

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

**Substantive Hearing
Friday 1 November 2024 – Wednesday 6 November 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant:	Regel Cuico
NMC PIN	19G05350
Part(s) of the register:	Nurses part of the register Sub part 1 RN1: Adult nurse, level 1 (23 July 2019)
Relevant Location:	Croydon
Type of case:	Misconduct
Panel members:	Tracy Stephenson (Chair, Lay member) Mark Gibson (Registrant member) Lorraine Wilkinson (Lay member)
Legal Assessor:	Nigel Mitchell
Hearings Coordinator:	Rebecka Selva
Nursing and Midwifery Council:	Represented by Tessa Donovan, Case Presenter
Mr Cuico:	Not present and not represented at this hearing
Facts proved:	Charges 1 a, 1b, 1c, 1d and 2
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Notice of withdrawal of representation for Mr Cuico

At the outset of the hearing Mr Buxton, instructed by the Royal College of Nursing (RCN) on behalf of Mr Cuico, informed the panel that he would be withdrawing representation.

Mr Buxton informed the panel that as per RCN policy they are not able to represent a registrant if they are not present.

In response to panel questions, Mr Buxton clarified that there has been no response from Mr Cuico other than an email he received at 06:30 am on 1 November 2024. Mr Cuico's phone number provided to the NMC, as on the register, is not valid.

Mr Buxton informed the panel that it is his understanding that Mr Cuico does not wish to return to nursing and intends to return to the Philippines. He also informed the panel that it is his understanding that even if the case were adjourned by a day or so to allow Mr Cuico to attend - Mr Cuico would not attend.

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

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Cuico was not in attendance and that the Notice of Hearing letter had been sent to Mr Cuico's registered email address by secure email on 12 September 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mr Cuico's representative at the Royal College of Nursing (RCN) on 12 September 2024.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Cuico's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

Decision and reasons on proceeding in the absence of Mr Cuico

The panel next considered whether it should proceed in the absence of Mr Cuico. It had regard to Rule 21 and heard the submissions of Ms Donovan who invited the panel to continue in the absence of Mr Cuico.

Ms Donovan referred the panel to the information outlined by Mr Buxton in relation to Mr Cuico not wanting to attend this hearing. Ms Donovan submitted that given the nature of this case, it is in the public interest to expeditiously dispose of this case.

The panel accepted the advice of the legal assessor.

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

The panel decided to proceed in the absence of Mr Cuico. In reaching this decision, the panel considered the submissions of Ms Donovan, information outlined by Mr Buxton, and

the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Cuico;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Mr Cuico has indicated that he has no intention of attending the hearing;
- The charges relate to events that occurred in 2023;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Cuico in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Cuico's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Cuico. The panel will draw no adverse inference from Mr Cuico's absence in its findings of fact.

Details of charge

That you, a registered nurse:

- 1) Between 23 – 24 August 2023:

- a) Asked Colleague A if she would ever consider cheating on her partner or words to that effect.
- b) Told Colleague A that you had never kissed a white girl before and asked if she would kiss you or words to that effect.
- c) Touched Colleague A's outer thigh up and down several times.
- d) Asked Colleague A multiple times to *just kiss you one time...come on you're so hot, just one kiss, your partner never needs to know* or words to that effect.

2) Your conduct at any or all of charge 1 was sexually motivated.

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

Background

On 16 October 2023, the NMC received a referral from Witness 2, the Director of Clinical Services at [PRIVATE] (the Hospital) which is a part of [PRIVATE]. Mr Cuico had worked at the Hospital as a nurse since December 2022.

It is alleged that on 23 - 24 August 2023, Mr Cuico had been working alongside Colleague A during a night shift when he asked her if she would consider cheating on her partner. She said 'no', and Mr Cuico is then alleged to have proceeded to tell her that he had "*never kissed a white girl before*", and asked if she would kiss him. It is alleged that he wheeled his chair over to Colleague A so that she was stuck between the desk and him, and he started to caress her upper thigh and asked her several times to "*just kiss him one time*". Mr Cuico is alleged to have said "*come on, you are so hot, just one kiss, your partner never needs to know*" or words to that effect.

Colleague A stated that she repeatedly said 'no' to Mr Cuico and when she said it more forcefully/loudly, Mr Cuico "*shushed*" her.

During the internal investigation, Colleague A reported feeling vulnerable as it was a night shift and there was nobody else around.

Colleague A completed her shift and called her family for advice, and they told her to go back to the Hospital and report the incident. At 09:00am on 24 August 2023, Colleague A returned to the Hospital and reported the incident to Witness 3 and made a statement.

An internal investigation was conducted immediately by Witness 2. Several witnesses were interviewed including Mr Cuico, Colleague A, and several staff members who were working the same night shift on 23 - 24 August 2023.

Mr Cuico was dismissed from his role on 12 October 2023, following an investigation into an alleged sexual assault and sexual harassment of Colleague A a fellow nurse, during a night shift on 23 - 24 August 2023.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the submissions made by Ms Donovan.

Ms Donovan directed the panel to the written witness statements on behalf of the NMC:

- Witness 1: Colleague A
- Witness 2: Director of Clinical Services at the Hospital
- Witness 3: Ward sister at the Hospital
- Witness 4: Executive Director at the Hospital

The panel has drawn no adverse inference from the non-attendance of Mr Cuico.

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.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor which included reference to *Haris v GMC* [2020] EWHC 2518 (Admin). It considered the witness and documentary evidence provided by the NMC.

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

Charge 1a - d)

“That you, a registered nurse, Between 23 – 24 August 2023:

- a) Asked Colleague A if she would ever consider cheating on her partner or words to that effect
- b) Told Colleague A that you had never kissed a white girl before and asked if she would kiss you or words to that effect
- c) Touched Colleague A’s outer thigh up and down several times
- d) Asked Colleague A multiple times to just kiss you one time...come on you’re so hot, just one kiss, your partner never needs to know or words to that effect.”

This charge is found proved.

Whilst the panel considered each sub charge separately, in these circumstances where charge 1 took place as a continuous act, it decided that charges 1 a, 1b, 1c, and 1d be written up together.

In reaching this decision, the panel took into account the documentary evidence and the witness statements of Witness 1 (Colleague A), Witness 2, Witness 3 and Witness 4.

The panel had regard to Witness 1's witness statement dated 9 January 2024:

'Mr Cuico asked me if I would ever consider cheating on my partner and I said 'No.' He told me that he had never kissed a white girl before and asked if I would kiss him. I said 'No.' It was then that he wheeled his chair over to mine so that I was stuck between him and the nurses station desk. He started caressing my left outer thigh up and down several times. He was asking me multiple times to 'just kiss him one time...come on you're so hot, just one kiss, your partner never needs to know.' Or words to that effect. I repeatedly said 'No, no, no, please stop.' I did not want to make eye contact with him in case he thought it was an invitation, so I was staring down, looking at my notes. I said 'no' more loudly and he shushed me.'

The panel also considered the near-contemporaneous local statement made by Witness 1 was consistent with her signed witness statement to the NMC. The panel inferred that this had been produced shortly after the night shift on 23 - 24 August 2023 as in Witness 1's statement she wrote:

'Once my shift was finished, I left the Hospital and phoned my boyfriend and family and told them what had happened. They encouraged me to report the incident straight away. I then returned to the Hospital and reported it to [Witness 3] my manager, who had come on shift about 07.00. She took me downstairs to inform [Witness 2] Director of clinical services. [Witness 2] asked me to write a statement (Exhibit /01).'

The panel determined that the local statement was likely to be reliable as it was produced very shortly after the alleged incident. The panel also took into account the evidence of first complaint made to Witness 3, the minutes of the investigative meetings with

Colleague A dated 31 August 2023 and 10 October 2023 all of which were consistent with her account.

The panel further considered that the distress felt by Witness 1 and noted by Witness 2, Witness 3 and Witness 4 was capable of corroborating her account.

The panel noted that Mr Cuico has denied all allegations. He has, however, put forward no positive defence to the NMC save for a general denial. The panel considered the local statement of Mr Cuico dated 24 August 2023 and found this to be inconsistent with a later investigation interview held with Mr Cuico on 31 August 2023 and 10 October 2023. The panel noted that in the local statement Mr Cuico stated that the conversation was '*nothing but casual and became less...*' but on the investigatory interview on 10 October 2023 the panel noted:

[Witness 2] - *was the conversation that you had with was romantic or sexual?*

[Mr Cuico] - *yes, at first, as she was going into very intimate details about her experiences...*

[Witness 2] - *So when she mentioned that she had the coil you thought she wanted something to happen between you?*

[Mr Cuico] – *Yes but I did not do anything stupid ...'*

The panel further referred to Mr Cuico's investigation interview on 31 August 2023:

'I don't believe what she is saying! That's a complete lie what she is saying! And so malicious! I honestly think that she is just jealous.'

The panel found that Mr Cuico's explanation for Witness 1 making a false allegation lacked credibility. The panel referenced Witness 1's statements within her investigation dated 10 October 2023:

'There is no benefit for me to lie and accuse anyone – I am not malicious, and I am not jealous. There is no benefit to me for lying, I get on with everyone and love working here.'

The panel considered that Witness 1 had remained consistent in her accounts of the incidents. Witness 2, Witness 3 and Witness 4's evidence also corroborated Witness 1's accounts of the incident. The panel found Mr Cuico's accounts to be inconsistent and implausible and considered that as he was the senior colleague and should have realised that the conversation as inappropriate and discontinued it rather than encourage it. Therefore, the panel preferred the evidence provided by Witness 1, Witness 2, Witness 3 and Witness 4. On the balance of probabilities, the panel found this charge, in its entirety, to be proved.

Charge 2)

"Your conduct at any or all of charge 1 was sexually motivated."

This charge is found proved.

In reaching this decision, the panel took into account that the entirety of charge 1 was found proved and the witness statements of Witness 1, Witness 2, Witness 3 and Witness 4.

The panel could not find any plausible, innocent explanation for Mr Cuico to touch Colleague A's thigh. The panel further considered that Mr Cuico '*shushed*' Colleague A when she repeatedly declined his request to '*kiss*' him, indicating that he was aware that his conduct was not acceptable.

The panel considered Witness 1's witness statement:

'He told me that he had never kissed a white girl and asked if I would kiss him...It was then that he wheeled his chair over to mine so that I was stuck between him and the nurses station desk'.

The panel felt that by mentioning Colleague A's skin colour, Mr Cuico was sexualising Colleague A's race. Mr Cuico had objectified her by stipulating that he had never kissed a white girl and therefore making an inappropriate comment about Colleague A's race which was sexually motivated. The panel also noted that Mr Cuico had effectively trapped Colleague A by moving his seat towards her.

The panel considered that charge 1a, in isolation, may not have been sufficient to amount to sexually motivated behaviour. However, in the context of the conversation and his conduct the panel was satisfied that Mr Cuico's actions did amount to sexually motivated behaviour in all four limbs of the charge. The panel therefore determined that Mr Cuico's behaviour was sexually motivated and 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 Mr Cuico's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Cuico's 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 GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Donovan invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Donovan identified the specific, relevant standards where Mr Cuico's actions amounted to misconduct.

Ms Donovan submitted that having found sexual harassment and sexual assault in this case, the panel has found facts proved which amount to serious misconduct.

Ms Donovan submitted that Mr Cuico's conduct directly conflict with the standards and values set out in the code, namely:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

Ms Donovan submitted that Mr Cuico's actions constitute sexual misconduct.

Ms Donovan outlined for the panel that the NMC Guidance sets out that sexual misconduct can have a profound and long-lasting impact on people, including causing physical, emotional and psychological harm.

Submissions on impairment

Ms Donovan 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) NMC (2) and Grant* [2011] EWHC 927 (Admin).

Ms Donovan referred the panel to NMC Guidance which sets out that sexual misconduct is likely to be serious enough to impair fitness to practise whether the conduct takes place in professional practice or outside professional practice.

Ms Donovan submitted that Mr Cuico took advantage of his position as the senior nurse on duty and preyed upon a junior colleague by inviting her to disclose personal details about herself and then making sexual advances, going so far as to touch her in a sexual manner. She submitted that Mr Cuico made a junior colleague feel unsafe in her workplace.

Ms Donovan outlined that Mr Cuico denied the allegations, even going so far as to accuse Colleague A of being the one to make advances and attempting to suggest a sinister motive on her part.

Ms Donovan submitted that Mr Cuico has displayed no remorse or insight into his behaviour, demonstrating an attitudinal concern.

Ms Donovan submitted that whilst this appears to have been an isolated incident in respect of Mr Cuico's career, it raises serious questions about Mr Cuico's attitude, his understanding of his professional obligations and his understanding of the power he holds over junior staff and patients.

Ms Donovan submitted that having failed to accept and show any insight into his wrongdoing, Mr Cuico continues to pose a risk of repetition. She reminded the panel that even according to Mr Cuico's own version of events, he failed to stop what he accepted was an inappropriate conversation in order to set appropriate professional boundaries and instead sought to deflect responsibility for his behaviour.

Ms Donovan submitted that this serious professional misconduct constitutes an impairment to Mr Cuico's fitness to practice and Mr Cuico continues to pose a risk to other members of the profession and potentially to members of the public.

Ms Donovan submitted that this conduct seriously undermines the trust and confidence in the profession.

Ms Donovan invited the panel to find impairment on the basis of serious misconduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance*, *Grant* and *Cohen v GMC* [2008] EWHC 581 (Admin).

Decision and reasons on misconduct

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

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

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that this case involves sexual misconduct. The panel decided that Mr Cuico's conduct did fall seriously short of the conduct and standards of what is expected of a nurse. A senior colleague should be a role model, not abuse their position of trust and seniority for personal gratification.

The panel found that Mr Cuico's actions amounted to misconduct.

Decision and reasons on impairment

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

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

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional 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. 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) ...'*

The panel found that Colleague A was put at risk of physical and emotional harm as a result of Mr Cuico's misconduct. Whilst Mr Cuico did not put a patient or patients at risk of harm, he put Colleague A at risk of harm and caused emotional harm. The panel determined that if Mr Cuico could behave in this manner towards a colleague, it was equally possible that he could behave in this manner towards a patient. Mr Cuico's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. Therefore, the panel found that limbs b and c were engaged in respect of his past behaviour.

In assessing whether Mr Cuico is liable in the future to cause unwarranted risk of harm, bring the profession into disrepute and/or breach one of the fundamental tenets of the

medical profession the panel applied the test as set out in *Cohen* with regard to impairment:

- a. is the misconduct easily remediable?*
- b. has the misconduct already been remediated?*
- c. is the misconduct highly unlikely to be repeated?*

The panel referred to NMC Guidance FTP-2a and FTP-3a and found that misconduct of this nature could be remedied, but with extreme difficulty. The panel noted that there has been no engagement from Mr Cuico in this hearing, no evidence of strengthened practice, and no reflective account or testimonials submitted on his behalf. Given Mr Cuico's lack of insight, remorse and abuse of his position of trust, the panel doubted whether, in this case, the misconduct was easily remediable. In any event, the panel found that his conduct has not been remediated as Mr Cuico has not shown any insight into the effects of his misconduct on Colleague A and the potential for harm in respect of Colleague A nor the impact on the wider nursing profession. Accordingly, the panel found that there was a risk of repetition. As the panel has already identified there is a risk that Mr Cuico may repeat this behaviour with patients. Accordingly, a, b and c are engaged as to the future.

The panel was concerned by Mr Cuico's failure to understand and maintain professional boundaries. The panel determined that Mr Cuico's behaviour and his placing blame on Colleague A, shows evidence of deep-seated attitudinal issues. Therefore, the panel could not be satisfied that Mr Cuico would not repeat this conduct.

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

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.

The panel determined that a finding of impairment on public interest grounds is required as a well-informed member of the public would be extremely concerned if a finding of impairment were not made for a nurse who had demonstrated sexually motivated behaviour and abused their position of trust in this manner with a junior colleague. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Cuico's fitness to practise impaired on the grounds of public interest. The misconduct is fundamentally at odds with the standards of behaviour and conduct expected of nurses.

Having regard to all of the above, the panel was satisfied that Mr Cuico's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Cuico off the register. The effect of this order is that the NMC register will show that Mr Cuico 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 which included reference to the case of *Arunachalam v GMC* [2018] EWHC 758 (Admin).

Submissions on sanction

In the Notice of Hearing, dated 12 September 2024, the NMC had advised Mr Cuico that it would seek the imposition of a striking off order if it found his fitness to practise currently impaired.

Ms Donovan referred the panel to the NMC sanctions guidance on sexual boundaries

- *whether the healthcare professional has demonstrated any insight*
- *whether the healthcare professional works with or has access to vulnerable groups of patients or carers*
- *whether there is a risk of the healthcare professional re-offending if allowed to continue in unrestricted practice*

Ms Donovan submitted that Mr Cuico has displayed no insight into his behaviour. She reminded the panel that Mr Cuico denied any wrongdoing and attempted to deflect blame onto Colleague A. She submitted that Mr Cuico, even in his own version of events, failed to demonstrate an understanding that he had a responsibility to set clear boundaries. Ms Donovan outlined for the panel that Mr Cuico described the conversation as '*casual and a good laugh*' which demonstrates his complete lack of comprehension and awareness with regard to the code of conduct.

Ms Donovan reminded the panel that the risk of harm is high as Mr Cuico has been a night shift hospital nurse, where there would be limited staff and patients would mostly be asleep. She outlined that Mr Cuico was the senior nurse on duty which afforded him a level of power and authority over those he works with. As such, she submitted that Mr Cuico has access to vulnerable groups.

Ms Donovan submitted that given Mr Cuico's lack of insight and remorse, there is a risk of repetition.

Ms Donovan submitted that an aggravating feature in this case is that Mr Cuico abused his position of trust that he held as a registered professional. She submitted that although

this was an isolated incident, the power imbalance between Mr Cuico and Colleague A aggravates the seriousness significantly. She further submitted that Mr Cuico's behaviour was predatory as he manipulated Colleague A via questions leading up to physical assault and then attempted to coax Colleague A despite her protestations.

Ms Donovan submitted that the regulatory concerns in this case and the sexual misconduct raise serious questions about Mr Cuico's professionalism.

Ms Donovan submitted that in this case, the least restrictive sanction that can be proportionately imposed is a strike-off order.

Ms Donovan submitted that a strike-off order is the only sanction which will sufficiently protect the public, given Mr Cuico's deep seated attitudinal issues and predatory behaviour. She reminded the panel that with the lack of any remorse or insight the risk of repetition and harm is too high.

Ms Donovan submitted that public confidence would be severely undermined if Mr Cuico were not to be removed from the register. She submitted that imposing this sanction will be sufficient to protect patients and members of the public and to maintain professional standards.

Decision and reasons on sanction

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

The panel took into account the following aggravating features of Mr Cuico's misconduct:

- He abused a position of trust with a junior colleague
- His lack of insight
- His lack of remorse
- He caused emotional harm to a colleague

The panel was not able to find any mitigating circumstances in this case.

The panel referred to NMC Guidance SAN-2:

‘Sexual misconduct is likely to create a risk to people receiving care and to colleagues as well as undermining public trust and confidence in the professions we regulate. A panel should always consider factors such as the duration of the conduct in question, the professional’s relationship or position in relation to those involved and the vulnerabilities of anyone subject to the alleged conduct. Long-term or repeated conduct is more likely to suggest risk of harm, together with conduct involving imbalances of power, cruelty, exploitation and predatory behaviour.

However, 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.’

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Cuico’s practice would not be appropriate in the circumstances. The SG states

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

The panel next considered whether placing conditions of practice on Mr Cuico's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case nor would it address Mr Cuico's attitudinal issues. The sexual misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Cuico's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

However, the conduct, as highlighted by the facts found proved, the panel determined evidenced attitudinal problems and a distinct lack of insight, therefore posing a significant risk of repetition and risk of harm to the public. The panel noted that the serious breach of

the fundamental tenets of the profession evidenced by Mr Cuico's actions is fundamentally incompatible with Mr Cuico remaining on the register.

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

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?*

The panel noted the observations of Mr Justice Kerr in *Arunachalam v GMC*:

".....sexual misconduct is self-evidently always serious and often likely to lead to erasure, even for a first time offender. Often, maintaining public confidence in the profession and upholding high standards of behaviour by stamping out unacceptable behaviour of this kind will require erasure in a sexual misconduct case.

Where the victim is a colleague rather than a patient, severe sanctions in such cases are generally necessary, in addition, to protect and uphold the dignity of workers in the profession and to protect their freedom to work without being molested. The victims are usually women.

..... lack of what is called "insight" tends to increase the severity of the sanction and, conversely, proof of insight tends to mitigate it. "Insight" roughly translates as

owning up, saying sorry and convincing the panel that offending behaviour will not be repeated. That is obviously more difficult if the charges are denied”.

Mr Cuico’s actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Cuico’s actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Cuico’s 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 mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Interim order

As the striking off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Cuico’s own interests until the striking-off sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Ms Donovan. She submitted that an interim suspension order is required to cover the 28 day appeal period on both public protection and public interest grounds. She invited the panel to impose the interim suspension order on the same factual and regulatory basis as the substantive striking off order.

Decision and reasons on interim order

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

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

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

This will be confirmed to Mr Cuico in writing.

That concludes this determination.