

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

**Substantive Meeting  
Thursday, 10 October 2024 – Friday, 11 October 2024**

Virtual Meeting

**Name of Registrant:** Daniel James Peng

**NMC PIN** 10A1201E

**Part(s) of the register:** Nurse – Sub Part 1  
RNMH: Mental Health Nurse, Level 1 (24 February 2010)

**Relevant Location:** Lichfield

**Type of case:** Misconduct

**Panel members:** Richard Weydert-Jacquard (Chair, Registrant member)  
Louise Poley (Registrant member)  
Rachel Robertson (Lay member)

**Legal Assessor:** Paul Hester (10 October 2024)  
Charles Apthorp (11 October 2024)

**Hearings Coordinator:** Zahra Khan

**Consensual Panel Determination:** Amended

**Facts proved:** Charges 1, 2, 3, and 4

**Facts not proved:** N/A

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

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

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Peng's registered email address by secure email on 2 September 2024.

Further, the panel noted that the Notice of Meeting was also sent to Mr Peng's representative at the Royal College of Nursing (RCN) on 2 September 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the fact that this meeting will take place on or after 8 October 2024, and that this meeting was to be heard virtually.

In light of all of the information available, the panel was satisfied that Mr Peng has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

That you, a registered nurse,

1) While working at Beechfields Nursing Home on 29 August 2019 debrided a blister on Resident A's toe,

- a) without clinical justification, and/or
- b) without the necessary skill and/or training.

2) While working at Beechfields Nursing Home on 30 November 2019 in relation to Resident B,

- a) Re-used a single use syringe.
- b) Did not change the label on the syringe that had been re-used.

3) While employed by Towerview Care, signed MAR charts to indicate medication had been administered to residents when it had not, on one or more occasions as set out in schedule 1.

4) Your conduct in charge 1 was dishonest because you intended any reader of the MAR charts to understand the records to be accurate, when you knew they were not.

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

### **Consensual Panel Determination**

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

The agreement, which was put before the panel, sets out Mr Peng's full admissions to the facts alleged in the charges, that his actions amounted to misconduct, and that his fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking-off order.

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

That provisional CPD agreement reads as follows:

*'The Nursing & Midwifery Council ("the NMC") and Daniel James Peng, PIN 10A1201E ("the Parties") agree as follows:*

1. *Mr Peng is content for his case to be dealt with by way of a CPD meeting. Mr Peng understands that if the panel wishes to make amendments to the provisional agreement with which he does not agree, the panel will postpone the matter for the case to be considered at a later hearing.*

### **The charges**

2. *Mr Peng admits the following charges:*

*That you, a registered nurse,*

1. *While working at Beechfields Nursing Home on 29 August 2019 debrided a blister on Resident A's toe,*

- a) *without clinical justification, and/or*

- b) *without the necessary skill and/or training.*

2. *While working at Beechfields Nursing Home on 30 November 2019 in relation to Resident B,*

- a) *Re-used a single use syringe.*

- b) *Did not change the label on the syringe that had been re-used.*

3. *While employed by Towerview Care, signed MAR charts to indicate medication had been administered to residents when it had not, on one or more occasions as set out in schedule 1.*

4. *Your conduct in charge 1 was dishonest because you intended any reader of the MAR charts to understand the records to be accurate, when you knew they were not.*

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

### **Schedule 1**

	<b>Date</b>	<b>Resident</b>	<b>Medication</b>
1.	6 June 2020	Resident C	Prednisolone
2.	12-14 June 2020	Resident D	Cyanocobalamin - B12
3.	12-14 June 2020 (on an occasion other than 2. above)	Resident D	Cyanocobalamin - B12
4.	12-14 June 2020	Resident E	Co-amoxiclav
5.	12 June 2020	Resident F	Calcichew-d3
6.	13 June 2020	Resident F	Calcichew-d3
7.	14 June 2020	Resident F	Calcichew-d3
8.	14 June 2020	Resident G	Lorazepam
9.	14 June 2020	Resident G	Rivastigmine
10.	14 June 2020	Resident G	Ferrous sulphate

### **The facts**

3. Mr Peng appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse – Mental Health and has been on the NMC register since 24 February 2010.

4. Mr Peng was employed through an agency as a Registered Nurse at Beechfields Nursing Home ('Beechfields') for about 12 months, until 03 January 2020.

### **Charge 1**

5. Resident A had a blister on his toe. On 29 August 2019, Mr Peng debrided the blister (took away the dead skin). Due to Mr Peng not having the requisite skills to safely debride the wound became infected and needed to be treated with antibiotics. Had the infection not been noticed or treated in time, Resident A's wound could have become septic.

6. *Mr Peng accepted that he had debrided Resident A's blister when he was spoken to by the Beechfield's Home Manager.*

7. *Debriding is a specialist job. There was no clinical justification for Mr Peng's actions as the blister would have disappeared naturally. Furthermore, Mr Peng admits he did not have the necessary skill or training to debride a blister.*

### Charge 2

8. *Resident B was on palliative care treatment at Beechfields. On 30 November 2019, Mr Peng administered Resident B's controlled drugs via syringe driver by reusing a single use syringe. Mr Peng re-used the syringe for different medication so the syringe driver did not have the correct medication label. A syringe driver must be labelled with the correct medication along with the millilitre, date, and time. Mr Peng did not change the label on the syringe to indicate it had been reused.*

9. *When discussing the incident with the Beechfields Home Manager, Mr Peng admitted that he had reused the syringe and said this was because there were no syringes left in the clinic room. He confirmed he washed the syringe out with saline and reused it. The manufacturer's instructions for the syringe driver states these are single use syringes. Mr Peng should have followed protocol and called the Beechfields Clinical Lead for guidance, and she would have informed him that there was a full box of syringes on the premises and where to locate it. The Clinical Lead had informed Mr Peng about the box of syringes in treatment room in the days preceding this incident.*

10. *Mr Peng was employed as a Registered Nurse at Towerview Care Home ('Towerview') from 28 March 2020 to 02 July 2020. Towerview is a Home with 85 beds for residents with complex mental health conditions and dementia.*

### Charge 3

11. On 06 June 2020, Mr Peng failed to administer Prednisolone to Resident C. He however signed the MAR chart to indicate that it had been administered. The error was revealed on 07 June 2020, when the stock count was discovered to be incorrect. The Matron spoke with Mr Peng about the error and best practice moving forward.

12. Resident D was prescribed Vitamin B12 to help with his dementia. On 11 June 2020 the stock count for Vitamin 12 was 65. Between 12 and 14 June 2020, Mr Peng signed Resident D's MAR chart on each day to indicate that the medication had been administered. The stock count on 15 June 2020 however was 63, indicating that 2 tablets had not been administered during this period. There was potential harm to Resident D due to their medical history.

13. Resident E was prescribed Co-Amoxiclav, an antibiotic, to treat his chest infection. Between 12 and 14 June 2020, Mr Peng signed Resident E's MAR chart on each day to indicate that the medication had been administered. On 15 June 2020, a stock count revealed that one tablet had been missed in this period.

14. Resident F had suffered a bone fracture and was prescribed Calcichew-D3 as a supplement to strengthen his bones. Between 12 and 14 June 2020, Mr Peng signed Resident D's MAR chart on each day to indicate that the medication had been administered. On 15 June 2020, a colleague found the tablets still in the blister pack i.e., they had not been given.

15. Resident G was prescribed Lorazepam, Rivastigmine, and Ferrous Sulphate. Lorazepam is an antipsychotic medication. If not administered there is a risk that a patient will become aggressive. Rivastigmine is used to treat dementia. Resident G was anaemic; the Ferrous Sulphate was prescribed to treat it. If not administered Resident G's iron level would become low and he could have passed out. On 14 June 2020, Mr Peng signed Resident G's MAR chart to indicate that the medications had been administered. On 15 June 2020, a colleague found the tablets still in the blister pack i.e., they had not been given.

16. *No harm came to any patients as a result of the medication not being administered.*

17. *On 26 June 2020 Mr Peng was interviewed by the Home Manager at Towerview. Mr Peng said he did not remember the incidents nor did he provide any explanation for the errors.*

18. *On 24 February 2020, Beechfields Nursing Home submitted a referral to the NMC with reference to charges 1 and 2.*

19. *On 27 July 2020, Towerview Care Home submitted a referral to the NMC with reference to charge 3.* 20. *On 21 June 2024, Mr Peng returned the completed and signed Case Management Form in which he admitted the charges and impairment in full.*

### **Misconduct**

21. *The facts amount to misconduct.*

22. *Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 provides guidance when considering what could amount to misconduct:*

*'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances.'*

23. *Further assistance may be found in the comments of Jackson J in R (Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin) respectively:*



*'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

And

*'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*

24. At the relevant time, Mr Peng was subject to the provisions of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** ("the Code"). It is agreed that the following provisions of the Code have been breached in this case:

***Prioritise people***

***1 Treat people as individuals and uphold their dignity***

*To achieve this, you must:*

*1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

***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*

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

**Practise effectively**

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

*To achieve this, you must:*

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

**Preserve safety**

*13 Recognise and work within the limits of your competence*

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

*13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*

*13.5 complete the necessary training before carrying out a new role*

*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:*

**Promote professionalism and trust**

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

*To achieve this, you must:*

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

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

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

*25. It is agreed that Mr Peng's conduct as detailed in charges 1 to 3 falls far short of what would have been expected of a registered nurse. The areas of concern identified relate to basic nursing skills and practice. Mr Peng's actions in acting outside the scope of his competence, re-using a single use syringe, failing to properly administer patient medications and failing to record medication administration accurately, were a significant departure from the fundamental principles of the Code of prioritising people, preserving safety, practising effectively, and promoting professionalism and trust in the profession. These failings and the dishonesty involved are serious departure from expected standards and put patients at significant risk of harm.*

### ***Impairment***

*26. It is agreed that Mr Peng's fitness to practise is currently impaired by reason of his misconduct.*

*27. The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:*

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

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

29. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

30. In the case of Meadows v General Medical Council [2006] EWCA Civ 1390 the following important observation was made about the purposes of this stage of the proceedings:

*'The purpose of fitness to practise proceedings is not to punish a practitioner for past misdoing but to protect the public from the acts and omissions of those who are not fit to practise. The Fitness to Practise Panel therefore looks forward not back. However in order to form a view as to the fitness to practise of a person to practise today it is evident that it will have to take account of the way in which a person concerned has acted or failed to act in the past.'*

31. The parties agree that consideration of the nature of the concern involves looking at the factors set out by Dame Janet Smith in the 5th Shipman Report, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;

a) Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b) Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or

c) Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or

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

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

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

33. The Parties agree that limbs (a) to (d) can be answered in the affirmative in this case. Taking each of the limbs in turn:

Limb a)

34. By debriding a patient’s wound without clinical justification and without the proper training, by re-using a single use syringe and failing to re-label it, by failing to correctly administer medication, and signing to indicate medication had been given when it had not, Mr Peng placed patients at risk of harm.

Limb b)

35. The areas of concerns identified relate to basic nursing skills and practice and consists of Mr Peng’s failure to properly prepare and administer medications, failure to record medication administration adequately and accurately, and failure to appropriately manage a patient’s wound. Honesty is a fundamental tenet of the profession and is often described as the bedrock of the profession. The public has the right to expect high standards of registered professionals. Registered professionals occupy a position of trust and must, at all times, act with and promote honesty. It is agreed that Mr Peng’s actions have brought the nursing profession into disrepute. The seriousness of the misconduct not only brings the profession into disrepute but calls into question Mr Peng’s professionalism and trustworthiness in the workplace.

Limb c)

36. The Parties agree that the relevant sections of the Code set out above have been breached in this case and these breaches relate to fundamental tenets of the profession, which consequently undermines or erodes public trust and confidence in the profession.

Limb d)

37. The Parties agree that Mr Peng's signing of MAR charts to indicate medication had been given when it had not was dishonest.

38. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions:

- (i) whether the concern is easily remediable;
- (ii) whether it has in fact been remedied; and
- (iii) whether it is highly unlikely to be repeated.

Limb (i)

39. The Parties agree that there are underlying attitudinal issues. The Parties have considered the NMC guidance entitled: Can the concern be addressed? (Reference: FTP-14a), which provides that attitudinal concerns cannot be addressed by training or supervision. The guidance indicates that dishonesty may not be possible to address, particularly if it was serious and sustained over a period of time or was directly linked to the nurse, midwife or nursing associate's practice. The Code requires all nurses, midwives and nursing associates to act with honesty and integrity at all times and Mr Peng's actions were a significant departure from the standards expected.

40. Mr Peng's conduct as a nurse falls so far short of the standards the public expect of professionals caring for them, that public confidence in the nursing and midwifery professions is undermined. These were not one-off incidents, they occurred over a period of time and in 2 Nursing Home settings. Signing to indicate that medications have been administered when they have not been brings into question Mr Peng's professionalism and trustworthiness in the workplace. Dishonesty linked to practice is particularly serious and is indicative of deepseated attitudinal issues which are more difficult to address.

Limb (ii)

41. The Parties have considered the NMC guidance 'Has the concern been addressed?' (FTP-14b). Mr Peng has provided several certificates from 2020 indicating that he has undertaken training in e.g., safe administration of medication and decision making. Whilst dishonesty is difficult to remediate, it is agreed that Mr Peng has not provided evidence to suggest that he has taken any steps to address the dishonesty concerns.

Limb (iii)

42. The Parties have considered the NMC guidance 'Is it highly unlikely that the conduct will be repeated?' (FTP-14c). Mr Peng has shown no remorse or insight into the seriousness of his actions. He has not provided an explanation for his actions. He has also not worked as a registered nurse since 2020 and therefore not remediated his practice. In the absence of sufficient insight, remorse and remediation, it is agreed that there is a significant risk of the conduct being repeated.

Remorse, reflection, insight, remediation

43. It is agreed that Mr Peng has not demonstrated any remorse or insight in relation to his actions albeit he has admitted the charges.

44. *The nature of the misconduct, particularly the dishonesty elements means that it cannot be addressed through training.*

45. *Mr Peng has not worked as a nurse since he left the employ of Towerview Care Home in 2020.*

46. *It is therefore agreed that in the absence of remorse and sufficient insight, the risk of repetition remains.*

*Public protection impairment*

47. *The Parties agree that a finding of impairment is necessary on public protection grounds.*

48. *Mr Peng's failings fall seriously below the standards expected of a nurse. He has not provided any evidence to confirm he has addressed either the clinical or the dishonesty concerns and thus a risk of repetition remains. A finding of impairment is therefore required for the protection of the public.*

*Public interest impairment*

49. *A finding of impairment is necessary on public interest grounds.*

50. *In Grant at paragraph 74 Cox J commented that:*

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



51. *Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/or to maintain public confidence in the profession.*

52. *In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which has not been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

53. *However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

54. *The Parties agree that there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour and to maintain confidence in the profession and the NMC as a regulator. Mr Peng acted in a way that other colleagues would find deplorable. His actions raise fundamental concerns about his attitude and trustworthiness and constitute a serious breach of his position as a registered professional.*

### **Sanction**

55. *The appropriate sanction in this case is a **striking-off order**.*

56. *The public interest must be at the forefront of any decision on sanction. The public interest includes protection of members of the public, including patients, the maintenance of public confidence in the profession and the declaring and upholding of*

*proper standards of conduct and behaviour within the profession. The public interest in this case lies with maintaining public confidence in the profession and upholding proper professional standards by declaring that Mr Peng's misconduct is unacceptable.*

*57. Any sanction imposed must do no more than is necessary to meet the public interest and must be balanced against Mr Peng's right to practise in his chosen career.*

*58. The Parties agree the following to be aggravating and mitigating factors:*

*Aggravating factors:*

- Lack of insight*
- A pattern of misconduct over a period of time.*
- Conduct which puts patients at risk of harm.*
- Dishonest conduct directly linked to his work as a nurse.*

*Mitigating factors:*

- None.*

*59. In taking the available sanctions in ascending order, the Parties first considered whether **to take no action or make a caution order**. It is agreed that neither of these sanctions would be appropriate in view of the seriousness of Mr Peng's actions, the need to protect the public, and the need to declare and uphold proper standards of conduct.*

*60. Imposing a **conditions of practice order** would not be appropriate. The Parties considered that this may have been appropriate for the medication errors alone. However, the dishonesty is an indicator of a deep-seated personality/attitudinal concern which, combined with Mr Peng's lack of insight, means it would not be appropriate. There are no workable conditions that could be formulated to adequately*

*address the dishonesty. This sanction would not reflect the seriousness of the misconduct, therefore public confidence in the nursing profession and professional standards would not be maintained.*

*61. **Imposing a suspension order** would not be sufficient to protect the public. Whilst the guidance at SAN-3d indicates that the misconduct in this case is sufficiently serious to warrant temporary removal from the register, such an order would be appropriate where there is “a single incidence of misconduct...”, “no evidence of harmful deep-seated personality or attitudinal problems” and “the Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour”. None of those factors apply in the present case.*

*62. In 2019 there were 2 incidents of poor clinical practice, the first of which involved Mr Peng working outside the scope of his competence. This was followed by a single medication administration incident on 06 June 2020, after which Mr Peng was spoken to by the Matron. Despite this apparent warning, Mr Peng went on to make further errors with the associated dishonesty. Whilst there is no evidence of repetition since, this is because Mr Peng no longer works as a nurse. There is no evidence of insight or remediation and therefore a risk to the public remains. A suspension order would not reflect the seriousness of the misconduct. Therefore, public confidence in the profession and professional standards would not be maintained.*

*63. The Parties agree that a **striking-off order** is the appropriate sanction. With regard to the NMC guidance at SAN-3e, it is agreed that the misconduct was serious and is fundamentally incompatible with ongoing registration. The dishonest act of signing to indicate that medications have been administered when they have not involved a serious breach of the fundamental tenet of honesty and presents public safety concerns. Mr Peng’s actions raise fundamental concerns around his professionalism and trustworthiness. Public confidence in the profession cannot be maintained unless Mr Peng is removed from the register. It is the only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.*

### ***Maker of allegation comments***

*64. Beechfields was contacted for comment on the proposed consensual panel determination but they did not replied to the request.*

*65. Towerview was contacted for comment on the proposed consensual panel determination but they did not replied to the request.*

### ***Interim order***

*66. An interim order is required in this case. The interim order is necessary for the protection of the public and/or otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event that Mr Peng seeks to appeal the panel's decision. The interim order should take the form of an interim suspension order.*

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

Here ends the provisional CPD agreement between the NMC and Mr Peng. The provisional CPD agreement was signed by Mr Peng on 7 August 2024 and the NMC on 14 August 2024.

The panel had reference to paragraph 10 of this agreement. It noted that it had incorrectly been placed within the section headed 'charge 2' and that it should have been placed under the section headed 'charge 3'.

## **Decision and reasons on the CPD**

The panel decided to amend the CPD.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Peng. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noticed that there was a fundamental typographical error in charge 4 as this charge should relate to charge 3 as opposed to charge 1.

The legal assessor referred to Rule 28 (2) which states:

*'Before making any amendment the committee shall consider any representations from the parties on this issue'.*

The legal assessor advised that there is nothing in the body of the rule that states that the panel has the power of its own volition to make an amendment. He advised the panel to obtain consent from the parties as these are the charges that have been signed within the provisional CPD agreement.

The panel requested for the NMC to reach out to Mr Peng and his representative at the RCN. The NMC received a response from Mr Peng's representative, dated 10 October 2024, which stated:

*'On behalf of the registrant, I have no objection to the amendment to the wording of charge 3'.*

The NMC also confirmed that it had no objection to the proposed amendment to the charge.

In these circumstances, the panel made the following amendment to the charge:

*'4. Your conduct in ~~charge 1~~ **charge 3** was dishonest because you intended any reader of the MAR charts to understand the records to be accurate, when you knew they were not'.*

The panel noted that Mr Peng admitted the facts of the charges.

Accordingly, the panel was satisfied that all charges are found proved by way of Mr Peng's admissions as set out in the signed provisional CPD agreement.

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

That you, a registered nurse,

1) While working at Beechfields Nursing Home on 29 August 2019 debrided a blister on Resident A's toe,

- a) without clinical justification, and/or
- b) without the necessary skill and/or training.

2) While working at Beechfields Nursing Home on 30 November 2019 in relation to Resident B,

- a) Re-used a single use syringe.

b) Did not change the label on the syringe that had been re-used.

3) While employed by Towerview Care, signed MAR charts to indicate medication had been administered to residents when it had not, on one or more occasions as set out in schedule 1.

4) Your conduct in charge 3 was dishonest because you intended any reader of the MAR charts to understand the records to be accurate, when you knew they were not. AND in light of the above, your fitness to practise is impaired by reason of your misconduct.

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

The panel heard and accepted the advice of the legal assessor who referred to the following cases: *Roylance v General Medical Council* [1999] UKPC 16, in *R (Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin), and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

The panel then went on to consider whether Mr Peng's fitness to practise amounts to misconduct. Whilst acknowledging the agreement between the NMC and Mr Peng, the panel exercised its own independent judgement in reaching its decision on misconduct.

In respect of misconduct, the panel determined that Mr Peng's actions fell below the standards expected of him and that his actions amounted to misconduct. The panel considered the sections of the Code outlined in the CPD, and concluded that the failings, both individually and collectively, amounted to misconduct.

In relation to charges 1a and 1b, the panel determined that, in Mr Peng working outside his remit and undertaking a clinical task that he had not been trained in, he placed Resident A at risk of harm. The panel determined that Mr Peng's actions in this charge were serious breaches of the Code and amounted to misconduct.

In relation to charges 2a and 2b which relate to infection risk and communication with colleagues, the panel determined that, in reusing a single use syringe, Mr Peng breached infection prevention and control guidelines which put Resident B at risk of harm. Further, he failed to follow protocol and to appropriately communicate with colleagues to locate alternative syringes. In relation to charge 2b, the panel determined that Mr Peng failed to ensure that the syringe driver he used was appropriately labelled. The panel determined that Mr Peng's actions in this charge were serious breaches of the code and amounted to misconduct.

In relation to charge 3, the panel determined that, in Mr Peng signing MAR charts to indicate medication had been administered to residents when it had not, he placed patients at a real risk of harm. The panel noted that this conduct occurred on ten occasions and involved five different residents. Further, the matron had identified Mr Peng's error on the first occasion and spoken to him, advising him of best practice. However, he then wrongly signed MAR charts to indicate medication had been administered to residents on a further nine occasions in the following week. Consequently, the panel determined that this made Mr Peng's misconduct in charge 3 all the more serious. These were serious breaches of the Code and amounted to misconduct.

In relation to charge 4, the panel determined that dishonesty is a breach of the Code and amounts to serious misconduct. The panel further determined that there was a risk of harm to patients and that Mr Peng's deception increased that risk.

In this respect, the panel endorsed paragraphs 21 to 25 of the provisional CPD agreement in respect of misconduct.

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

The panel heard and accepted the advice of the legal assessor who referred to the following cases: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery*



*Council (2) Grant* [2011] EWHC 927 (Admin), and *Meadows v General Medical Council* [2006] EWCA Civ 1390.

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

The panel considered whether Mr Peng's fitness to practise is currently impaired by reason of misconduct. 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.'*

The panel determined that Mr Peng's fitness to practise is currently impaired.

The panel considered the judgment in *Grant* as outlined in the CPD and endorsed the engagement of all four limbs in this case, in respect of the past. The panel has no evidence of remorse, reflection, insight, or remediation, nor does it have any evidence of strengthened practice around Mr Peng's misconduct. The panel determined that Mr Peng's dishonest misconduct was evidence of an attitudinal issue and also possibly indicative of a deep-seated attitudinal issue. Such a serious concern is difficult to put right, and the panel has no evidence that Mr Peng has made any attempt to address this or his other misconduct. Given its findings, the panel determined that all four limbs are engaged in this case, in respect of the future and that there is a real risk of repetition. Accordingly, the panel determined that Mr Peng's fitness to practise is currently impaired on the ground of public protection.

The panel was therefore not satisfied that Mr Peng could practise safely and professionally in the future.

In light of this, the panel determined that the public confidence in the nursing profession and the NMC as its regulator would be undermined if a finding of impairment was not made. Accordingly, the panel determined that Mr Peng's fitness to practise is also currently impaired on public interest grounds.

In this respect the panel endorsed paragraphs 26 to 54 of the provisional CPD agreement.

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

Having found Mr Peng'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 as set out in the CPD:

- Lack of insight.
- A pattern of misconduct over a period of time.
- Conduct which puts patients at risk of harm.
- Dishonest conduct directly linked to his work as a nurse.

The panel noted that no mitigating features are set out in the CPD.

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.

The panel 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 Peng'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 Peng'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 Peng'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. The 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 Peng'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 a 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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The conduct, as highlighted by the facts found proved, involved significant departures from the standards expected of a registered nurse. The panel noted that the serious breach of

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

In this particular case, the panel determined that, whilst a suspension order would protect the public for a period of time, it could not be reassured that, given the lack of evidence of Mr Peng's remorse, reflection, insight, and remediation, there was a meaningful chance that Mr Peng would be able to remediate these very difficult concerns. As such, 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?*

Mr Peng'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 Peng'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 agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Peng'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 concluded that nothing short of this would be sufficient in this case.

The panel considered the impact that a striking-off order may have on Mr Peng. However, it considered that Mr Peng was aware of this sanction and had consented to it when he signed the CPD agreement.

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.

### **Decision and reasons on interim order**

The panel 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 Peng's own interest. The panel heard and accepted the advice of the legal assessor.

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

The panel agreed with the CPD that 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 due to account for the possible appeal period.

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

That concludes this determination.