Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 27 November 2023 – Friday 10 December 2023
Friday, 22 December 2023
Monday 24 June 2024 – Thursday 27 June 2024

Virtual Hearing

Name of Registrant:	**Tapiwa Zhou**
NMC PIN	01I6425E
Part(s) of the register:	Registered Nursing – RNA, Adult Nurse (September 2004)
Relevant Location:	London
Type of case:	Misconduct
Panel members:	Florence Mitchell (Chair, registrant member) Mark Gibson (Registrant member) Tricia Breslin (Lay member)
Legal Assessor:	John Bromley-Davenport KC (Monday 27 November 2023 – Friday 10 December 2023 and Monday 24 June 2024 – Thursday 27 June 2024) Caroline Hartley (Friday 22 December 2023)
Hearings Coordinator:	Muminah Hussain Sophie Cubillo-Barsi (Monday 24 June 2024 – Thursday 27 June 2024)
Nursing and Midwifery Council:	Represented by Ryan Ross, Case Presenter
Mr Zhou:	Present and represented by Priya Khanna, (Royal College of Nursing)
Facts proved:	Charges 3, 4 & 5
Facts not proved:	Charges 1 & 2

Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	**Interim Suspension Order (18 months)**

Details of charge

That you, a registered nurse:

1. On an unknown date in April 2017 you breached professional boundaries in that you attempted to hug and kiss Patient B during an appointment.

2. Your actions in charge 1 above were sexual and/or sexually motivated.

3. On 25 April 2017 you breached professional boundaries in that:

    a) You communicated with Patient B using your personal mobile telephone without clinical reason or justification.
    b) You offered to inappropriately administer Azithromycin medication to Patient B outside of the hospital or clinic environment.
    c) You met Patient B outside of the hospital or clinic environment without clinical reason or justification and this action was sexually motivated.
    d) You engaged in sexual activity with Patient B.

4. On a date in August 2019 you breached the terms of an Interim Conditions of Practice Order imposed on 11 July 2019 by failing to inform a prospective employer, at the time of application, you were subject to the Conditions of Practice Order.

5. Your actions in charge 4 above were dishonest in that by failing to disclose the Interim Conditions of Practice Order you were attempting to progress your application with the prospective employer on a false impression that you could practice without restriction.

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

Decision and reasons on application to amend the charge

At the outset of the hearing, the panel suggested an amendment to charges 3(c) and 4, as it would be appropriate to provide clarity and more accurately reflect the evidence:

"That you, a registered nurse:

3. On 25 April 2017 you breached professional boundaries in that:

   c) You met Patient B outside of the hospital or clinic environment without clinical reason or justification **and this action was sexually motivated.**

   d) You engaged in sexual activity with Patient B.

~~4. Your actions in charge 3 c) above were sexual and or sexually motivated in that you engaged in sexual activity with Patient B.~~

4. On a date in August 2019 you breached the terms of an Interim Conditions of Practice Order imposed on 11 July 2019 by failing to inform a prospective employer, at the time of application, you were subject to the Conditions of Practice Order.

5. Your actions in charge ~~5~~**4** above were dishonest in that by failing to disclose the Interim Conditions of Practice Order you were attempting to progress your application with the prospective employer on a false impression that you could practice without restriction.

Mr Ross, on behalf of the Nursing and Midwifery Council (NMC), submitted that the proposed amendments are appropriate but they should be expanded.

Ms Khanna on your behalf, had no objections to the panels proposed amendments but objected to Mr Ross's proposed amendments. She submitted that the NMC's

expanded amendments were not appropriate, and there had been no material change in circumstances.

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

The panel denied Mr Ross' application to further amend the charges as they would cause injustice to you.

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Ross under Rule 31 to allow the hearsay testimony of Patient B into evidence. Mr Ross submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations. He referred the panel to *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and *Mansaray v Nursing and Midwifery Council* [2023] EWCH 730 (Admin).

Ms Khanna opposed the application to admit the hearsay evidence of Patient B. She submitted that this is the sole and decisive evidence of some of the charges. Ms Khanna submitted that this is '*demonstrably unreliable evidence*' and there has been no attempt by the NMC to call Patient B as a witness to produce evidence on her behalf. Ms Khanna submitted that the hearsay evidence holds no weight to it, and is also referred to in the witness statements already provided.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a

range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave serious consideration to the application regarding hearsay evidence. It considered whether you would be disadvantaged by allowing hearsay testimony into evidence.

The panel considered that the hearsay evidence was relevant to charges 1 – 3, and accepted the NMC's assertion that there was corroboration of Patient B's evidence from other witnesses.

The panel considered that Patient B may be young, and also vulnerable given the nature of the charges. It noted that the NMC chose not to call her as a witness, as she had disengaged with the Police and the Trust investigation, as such they felt it was unlikely that she would engage with the NMC and that it would be disproportionate and heavy handed to make an application to the High Court to compel Patient B to attend.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Patient B, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application of no case to answer

The panel considered an application from Ms Khanna that there is no case to answer in respect of charges 1, 2 3(b) and 5. This application was made under Rule 24(7).

In relation to this application, Ms Khanna referred the panel to the relevant case law including the following; *R v Galbraith* [1981] 1 WLR 1039, *Ashraf v General Dental Council* [2014] EWCH 2618 (Admin), *R v Baker & Richards* [2020] EWCA Crim 176, *R v Shippey* [1985] CRIM LR 767, *R v Goddard & Fallick* [2013] EWCA CRIM 176 and *R v Jabber* [2006] EWCA Crim 2694.

In relation to charge 1, Ms Khanna submitted that there exists a conflict of accounts; you maintain the view that you did not hug and kiss Patient B, and Patient B's account is that you did. She submitted that there are inconsistencies between the witness evidence in regard to this charge, and the evidence presented by the NMC is inherently weak.

Ms Khanna submitted that your actions in charge 1 cannot be viewed as sexual or sexually motivated. She submitted that if the actions of a hug and a kiss was viewed in isolation, it would not amount to being sexually motivated. Ms Khanna informed the panel that as a nurse, you have comforted many patients with a hug. She submitted that there is inconsistent evidence in relation to charge 2.

In relation to charge 3(b), Ms Khanna submitted that you deny this allegation. She submitted that this allegation came straight from Patient B, and that there is no evidence that the administration of any medication took place.

With regard to charge 5, Ms Khanna submitted that there is no place on the application form to disclose a conditions of practice order. She did not dispute that you did not disclose your conditions of practice order on the application form, but stated that there was no dishonesty in you not disclosing this information. Ms Khanna cited evidence (an email sent by you on 28 October 2018), where you had disclosed your conditions of practice order to another employer. She therefore submitted that there is insufficient evidence for this charge.

In these circumstances, it was submitted that these charges should not be allowed to remain before the panel.

Mr Ross opposed the application. He submitted that in regard to Galbraith, there is a high threshold for evidence to be weak, vague or unreliable. Mr Ross submitted that the inconsistencies between the witness' statements and their oral evidence are not unreliable, but that there has been a long time between the two. He submitted that where the evidence points to reliability, this is best done at the fact finding stage.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 2 proved. It determined that there was not enough evidence to find the charge proved that a hug and a kiss were sexual and/ or sexually motivated.

The panel was of the view that there had been sufficient evidence to support the charges 1, 3(b) and 5 at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Background

The charges arose whilst you were employed as a registered nurse at Genito Urinary Medicine (The Clinic), London North West University Healthcare NHS Trust (the Trust). At the time of the concerns raised in the referral, you were working as a Band 6 Sexual Health Nurse for the Trust.

On 21 December 2017, Patient B allegedly attended the clinic and advised that she had previously been seen in April 2017 by a doctor, and also separately by you. Patient B said that you had tried to hug and kiss her, either during the blood test or when treatment was given.

Patient B said that you gave her an oral pill, Azithromycin, on 25 April 2017. Patient B said that she had vomited two hours later and so she texted you. Patient B alleges that you arranged to meet her at South Kenton station to give her further treatment.

Patient B said she met you and got in your car and you drove her to the Wembley Hilton, where you bought her alcoholic drinks and asked her if she would like to stay there. Patient B declined and said she felt quite drunk. You started to drive Patient B home but on the way you stopped the car three times and on the third occasion you exposed yourself and pushed her head down for oral sex. Patient B said that she became hysterical so you dropped her back at Kenton station. Patient B said she had reported the matter to the Police.

The Trust initiated an investigation into the concerns and you were suspended from your duties. A disciplinary hearing was held on 23 August 2018, and you were subsequently dismissed from the Trust on 21 September 2018 without notice for gross misconduct. You appealed the decision, but your appeal was unsuccessful.

It is further alleged that in August 2019, you applied for a clinical research post at Imperial College Healthcare NHS Trust (Imperial). On the application form, you did not declare that your NMC registration was subject to an interim conditions of practice order which you were required to do as part of the conditions.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Khanna, who informed the panel that you made admission to charge 3(d) but do not accept the preamble to the charge.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Ross on behalf of the NMC and by Ms Khanna on your behalf.

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

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

- Witness 1: [PRIVATE]
- Witness 2: [PRIVATE]
- Witness 3: [PRIVATE]
- Witness 4: [PRIVATE]
- Witness 5: [PRIVATE]
- Witness 6: [PRIVATE]

The panel also heard evidence from you under oath.

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

The panel also had regard to Patient B's hearsay evidence. The panel decided to treat this evidence with caution, but would give it the appropriate weight if it is the sole or decisive evidence. It determined that there was contemporaneous evidence to validate Patient B's hearsay evidence.

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

Charge 1

"That you, a registered nurse:

1. *On an unknown date in April 2017 you breached professional boundaries in that you attempted to hug and kiss Patient B during an appointment."*

This charge is found NOT proved.

In reaching this decision, the panel took into account the written statement and oral evidence of Witness 1 and Witness 3. On 2 January 2018, Patient B handed a note into South Harrow Police Station on which she wrote the circumstances of the offence against you.

The written statement of Witness 1 reads:

> *"**b.** Patient B stated that the Registrant had tried to hug and kiss her, but was not sure if this had happened during the blood tests or when the Patient B's chlamydia treatment was given."*

The notes of the meetings with Patient B which were written by Witness 3 dated 21 December 2017 and 3 January 2018, read:

> *"Tried to kiss & hug* [PRIVATE]*."*

> *"Blood tests – tried to hugs & kiss on cheek.* [PRIVATE]*"*

Witness 3 was consistent in her oral evidence that Patient B said a hug and a kiss took place, and she maintained her position on this at the disciplinary hearing that took place at the Trust.

Witness 3 stated that she was alone with Patient B at the meeting of 21 December 2017, and the panel accepted this to be correct.

Witness 1 was also in attendance at the meeting that took place between Patient B and Witness 3 on 3 January 2018. Witness 1's signature is on the bottom of the notes that Witness 3 took, however there is no evidence of a hug and kiss taking place in any of her own notes or statement, and in her oral evidence, she could not remember Patient B saying this. Witness 1 did say that if she had signed the notes,

she would have read them through so it is more likely than not, according to Witness 1, that a hug and a kiss took place.

The note that was handed to the police by Patient B reads:

"DURING MY CHECK UP HE ATTEMPTED TO HUG AND KISS ME."

The panel noted that although this was handed to the police, Patient B did not go back to the police station again, nor was she contacted by the NMC to go through her version of events.

In your oral evidence, you had told the panel that you would not have attempted to hug and kiss a patient at the clinic. You said that the private rooms at the clinic were never locked when in use, and anyone could have walked in if this encounter was to take place.

The panel found this charge not proved. It determined that a hug and kiss could not be made out, and that the evidence to prove this is weak. In regard to a breach of professional boundaries, given that the evidence for a hug and a kiss is weak, professional boundaries could not have been breached.

Charge 3(a)

"That you, a registered nurse:

3) On 25 April 2017 you breached professional boundaries in that:

a) You communicated with Patient B using your personal mobile telephone without clinical reason or justification."

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence, the police interview dated 27 June 2018, the note given to the police by Patient B dated 2 January 2018, and Witness 3's contemporaneous notes and oral evidence.

The note given to the police by Patient B dated 2 January 2018 reads:

> *"… WHEN I WAS CONTACTED BY HIM DAYS LATER … TEE CONTACTED ME ON AN OLD NUMBER. (THE NUMBER IS NOW BROKEN)…"*

During your police interview dated 27 June 2018, you said:

> *"She proceeded to give me her number again because I told her I'm not sure where I got her number or if I still have her number. Couple days later we then started communicating, just on a social basis, we arranged mutually to meet up … I think I would've initiated it because, I had her number so I would texted her or called her and, kind of engage in conversation … I just like thanks for giving me your number it was great to meet you, just like normal conversation … I'm a guy so obviously I would kind of initiate further chat or give compliments … the possibilities would be phone call, WhatsApp and maybe text message…"*

Witness 3's notes read:

> *"given phone no … text Tee … text back to meet …"*

The panel noted that you had said in your oral evidence that you were the nurse manning the results call line when Patient B called about her test results. You had given her the results, and said that you told her to attend the clinic or call if she needed further assistance.

In your oral evidence, you admitted to using your own phone to contact Patient B. You had told the panel that you were involved in a romantic relationship with Patient B prior to her attending the clinic, so you already had her number. You also told the panel that you did not see a problem with contacting patients if you knew them

before. The panel accepted the evidence of the other witnesses at the Trust that there was no need for you to contact Patient B using your personal mobile phone.

The panel determined that on the balance of probabilities, you did communicate with Patient B using your personal mobile telephone without clinical reason or justification. It determined that this was a breach of professional boundaries as following her visit to the clinic, she then became a patient requiring clinical care regardless of the fact that you state you had known her in the past. The panel noted that in your oral evidence, you chose to refer to her as 'B' and not Patient B, and that you did so to portray to the panel that it was acceptable therefore to make contact with this patient. The panel did not accept this. The panel therefore finds Charge 3(a) proved.

Charge 3(b)

"That you, a registered nurse:

3) On 25 April 2017 you breached professional boundaries in that:

b) You offered to inappropriately administer Azithromycin medication to Patient B outside of the hospital or clinic environment."

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's oral evidence and written statement, Witness 3's written statement and contemporaneous notes of the meetings with Patient B dated 21 December 2017 and 3 January 2018, your oral evidence, the note given to the police by Patient B dated 2 January 2018 and Witness 6's oral evidence.

In her oral evidence, Witness 1 said Patient B told her that she had been sick, and that you would meet her to give her a dose of Azithromycin which is the reason as to why Patient B was meeting you. Witness 1's written statement also reads:

"the Registrant then texted the patient back saying that he would meet her at South Kenton Station to give her medicine."

Witness 3's written statement reads:

*"**f.** Upon vomiting, Patient B said that she then texted the Registrant to inform him …*
***g.** Patient B said to me that the Registrant told her to meet him at South Kenton Station and he would then give her the treatment."*

The panel also heard from Witness 6. Witness 6 told the panel that during your disciplinary hearing at the Trust, you said that you initially met with Patient B due to the fact that she had vomited and you would need to give her a second dose of medication. Witness 6 informed the panel that when you were challenged about administering medication outside of the clinic, you changed your story and said that this did not happen.

In the note given to the police by Patient B dated 2 January 2018, Patient B wrote:

"I TOLD HIM I WAS SICK AND HE TOLD ME TO MEET HIM LATER, NOT TO TELL ANYONE, THAT HE WOULD GIVE ME MORE TABLETS. I MET TEE … AND ASKED FOR THE TABLET … AS WE DROVE BACK TEE HANDED ME THE TABLET AND TOLD ME TO TAKE THEM THE NEXT MORNING WHEN I HADN'T BEEN DRINKING. I THOUGHT THIS WAS A KIND THING TO SAY. I PUT THEM IN MY BAG …"

Witness 1, Witness 3 and Witness 6 informed the panel that nurses were not allowed to administer medication outside of the clinic. The protocol is to use the clinic phone to contact the patients, and if they have vomited, the patient would then need to return to the clinic so another dose of medication can be administered to them on site.

In your oral evidence, you informed the panel that there was no formal audit by the clinic staff on medication. You said that a pharmacist came in once a week to replenish the medication. When you were asked in your police interview if you had agreed to provide Patient B with medication, you said:

"I wouldn't recall …"

The panel was of the view that given a formal audit did not take place in regard to the medication, there was not a guaranteed way to tell if Azithromycin had been taken. It took into account that Witness 6 was disapproving of your conduct and professionalism, however it determined that the evidence she had given was in line with the other evidence before the panel. The panel looked carefully at the note which was given by Patient B to the police, and determined that it is very likely that a nurse would advise someone not to take medicine whilst intoxicated. The panel felt that on the balance of probabilities, that you had given her this advice.

The panel concluded that on the balance of probabilities, you did offer to inappropriately administer Azithromycin to Patient B outside of the hospital or clinical environment. It therefore found Charge 3(b) proved.

Charge 3(c)

"That you, a registered nurse:

3) On 25 April 2017 you breached professional boundaries in that:

c) You met Patient B outside of the hospital or clinic environment without clinical reason or justification and this action was sexually motivated."

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence, the note given to the police by Patient B dated 2 January 2018, your police interview dated 27 June 2018 and Witness 3's written statement.

When asked during your police interview dated 27 June 2018, how you agreed to meet with Patient B outside of the clinic, you said:

> *"… it would be just been flirtatious conversation back and forth and, you know saying can we catch up sometime or can we meet up … It's from both ends she was keen to meet up, I was also keen to meet up"*

You also told the police:

> *"… she's become a little bit flirty during the consultation at work … We've met up she's come well presentable, dressed up heels, nice dress, she's looking quite attractive… this bar is in a hotel at the Hilton in Wembley."*
>
> *"Immediately that just put me off … We sit in the back seat … So she looked at my pants and said, oh my God you hard … I'm like oh well its difficult look at you, you're a stunning woman so its natural that's gonna happen. Then I try to kiss her but she wouldn't let me kiss her … So unzip my pants taken my penis out and she briefly give me oral sex … conversation was still flirty in the car [PRIVATE]… so I parked over somewhere in Harrow, because it was tempting, it was difficult so I stop over and I said, come on we you can't be doing this… then she gave me oral sex again in the car till I actually popped."*

Witness 3's notes read:

> *"Text Tee … meet tonight … Wembley Hilton – bought 3 gin and tonic and asked Patient B if she wanted to stay …"*

Having found Charge 3(b) proved, the panel determined that you could have used medication as a lever to meet Patient B, and that this meeting was sexually motivated.

You informed the panel in your oral evidence that you had a previous romantic relationship with Patient B, and when you were asked what the nature of your relationship was, you said *"I didn't say it had eased off."*

Although you had told the panel that you had a relationship with Patient B before she had attended the clinic, in your police interview you said:

> *"… so she was quite complementary on oh my god this is what you drive oh you looking well too…"*

The panel were of the view that there were inconsistencies in your oral evidence versus the evidence in the bundle. In your oral evidence, you had said that you were not attracted to Patient B and that you wanted to get out of the situation you were in with her and just get home, however you let her perform oral sex on you. The panel determined that had you wanted to get out of the situation, there were other ways you could have done so. You told the panel that you were involved in a romantic relationship with Patient B prior to her attending the clinic, but she did not even know what car you drove. When questioned about what a romantic relationship meant to you, you said that you preferred not to answer.

The panel determined that you meeting Patient B breached professional boundaries. It noted that although you had said you met 'B' and not Patient B, after you had attended to her in the clinic, she became your patient. On the balance of probabilities and with regard to the evidence in front of the panel, the panel found Charge 3(c) proved.

Charge 3(d)

> *"That you, a registered nurse:*
>
> *3) On 25 April 2017 you breached professional boundaries in that:*
>
> *d) You engaged in sexual activity with Patient B."*

This charge is found proved.

In reaching this decision, the panel took into account that you had admitted that you engaged in sexual activity with Patient B but that you disputed that this breached professional boundaries on the basis that you had known her in the past.

The panel noted that in your evidence you had said that you knew Patient B before and were involved in a romantic relationship, however you could not describe what this was and this assertion was at variance to what you told the police. It was of the view that if this was the case, then you should not have agreed to treat her clinically. Apart from your oral evidence, the evidence in front of the panel suggests that you did not know Patient B as well as you said you have, and that she only recognised you as a member of the community. Given that you had treated Patient B, she then became your patient with all the professional responsibilities that entails.

Witness 1, 3, 5 and 6 all told the panel in different ways that treating a patient that you knew outside of the clinic was not acceptable. Witnesses consistently informed the panel that you *"just don't do it"* in regard to treating people that you knew outside of the clinic, and reflected upon The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the NMC Code), and the standards of behaviour required by a professional nurse.

Considering your admission and all of the evidence before it, the panel found that you had breached professional boundaries, therefore found charge 3(d) proved.

Charge 4

"That you, a registered nurse:

4) On a date in August 2019 you breached the terms of an Interim Conditions of Practice Order imposed on 11 July 2019 by failing to inform a prospective employer, at the time of application, you were subject to the Conditions of Practice Order."

This charge is found proved.

In reaching this decision, the panel took into account your conditions of practice order and Witness 2 and Witness 4's written statement and oral evidence.

Your conditions of practice order stated:

8) *"You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (7) above, to them:*

   a) *Any organisation or person employing, contracting with, or using you to undertake nursing work.*
   b) *Any prospective employer (at the time of any application) where you are applying for any nursing appointment.*
   c) *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application)."*

In both Witness 2 and Witness 4's written statement and oral evidence, they informed the panel that they could not see the conditions of practice disclosed when you applied for their job role at Imperial. Witness 4 searched the NMC register and discovered that you were under an interim conditions of practice order.

Witness 2 said that upon requesting Human Resources (HR) to search your PIN on the register, it was found out that you had an interim conditions of practice order against you. Witness 2 was then advised by HR to inform the NMC.

You informed the panel that you had told someone in HR at Imperial, sometime in the past when you had applied for the Band 5 position that you were under an interim conditions of practice order. You said that the person you spoke to in HR

informed you that you did not need to disclose these interim conditions of practice again to them when applying for further positions. However, you were unable to show the panel any contemporaneous documents to substantiate this assertion.

The panel determined that the duty to disclose your interim conditions of practice order rests solely with you. Condition 8 clearly states that you are responsible for informing any organisation and prospective employer, at the time of any application. The panel was satisfied having seen your application form, that you made no mention of your interim conditions of practice order. The panel accepted the evidence of Witness 2 and Witness 4 that you had the opportunity to do so on the application form for the Band 6 role under the section's 'Supporting information' and/or 'Reasons for leaving'. The panel therefore found Charge 4 proved.

Charge 5

"That you, a registered nurse:

5) *Your actions in charge 4 above were dishonest in that by failing to disclose the Interim Conditions of Practice Order you were attempting to progress your application with the prospective employer on a false impression that you could practice without restriction."*

This charge is found proved.

In reaching this decision, the panel took into account Witness 4's witness statement, your application form for employment for Band 6 Research Nurse and your oral evidence.

Witness 4's written statement reads:

"There is no specific place on the application form that asks for the applicant to state their registration status, and at no point on the application is a question on whether there applicant has an interim order directly posed.

However, there are two places where I would expect an applicant to declare that they had an interim order. That is at the 'Supporting Information' section or at the 'Reason for Leaving' section of his employment.

The Registrant entered in the 'Reason for Leaving' section of his last employment that the reason for leaving was confidential. The Registrant did not mention anything of his interim order in the 'Supporting Information' section of his application either.

I would expect that an applicant disclose the fact that they have an interim order in their application if they are subject to one."

Under 'Reason for leaving' in your application form for employment for Band 6 Research Nurse, you had put:

"confidential at present."

You had also put *"n/a"* to the section which starts *"Months since most recent employment ended"*.

In your oral evidence, you had informed the panel that there was not a place for you to disclose your conditions. You had also told it that you did not need to disclose them as Imperial were already aware of the interim conditions of practice order against you.

The panel determined that an ordinary, decent person would find your actions dishonest. It noted that you were a senior nurse, and you had been actively involved in the recruiting staff at your previous Trust. The panel were of the view that you were dishonest, and had tried to hide behind a smokescreen with the answers that you had given. Witness 4 and Witness 2's written statements demonstrate where you could have disclosed your interim conditions of practice, and in both of these places, you had left a false impression.

The panel had enough evidence before it to determine your actions in Charge 4 to be dishonest. The panel therefore finds Charge 5 proved.

Submissions on interim order

The panel took account of the submissions made by Mr Ross. He submitted that an interim suspension order is already in place till 5 May 2023. Mr Ross submitted that the NMC is satisfied this order is sufficient to do everything it needs to do, however it is a requirement of the panel to make some consideration of a further interim order.

Ms Khanna had no objections to an interim suspension order.

Decision and reasons on interim order

Given that the dates of the resuming hearing are unclear, 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 noted that there are currently no resuming dates for this hearing, and if the interim order already in place falls away, there would be no protection in place in relation to public protection and public interest. The panel considered it had a duty to impose an order to cover the interim period until such a time any substantive order can be considered.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case. The panel therefore imposed an interim suspension order for a period of 18 months.

Tuesday 25 June 2024

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.

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.'*

Mr Ross invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) and highlighted, what in the NMC's view, were breaches of the Code in your case. Mr Ross invited the panel to find that your behaviour, as found proved in the charges, fell significantly short of the standards expected of a registered nurse.

Ms Khanna informed the panel that you concede that the charges found proved amount to misconduct.

Submissions on impairment

Mr Ross 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.

Mr Ross acknowledged that the dishonesty found proved in your case may have been somewhat mitigated, in that it was a one off incident. However, he referred the panel to your reflective statement and submitted that you continue to challenge the factual findings and it is a matter for the panel to determine whether you have demonstrated sufficient insight.

Mr Ross submitted that your pursuit of Patient B was deliberate rather than a chance encounter. There was a degree of planning involved resulting in the placing of a patient at risk of harm. He further submitted that the context in which the charges arose is aggravated by the fact that you were a Band 6 Sexual Health Nurse at the relevant time, and would have been privy to the patient's sexual history, sexual preferences, sexual orientation, their vulnerabilities and HIV status. Mr Ross invited the panel to find that your conduct within the charges was sexually motivated and that you put your own sexual gratification before the interests of Patient B.

Mr Ross acknowledged your Continued Professional Development (CPD) put before the panel. However, he submitted that, potentially, a lot more is required in order to remedy a finding of dishonesty, particularly in relation to the duty of candour. Mr Ross stated that some of the training undertaken by you is irrelevant. He referred the panel to the testimonials before it and highlighted the fact that the testimonials are not recent and refer to an Interim Order hearing rather than today's proceedings. He emphasised the point that none of the testimonials refer to the allegations found proved during the course of this hearing and the panel may be minded to find that they have limited or no value.

With regards to public protection, Mr Ross asked the panel whether it can be satisfied that you now have the tools available to you in order to prevent a similar incident occurring in the future. He submitted that a fully informed member of the

public, aware of the findings against you, would be troubled, should a finding of impairment not be made at this time.

Before concluding his submissions, Mr Ross referred the panel to a sentence within your reflective statement, in which you state:

> *'None of these concerns raised have reoccurred within the course of my professional life or personal for the past 7 years and I can assure they will never happen again.'*

Mr Ross submitted that the charges in this case occurred in 2017 and that one reading of the above sentence is that no further concerns have arisen since that time. Mr Ross asked the panel to treat the sentence with caution as it is disputed by the NMC.

Whilst Mr Ross acknowledged that the NMC do not have a burden of proof at this stage, he stated that this does not mean that you can put before the panel statements which give the 'wrong impression'. Mr Ross submitted that it would not be in the public interest if the NMC were prevented from challenging a statement made by you. He told the panel that further concerns have been raised regarding your practice, after these charges arose, concerning an individual identified as Patient C. The concerns are disputed by you. Mr Ross provided the panel with a form of words, which have been agreed between him and Ms Khanna on your behalf. The agreed form of words state:

> *'1. In an unsigned witness statement to the NMC, Patient C made an allegation as follows:*
>
> *a. She had a consultation and examination with R in September 2017.*
> *b. Approximately two weeks later, she received a telephone call from R on the pretext of giving results, which she had already received.*
> *c. R asked Patient C for a date and she declined.*
> *d. (Patient C made her allegation against R on 12 October 2017 to the Trust at a follow-up appointment).*

2. *R disputes the allegation. He says he was not at work in Sept/Oct 2017. He relies on an internal investigation report from the Trust by [Witness 5], in which the following dates were noted from the Electronic Staff Record:*

    a. *R was suspended from 3 May to 22 Oct 2017.*
    b. *R was on sick leave from 24 to 27 Oct 2017.*

3. *He also relies on an internal investigation report from the Trust by [Witness 5], in which the following dates were noted from the Electronic Staff Record:*

    a. *Under a heading titled 'Detail of Allegations', the allegation against Patient C arose from an incident noted as occurring on 11 Jan 2017.'*

Mr Ross reminded the panel that it should not make a finding of fact in relation to Patient C. He clarified that the NMC have introduced these additional concerns in order to 'raise a question mark' over a sentence within your reflective statement. However, Mr Ross asked the panel to be cautious, in that the allegations relating to Patient C should not contaminate or tarnish it's decision and should not be included in its findings on misconduct and impairment. Mr Ross reiterated that the only reason for raising this issue is its relevance to a single sentence in your reflective statement and therefore should be treated with caution.

In relation to the sentence within your reflective statement, Ms Khanna submitted that your assertion is specific to the concerns found proved during the course of this hearing, i.e. engaging in sexual relations, sexually motivated course of conduct and the resulting breach of professional boundaries and dishonesty.

Ms Khanna informed the panel that within the NMC's investigation report it is documented that the incident involving Patient C occurred in January 2017 and therefore predates the concerns considered by this panel. Further, Patient C reports the concerns in September or October 2017. Ms Khanna told the panel that it is noted within the report that you were suspended and subsequently on sick leave in September and October 2017, and therefore your assertion within your reflective

statement ‘may well be right’. Ms Khanna clarified that you dispute what happened with Patient C and additionally, when it happened. She reiterated the fact that this issue is not a matter for today’s panel.

With regards to your current impairment, Ms Khanna submitted that your dishonesty was a one off incident and related solely to your application with a prospective employer. She reminded the panel that you concede that your actions amount to misconduct and referred the panel to your reflective statement. Ms Khanna submitted that within the statement, you demonstrate insight and provided a sincere apology, namely:

> *‘I am profoundly saddened and disappointed by what has occurred, and I want to convey my sincerest apologies for any distress or inconvenience my actions may have caused.*
>
> *I am writing to you with a heavy heart, burdened by the weight of recent events. The situation that has unfolded has left me reeling with remorse and sorrow. The implications of what has transpired weigh heavily on my conscience, not only for its impact on my nursing profession but also for the toll it has taken on my personal life.*
>
> *Words cannot adequately express the depth of my regret for the pain and disruption that this situation has caused to the nursing profession, patients, members of the public and my family and all the people known to me. As a dedicated nurse, I have always strived to uphold the highest standards of professionalism and care, and to see those principles compromised in any way fills me with profound sadness.*
>
> *The repercussions of this ordeal have not only affected my professional reputation but have also seeped into the fabric of my personal life, causing strain and distress where there was once harmony. The realization of the ripple effect of my actions, regardless of intent, fills me with profound remorse.’*

Ms Khanna highlighted the fact that these regulatory proceedings have continued for seven years, and during that time you have been made subject to both an interim conditions of practice order and an interim suspension order. She told the panel that whilst you were subject to an interim conditions of practice order, you completed one to one meetings with your line manager and received positive feedback, as evidenced by the positive testimonials before the panel. Contrary to the NMC's submissions that the testimonials have 'limited' or no value, Ms Khanna submitted that it is obvious your employer would have had knowledge of these concerns, as they were aware of your interim conditions of practice.

In relation to your remediation, Ms Khanna referred the panel to your CPD. She submitted that your CPD demonstrates your continued learning and referred the panel to your training certificates in this regard. She highlighted that much of the training was completed whilst you were outside a nursing environment and therefore you incurred a personal cost. Ms Khanna provided the panel with a history of your employment since these regulatory proceedings began and clarified that you have not worked as a registered nurse since 2022 and, therefore, have been unable to provide the panel with up to date references with regards to your clinical practice.

In light of your insight and remediation, Ms Khanna invited the panel to find that you are not currently impaired. She concluded by inviting the panel to find that any impairment which may have existed at the time of your misconduct, has now been fully remediated.

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

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. It determined that your actions amounted to a breach of the Code. Specifically:

‘1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people’s human rights

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

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

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

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

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.6 protect anyone you have management responsibility for from any harm…

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:

18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines

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

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, treating people fairly and without discrimination, bullying or harassment

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

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

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

23 Cooperate with all investigations and audits *This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.*

To achieve this, you must:

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel determined the following with regards to the charges found proved:

3. **On 25 April 2017 you breached professional boundaries in that:**

    a) **You communicated with Patient B using your personal mobile telephone without clinical reason or justification.**
    b) **You offered to inappropriately administer Azithromycin medication to Patient B outside of the hospital or clinic environment.**
    c) **You met Patient B outside of the hospital or clinic environment without clinical reason or justification and this action was sexually motivated.**
    d) **You engaged in sexual activity with Patient B.**

When determining whether charge 3 amounts to misconduct, the panel considered the context in which the allegations arose, namely that you were a Band 6 Sexual Health Nurse working within a highly sensitive environment. Whilst the panel noted your evidence that you knew of Patient B prior to her attending the clinic, it determined that at the time she sought medical attention at the clinic, she became a patient, not an acquaintance. By choosing to circumvent the correct procedure and protocol, you were able to contact Patient B in the way that you did. The panel was of the view that as a Band 6 nurse, you would have or should have known that doing so breached professional boundaries. In light of this, the panel determined that communicating with a patient, using your own telephone, without clinical justification, did amount to serious misconduct.

In relation to administering medication outside of the clinical environment, the panel considered the evidence it had heard that the protocol was to use the clinic phone to contact the patients, and if they have vomited, the patient would then need to return to the clinic so another dose of medication could be administered to them on site. As an experienced Band 6 nurse, you would have or should have known the correct protocol. By failing to adhere to the protocol, you placed a vulnerable patient at risk

and failed to deliver the fundamentals of care effectively. The panel therefore determined that your actions in this regard amounted to serious misconduct.

In relation to proactively meeting Patient B outside of the clinical environment, without justification to do so and engaging in sexual activity, the panel determined that your actions breached professional boundaries. In meeting with Patient B, you failed to remain objective and you took advantage of her vulnerability and caused her to be upset and distressed. It found that your actions in this regard did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

4. **On a date in August 2019 you breached the terms of an Interim Conditions of Practice Order imposed on 11 July 2019 by failing to inform a prospective employer, at the time of application, you were subject to the Conditions of Practice Order.**

When considering whether charge 4 amounts to misconduct, the panel noted it's previous determination that disclosure of an interim conditions of practice order is a duty which rests solely with you. Further, the NMC's Code is explicit as to the expectations in this regard. The panel heard evidence that you had previously been involved in the Trust's recruitment process. It therefore determined that as a senior Band 6 nurse, it would have or should have been abundantly obvious to you that you had a duty to declare such conditions. The panel concluded that your failure to do so amounted to serious misconduct.

5. **Your actions in charge 4 above were dishonest in that by failing to disclose the Interim Conditions of Practice Order you were attempting to progress your application with the prospective employer on a false impression that you could practice without restriction.**

When making a decision as to whether charge 5 amounts to misconduct, the panel had regard to its previous determination in this regard, namely that you were dishonest, and tried to hide behind a smokescreen with the answers that you had given. The panel was of the view that honesty and integrity are fundamental tenets of

the nursing profession and your deliberate failure to disclose your conditions fell seriously short of the conduct and standards expected of a registered nurse. Such behaviour has the potential to create mistrust within the nursing profession and put patients at risk of harm. It therefore concluded that your dishonest conduct in this regard amounted to serious 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 sentence of your reflective statement, referred to previously, had no bearing one way or another on the panel's decision in relation to impairment.

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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 determined that patients were placed at an unwarranted risk of harm as a result of your misconduct. Your misconduct, which included breaching professional boundaries and dishonesty, had breached the fundamental tenets of the nursing

profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. In light of this, the panel concluded that all four limbs of the test are engaged in your case.

The panel noted your insight in that you accept the charges found proved amount to misconduct and you have now partially accepted the panel's decision in relation to facts. Further, within your reflective statement, you have been able to identify the impact your behaviour has had upon patients, your colleagues and the nursing profession. Despite this, the panel determined that you have failed to demonstrate any meaningful insight into your sexually motivated and premeditated course of behaviour which ultimately led to your misconduct. Further, in relation to the disclosure of your interim conditions of practice order, you have not provided the panel with sufficient insight as to how you would act differently in the future, despite having heard evidence, which was accepted by the panel, as to the correct procedure. Within your reflective statement, after referring to 20.6 of the Code, you maintained that it was your belief that, within your speciality, the issue of engaging with patients outside of your clinical practice 'could be discretionary'.

In conclusion, the panel determined that your lack of insight into your sexual misconduct and dishonesty, was strongly indicative of a deep seated attitudinal problem.

In relation to remediation, the panel considered that a finding of dishonesty is inherently difficult to remediate.

The panel noted the training undertaken by you which related to maintaining professional boundaries, safeguarding and chaperoning and amongst others, safeguarding vulnerable adults. However, the panel noted that much of the training was completed three years ago and at this time you have not been able to apply this training within a clinical environment given that since February 2023, you have worked within a Beauty Treatment Centre. Despite this training, none of your learning has been demonstrated in your reflective piece.

In light of your very limited insight and in the absence of any evidence of you strengthening your practice within a clinical environment, the panel was of the view that at this time, there remains a high risk of repetition. The panel could not be satisfied that should a similar situation arise again, your misconduct including dishonesty and sexually motivated behaviour, would not be repeated. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that public confidence in the profession would be seriously undermined if a finding of impairment were not made in this case, particularly in relation to your dishonesty and sexual misconduct. It was of the view that a fully informed member of the public would be very concerned by your misconduct and would consider your actions as deplorable. The panel therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

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

Mr Ross invited the panel to impose a striking off order. He outlined what, in the NMC's view, were aggravating and mitigating factors in your case. Mr Ross acknowledged the testimonials put before the panel but highlighted the fact that some references were provided in 2018, which predates some of the charges in your case. He further stated that none of the references address the finding of facts made by this panel in December 2023.

Mr Ross went through the sanctions available to the panel today. He submitted that no further action and/or a caution order would be inappropriate given the serious nature of the charges in your case. He stated that a conditions of practice order would be futile and sits disharmoniously with the panel's finding of a deep seated attitudinal problem. In relation to a suspension order, Mr Ross reminded the panel that you have had 'five to seven years' in order to develop and demonstrate meaningful insight but have failed to do so. He therefore submitted that a suspension order may not be appropriate given the seriousness of your case, including dishonesty and sexual misconduct.

In relation to a striking off order, Mr Ross referred the panel to the guidance provided by the Council for Healthcare Regulatory Excellence, dated January 2008, titled 'Clear Sexual Boundaries between Healthcare Professionals and Patients: Guidance for Fitness to Practise Panels'.

Mr Ross also referred the panel to the NMC's guidance on 'Cases Involving Sexual Misconduct'. He reminded the panel that at the time the charges arose, there was a clear imbalance of power in that you acted deliberately, using the provision of medication as a pretext to engage in sexual activity with Patient B. He described your behaviour as potentially 'predatory'. In this regard, he again referred to the NMC's guidance on 'Cases Involving Sexual Misconduct', which states:

'…as these behaviours can have a particularly severe impact on public confidence, a professional's ability to uphold the standards and values set out in the Code, and the safety of people receiving care, any nurse, midwife or nursing associate who is found to have behaved in this way will be at risk of being removed from the register.'

Mr Ross also referred the panel to the NMC's guidance in relation to charges of dishonesty. Whilst he noted that your dishonesty is not at the higher end regarding your job application, he asked the panel to question whether it was premeditated and referred the panel to it's previous determination, namely that you 'had tried to hide behind a smokescreen with the answers that you had given.'

Ms Khanna, on your behalf, reminded the panel that no gain was achieved by your dishonest misconduct.

Ms Khanna highlighted the training you have undertaken in relation to professional boundaries, and stated that this course consisted of seven hours of training and details of the training are before the panel. You completed this course in 2021.

Ms Khanna acknowledged the guidance referred to by the NMC. She objected to the NMC's submissions that your behaviour was predatory and reminded the panel that Patient B was not a stranger to you. Ms Khanna submitted that suggestion of an 'imbalance of power' is not fair and stated that the nature of a nurse and patient relationship inherently involves an imbalance of power, in that a patient relies on a nurse to provide care to them. She stated that your misconduct was a 'blurring of boundaries' rather than an exploitation of Patient B.

Ms Khanna submitted that until the finding on facts were made, you were innocent and that the 'game changing' moment occurred once the charges were found proved. She stated that you have every right to challenge the allegations and that this should not be held against you. Ms Khanna stated that 'the learning starts now' after the finding of fact.

Ms Khanna accepted that the most likely sanction in your case sits between a suspension order and/or removal from the register. She submitted that a lengthy suspension order, with directions by the panel and a review, would be an appropriate sanction. Ms Khanna invited the panel to find that a striking off order would be disproportionate, particularly in light of the fact that the dishonesty in your case is capable of remediation. She stated that a deep seated attitudinal problem does not automatically result in a striking off order.

[PRIVATE]

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:

- At the time the charges arose, you were a senior Band 6 nurse working in a highly sensitive environment and caring for vulnerable patients;
- Your misconduct in relation to Patient B was a deliberate pursuit and involved a degree of planning;
- You placed Patient B at an unwarranted risk of harm;
- Your misconduct was sexually motivated in that you placed your sexual gratification above the interests of Patient B;
- You have demonstrated only limited insight into your misconduct, particularly in relation to your sexual misconduct and dishonesty; and
- You continue to challenge the panel’s findings with regards to some of the facts of your case.

The panel also took into account the following mitigating features:

- Your practice has been restricted for seven years;
- During some of that time you practiced subject to an interim conditions of practice order without incident; and
- The dishonesty charge relates to a one off incident.

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

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

Before considering any further sanctions, the panel considered the seriousness of the dishonesty found proved. The panel noted that at the time the dishonesty charges arose you were an experienced Band 6 nurse, having had previous responsibility for the recruitment process within the Trust. Therefore, you should have or would have known of the requirement to disclose your interim conditions of practice order on any application form you submitted. Further, it determined that as a registered nurse it would have, or should have, been known to you that a nurse must act with honesty and integrity. The panel determined that by failing to declare your interim conditions of practice order to a prospective employer, you demonstrated a complete lack of integrity by making a conscious decision to be dishonest and therefore breached a fundamental tenet of the nursing profession. The panel was of the view that honesty and integrity is of central importance to a nurse's

practice and whilst it noted that not all dishonesty is equally serious, it determined that in your case, the dishonesty found proved was sufficiently serious.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. It noted that, potentially, some of the charges found proved may be capable of being remediated by way of a conditions of practice order. However, given your intent and sexual motivation behind your misconduct and your resulting lack of meaningful insight in this regard, the panel concluded that there are no practical or workable conditions that could be formulated. The panel considered that the suitability of a conditions of practice order is exacerbated by the panel's previous findings that, in the past, you have failed to adhere to such an order, demonstrating a blatant disregard for the NMC as a regulator. The panel therefore concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel also had regard to the guidance provided by the Council for Healthcare Regulatory Excellence, dated January 2008, titled 'Clear Sexual Boundaries between Healthcare Professionals and Patients: Guidance for Fitness to Practise Panels', which states:

'Aggravating and mitigating factors relevant to sanction

The following sections outline some common factors to emerge in cases involving sexual boundary transgressions which FtP panel members may wish to consider in determining sanctions. Common aggravating and mitigating factors to emerge are:

Aggravating factors

…

whether the healthcare professional took deliberate steps to facilitate abuse, for example scheduling the appointment as the last of the day, working without a chaperone being present, making inappropriate house calls, dissuading the patient from seeking a second opinion

whether the healthcare professional provided inappropriate prescription drugs, for example as an inducement to secure sexual favours…'

Whilst the panel acknowledged that the charges relate to one off incidents, it determined that your deliberate and premeditated sexual behaviour, your decision to omit your interim conditions of practice on your application form, and lack of insight in this regard, were strong indicators of a deep seated attitudinal problem. You took deliberate steps to facilitate a sexual relationship with Patient B, using your own telephone to contact her, securing her attendance by offering to inappropriately administer medication, all of which were contrary to the Trust's protocols.

The panel noted the testimonials provided by you. It considered Ms Khanna's submissions that true reflection begins once a finding of fact has been made. However, the panel's findings on facts were made six months ago, in December 2023, notwithstanding the fact that the incidents took place five to seven years ago. Despite this, the panel did not have before it evidence of meaningful insight into your sexually motivated and/or dishonest behaviour. To the contrary, you continue to challenge the panel's findings and fail to embrace the essence of the NMC Code.

Further, with regard to your training in relation to professional boundaries, you have failed to demonstrate this learning within your reflective statement, despite having ample opportunity to do so. Taking all of this into consideration, the panel could therefore not be satisfied that you do not pose a significant risk of repeating such behaviour in the future.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

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

The panel considered that this order was necessary to protect patients from the significant risk of harm identified, 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.

This will be confirmed to you in writing.

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 sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Ross who invited the panel to impose an interim suspension order in order to allow for any appeal to be made and considered. He submitted that such an order is necessary for the protection of the public and is otherwise in the public interest.

Ms Khanna acknowledged that an interim order is warranted on both public protection and public interest grounds.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore

imposed an interim suspension order for a period of 18 months in order to allow for any appeal to be made and considered.

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

That concludes this determination.