

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

**Substantive Hearing  
Monday, 30 September 2024 – Thursday, 3 October 2024**

Virtual Hearing

**Name of Registrant:** Andrew Brooks

**NMC PIN** 18B0166E

**Part(s) of the register:** Registered Nurse, Sub Part 1  
Mental health nurse, level 1 (March 2018)

**Relevant Location:** Kent

**Type of case:** Misconduct

**Panel members:** Michelle Lee (Chair, registrant member)  
Amanda Revill (Registrant member)  
Barry Greene (Lay member)

**Legal Assessor:** Justin Gau

**Hearings Coordinator:** Clara Federizo

**Nursing and Midwifery Council:** Represented by Alban Brahim, Case Presenter

**Mr Brooks:** Present and represented by Tope Adeyemi,  
instructed by the Royal College of Nursing (RCN)

**Facts proved by admission:** All charges

**Fitness to practise:** Impaired

**Sanction:** Suspension order (6 months)

**Interim order:** Interim suspension order (18 months)

## Decision and reasons on application to amend the charge

The panel heard an application made by Mr Brahimi, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 4.

The proposed amendments were to strike out the repeated set of words and correct the grammar. It was submitted by Mr Brahimi that the proposed amendments would correct the typographical errors within the charge. The proposed amendments are as follows:

*“That you, a registered nurse:*

*...*

- 4. ~~Inaccurately recorded~~ Inaccurately recorded, or caused to be recorded, an entry in Patient A’s pink notes that, you had spoken with Patient A to discourage leaving the ward.*

*...*

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

The panel noted that no objection was made by Ms Adeyemi on your behalf.

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 was of the view that such amendments as applied for were 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 as applied for to ensure clarity and accuracy.

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

Ms Adeyemi made a request that this case be held partly in private on the basis that proper exploration of your case may involve reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Brahimi did not object to the application.

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

The panel determined to go into private session in connection with [PRIVATE] as and when such matters are raised in order to protect your privacy in these proceedings.

### **Details of charge (as amended)**

*That you, a registered nurse:*

- 1. On 1 May 2021 provided Patient A with Naloxone Hydrochloride 2mg/2ml solution.*
- 2. On 1 May 2021 removed Naloxone Hydrochloride 2mg/2ml solution from the emergency resus bag without clinical justification.*
- 3. Following the medication error in charge 1 failed to inform the on-call manager.*

4. *Inaccurately recorded, or caused to be recorded, an entry in Patient A's pink notes that, you had spoken with Patient A to discourage leaving the ward.*
  
5. *During the local investigation into the medication error at charge 1:*
  - a. *incorrectly stated other health professionals, were responsible for the error*
  - b. *incorrectly stated that you had, had a conversation with Patient A to discourage them from leaving the ward.*
  - c. *failed to inform Patient A and/or their relatives of the provision of the incorrect medication.*
  
6. *Your actions in charge 5a were dishonest as you intended to deceive others into believing you were not responsible for the medication error.*
  
7. *Your actions in charges 4 and 5b were dishonest in that you intend to deceive others into believing you had advised Patient A to remain on the ward.*

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

## **Background**

The charges arose whilst you were employed as a registered mental health nurse by Cygnet Health Care Limited from 3 December 2019 until 29 May 2021. You worked on Oakwood Ward (the Ward), an Acute Adult Psychiatric Ward for female patients, at Godden Green Hospital (the Hospital). The referral arose from an incident on 1 May 2021 when you, as the nurse in charge, allegedly mistakenly provided Naloxone Hydrochloride instead of an EpiPen to Patient A, who had experienced an allergic reaction earlier that day.

Despite Patient A requesting an additional EpiPen before leaving the ward, you provided them Naloxone, which was allegedly later administered by another patient when Patient A experienced a second allergic reaction while off the Ward. The alleged mistake was discovered when, after suffering another allergic reaction on the grounds of the hospital and after being alerted by another patient, Patient A was discovered on the floor and another nurse noticed the Naloxone needle nearby.

An internal investigation followed, leading to your dismissal. You later admitted to confusing the similar packaging of the medications, not checking the stockroom and feeling rushed. Initially, you allegedly blamed others for the error but eventually took responsibility, acknowledging your failure to report or inform Patient A about the mistake promptly. Cygnet concluded that your actions put patients at risk and involved a further allegation of falsifying information regarding your interactions with Patient A.

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

At the outset of the hearing, the panel heard from Ms Adeyemi, who informed the panel that you made full admissions to all of the alleged charges. The panel therefore finds charges 1, 2, 3, 4, 5a, 5b, 5c, 6 and 7 proved in their entirety, by way of your admissions.

### **Fitness to practise**

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.

Prior to hearing submissions on misconduct and impairment, the panel heard live evidence from you under oath.

### **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 Brahimy invited the panel to take the view that the facts found proved amount to misconduct. He made the following submissions in writing:

#### **"Misconduct**

[...]

4. *The NMC submit that the proven charges amount to misconduct. The following submissions are collectively made in respect of the Registrant's conduct:*

- a. *To have given a vulnerable patient the wrong medication despite being a nurse of a senior level is an act which falls short of what would be proper in the circumstances;*
- b. *To have not escalated matters when the error was realised and to have also*

*deliberately recorded an incorrect discussion with a patient connotes a serious breach;*

- c. To have sought to blame others and conceal your own responsibility in interview are acts that would be considered as deplorable by fellow practitioners.*

*5. The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit (note that it is the 2018 version of the Code that applies in this case):*

- 4 Act in the best interests of people at all times;*
- 8 Work cooperatively;*
- 10 Keep clear and accurate records relevant to your practice;*
- 16 Act without delay if you believe that there is a risk to patient safety or public protection;*
- 20 Uphold the reputation of your profession at all times;*
- 21 Uphold your position as a registered nurse, midwife or nursing associate;*
- 23 Cooperate with all investigations and audits.*

*6. Overall, the NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. The public would expect that the profession will have staff that uphold a professional reputation. The Panel may find that most in breach are that of "20" and "21" above. The Registrant has put into question as to whether nurses can be trusted to care around vulnerable patients. Rather than owning up to his own error, the Registrant has sought to shift blame on others. This would have not only affected them but this also adversely reflects on the integrity of the medical profession as a result of being dishonest in interview. Such behaviour will also affect the public's trust in the medical profession.*

*7. The NMC therefore invite the Panel to find misconduct.”*

In response, Ms Adeyemi submitted that while the panel must decide whether your actions constitute misconduct, it is acknowledged that dishonesty and mixing up medication are unacceptable for a registered nurse. She outlined that you deeply regret your actions, which affected not only Patient A but also your colleagues, and you fully admitted to your mistakes, reflecting your understanding of the wrongdoing and your commitment to ensuring it is not repeated.

Ms Adeyemi submitted that misconduct is ultimately a matter for the panel.

### **Submissions on impairment**

Mr Brahimi moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

In relation to impairment, Mr Brahimi submitted the following in writing:

#### **“Registrant’s latest position**

*8. The Registrant gave evidence arguing that he has since reflected, trained and is supported by testimonials in respect of not being impaired. The NMC would invite the Panel to carefully consider these documents and would highlight that there is still room for concern that a senior nurse (in charge) would be distracted around others in an environment that requires strong focus. The Panel will also recall that the Registrant said he felt panicked which is contrary to what would be expected from a nurse of a senior position. It is important to note that a nurse in charge is*



*required to lead others through concerns and not blame them for his error.*

*[PRIVATE]*

### **Impairment**

*[...]*

*12. The NMC say that the Registrant is impaired and that all limbs of Grant are engaged in this case, however, the Panel are at liberty to consider any ground.*

*13. The first limb is engaged as a result of the Registrant putting Patient A in unwarranted risk of harm. The Panel have accepted the evidence in respect of the charges proven and it follows that Patient A was put at risk of harm (but not limited to) where:*

- a. Providing a patient with the wrong medication could have been particularly harmful in this situation. It is known to the Panel that an allergic reaction can lead to life-threatening circumstances and an EpiPen is designed to tackle this. The Registrant put a vulnerable patient at direct risk of harm as a result of his medication error which resulted in the ambulance being called.*

*14. The second limb is engaged as a result of the Registrant's behaviour, as found proven, plainly brings the profession into disrepute:*

- a. It is incumbent on practitioners being honest and transparent for the medical profession to run correctly and address errors as and when they take place. In this instance, not only has the Registrant sought to blame others regarding his own conduct but was also untruthful in his interview regarding conversations with the patient. This will plainly bring the profession into disrepute.*

15. *The third limb is engaged, where the Registrant has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, but in particular:*

- a. *Uphold the reputation of your profession at all times (20.1 and 20.2);*
- b. *Uphold your position as a registered nurse, midwife or nursing associate (21.3);*
- c. *Cooperate with all investigations and audits (23.1).*

16. *The fourth limb is engaged as a result of the Registrant having been found proven of acting dishonestly. This causes the following concerns (but not limited to):*

- a. *There are two dishonesty charges in this case which demonstrate the Registrant seeking to deliberately mislead the employer. It should be noted that there is time apart between the act of incorrectly completing Patient A's pink notes and the interview itself. This shows that there was no productive insight between these times and the Registrant maintained his intention to be dishonest rather than reflect and own up by the time the interview took place.*

17. *As further stated at paragraph 74 of Grant, the Panel should:*

*“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.”*

18. *The NMC submit that there is a serious departure from the standards expected of a nurse and that the behaviour is incompatible with ongoing registration. The Panel should consider impairment on the following grounds:*

**19. Public protection**

- a. *There is a significant risk of harm in this case. The Registrant caused a situation where he gave the wrong medication to a vulnerable patient which required the ambulance being contacted. The consequences could have been very harmful. The Registrant's lack of ownership (at the time) that this was his error also demonstrates a risk of repetition. The Panel will appreciate the escalation where there is initially an incorrect entry of records, then a blaming of others and then he also maintains a dishonest position at interview. The Panel should also have in mind the impact that blame can have on other staff members where they may have to be interviewed and suffer stress as a result of the Registrant dishonestly suggesting they were responsible for what happened.*

**20. Otherwise in the public interest**

- a. *The NMC submit that the greater concern in this case is the damaging impression that dishonesty will have on the nursing profession. These charges relate to more serious category of misconduct, namely dishonesty and a member of public learning of these incidents would find it difficult to reinstate trust in the medical profession where dishonesty is often an attitudinal problem, and often difficult to remediate. In this case, the Panel will appreciate that beyond the medication error and dishonesty, there are further concerns which only aggravate the Registrant's conduct. These include his failure to inform the on-call manager and failure to inform Patient A's relatives regarding this incident. Maintaining public interest requires transparency where possible and, in this instance, the Patient's family had every right to be informed in good time. As a result of the Registrant's abuse of position, the NMC submit that the honesty and integrity of the medical profession has been challenged and evidently been put into disrepute.*

21. As such the NMC invite the Panel to find that the Registrant is currently impaired.”

In response, Ms Adeyemi highlighted several factors to demonstrate that you are not currently impaired and pose no risk to the public. These include your early and full admissions, your reflection on the events and your efforts to strengthen your practice. She emphasised that perfect insight is not expected, but you have shown a clear understanding of your mistakes. She submitted that you acknowledged the distractions that led to your errors and provided examples of how you would handle similar situations differently in the future. She further submitted that your calm handling of other stressful situations was also presented as evidence of your growth and self-awareness.

Ms Adeyemi referred the panel to your evidence of training and submitted that you completed relevant courses to address your deficiencies, both shortly after the incident and more recently this year, showing a continued commitment to improving your practice. Additionally, she submitted that no further concerns have arisen during your subsequent employment, and you have received positive testimonials from colleagues. Ms Adeyemi argued that the misconduct occurred early in your career and that your practice has since strengthened with experience.

Regarding public interest, Ms Adeyemi acknowledged the seriousness of dishonesty but argued that your actions, training and remediation over the past few years demonstrate that you can now practice safely and professionally without restriction. The public, she suggested, would expect proportionate regulation, and if fully informed of the circumstances, they would not object to you being allowed to continue practicing.

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 (GMC)* (No 2) [2000] 1 A.C. 311, *Ashton v GMC* [2013] EWHC 943, *Preiss v GDC* [2001] 1 WLR 1296, *GMC v Meadow* [2007] QB 462 (Admin) and *Calhaem v GMC* [2007] EWHC 2606.

## **Decision and reasons on misconduct**

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

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

**'8 Work cooperatively**

*To achieve this, you must:*

**8.1** *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

**8.6** *share information to identify and reduce risk*

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

*To achieve this, you must:*

**10.3** *complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

**14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place**

*To achieve this, you must:*

**14.2** *explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers*

**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:*

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel concluded that administering the wrong medication to a vulnerable patient and acting without clinical justification were serious omissions, which put Patient A at significant risk of harm as this could have had severe consequences for their health. The panel noted that as the nurse in charge, you were responsible for ensuring that the right medications are administered. The panel considered it a grave departure from the standards expected of a nurse and therefore, this amounted to serious misconduct.

The panel also determined that you breached the duty of candour expected of nurses by being dishonest and initially attempting to shift blame onto others, rather than taking responsibility for your actions. Although the panel acknowledged that you later admitted your wrongdoing, your initial dishonesty was a serious concern.

The panel took into account the challenging work environment you described. While your failure to inform the on-call manager may not be considered 'deplorable' in isolation given the presence of a senior clinical manager and the busy nature of the Ward, when viewed

in the context of a serious medical error and your position as the nurse in charge, such failure amounted to misconduct.

Overall, the panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

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

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*

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

The panel finds that Patient A was put at unwarranted risk of harm and required an ambulance to be contacted as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. Therefore, the panel determined that all four limbs of *Grant*, as set out above, were engaged.

Regarding insight, the panel considered your written reflection and your oral evidence. The panel determined that your insight was developing. It recognised that you apologised and made admissions to the charges at this hearing. It noted that this was not your immediate position at the time when the incident took place. The panel was of the view that you were yet to demonstrate a deeper understanding of how your actions put Patient A at a risk of harm, why what you did was wrong and how this impacted negatively on the



reputation of the nursing profession and sufficiently demonstrate how you would handle the situation differently in the future.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account the additional relevant training you have undertaken on Medication Awareness, Medication Administration, Duty of Candour, HSG Clinical Skills and Record Keeping. It noted that you made an effort to address the concerns at the time as you did the training in 2021 following the incident and undertook the courses again recently this year.

The panel also considered the two positive testimonials you provided, which speak to your work and character. However, the panel found these references to be limited in detail, as they did not address how frequently you worked with the individuals who provided them, especially considering you are working as an agency nurse as opposed to being regular staff, or provide insights into your practice in relation to the specific areas of concern. Additionally, the testimonials did not address the issue of dishonesty, which remains a significant aspect of this case.

The panel is of the view that there is a risk of repetition. It noted that you have been working professionally in the nursing field as an agency staff. Whilst the panel acknowledges this, there is insufficient evidence at this time to satisfy the panel that the misconduct will not reoccur. 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.

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, particularly in light of the dishonesty element, and 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 suspension order for a period of 6 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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 Brahim made the following submissions in relation to sanction:

1. *“The Panel have now reached a stage of finding misconduct in respect of the Registrant’s behaviour and have concluded that fitness to practice is currently impaired. The Panel should therefore consider what sanction is appropriate to address the proven charges.*
2. *The Panel should first take into account relevant factors before deciding on sanction, as set out by the NMC Fitness to Practice Library guidance SAN-1:*

### 3. Proportionality

- a. *Finding a fair balance between Registrant's rights and the overarching objective of public protection;*
- b. *To not go further than it needs to, the Panel should think about what action it needs to take to tackle the reasons why the Registrant is not currently fit to practise;*
- c. *The Panel should consider whether the sanction with the least impact on the nurse practise would be enough to achieve public protection, looking at the reasons why the nurse isn't currently fit to practise and any aggravating or mitigating features.*

### 4. Aggravating features

- a. *Breaching the professional duty of candour;*
- b. *Position of responsibility;*
- c. *Patient seriously at risk of harm;*
- d. *Further observations:*
  - i. *Vulnerable patient;*
  - ii. *Multiple incidents of dishonesty;*
  - iii. *Impact on others as a result of blaming them.*

### 5. Mitigating features

- a. *Registration effective from 21st March 2018;*
- b. *Admissions to offences;*
- c. *Insight to matters;*
- d. *Number of trainings since incident;*

6. *Previous interim order and their effect on sanctions*

a. *No Interim Order in place.*

7. *Previous fitness to practice history*

a. *No previous findings.*

**Sanctions available**

8. *NMC submit that taking no action and a caution order are not suitable options for this case due to the variety of concerns. Guidance is found at SAN-3a and 3b.*

a. *Taking no action: this would not be an appropriate course of action as the combination of regulatory concerns of behaviour is serious. The public protection and public interest elements in this case are such that taking no action would not be the appropriate response;*

b. *Caution Order: similarly, a Caution Order is also not suitable as this is a sanction aimed at misconduct that is at the lower end of the spectrum. In this case the concerns involved a medication error and two dishonesty charges.*

9. *With regards to a conditions of practice order (COPO), the NMC submit that this option does not adequately address and reflect upon the number of breaches in this case. NMC guidance is found at reference SAN-3c.*

a. *The level of concern in this case would require a higher level of sanction than a COPO where there is a variety of issues. The guidelines refer to*

*“When conditions of practice are appropriate” and the Panel may find that these conditions are not met.*

- b. Measurable, workable and appropriate conditions can be put into place to address instances such as specific clinical failures, however, a COPO would not suitably address the multiple instances of dishonesty which is an attitudinal concern.*
- c. A COPO can be used even where impairment is found. Such an order is appropriate where there is no evidence of harmful deep-seated personality or attitudinal problems and there is a willingness on the part of the Registrant to engage. Insight into the health condition and to agree to abide by conditions such as treatment or supervision. Further, patients would not be directly or indirectly at risk by such conditions, which can be monitored and assessed for such a duration as necessary. If this involved only the medication error, conditions may have been appropriate. However, the dishonesty concern is suggestive of harmful deep-seated personality or attitudinal problems which cannot be remediated through conditions. This sanction would be insufficient to protect the public and would not meet the public interest test.*

*10. The NMC submit the Registrant’s actions do warrant a suspension order (SO) but this would not be sufficient. Suspension guidance is found at reference SAN-3d, and includes some of the following (but not limited to):*

- a. “Key things to weigh up before imposing this order include:*
  - whether the seriousness of the case require temporary removal from the register?*
- b. “Use the checklist below as a guide to help decide whether it’s appropriate or not. This list is not exhaustive:*

- *a single instance of misconduct but where a lesser sanction is not sufficient”*

*c. Seriousness of the case does require at least temporary removal from the case. However, the medication error was serious and Patient A was at significant risk of harm. Whilst that was a single incident a lesser sanction would not be appropriate due to dishonesty which is evidence of deep-seated personality or attitudinal problems. There is also a risk of repetition of such behaviour, which poses a risk to the public and a such an order would be insufficient to adequately protect the public in this case.*

*11. The NMC submit that a striking-off order is appropriate where dishonesty has been found, including medication errors. The Panel may be assisted by guidance provided at reference SAN-3e.*

*a. This is the most serious sanction and is likely only appropriate when the conduct is fundamentally incompatible with remaining on the register. The clinical error is serious and coupled with dishonesty of the Registrant in seeking to cover up the medication error points to the Registrant being fundamentally incompatible with remaining on the register. Our guidance at SAN-2 sets outs that honesty is of central importance to a nurse, midwife, or nursing associates practice and allegations of dishonesty will always put a Registrant at some risk of being removed from the register. This case concerns a deliberate breach of the professional duty of candour by the Registrant who deliberately sought to cover up that it was him who provided the incorrect medication by blaming other healthcare professionals and failed to inform Patient A of the error. The Registrant’s actions put Patient A at risk of significant harm. Further, the Registrant sought to deceive his employer about his discussions with Patient A before and after the incident. The Panel may consider that Registrant can only be considered intrinsically dishonest*

*in both actions. Placing the blame even briefly on another healthcare professional is fundamental incompatible with remaining on the register.*

**Sanction request:**

*12. The concerns in this case may be described as being attitudinal in nature. For all the reasons previously argued, the NMC submit that the appropriate sanction is a:*

**Strike Off**

*13. The NMC have sought to assist the Panel by going through each of the possible sanctions and when weighing the evidence against the set guidance, it is justified that there be a strike off. Patients, colleagues and the public need to be able to trust those on our register, that they will be open and honest when mistakes are made, not doing so calls into question whether the Registrant would uphold the proper professional standards of someone in such a trusted position. In this case there has been a lack of honesty and trustworthiness of the Registrant and a strike-off is the only order that would sufficiently protect the public, maintain trust and confidence in the profession. This sanction would reflect that the conduct of the Registrant has been properly addressed and maintain trust with the public that the NMC do take such allegations seriously and will take swift and appropriate action.*

*14. The NMC respect that the Panel is entirely at liberty to proceed as they deem most suitable for this case.”*

In response, Ms Adeyemi acknowledged the seriousness of your actions and their impact on patients, colleagues and the nursing profession. She emphasised that you had reflected on your behaviour and expressed deep remorse, particularly in regard to the risks posed to patient safety and the harm caused to your colleagues. Ms Adeyemi

highlighted that sanctions should not be punitive but aimed at public protection, and that a proportionate response was essential.

Ms Adeyemi outlined mitigating factors for the panel such as your consistent engagement with the proceedings, your lack of prior regulatory concerns and your demonstration of insight into your misconduct. [PRIVATE]. Additionally, she pointed out that your misconduct was an isolated incident, not indicative of a deeper, ongoing issue or pattern of dishonesty.

Ms Adeyemi submitted that striking you off the nursing register would be disproportionate and unnecessary for public protection as you have taken steps to remediate your conduct and showed a willingness to improve. She invited the panel to consider that conditions of practice would be more appropriate as it would allow you to reflect and continue improving your skills.

Ms Adeyemi also noted that while dishonesty is serious, you have worked without issue since the incident, demonstrating your ability to practice safely. She submitted that public trust in the profession would not be undermined if you were allowed to continue working, given your remorse, efforts to improve and the absence of further misconduct.

Ms Adeyemi submitted that, should the panel not be satisfied with a conditions of practice order, an alternative could be a suspension order for three months.

### **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:

- You were dishonest.
- A breach of the Duty of Candour.
- You were in a position of responsibility as the nurse in charge.
- Conduct which put patients at risk of suffering harm.
- Impact on others as a result of falsely blaming them.

The panel also took into account the following mitigating features:

- You are currently practising with no further concerns raised.
- Although you were in a senior position as the nurse in charge, your experience in this was limited and it was a relatively new Ward/working environment.
- You have undertaken some initial steps to remediate through retraining.
- Developing insight.
- Admissions at the outset of this hearing.
- Personal mitigation including [PRIVATE].

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.

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

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

The panel was satisfied that there was no evidence of any harmful, deep-seated attitudinal problems. While the dishonesty involved in this case was a serious concern, it was an isolated incident rather than a pattern of long-term or ongoing dishonesty, including during the investigation/interviews. The panel also acknowledged that, despite your initial attempt to shift blame, you ultimately admitted to your wrongdoing.

However, the panel concluded that no practical or workable conditions could be formulated at this time given the nature and gravity of the charges. The panel considered that you have undertaken some retraining, however, these did not address the behavioural concerns. It also noted that although you eventually acknowledged the misconduct, this came only after being confronted, rather than as a spontaneous response. The panel considered that the issue of dishonesty could not be effectively addressed through

conditions of practice. It emphasised that meaningful remediation for this must come from your own reflection, proactivity and willingness to change.

The panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public at this time.

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 considered that there was no evidence of harmful deep-seated personality or attitudinal problems in this case and that the charges relate to a single instance of misconduct. However, it determined that a lesser sanction is not sufficient to address the public protection and public interest concerns. It discerned that a reasonable and well-informed member of the public would expect that the regulator marks the seriousness of this case, particularly in relation to the three charges of dishonesty.

The panel noted that you are not currently under any conditions and have been working three to four days a week for three years without any further issues raised. However, the panel did not have documentary information before it in relation to this and noted that

circumstances/patterns of employment may be different for an agency staff as opposed to regular staff. Further, the panel noted that your level of insight was developing at this time.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. It noted that the misconduct can be remedied, and you have been engaged in this process, addressed some of the concerns through retraining and demonstrated a willingness to take the necessary steps to return to safe practice.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 6 months was appropriate in this case to mark the seriousness of the misconduct, particularly in light of the dishonesty, and allow you some time to reflect.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Completion of a further reflective piece.
- Testimonials from a line manager or supervisor, who has read this determination in full, that details your work practices and character at work.
- Additional training which includes courses on Professional Ethics and communication skills.

This will be confirmed to you in writing.

### **Interim order**

As the substantive suspension 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 suspension 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 Brahim:

#### ***“Interim order under Rule 24 (14) to cover possible appeal***

*15. Should the Panel make an order as to sanction beyond that of a caution, the NMC would invite that there be an interim suspension order for a period of 18*

*months. The Panel will appreciate that the decision on sanction will not take effect until at least 28 days. The period of 18 months would therefore be sufficient should an appeal be lodged by the Registrant. The request and grounds argued for why an interim order is required would be the same as those previously presented at the misconduct and impairment stage. The Panel may agree that having no interim order would not be reflective of their finding that a sanction is required, beyond a caution.”*

In response, Ms Adeyemi submitted that the panel should not impose an interim order. She acknowledged the panel's findings but argued that the level of risk posed by you has not fundamentally changed. She submitted that the evidence considered by the panel had not changed throughout all the NMC proceedings. She stated that you are entitled to an appeal period, and while there is no indication of an appeal at this time, it remains your right. She emphasised that three years have passed since the referral, during which you continued to practice as a nurse without any further incident or concerns raised. For this reason, she submitted that an interim order is not necessary at this stage.

### **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 by admission 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 risks to patients and the public identified by the panel in its earlier decision and reasons for imposing the substantive suspension order.

The panel had regard to Ms Adeyemi's submissions that the level of risk had not changed, you are not currently under an interim order, and you have been practising for a period since the incident with no further concerns raised. The panel noted that no interim order

was imposed in the past. Whereas an interim order panel undertakes a risk assessment before the facts are proved, this panel has accepted your admissions and has found your fitness to practise to be impaired.

The panel determined that an interim suspension order was necessary to protect the public and uphold public confidence in the nursing profession and to do otherwise would be incompatible with its earlier findings. The period of this order is for 18 months to allow for the possibility of an appeal to be made and concluded.

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

That concludes this determination.