable to demonstrate strengthened practise, therefore the risk of repetition remains. Additionally, the NMC have not received evidence of further training undertaken by Mrs Ndlovu in, for example, medication management and administration, medication competency, and prescribing, to address the areas of deficiency. A finding of impairment is thus necessary on public protection grounds.

Public interest impairment

47. 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 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.”

48. 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.

49. It is submitted that there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. The prioritisation of people, practising in line with the best available evidence, preservation of safety with reference to prescribing and provision of services within the law, guidance, and regulations, and the upholding of the reputation of the profession are fundamental tenets of the profession. Nurses must ensure that their conduct at all times justifies the public’s trust in the profession. It is submitted that a member of the public apprised of the facts, would be shocked to hear that a registered nurse was entitled to practice without restriction in the circumstances. As such, the need to protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession, and the regulator, would be seriously undermined, particularly where there is a risk of repetition, as is present in this case.

50. Based on the above paragraphs, the Parties agree that Mrs Ndlovu’s fitness to practise is impaired on public protection and public interest grounds.

Sanction

*51. The appropriate sanction in this case is **a 6-month Conditions of Practise Order, with review before expiry.***

52. *The following aggravating features of this case are agreed by the Parties to be:*

- *The real harm suffered by Patient A in the initial 48 hours after administration of Ozempic® and the lingering side effects over 8 days as a result of Mrs Ndlovu's actions and omissions.*

- *The blurring of professional boundaries – in her reflective statement Mrs Ndlovu stated: 'I allowed my good relationship with the client [to] overlook my clinical judgment'. And it should also be noted that Mrs Ndlovu has not reflected on how she will prevent that blurring of professional boundaries in the future.*

53. *The following mitigating features of this case are agreed by the Parties to be:*

- *Mrs Ndlovu has demonstrated remorse and insight.*

54. *The Parties have considered the NMC's guidance to assist with the determination of the appropriate sanction. The Parties acknowledge that the panel will want to consider sanction in ascending order of seriousness.*

54.1. **Taking no further action** or imposing a **caution order** would be wholly inappropriate as they would not sufficiently address the seriousness of the concerns in this case and would not meet the wider public interest. Prescribing where inappropriate and acting outside of one's scope of practice could potentially cause harm if not put right and is also sufficiently serious to undermine public confidence in the profession.

54.2. Imposing a **conditions of practice order** would be appropriate. The NMC's guidance (SAN-3c) provides that conditions will be appropriate where there are identifiable areas of the nurse's practice in need of assessment/retraining, there is potential and willingness to respond positively to retraining, patients will not be put in danger directly or indirectly as a result of the conditions, patient will be protected for the period they are in force, and the conditions can be monitored and assessed.

The NMC consider that these factors are all present. There is no evidence of harmful deep-seated personality or attitudinal problems, nor evidence of general incompetence. Workable conditions could be put in place in relation to identifiable areas of Mrs Ndlovu's practice in need of assessment and retraining, for example completing non-medical prescribing competency assessments/courses before being allowed to prescribe medication.

*54.3. In the circumstances, the Parties consider that a **suspension order** or a **striking order** would be wholly disproportionate.*

55. The NMC considers that 6 months would provide Mrs Ndlovu sufficient time to strengthen her practise. A review before expiry would afford the NMC the opportunity to ensure that the misconduct has been sufficiently remediated.

56. The NMC recommends the following conditions be included:

- 1. You must not practise as a non-medical prescriber.*
- 2. You must:*
 - a. Successfully complete a non-medical prescribing competency course.*
 - b. Successfully complete a professional boundaries training course.*

The courses referred to above must include theoretical and practical components. Your successful completion of said courses must be assessed by a fellow registered professional with prescribing rights who will sign you as competent at their conclusion.

- 3. You will send your case officer evidence that you have:*
 - a. Successfully completed a non-medical prescribing competency course within 6 months of this order coming into effect.*

b. Successfully completed a professional boundaries training course within 6 months of this order coming into effect.

4. You must keep the NMC informed about anywhere you are working by:

- a. Telling your case officer within seven days of accepting or leaving any employment.*
- b. Giving your case officer your employer's contact details.*

5. You must keep the NMC informed about anywhere you are studying by:

- a. Telling your case officer within seven days of accepting any course of study.*
- b. Giving your case officer the name and contact details of the organisation offering the course of study.*

6. You must immediately give a copy of these conditions to:

- a. Any organisation or person you work for.*
- b. Any agency you apply to or are registered with for work.*
- c. Any employers you apply to for work (at the time of application).*
- d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
- e. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

7. You must tell your case officer, within seven days of your becoming aware of:

- a. Any clinical incident you are involved in.*
- b. Any investigation started against you.*
- c. Any disciplinary proceedings taken against you.*

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a. Any current or future employer.*

- b. Any educational establishment.*
- c. Any other person(s) involved in your retraining and/or supervision required by these conditions.*

Maker of allegation comments

57. On 13 May 2024 the NMC emailed the referrer, PG, for comments on the CPD agreement. A response was received on the same date, agreeing to the CPD with no further comments.

Interim order

58. An interim order is required in this case.

59. The interim order is necessary for the protection of the public and otherwise in the public interest for the reasons given above.

60. The interim order should be for a period of 18 months in the event that Mrs Ndlovu seeks to appeal the panel's decision. The interim order should take the form of an interim conditions of practice order.

61. The interim conditions of practice should include the following:

1. You must not practise as a non-medical prescriber.

2. You must:

- a. Successfully complete a non-medical prescribing competency course.*
- b. Successfully complete a professional boundaries training course.*

The courses referred to above must include theoretical and practical components. Your successful completion of said courses must be assessed

by a fellow registered professional with prescribing rights who will sign you as competent at their conclusion.

3. You will send your case officer evidence that you have:

a. Successfully completed a non-medical prescribing competency course within 6 months of this order coming into effect.

b. Successfully completed a professional boundaries training course within 6 months of this order coming into effect.

4. You must keep the NMC informed about anywhere you are working by:

a. Telling your case officer within seven days of accepting or leaving any employment.

b. Giving your case officer your employer's contact details.

5. You must keep the NMC informed about anywhere you are studying by:

a. Telling your case officer within seven days of accepting any course of study.

b. Giving your case officer the name and contact details of the organisation offering the course of study.

6. You must immediately give a copy of these conditions to:

a. Any organisation or person you work for.

b. Any agency you apply to or are registered with for work.

c. Any employers you apply to for work (at the time of application).

d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

7. You must tell your case officer, within seven days of your becoming aware of:

- a. Any clinical incident you are involved in.*
- b. Any investigation started against you.*
- c. Any disciplinary proceedings taken against you.*

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a. Any current or future employer.*
- b. Any educational establishment.*
- c. Any other person(s) involved in your retraining and/or supervision required by these conditions.*

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the Panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Mrs Ndlovu. The provisional CPD agreement was signed by Zach Jones - RCN representative, on behalf of Mrs Ndlovu, on 1 July 2024 and the NMC on 15 May 2024.

Decision and reasons on the CPD

The panel decided to accept the CPD with a minor clarification.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept or reject the provisional

CPD agreement reached between the NMC and Mrs Ndlovu. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mrs Ndlovu admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Mrs Ndlovu's admissions as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Mrs Ndlovu's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mrs Ndlovu, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of misconduct the panel determined that the charges found proved amount to misconduct and they are in breach of many provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2018) (the Code) which are highlighted by the NMC in the CPD agreement apart from provision 20.8. The panel also determined that because NMC adopted the Royal Pharmaceutical Society's ('RPS') Prescribing Competency Framework (2016) as the standards of competence for prescribing practice Mrs Ndlovu has also breached the RPS standards. Furthermore, the panel determined Mrs Ndlovu was in breach of Schedule 1 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The panel also noted that there was actual harm caused to the patient as a result of Mrs Ndlovu's misconduct.

Having considered all of the above, the panel concluded that Mrs Ndlovu's fitness to practise is currently impaired on the grounds of public protection. The panel also determined that her fitness to practise is impaired by reason of public interest. A reasonable and fully informed member of the public would expect a finding impairment in the circumstances of this case. In this respect the panel agreed and endorsed paragraphs 28 to 50 of the provisional CPD agreement.

Decision and reasons on sanction

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

The panel took into account and agreed with the following aggravating features:

- The real harm suffered by Patient A in the initial 48 hours after administration of Ozempic and the lingering side effects over 8 days as a result of Mrs Ndlovu's actions and omissions.
- The blurring of professional boundaries – in her reflective statement Mrs Ndlovu stated: 'I allowed my good relationship with the client [to] overlook my clinical judgment'. And it should also be noted that Mrs Ndlovu has not reflected on how she will prevent that blurring of professional boundaries in the future.

The panel also took into account and agreed with the following mitigating features:

- Mrs Ndlovu has demonstrated remorse and insight.

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 Ndlovu's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Ndlovu's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Mrs Ndlovu would be willing to comply with conditions of practice.

The panel noted that the misconduct is remediable and Mrs Ndlovu has developed insight into her misconduct, and has provided an appropriate reflection. The panel noted that there have been no concerns since the incidents in question. The panel was of the view that it was in the public interest that, with appropriate safeguards, Mrs Ndlovu should remain practising as a nurse.

Balancing all of these factors, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Ndlovu's case because she has been engaging with the process, has demonstrated remorse and insight. The panel was of the view that Mrs Ndlovu's misconduct was not incompatible with her remaining on the NMC register.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order would adequately protect the public, and would mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel agreed with the CPD that the following conditions are appropriate and proportionate in this case (with a point of clarification in bold font):

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. You must not practise as a non-medical prescriber
2. You must:
 - a) Successfully complete a non-medical prescribing competency course **(as acceptable to the NMC)**.
 - b) Successfully complete a professional boundaries training course.

The courses referred to above must include theoretical and practical components. Your successful completion of said courses must be assessed by a fellow registered professional with prescribing rights who will sign you as competent at their conclusion.

3. You will send your case officer evidence that you have:
 - a) Successfully completed a non-medical prescribing competency course within 6 months of this order coming into effect.
 - b) Successfully completed a professional boundaries training course within 6 months of this order coming into effect.
4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment..
 - b) Giving your case officer your employer's contact details.
5. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.

b) Giving your case officer the name and contact details of the organisation offering the course of study.

6. You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.
- b) Any agency you apply to or are registered with for work.
- c) Any employers you apply to for work (at the time of application).
- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
- e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

7. You must tell your case officer, within seven days of your becoming aware of:

- a) Any clinical incident you are involved in.
- b) Any investigation started against you.
- c) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a) Any current or future employer.
- b) Any educational establishment.
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 6 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Ndlovu has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Mrs Ndlovu's attendance at the review hearing, or if held as a meeting a reflective piece demonstrating her learning and progress
- Mrs Ndlovu's continued engagement with the NMC
- Any relevant testimonials
- Evidence of any training undertaken and competencies achieved

This will be confirmed to Mrs Ndlovu in writing.

Decision and reasons on interim order

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 is in Mrs Ndlovu's own interests. The panel heard and accepted the advice of the legal assessor.

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 agreed with the CPD that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the

substantive order and shall be for a period of 18 months. This will cover any appeal period and in the interim protect the public and address the wider public interest.

The interim conditions are as follows:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.’

1. You must not practise as a non-medical prescriber
2. You must:
 - a) Successfully complete a non-medical prescribing competency course **(as acceptable to the NMC)**.
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The courses referred to above must include theoretical and practical components. Your successful completion of said courses must be assessed by a fellow registered professional with prescribing rights who will sign you as competent at their conclusion.

3. You will send your case officer evidence that you have:
 - a) Successfully completed a non-medical prescribing competency course within 6 months of this order coming into effect.
 - b) Successfully completed a professional boundaries training course within 6 months of this order coming into effect.

4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment..
 - b) Giving your case officer your employer's contact details.

5. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering the course of study.

6. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

7. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Mrs Ndlovu is sent the decision of this meeting in writing.

That concludes this determination.