

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

**Substantive Hearing  
15, 17-19 and 22-26 July 2024**

**Virtual Hearing**

<b>Name of Registrant:</b>	<b>Anca Podgoreanu</b>
<b>NMC PIN</b>	14E0468C
<b>Part(s) of the register:</b>	Registered Nurse – Adult Nursing
<b>Relevant Location:</b>	Stockport
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Rachel Onikosi (Chair – Lay member) Claire Martin (Registrant member) Saiqa Shaffi (Lay member)
<b>Legal Assessor:</b>	Nigel Pascoe KC
<b>Hearings Coordinator:</b>	Vicky Green
<b>Nursing and Midwifery Council:</b>	Represented by Kirsty Shaw, Case Presenter
<b>Ms Podgoreanu:</b>	Present and represented by Jayesh Jotangia, Counsel, instructed by the Royal College of Nursing
<b>Facts proved by admission:</b>	Charges 1(in its entirety), 3, 5(in its entirety), 6 and 7.
<b>Facts proved:</b>	Charges 2 and 4
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim order:</b>	Interim suspension order – 18 months

## Details of charge (as amended)

That you, a registered nurse:

1) On 29 June 2022, whilst working at Alexandra Hospital:

a) Misappropriated medication, Midazolam and/or Fentanyl, for your own personal use. **[Proved by way of admission]**

b) Failed to dispose of Midazolam and/or Fentanyl and/or syringe/s in a sharps bin. **[Proved by way of admission]**

2) Your actions at charge 1a above were dishonest in that you knowingly misappropriated medication, Midazolam and/or Fentanyl, for your own personal use. **[Proved]**

3) On 16 September 2022 signed your name in the Controlled Drugs book to indicate that you witnessed/second checked Gabapentin being administered to Resident A when you had not. **[Proved by way of admission]**

4) Your actions at charge 3 above were dishonest in that you deliberately sought to represent that you had been present when controlled drug, Gabapentin, was administered to Resident A when you had not been present. **[Proved]**

5) On 12 October 2022:

a) Did not follow controlled drug procedures in that you administered;

i) Controlled drug, Morphine sulphate, to Resident B without a second checker/a second member of trained staff present.

ii) Controlled drug, Pregabalin, to Resident C without a second checker/second member of trained staff present. **[Proved by way of admission]**

b) Asked Nurse A to sign the controlled drug book when she had not witnessed you administer controlled drug/s, Pregabalin and/or Morphine Sulphate and/or Pregabalin, to Resident B and/or Resident C. **[Proved by way of admission]**

c) Signed Colleague A's initials in the controlled drug book to indicate that Colleague A had acted as a second checker when you:

i) Administered controlled drug, Morphine Sulphate, to Resident B when they had not. **[Proved by way of admission]**

ii) Administered controlled drug, Pregabalin to Resident C when they had not. **[Proved by way of admission]**

d) Signed Nurse B's name in the controlled drug book to indicate that Nurse B had acted as a second checker when you administered controlled drug, Pregabalin to Resident C when they had not. **[Proved by way of admission]**

6) Your actions at charge 5c(i) and/or 5c(ii) above were dishonest in that you deliberately sought to represent that Colleague A was present when you had administered controlled drugs, Morphine Sulphate and/or Pregabalin, to Resident B and/or Resident C when they were not. **[Proved by way of admission]**

7) Your actions at charge 5d) above were dishonest in that you deliberately sought to represent that Nurse B was present when you had administered controlled drug, Pregabalin, to Resident C when they were not. **[Proved by way of admission]**

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

### **Decision and reasons on application for a short adjournment**

On the first day of the hearing, Ms Shaw, on behalf of the Nursing and Midwifery Council (NMC) made an application to adjourn the hearing until day two of the hearing. She informed the panel that the witness listed to give evidence on day one would not be available until day three of the hearing. Ms Shaw submitted that other NMC witnesses have been scheduled to give evidence on day two of the hearing, however, none were available on day one.

Mr Jotangia, on your behalf, submitted that in these circumstances it is acceptable to adjourn the hearing. He submitted that this short delay would cause no prejudice to you.

The panel accepted the advice of the legal assessor.

The panel was mindful of its overarching objectives and the public interest in the expeditious disposal of cases. The panel was of the view that in order to utilise time in the hearing properly, NMC witnesses should have been scheduled to attend today. However, given that efforts had been made to secure the attendance of the witnesses and these had been unsuccessful, the panel decided to adjourn proceedings until day two of the hearing. The panel noted that this application was unopposed, and it was of the view that a short adjournment would not be unfair to you and there would be no prejudice to either party. The panel therefore granted this application.

The panel directed the parties to use the adjourned time to ensure that the witnesses are immediately available for when the hearing resumes, and that the rest of the hearing is carried out efficiently and expeditiously.

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

Ms Shaw made an application for any parts of the hearing that relate to your health be heard in private. This application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Jotangia agreed that any reference to your health should be heard in private to protect your right to privacy.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to your health, the panel determined to conduct these parts of the hearing in private to protect your right to privacy.

### **Decision and reasons on application to amend charge 3**

During your live evidence, you told the panel that whilst you had admitted the substance of charge 3, the incident occurred on 16 September 2022 and not on 15 September 2022 as stated in the charge. The panel therefore invited submissions from Ms Shaw and Mr Jotangia on whether this charge should be amended in the light of your clarified position which can be seen as withdrawing the gist of your earlier admission.

Ms Shaw made an application to amend charge 3 pursuant to Rule 28 of the Rules'. Charge 3 currently reads as follows:

*3) On 15 September 2022 signed your name in the Controlled Drugs book to indicate that you witnessed/second checked Gabapentin being administered to Resident A when you had not.*

The proposed amendment to charge 3 is as follows:

*3) On ~~15~~ 16 September 2022 signed your name in the Controlled Drugs book to indicate that you witnessed/second checked Gabapentin being administered to Resident A when you had not.*

Ms Shaw submitted that while you have admitted this charge in its current form, in your evidence it has become clear that this charge occurred on 16 September 2022 not 15 September 2022. She submitted that the amendment is not opposed and more accurately reflects the evidence.

Mr Jotangia agreed with this application and submitted that you have admitted the substance of the charge in any event.

The panel accepted the advice of the legal assessor.

Having heard during evidence that this charge arose on 16 September 2022 and not 15 September 2022 as is currently set out in charge 3, the panel was of the view that the proposed amendment would ensure clarity and properly reflect the evidence. The panel noted that this application was not opposed and that you admit this charge and agree that what is set out happened on 16 September 2022. The panel determined that this amendment can be made without any unfairness or prejudice to either party and therefore granted this application.

Charge 3 now reads as follows:

*3) On 16 September 2022 signed your name in the Controlled Drugs book to indicate that you witnessed/second checked Gabapentin being administered to Resident A when you had not.*

The Chair read out the amended charge 3 as amended. You admitted the amended charge 3 and the panel found this charge proved by way of your admission.

## **Background**

Charges 1 and 2 arose whilst you were employed by Circle Health Group as a registered nurse in the Catheter Lab at the Alexandra Hospital (the Hospital). On 29 June 2022 at approximately 15:40, Ms 6 found two syringes, one containing wasted (undestroyed) Midazolam and the other containing wasted (undestroyed) Fentanyl, in

your bag. Following the discovery, Ms 6 escalated the situation to the Acting Deputy Clinical Services Manager. You were removed from the Catheter Lab, suspended from work pending investigation and the police were informed.

Charges 3 – 7 arose whilst you were working at Brampton Lodge care home (the Home) where you were employed from September 2022 as a registered nurse. Between 16 September 2022 and 12 October 2022, a number of concerns were raised about you not following the Home's Controlled Drug policy and incorrectly and dishonestly signing the Controlled Drugs book (CD book).

### **Decision and reasons on facts**

At the outset of the hearing, Mr Jotangia informed the panel that you made full admissions to charges 1, 3, 5, 6 and 7.

The panel therefore finds charges 1, 3, 5, 6 and 7 proved in their entirety by way of your admissions.

In reaching its decisions on the disputed charges, the panel took into account all the oral and documentary evidence in this case, together with the submissions made by Ms Shaw on behalf of the NMC and those made by Mr Jotangia on your behalf. The panel had regard to the NMC Guidance entitled '*Evidence*' (Reference: DMA-6) and '*Making decisions on dishonesty charges and the professional duty of candour*' (Reference: DMA-8).

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

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

- Ms 1: Deputy Manager at Brampton Lodge.
- Ms 2: Bank Nurse at the Alexandra Hospital.
- Mr 3: Associate Director of Clinical Services at the Alexandra Hospital.
- Mr 4: Associate Director of Clinical Services at the Alexandra Hospital.

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

## **Charge 2**

2) Your actions at charge 1a above were dishonest in that you knowingly misappropriated medication, Midazolam and/or Fentanyl, for your own personal use.

**This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence. It had particular regard to the evidence of Ms 2, Mr 3 and Mr 4 and to your evidence.



The panel noted that you admitted charge 1)a), namely that on 29 June 2022, whilst working at Alexandra Hospital you took Midazolam and/or Fentanyl for your own personal use.

The panel heard evidence from Ms 2, Mr 3 and Mr 4, all of whom confirmed the policy of safe disposal of medications and that medication should never be taken by a nurse from the Hospital for personal use.

In her witness statement to the NMC, Ms 2 stated the following:

*'Then we started to prepare for the third case of the day around 2.15/2.20 pm. Anca was responsible for giving sedation on this case as the ODP. [Ms 6] and [Ms 7] were scrubbed. I did the paperwork.*

*At the end of the procedure, I was asked by Anca to witness her discard the Fentanyl and Midazolam and sign the records.*

*The sharps bin has absorbable material at the bottom to absorb discarded medication. Once you squirt out the medicine, you throw the syringe in the bin.*

*The bin wasn't exactly in the lab, but it was a section off the lab. It is part of the lab, it is a little area, with no door – that is where the big sharps bin is kept. Anca went over to the bin, I could see her from where I was even though I did not follow her. I was in the main lab, a few steps from her, watching her from a where I was stood. To my mind, she had the syringe in her hand, squirted the drugs out and put it in the sharps bin. She said, she was discarding the syringes and I was confident that she was doing just that.*

*I have been asked if I could see Anca discarding the drugs. As far as I know, she had two syringes in her hand. I believe she was squirting the medicines into the bin. I couldn't see any labels on the syringes from where I was standing. From what I saw with her hand, she was putting it into the sharps bin.*

*I have worked with Anca on several occasions, and I have also line managed Anca. I had no reason to doubt what she was doing or physically walk up to the bin with her.*

*I did not witness Anca place any syringes in her bag or in her clothes.'*

In your evidence you told the panel that you did not consider your actions in taking this medication to be dishonest. [PRIVATE]. As a consequence of this, you said that you felt that your judgement was impaired and, whilst you accepted that you should not have taken the medication for your own use, you did not accept that your actions were dishonest.

You said that there is a difference between theft and misappropriation and that taking used medication is different to taking unopened medication. Had your bag not been searched when it was, you said you would not have taken the medication from the Hospital and that it is likely that you would have reported your lapse in judgement to Ms 2 after. You also raised privacy concerns about Ms 2 going through your bag when you were not present. You expressed remorse for your actions and accepted that what you did was wrong.

The panel had regard to the test for dishonesty as set out in the case of *Ivey v Genting Casinos (UK) Ltd (Trading as Crockfords Club)* [2018] A.C. 391.

The panel considered that taking medication from the Hospital under any circumstances, that you knew was not intended for you, whether opened or unopened, and concealing it in your bag with the intention of using it yourself was dishonest. Whilst the panel empathised with [PRIVATE], the panel did not accept your evidence that your judgement was so impaired that you were unaware of your actions. The panel was of the view that a nurse should act with honesty and integrity at all times and taking medication from the Hospital in this way could never be justified.

The panel was satisfied that your actions were deliberate and deceptive when you took the syringes and put them in your bag without Ms 2 noticing. The panel was also not

convinced that you would not have taken the medication from the Hospital if it had not been discovered in your bag.

Having regard to all of the above, and applying the objective test of the standards of ordinary, decent people, the panel determined that in taking Midazolam and/or Fentanyl from the Hospital for your own personal use, your actions were dishonest. The panel therefore found this charge proved.

#### **Charge 4**

4) Your actions at charge 3 above were dishonest in that you deliberately sought to represent that you had been present when controlled drug, Gabapentin, was administered to Resident A when you had not been present.

**This charge is found proved.**

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Ms 1 and to your evidence.

The panel had regard to the Home's controlled drugs policy, in particular, the following:

*'For good practice, two members of staff should sign for schedule 2 and above drugs when:*

*receiving controlled drugs*

*checking stock balances*

*administering the medicines*

*disposing of these medicine stocks'*

The panel had sight of the Home's '*Medication Administration Competency Tool*' and noted that you had completed this and been signed off as competent on 7 September 2022.

The panel had sight of Ms 1's witness statement to the NMC in which she stated the following:

*'During an audit, I noticed that Anca countersigned for 300mg of Gabapentin (controlled drug) given at 23:37. She was on the early shift that day and was not physically in the building at 23:37 as she finished work at 20:15 on that day.*

*Anca was confronted about this incident. She admitted that she agreed to pre-sign the CD book for an agency staff during handover. Anca was worried that the NMC would become aware of this incident as had an ongoing case already. She begged [Ms 5] and I not to report the incidents to the NMC...*

*Anca was aware that she ought to sign for medication she had witnessed. This is part of the basic medication administration training. By law, we would have trained members of staff would witness the administration of the controlled drug.'*

In your evidence, you told the panel that you accepted that you were not present when the controlled drugs were administered to Resident A, but the following day you checked on the resident and the stock levels to help convince you that it had been administered correctly. You told the panel that you signed the controlled drugs book as you trusted that the agency staff knew the appropriate protocol. You also told the panel that you did not voluntarily sign the CD book, but that you felt pressurised and forced into it. You told the panel that on the day that you countersigned, you informed Ms 1 and Ms 5 (Manager at the Home) that you had countersigned when you had not been present for, and witnessed, the administration of the controlled drugs. You told the panel that Ms 1 and Ms 5 told you not to do this again.

The panel noted that Ms 1 had no recollection of you informing her and Ms 5 that you had not followed policy in respect of countersigning on 16 September 2022. The panel also heard evidence that approximately a month later, you asked Ms 1 to countersign for a controlled drug that you had administered without her having witnessed it. The panel found that it was more likely than not that you did not raise your concerns on 16

September 2022, as if you had, it is unlikely that you would have proceeded to ask Ms 1 to countersign in breach of the policy shortly after.

The panel was satisfied that Gabapentin is a controlled drug and that at the point of administration, a second checker is required. The panel was of the view that obtaining a countersignature from a person who had not witnessed the administration of the medication was a breach of the policy and misleading.

The panel was of the view that as an experienced nurse, having had the required training and being aware of the Home's policy, you knew that a countersignature should only be provided when you witness the administration of a controlled drug, and not at a later time or date. In signing to say that you had witnessed Resident A receiving Gabapentin when you knew you had not, you intentionally created a false impression which would be considered to be dishonest by the standards of ordinary, decent people. Accordingly, the panel found this charge proved.

## **Fitness to practise**

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

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

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

## **Your evidence**

At this stage of the hearing, you provided the panel with a closing written statement setting out your further reflection and remorse. You also gave further evidence under affirmation.

In your evidence you told the panel that you are not a dishonest person and that the mistakes you made would not happen again. You said that with what you have been through, and these proceedings have made you truly understand the importance of having a healthy and secure life, and that you always need to follow the rules.

You assured the panel that you would never take controlled drugs for your own personal use again [PRIVATE]. [PRIVATE]

You told the panel that since your PIN has been suspended by way of an interim order, you have been unable to work in a care setting. You have been working for the Council as a Care Call Officer. In this role you respond to calls from vulnerable people with mobility issues in the community who have had a fall. You told the panel that you attend their home and assist by lifting them using a device, and if the person is injured then you escalate to emergency services.

You told the panel that if you were asked to countersign for a controlled drug that you had not witnessed, you would say that you cannot sign because you did not observe it and you would advise the colleague to seek further assistance from a manager.

Since the charges arose, you said that you have taken steps to keep your nursing knowledge up to date. You have attended a number of online courses [PRIVATE]. You told the panel that you now have a healthy pattern of sleep, and you eat well.

You told the panel that you have been a nurse for 32 years and you love working in the nursing profession. You said that even when you have tried to follow a different path, you always come back to nursing as other jobs are unable to give you that satisfying feeling. You further told the panel that whilst working as a nurse, you have literally and practically saved lives and if you were given another chance, it would be a blessing and bring you much joy.

### **Submissions on misconduct**

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

Ms Shaw, on behalf of the NMC, submitted that the facts found proved amount to misconduct. She referred the panel to a number of judgments including *Roylance*, *Calhaem v General Medical Council* [2007] EWHC 2606 (Admin) *Nandi v General Medical Council* [2004] EWHC 2317. Ms Shaw also drew the panel’s attention to NMC

Guidance on ‘*Serious concerns which are more difficult to put right*’ (Reference: FTP-3a. Last Updated: 27/02/2024).

Ms Shaw referred the panel to the standards of ‘*The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*’ (the Code) in making its decision. She identified the specific, relevant standards that were engaged and where your actions amounted to misconduct.

Ms Shaw submitted that the conduct in this case is serious, and the charges found proved demonstrate a “*wholesale failure*” to act in a way consistent with upholding the reputation of the profession. She referred the panel to the NMC Guidance on ‘*Considering sanctions for serious cases*’ (Reference: SAN-2. Last Updated: 27/02/2024), in particular, the section entitled ‘*Cases involving dishonesty*’ and the following:

*‘Honesty is of central importance to a nurse, midwife or nursing associate’s practice. Therefore allegations of dishonesty will always be serious...’*

Ms Shaw submitted that acting dishonestly and misappropriating controlled drugs for your own personal use is serious and falls short of the standards expected of a registered nurse. She submitted that your conduct in forging colleagues’ signatures and fraudulently signing the CD book is serious, placed patients and residents at a risk of harm and would be considered deplorable by fellow practitioners. Ms Shaw therefore invited the panel to make a finding of misconduct.

Mr Jotangia submitted that you accepted that the charges are serious however, not every failure or shortcoming amounts to misconduct.

### **Submissions on impairment**

Ms Shaw moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the



profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Yeong v GMC* [2009] EWHC 1923 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Ms Shaw submitted that your dishonesty was repeated and occurred in a work setting and directly linked to your practice as a nurse. She submitted that charges of this nature are incapable of being remedied by further training as they are rooted in fundamental dishonesty. Ms Shaw submitted that the misconduct in this case is not capable of being easily remediated.

Ms Shaw submitted that you have provided some evidence of the attempts you have made to remediate your misconduct. She acknowledged that you have provided multiple reflective statements prior to and during the hearing and that you have apologised for your actions. Ms Shaw submitted that whilst you accepted the majority of the charges, you have sought to deflect blame from yourself to your employers and colleagues and attempted to minimise your actions. She submitted that you have not looked at the charges objectively, instead you have sought to draw a distinction between “used” and “unused” medication and you said that signing initials is different to forging a signature. Ms Shaw submitted that the quality and nature of your insight is lacking and insufficient.

Ms Shaw submitted that the primary position is that the misconduct and behaviour identified in this case is not capable of remediation. She submitted that the steps you have taken to address your misconduct are insufficient and the training undertaken is not directly linked to the concerns.

Ms Shaw submitted that there is a history of repeated acts and that you say these arose as a consequence of [PRIVATE]. [PRIVATE]. Ms Shaw submitted that nursing is a stressful profession and it appears that when you are faced with difficult circumstances, you make decisions that are not in accordance with the Code and you put yourself and patients at a risk of harm and negatively impact the reputation of the nursing profession.

Ms Shaw submitted that despite being subject to an interim conditions of practice order and following the incident at the Hospital in June 2022, you again failed to comply with policy and procedure at the Home where two further instances of misconduct arose. Ms Shaw therefore submitted that there is a risk of repetition of your misconduct.

Ms Shaw invited that panel to find that you are currently impaired on public protection and public interest grounds.

Mr Jotangia submitted that to your credit, you made admissions to the majority of the charges at the very outset of these proceedings. He submitted that you have worked as a nurse for 32 years with a previously unblemished career and to have a further impact on her profession would be unfair to you.

Mr Jotangia submitted that you have reflected deeply on your actions, demonstrated a "*learning curve*" at a high level and provided credible evidence that you would not act in a similar way in the future. He submitted that you have not attempted to deflect blame or defend your actions, you have simply provided background information. Mr Jotangia submitted that the charges arose during a period of less than four months and while you were experiencing very extraordinary circumstances [PRIVATE]. He submitted that you have been passionate about the nursing profession and you hold it in a high regard.

Mr Jotangia submitted that the misconduct in this case is capable of being remedied. He submitted that through your reflections and the evidence you have provided during this hearing, you have demonstrated that you have understood what would be required of you in the future. Mr Jotangia referred the panel to your bundle of documents and to the course that you have completed. He submitted that you have demonstrated that you have addressed your conduct and that your past actions and omissions are not likely to be repeated. Mr Jotangia invited the panel to find that your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor.

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

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel was of the view that your actions fell significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

***'8 Work co-operatively***

*To achieve this, you must:*

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

***10 Keep clear and accurate records relevant to your practice***

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

*To achieve this, you must:*

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

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

***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***

*To achieve this, you must, as appropriate:*

*13.4 take account of your own personal safety as well as the safety of people in your care*

**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:*

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

*18.4 take all steps to keep medicines stored securely*

**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*

*19.2 take account of current evidence, knowledge and developments in reducing mistakes and the effect of them and the impact of human factors and system failures (see the note below)*

**20 Uphold the reputation of your profession at all times**

*To achieve this, you must:*

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

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

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

*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*

***[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 individually and cumulatively, the charges found proved amounted to misconduct. The panel made the following findings in respect of each of the charges.

### **Charges 1 and 2**

The panel determined that misappropriating controlled drugs from your place of work for your own personal use was extremely serious. This not only placed yourself at a potential risk of harm by intending to take controlled drugs that were not prescribed for you, it also placed patients at a risk of harm. The panel was of the view that had you taken the controlled drugs either at work or at home on that day (29 June 2022) and proceeded to deliver care to patients the next day, then your performance and level of care could have been negatively impacted and it could have placed patients and your colleagues at risk of harm. The seriousness of this misappropriation, in the panel's view, is compounded by the dishonesty element of the charge. Nurses are expected to be trustworthy, honest and act with integrity.

In failing to dispose of the syringes in accordance with the Hospital's policy, the panel determined that in acting outside of the policy your conduct was serious and presented risks that fellow practitioners and the public would consider to be deplorable.

Having regard to the above, the panel determined that your actions and omissions in respect of charges 1 and 2 fell seriously short of the standards expected of a nurse and amounted to misconduct.

### **Charges 3 and 4**

The panel was mindful that the purpose of having a second checker for the administration of controlled drugs is to mitigate potential risk to the resident through having a second person witness the administration. The panel was also mindful that clear and accurate records are of paramount importance to ensure the safety and wellbeing of residents.

In dishonestly countersigning residents' records to indicate that you had been present for the administration of a controlled drug when you had not, you created a false impression and did not carry out the necessary checks in accordance with the Home's policy. The panel was of the view that such behaviour was very serious, a significant departure from the standards expected of a nurse and would be considered deplorable by fellow practitioners and the public. The panel therefore found that charges 3 and 4 amounted to misconduct.

### **Charge 5a**

The panel determined that in failing to follow controlled drugs procedures in that you administered Morphine sulphate and Pregabalin to residents without a second checker is very serious. A second checker is required to mitigate risk to residents when administering strong and potentially dangerous medication. The panel found that acting in contravention of local policy in this regard would be considered as deplorable by fellow practitioners and the public. Accordingly, the panel found that this charge amounted to misconduct.

### **Charge 5b**

The panel was of the view that asking another nurse to be complicit in bad practice and to breach local policy is serious. As an experienced nurse you should act as a role model and encouraging bad practice, in the panel's view, would be considered as deplorable by fellow practitioners and the public. The panel therefore found that this charge amounted to misconduct.

### **Charges 5c, 5d, 6 and 7**

The panel determined that fraudulently and dishonestly signing the CD book to show that colleagues had witnessed you administering controlled drugs when they had not was extremely serious. By misrepresenting the truth and seeking to conceal your breach of local policy your actions lacked honesty and integrity and placed patients at a risk of harm. The panel was of the view that a fellow practitioner and member of the public would consider your actions to be deplorable. Accordingly, the panel found that these charges amounted to misconduct.

### **Conclusion**

The panel found that all of the charges in this case were underpinned by repeated dishonesty which occurred over a period of approximately four months and in two different places of work. The panel determined that you breached your professional duty of candour to be open and honest when things go wrong, and you sought to cover up your mistakes and falsified records which could have impacted on patient care, patient safety, internal audits and the transparency required for CQC assessments. The panel considered that this conducted is extremely serious and fell far below the standards expected of a registered nurse and amounted to misconduct.

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

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

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

In coming to its decision, the panel had regard to the NMC Guidance in which the following is stated:

*'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/ fitness to practise is impaired in the sense that S/He:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found all four limbs engaged in this case.

In respect of limb a), the panel found that in taking two syringes containing controlled drugs for your own personal use, placed patients at an unwarranted risk of harm. You had not been prescribed the medication that you intended to use and, if you had taken it whilst you were at work, this could have negatively impacted your performance and

patient care. The panel was also of the view that even if you had taken the medication at home, as you had not previously taken it, there was no way of knowing how this would have affected you and the care you delivered to patients the following day.

In failing to adhere to controlled drugs policy, the panel determined that you placed residents at an unwarranted risk of harm. Controlled drugs policies are in place to ensure patient safety when administered regulated drugs and by acting in contravention to this, the panel found that you placed residents at risk of harm by not ensuring that the medication was second checked, and that the administration was witnessed.

In respect of limbs b), c) and d), the panel determined that honesty, integrity and adherence to local policy and procedure are fundamental tenets of the profession and in acting dishonestly and with disregard for local policies, you brought the profession into disrepute. In misappropriating controlled drugs for your own personal use, deceiving colleagues and attempting to conceal and create a false impression in clinical records, the panel found that you had brought the profession into disrepute, breached fundamental tenets of the profession and acted dishonestly.

Before considering future risk, the panel gave consideration to the test as set out in the case of *Cohen* in respect of whether the misconduct in this case is easily remediable. The panel was mindful that dishonesty is attitudinal in nature and whilst not impossible, it is inherently difficult to remediate.

In determining future risk, the panel had regard to all of the evidence in this case, including your bundle of documents. It had particular regard to your reflective statements and the oral evidence you have provided in this hearing. In your reflective statements and oral evidence, the panel found that you are very sorry for your actions and have expressed genuine remorse. However, the panel found that you have not taken full ownership of your actions and you sought to deflect blame. The panel was concerned about your assertions that as the medication had been used, it was less serious to misappropriate this than it would have been if the medication was unopened.

The panel was of the view that your reflection is not targeted and whilst it sets out the impact of your actions on a personal level, you have not deeply reflected on the impact of your actions on patients, colleagues, the profession and the public perception. The panel was not satisfied that you fully understand the severity of the findings against you, the utmost importance of adherence to policies and the need to act with honesty and integrity, even when faced with difficult and stressful situations. The panel therefore found that your insight is limited.

The panel considered what steps you have taken to strengthen your practice. It noted that you have undertaken a number of courses to keep your nursing skills and knowledge up to date. However, the panel was of the view that the courses you have completed do not go directly to the concerns identified in this case. [PRIVATE], the panel noted that the charges and associated dishonesty that occurred at the Home, did so when you said that you were not [PRIVATE]. In any event, the panel determined that misappropriating medication for your own personal use, breaching policy and falsifying records could not be justified even if you were [PRIVATE].

In considering the risk of repetition, the panel noted that after the first instance of dishonesty on 29 June 2022, you acted dishonestly on two further occasions in a different place of work within a few months and whilst subject to enhanced scrutiny by way of an interim conditions of practice order. Taking this pattern of behaviour, together with your limited insight and lack of evidence of strengthened practice, the panel determined that there is a real risk of repetition and a consequent risk of harm to patients. Given that there is a risk of repetition, the panel was of the view that you are not able to practise kindly, safely and professionally. The panel therefore found that your fitness to practice is currently impaired on the ground of public protection.

The panel was of the view that the public interest is engaged in this case. The public expect nurses to be honest and trustworthy and adhere to local policies and procedures to ensure patient safety. In the circumstances of this case, the panel determined that public confidence in the profession would be undermined if a finding of impairment was not made. Furthermore, the panel concluded that a finding of impairment was required

on public interest grounds to uphold and maintain proper professional standards and confidence in the profession and the regulator.

Having regard to all of the above, the panel determined that your fitness to practise is currently impaired on both public protection and public interest grounds.

## **Sanction**

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

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

### **Submissions on sanction**

Ms Shaw informed the panel that the NMC sanction bid is that of a striking-off order. She referred the panel to the relevant NMC Guidance and set out a number of factors that were aggravating and mitigating. Whilst Ms Shaw submitted that determining sanction is ultimately a matter for the panel, she addressed the panel on the principles of proportionality and reminded it of the overarching objectives of the NMC. Ms Shaw submitted that your actions and related dishonesty are fundamentally incompatible with you remaining on the Register.

Mr Jotangia reminded the panel of your previously unblemished career as a registered nurse spanning 32 years. He submitted that there are mitigating circumstances in this case [PRIVATE] and these should be taken into account in determining sanctions. Mr Jotangia submitted that you have fully engaged with these proceedings and made early admissions. Mr Jotangia submitted that the most appropriate order in this case is the maximum period of suspension. He submitted that you have learned from your mistakes and that you should be afforded the opportunity to further reflect and to fully address the concerns identified and to demonstrate how serious you resuming practice as a nurse.

The panel accepted the advice of the legal assessor.

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

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had

careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Your misconduct and associated dishonesty was repeated, it occurred in two different clinical settings and related directly to your nursing practice.
- Despite being subject to an interim conditions of practice order, as a consequence of the referral in relation to misappropriating controlled drugs in another healthcare environment, you acted dishonestly on two further occasions.
- You have demonstrated a lack of insight into your dishonesty and the importance of adherence to policy and procedure.
- In respect of misappropriating controlled drugs, you were in a senior position at the Hospital, and you abused this position of trust.
- Your conduct placed patients and residents at a risk of suffering harm.

The panel also took into account the following mitigating features:

- At the time that some of the charges arose, you were experiencing difficulties [PRIVATE].
- You made early admissions to most of the charges.

Having regard to the NMC guidance on '*Factors to consider before deciding on sanctions*' (Reference SAN-1. Last Updated: 27/02/2024) the panel noted that engagement with the NMC and a previously unblemished career are not to be considered as mitigating features. However, the panel was mindful of your full engagement throughout these proceedings and your efforts to assist the panel in giving evidence on two occasions. The panel also acknowledged that you have been a nurse for 32 years and there were no concerns raised about your practice before these charges arose.

Before considering the available sanctions, the panel first considered where on the spectrum of seriousness your dishonesty fell. The panel had regard to the NMC

Guidance on *'Considering sanctions for serious cases'* (Reference: SAN-2. Last Updated: 27/02/2024), in particular, the section entitled *'Cases involving dishonesty'* in which the following is stated:

*'Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register. However, in every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct that has taken place. Not all dishonesty is equally serious. 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:*

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*
- *misuse of power*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to people receiving care*
- *premeditated, systematic or longstanding deception*

*Dishonest conduct will generally be less serious in cases of:*

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents outside professional practice.'*

The panel found that in respect of the misappropriation of controlled drugs, this was very serious. You were in a senior position at the Hospital and entrusted with access to controlled medication and you abused your position of power. The panel considered there was an element of pre-meditation in that you took steps to deceive your colleague, pretended that you had disposed of the medication, but instead you had concealed it in

your bag. You dishonestly misappropriated the controlled drugs for your own personal use or gain.

In respect of the dishonesty arising from your fraudulent entry and the falsification of signatures in the CD book in a new post within a care home, the panel determined that this was also very serious. The panel considered that you deliberately breached the professional duty of candour by covering up that you had either not been the second checker or not had a second checker during the administration of controlled drugs. The panel found that this concealment placed vulnerable residents at a risk of harm as when receiving potentially dangerous medication, this was not checked by an appropriately educated staff member for any potential errors as required by the Home's policy. If a resident had been given an incorrect dose, then this could have had potentially serious consequences for them. By concealing that a second checker had not been present, the panel determined that you sought to gain from not being held accountable for your breach of policy. The panel also concluded that your actions in forging your colleagues' initials breached their trust in you.

The panel determined that your dishonesty is very serious for the reasons set out above. The panel considered that the dishonesty that occurred on a number of occasions and in different forms which took place over a short period of time (four months), fell at the more serious and higher end of the spectrum of dishonesty.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition and the public protection issues identified. The panel was of the view that an order that does not restrict your practice would not protect patients or colleagues and it would not properly mark 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 risk of repetition and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum*



*of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* Having determined that the misconduct and dishonesty in this case is at the higher end of the spectrum of seriousness, a caution order would be inappropriate. 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 your registration would be an appropriate and proportionate response. The panel noted that after the NMC had received the referral from the Hospital about your misappropriation of medication, you were allowed to continue to practice whilst being subject to an interim conditions of practice order. Despite being given the opportunity to continue to practice whilst the NMC carried out its investigations and subject to enhanced scrutiny, further instances of misconduct occurred. In addition, the panel determined that you lacked insight into your misconduct, particularly the dishonesty elements of it, which is at the higher end of the spectrum of seriousness, and it is likely to be repeated. Taking into account all of the above and that the concerns are attitudinal in nature, the panel determined that a conditions of practice order would not be practical or workable. Furthermore, the panel determined that a conditions of practice order would not protect the public, meet the public interest in this case or uphold proper professional standards.

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;*
- ...
- ...

As highlighted previously, the panel found that you misconducted yourself on a number of occasions over a period of four months, and it arose in two different clinical settings. The panel found that in your evidence, you attempted to minimise your misappropriation of controlled drugs by drawing a distinction between unopened medication and medication to be wasted when a full dose is not required/prescribed. The panel also found that in your evidence you sought to minimise your dishonesty in respect of breaching the controlled drug policy at the Home as you said that there was a culture of not ensuring a second checker was present during the administration of medication. The panel was of the view that your attempts to minimise the seriousness of your dishonesty, and the repeated nature of it, are indicative of harmful deep-seated personality and attitudinal issues. At the impairment stage, the panel found that you lacked relevant insight and there was a risk of repetition of your misconduct.

The panel determined that a suspension order would not be appropriate or proportionate in the circumstances of this case. Whilst the panel accepted that a period of suspension would protect patients and colleagues, it was not satisfied that in view of the seriousness of the misconduct and associated dishonesty, it would sufficiently address the public interest in this case. The panel was also of the view that a suspension order would not adequately mark the seriousness of your misconduct, and it would not uphold proper professional standards or maintain confidence in profession and its regulator.

Finally, in considering a striking-off order, the panel had regard to the following paragraphs set out in the SG:

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

The panel was of the view that the misconduct and associated dishonesty identified in this case does raise fundamental questions about your professionalism. Nurses are expected to adhere to local policies and to the Code, to prioritise people, practise effectively, preserve safety and promote professionalism and trust and you did not. Nurses are also expected to be open and honest at all times, to be responsible and to observe their professional duty of candour at all times, even when faced with challenging situations. The panel was of the view that your lack of insight, your attitude towards your misconduct, particularly the dishonesty element demonstrated a harmful deep-seated attitudinal issue and it also raised fundamental questions about your professionalism and ability to address the concerns in the future.

The panel determined that your actions and omissions were significant departures of the standards expected of a registered nurse and especially an experienced senior nurse. For the reasons set out above, the panel determined that a lesser sanction would not be sufficient to protect patients, members of the public and to maintain professional standards. Having found that your dishonesty was at the higher end of the spectrum of seriousness, it was repeated, occurred in a clinical setting which placed vulnerable patients and residents at a risk of suffering harm, and that there is evidence of a deep-seated attitudinal problem, the panel determined that your actions are fundamentally incompatible with you remaining on the Register. The panel therefore found that nothing short of a striking-off order would adequately protect patients, colleagues and the public.

The panel considered that a member of the public who was appraised of all of the information in this case, would be shocked and concerned if a nurse with these findings against her were allowed to remain on the Register. The public expect nurses to act with honesty and integrity and to prioritise patient care and safety at all times. The panel was of the view that the findings in this were so serious that to allow you to continue practising would bring the profession into disrepute, undermine public confidence in the profession and in the NMC as a regulatory body.

The panel considered that in these circumstances a striking-off order was necessary and is the only order sufficient 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 your own interests until the striking-off order takes effect.

The panel accepted the advice of the legal assessor.

### **Submissions on interim order**

Ms Shaw invited the panel to impose an interim suspension order for a period of 18 months to cover any appeal period. She submitted that an interim suspension order is necessary for the reasons set out in the panel's reasons for finding current impairment and imposing a striking off order.

Given the panel's findings, Mr Jotangia made no observations.

### **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. Having already determined that a striking off order is necessary to protect the public and to satisfy the public interest in this case, to not impose an interim suspension order to cover the appeal period would be inconsistent with its earlier findings. The panel therefore imposed an interim suspension order for a period of 18 months to cover any appeal period.

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

This will be confirmed to you in writing.

That concludes this determination.