

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

**Substantive Hearing
28 May 2024- 31 May 2024
Resumed 15 July 2024 – 18 July 2024
Resumed 9 - 12 September 2024**

Virtual Hearing

Name of Registrant: Mohamed Khdach Khdach

NMC PIN 20L0007C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing - Level 1 – 3 December 2020

Relevant Location: Portsmouth

Type of case: Misconduct

Panel members: John Kelly (Chair, Lay member)
Helen Chrystal (Registrant member)
Julia Cutforth (Lay member)

Legal Assessor: Michael Levy (28 - 30 May 2024)
Charles Conway (31 May 2024)
Caroline Hartley (15 – 18 July, 9-12 September 2024)

Hearings Coordinator: Alexandra Smith (28 - 31 May 2024)
Petra Bernard (15 – 18 July 2024)
Margia Patwary (9-12 September 2024)

Nursing and Midwifery Council: Represented by Brittany Buckell, Case Presenter

Mr Khdach Khdach: Present and represented by James Nash (Counsel), instructed by the Royal College of Nursing (RCN)

Facts proved: Charges 1a, 1b, 1c, 1d, 1e, 1f, 2, 3a, 3b, 3c, 4, 5, 6

Facts not proved: Charges 1g, 1h

Fitness to practise: **Impaired**

Sanction: **Suspension order (9 months) with review**

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

Decision and reasons on application to amend the charges

The panel heard an application made by Ms Buckell, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges 1(a) and 6.

In relation to charge 1(a), Ms Buckell proposed the wording be amended to include the words '**hoodie and / or**' as follows:

1. On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:
 - a. Said "I haven't even bought you dinner yet", or words to that effect, when Patient A had either taken their **hoodie and / or** top off, or was in the process of doing so;

Ms Buckell submitted that the proposed amendment would provide clarity and more accurately reflect the evidence by focusing attention on the words allegedly used by you. She added that the amendment avoids the ambiguity between the differing accounts of yourself and Patient A.

Turning to charge 6, Ms Buckell proposed that the wording be amended to include an intention to make a false representation to your employer whilst removing references to Portsmouth NHS Trust as follows:

6. Your conduct at charge 5 was dishonest in that you **intended to make a representation to your employer that you could work for them which you knew to be false.** ~~you were prohibited from working for an employer other than Portsmouth NHS Trust.~~

Ms Buckell submitted that this amendment would better reflect the context of charge 5 to which it refers and would focus more on your mindset at the time.

The panel heard submissions from Mr Nash on your behalf. He did not object to the proposed change to charge 1(a). However, in relation to the proposed amendment to

charge 6, Mr Nash submitted that the proposed wording would over complicate the charge. He said that the alleged dishonesty stemming from your knowledge of the restriction on your practise would shift to become based on a hypothetical intention which would make the facts more difficult to establish.

On this basis Mr Nash objected to the proposed amendment but in doing so, suggested alternative wording, removing the reference to '*intention*' as follows:

6. Your conduct at charge 5 was dishonest in that you **intentionally made a representation to your employer that you could work for them which you knew to be false.** ~~you were prohibited from working for an employer other than Portsmouth NHS Trust.~~

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).

In relation to charge 1(a), the panel noted that Mr Nash did not oppose the amendment on your behalf. It was of the view that this proposed amendment would, as submitted by Ms Buckell, focus attention on the words alleged to have been used and was satisfied that the amendment can be made without prejudice to you or injustice to either party. Consequently, the panel approved the proposed amendment to charge 1(a).

In relation to charge 6, the panel considered submissions by both parties. It considered that the amendment, as applied for, introduced an element of speculation into the charge because the alleged dishonesty would be predicated on a future intention to make a false representation. The panel was of the view that the wording proposed would make it difficult to properly assess, from the evidence, when an alleged intention on your part actually crystallised into a dishonest act. The panel had regard to the alternative wording suggested by Mr Nash and took the view that this form of words gives greater clarity by removing reference to alleged intention on your part and focussing on the actual interaction between you and your employer.

The panel explained its rationale to the parties and offered the opportunity to make further submissions. Ms Buckell on behalf of the NMC offered no objection to the adjustments proposed by Mr Nash.

The panel considered that the proposed amendments to charge 6 could be made without injustice to you and would more closely reflect the evidence which focuses on your relationship with your employer and the circumstances under which you came to be employed at the Home. Accordingly the panel agreed to amend charge 6 as follows:

6. Your conduct at charge 5 was dishonest in that you **intentionally made a representation to your employer that you could work for them which you knew to be false.** ~~you were prohibited from working for an employer other than Portsmouth NHS Trust.~~

Details of charges (as read)

That you, a registered nurse:

1. On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:
 - a. Said “I haven’t even bought you dinner yet”, or words to that effect, when Patient A had either taken their hoodie and / or top off, or was in the process of doing so;
 - b. Discussed going out for dinner and/or drinks with Patient A;
 - c. Said “I will show you what your ex-husband didn’t”, or words to that effect;
 - d. Requested and recorded Patient A’s telephone number;
 - e. Gave Patient A your telephone number, by calling their phone.
 - f. Pulled down your face mask without clinical justification;
 - g. Leaned over them in close proximity, without clinical justification;
 - h. Stroked their forearm without clinical justification.

2. Your conduct at any and/or all of charge¹ was sexually motivated in that you were seeking sexual gratification and/or intended to pursue a future sexual relationship with Patient A.
3. On or around 11 June 2022, in relation to Colleague A
 - a. Said “I like the view from here”, or words to that effect;
 - b. Touched or slapped their bottom at least once;
 - c. Said “But it’s just so good”, or words to that effect when Colleague A told you to stop.
4. Your conduct at any and/or all of charge 3 above was sexual in nature.
5. You breached condition 1 of your NMC Interim Conditions of Practice Order) imposed on 18 July 2022, in that between 3 October 2022 and 20 October 2022 you worked on one or more dates, as a registered nurse, for an employer other than the Portsmouth NHS Trust.
6. Your conduct at charge 5 was dishonest in that you intentionally made a representation to your employer that you could work for them which you knew to be false.

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

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

At the outset of the hearing, Ms Buckell made a request that this case be held partly in private on the basis that proper exploration of your case involves the witness account of Patient A, which speaks [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 Nash indicated that he supported 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 rule on whether or not to go into private session in connection with Patient A's [PRIVATE]. The panel determined that this evidence would be heard in private.

Decision and reasons on application for the disclosure of further information

At the outset of the hearing, Mr Nash made a request for further disclosure. He asked for disclosure relating to a NMC case against Colleague A, which he submitted may call into question the integrity and credibility of Colleague A.

Ms Buckell submitted that she did not support the application for further disclosure. She submitted that the case against Colleague A is an unproven allegation and if further disclosure is allowed it could turn this case into a '*hearing within a hearing*'.

The panel decided to deny the application. The panel had regard to the fact that this case against Colleague A has not gone before the Case Examiners (CE) yet and therefore information relating to it can only refer to untested allegations that have not been objectively assessed.

Decision and reasons on application of no case to answer

The panel considered an application from Mr Nash that there is no case to answer in respect of charges 5 and 6. This application was made under Rule 24(7).

In relation to this application, Mr Nash submitted that in regard to charge 5, you were undergoing a shadowing role for the first month of your employment. He submitted that the manager of the home accepted that this was a shadowing role and that you weren't performing any nursing or nursing associate duties. He submitted that eventually, the

aim was for you to work as a registered nurse, however you were not doing so at this time. He submitted that the panel cannot base a factual finding simply on job title or payslip and this goes against the actual evidence of the witness. In these circumstances, it was submitted that this charge should not be allowed to remain before the panel. He submitted that because charge 6 is directly related to charge 5, this should also not be allowed to remain before the panel.

Ms Buckell submitted that there is a case to answer. She submitted that the panel are not reaching conclusions on facts at this stage. In regard to charges 5 and 6 she submitted that; you breached condition 1 of your interim conditions of practice order by accepting employment at the care home. She referred the panel to a pay slip dated 15 October 2022, which she submitted showed that your job title and pay reflected that of a registered nurse. She submitted that a supernumerary status does not mean you are not in that job title. She submitted that if someone starts a role and they work in probationary period it does not mean they do not have the role. Therefore, she invited the panel to dismiss submission for no case to answer.

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

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

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

Background

You were referred to the NMC on 24 June 2022 by Portsmouth Hospitals NHS Trust ('the Trust'). You were employed in the Accident and Emergency (A&E) Department of the Trust from 30 November 2020.

It is alleged that during a night shift on 11 June 2022 you touched a female colleague's bottom (Colleague A) without her consent in the corridor.

The Trust explain that this alleged incident was brought to the attention of senior management on 18 June 2022, and that on 20 June 2022 you were suspended pending an investigation. You were subsequently dismissed from the Trust on 24 August 2022.

When making its referral, the Trust also told the NMC that you were issued with a first written warning on 7 April 2022 in relation to inappropriate behaviour towards Patient A on 3 February 2022.

An interim conditions of practice order was imposed on 18 July 2022. This included as condition 1 that '*You must only work for Portsmouth NHS Trust*'.

Whilst obtaining up to date employment information from your recent employer, [PRIVATE] (the Home) in preparation for this case, it was established that you started working with the Home on 3 October 2022. However, your interim conditions of practice order was not varied until 20 October 2022. It is alleged therefore, that you worked in breach of condition 1, which only allowed you to be employed by the Trust.

Decision and reasons on facts

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

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

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

- Witness 1: Patient A
- Witness 2: Colleague A, [PRIVATE]
- Witness 3: Deputy manager at the Home

The panel also heard evidence from you under oath.

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

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

Charge 1

On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:

- a. Said “I haven’t even bought you dinner yet”, or words to that effect, when Patient A had either taken their hoodie and / or top off, or was in the process of doing so;
Proved
- b. Discussed going out for dinner and/or drinks with Patient A; **Proved**
- c. Said “I will show you what your ex-husband didn’t”, or words to that effect;
Proved

- d. Requested and recorded Patient A's telephone number; **Proved**
- e. Gave Patient A your telephone number, by calling their phone. **Proved**
- f. Pulled down your face mask without clinical justification; **Proved**
- g. Leaned over them in close proximity, without clinical justification; **Not proved**
- h. Stroked their forearm without clinical justification. **Not proved**

In reaching its decision on charge 1 and its sub-charges, the panel considered the written and oral evidence of Patient A, and yourself, the unchallenged written evidence of Nurse 1 and the notes of a Trust investigation meeting held on Thursday, 13 February 2022, which you attended.

Charge 1a

On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:

- a. Said "I haven't even bought you dinner yet", or words to that effect, when Patient A had either taken their hoodie and / or top off, or was in the process of doing so;

This charge is found proved.

In oral evidence, Patient A said that having attended the Trust Accident and Emergency (A&E) department around 1.00am on 3 February 2022, she was escorted by you into the plaster room for a blood test to be taken. In her written statement, Patient A said:

'...he closed the door behind him as he entered. I took my hoodie off as he closed the door as I knew he would need to see my exposed arm, and that's when he made the comment 'I haven't even bought you dinner yet.'

Patient A was consistent in her description of this event throughout her oral evidence.

During the Trust investigation meeting held on Thursday 13 February 2022, you were asked if you had said to Patient A *'I haven't bought you dinner yet'*. To which you replied:

'No, that's not what I said...it wasn't that way at all. I understand that with all this it seems like a bit inappropriate, but it was just an innocent joke...The scene is this – I was closing the plaster room [door] and I closed the curtains as well, and then as I turned back I saw her taking her hoodie and her top off, and she was just with her bra...That is when I said literally "easy there, you haven't bought me dinner yet" '

Having regard to the words used the panel determined that you, by Patient A's and your own accounts, said to Patient A the words in charge 1(a) or words to that effect.

The panel noted the irreconcilable difference between your own account and that of Patient A in terms of what clothing she removed on entering the plaster room, but placed little emphasis on this because the evidence shows that she had either taken her hoodie and / or top off or was in the process of doing so when you made the comments described above.

The panel noted that in giving accounts of the events alleged in charges 1(b) to 1(f), you and Patient A described the same events but with significantly different emphasis on key points, such as who initiated particular passages of conversations or actions. Consequently, with reference to allegations 1(b) to 1(f), the panel considered the credibility of evidence presented. The panel noted your good character with no previous regulatory concerns and took this into account in its deliberations. However, the panel considered the motivation of Patient A to make the allegations and took account of the circumstances of the event.

The panel noted that Patient A attended the A&E department in the early hours of the morning and during her evidence, variously described herself as feeling *'pretty rough'*, *'tired'*, *'unwell'* and *'not myself'*. She was referred to A&E by a General Practitioner

(GP) with a suspected blood clot in the lung and Covid-19. She was in a stressful and vulnerable situation.

The panel noted that the emphasis of your explanation for the matters alleged in charges 1(b) to 1(f) was that the tone of the conversation and the over-friendly, 'jokey' behaviour was initiated by Patient A. The panel considered how likely this was given the medical condition in which she found herself and described above. The panel found it on balance unlikely that Patient A would have acted in the way you suggest in these circumstances.

The panel also noted that Patient A gave evidence that events in the plaster room whilst she was undergoing a blood test had impacted her significantly, such that she reported matters to another nurse on duty and soon after to the nurse in charge of the A&E department that night. The panel took account of this in its deliberations.

When, during the Trust investigation interview on 17 February 2022 (the first Trust interview), you were asked why Patient A might make these allegations against you, your response was:

'...the only way I can wrap my head around the whole thing is that she felt a bit embarrassed about not being able to contact me, because I believe that the nurse in charge came back to me an hour later...saying that [Patient A] had made some allegations against me. So in that time span I believe she had tried to contact me, ... as soon as she left the plaster room, I did block her number and deleted it, so she received no contact from me, and obviously I denied her from texting me or giving me any calls. So I guess she was a bit embarrassed because I was still her nurse'.

When asked how Patient A would know that you had blocked her telephone number, you could not offer an explanation and said: *'No, no. I'm not entirely sure but I believe that when you try to call a blocked number it simply just denies you the call.'* You maintained this position during your oral evidence.

The panel noted the evidence that Patient A was distressed after leaving the plaster

room and, given her ongoing medical situation, consider it highly unlikely that she would attempt to call you in such circumstances. The panel found your explanation to be implausible and based on assumptions firstly, that Patient A attempted to call you and secondly, that she had become aware that you had blocked her telephone number as you claim.

On balance, having regard to the above, the panel concluded that aspects of your version of events are implausible and unlikely to have occurred as you describe and therefore gave greater weight to the evidence of Patient A.

Charge 1b

On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:

- b. Discussed going out for dinner and/or drinks with Patient A;

This charge is found proved.

The panel noted the evidence presented by Patient A in her witness statement:

'At that point I just thought he was being friendly so I asked him where we would go and he said "where would you want to go"?, which I said I don't know. I remember starting to feel a bit uncomfortable and wishing he would stop and just have more of what would have been considered a normal chat.'

...

'He then said we should go for a drink and I wasn't sure how to deal with it as I didn't want to be rude and not talk to him. I was on the bed with a strap around my arm for him to take blood so I thought I'd rather not upset him.'

The panel noted that Patient A's witness statement as above is consistent with the contemporaneous account that she gave to Nurse 1 soon after the alleged incident.

During cross-examination, it was put to Patient A that it was she who brought up the subject of going for a drink, to which she responded *'he's a liar...definitely no'*.

In your 'Statement of events that happened on the night shift of 02/02/2022' (contemporaneous statement), you recorded that Patient A engaged you in small talk asking about the department and yourself with questions such as *'are you busy tonight?', 'where are you from?', 'do you live locally?'* and commenting that *'I [Patient A] like your accent'*. You went on to describe canulating Patient A in order to take blood samples and leaving the room briefly to obtain swabs for a Covid-19 test. After carrying out the Covid-19 test, you state:

'After doing this I explained the normal times the tests take to come back to us but she then cut me off and insisted that we should hang out for some pints, have a drink and a laugh and insisted on taking my number.'

During the first Trust investigation interview, when you were asked if you had suggested to Patient A that the two of you went for a drink together, you stated:

'The patient suggested that. Like I said in my statement she suggested that we should go for a pint as pals, as friends, as lads – that is what she said.'

It was put to you that Patient A claimed that you asked her on more than one occasion if she would go out for a drink with you, to which you replied: *'No, not at all'*. The panel noted that during your oral evidence, you maintained this position that, essentially, conversation around you and Patient A going for a drink or having dinner together was instigated by Patient A herself.

The panel bore in mind its analysis of the respective credibility of you and Patient A as set out above, and in relation to this allegation found your explanation was implausible particularly in relation to how poorly Patient A was feeling and her immediate distress demonstrated in the aftermath of her consultation with you. The panel therefore found this charge proved.

Charge 1c

1. On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:

c. Said “I will show you what your ex-husband didn’t”, or words to that effect;

This charge is found proved.

The panel had regard to Patient A’s witness statement in which she said:

‘He then said “oh I’ll show you what your ex-husband didn’t” and when he said that I was shocked and straight away thought no, that’s not appropriate or professional. The line had now been crossed and I reiterated to him that I have a partner hoping that would end the conversation. I remember feeling really unwell when I was lying there and felt vulnerable at that point. I was in a room that was closed and he was quite a big guy and imposing so that was concerning.’

The panel noted that Patient A’s claim that this comment had been made is consistent with her contemporaneous statement made soon after the alleged incidents and her oral evidence to the panel.

In cross-examination it was put to Patient A that the comment alleged in this charge was never in fact made. To which she replied *‘It did happen, and he did say that’*.

The panel noted that in your contemporaneous statement you make no mention of Patient A’s husband and / or ex-husband being discussed and, in oral evidence and during the first Trust investigation interview denied that you raised matters relating to Patient A’s husband and / or ex-husband. The panel recognised the consistency in your account in this regard.

However, the panel, having regard to the evidence could see no plausible reason why Patient A would fabricate such a comment having been made.

The panel bore in mind its analysis of the respective credibility of you and Patient A as set out above, and in relation to this allegation, on balance the panel preferred Patient A's evidence in the light of the context as set out above. Accordingly, the panel found this charge proved.

Charges 1d and 1e

1. On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:
 - d. Requested and recorded Patient A's telephone number;
 - e. Gave Patient A your telephone number, by calling their phone.

These charges are found proved.

The panel noted there is common ground between the parties that Patient A's telephone number was entered into your mobile phone and that a call was made from your mobile phone to that of Patient A, thereby sharing your telephone contact details with Patient A. What is disputed is how this exchange of telephone contact details was instigated.

The panel took into account the inconsistency between your accounts. Initially, immediately after your consultation with Patient A, you told Nurse 1 that you denied any exchange of numbers. The panel also had sight of your contemporaneous statement in which you state that *'she insisted on taking my number...she insisted on typing her number on my phone and calling herself to make sure she had my number and I would not leave her hanging'*. In the first Trust investigation interview, it was put to you that you took out your mobile phone and asked Patient A to put her number into it, to which you replied:

'no, that is not what happened. Like I said in my statement, she was asking me, obviously she wanted to take my number so I did take my phone out. She took

my phone and she put her number in my phone and dialled it herself to make sure I didn't give her a fake number'.

You went on to say:

'I did not call her. I did not ask for her number. She did dial her phone number from my phone.'

The panel could not reconcile your initial denial of an exchange of numbers when you were first spoken to by Nurse 1 with your contemporaneous statement and responses during the first Trust investigation interview. The panel noted that your contemporaneous statement was made soon after speaking to Nurse 1 yet it contains an acknowledgement that an exchange of telephone numbers took place with Patient A and significant detail on how events unfolded. Similarly, the panel noted that your responses during the first Trust investigation interview include admissions that an exchange of telephone numbers took place and again, in significant detail in relation to how that exchange took place.

The panel had regard to Patient A's contemporaneous statement recorded by Nurse 1, which states that:

'M [you] gets his phone out and asks Patient A to put her number in. She does and M rings her to save the number...We ask to see the number saved on Patient A's phone [redacted]'

In her written statement Patient A said:

'He then got his phone out and asked me to put my number in. He stood over me and handed me his phone. I felt I [sic] no option but to take the phone from him as he was so close to me. The phone was almost in my face. I put my number and he rang my number and saved it to his phone.'

Patient A maintained her position in oral evidence and when challenged on your version of events, she said '*absolutely not*'.

The panel bore in mind its analysis of the respective credibility of you and Patient A as set out above. Having regard to this and your contradictory statements in relation to the exchange of telephone numbers, balanced against the consistency of Patient A's account, the panel preferred her evidence. Accordingly, the panel found these charges proved.

Charge 1f

1. On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:

f. Pulled down your face mask without clinical justification;

This charge is found proved.

The panel noted Patient A's contemporaneous statement made to Nurse 1 in which she describes you saying '*this is what I look like so you know what to expect*' whilst pulling your mask down and smiling.

In her written statement, Patient A states '*he was still standing over me pulling his face mask down*' saying '*this is what I look like*'. Patient A's oral evidence was consistent on this point.

During your Trust investigation interview, you were asked whether you pulled your mask down and told Patient A this is how you looked, to which you replied '*No.*'

However, the panel noted in your oral evidence when asked if you had pulled your face mask down, you said '*No, not intentionally at least*'. You went on to explain that at the time, barbers were closed due to Covid-19 restrictions and consequently you had a more prominent beard than otherwise might have been the case, which may have caused your mask to slip unintentionally. The panel considered that whilst it may be

possible that your mask slipped unintentionally, it was surprised that this explanation was not included in your responses during the first Trust investigation interview which took place only 15 days after the incidents subject of charge 1 in this case.

The panel bore in mind its analysis of the respective credibility of you and Patient A as set out above. Having regard to this and your failure to offer any explanation until giving oral evidence, balanced against the consistency of Patient A's account, the panel preferred her evidence. Accordingly, the panel found this charge proved.

Charge 1g and 1h

1. On 3 February 2022, in relation to Patient A failed to maintain professional boundaries in that you:
 - g. Leaned over them in close proximity, without clinical justification;
 - h. Stroked their forearm without clinical justification.

These charges are found NOT proved.

The panel had regard to Patient A's contemporaneous statement made to Nurse 1 soon after the alleged incidents subject of charge 1 and noted that she said that you came 'exceptionally close'. In Patient A's witness statement she explains:

'he leaned over me and really felt like he was going to kiss me as he was so close to my face. He was literally in my personal space to [sic] I pushed him away slightly.'

...

'He went to take the blood and was stroking the base of my forearm, literally up and down a number of times. It wasn't quick and he definitely took his time in a suggestive manner.'

Patient A was consistent in her oral evidence in relation to these charges.

In your Trust investigation interview, when asked if you got physically close to the patient, you responded:

'as close as needed I believe, because you do get a bit close when you try to canulate. So you have to touch their skin to look for a vein and sometimes when you can't find it you lean forward a bit. I don't know if she misunderstood that and thought I was trying to do something else. I'm not entirely sure. Like I said in my statement she did seem a bit dizzy, a bit out of it, when I was trying to canulate her'.

When pressed further on this point you added:

'I think everyone needs to get a bit close to the patient when they try to canulate them. I needed to try to feel a vein. I think she was a bit harder to canulate so it was a bit – I had to do a bit more of a thorough investigation so had to touch all of her possible, um well anatomically speaking we all have the same veins, so I just tried to go through the same locations to find a vein, and maybe just without realising it you get a bit closer because you try to maybe see the vein. That was all, there was no more than that'.

The panel accepted that there was a good clinical justification for you to have been in close proximity to Patient A on this occasion and to have stroked her forearm while taking blood. The panel was not satisfied that there was sufficient evidence to find these charges proved.

Charge 2

2. Your conduct at any and/or all of charge 1 was sexually motivated in that you were seeking sexual gratification and/or intended to pursue a future sexual relationship with Patient A

This charge is found proved.

The panel first considered whether your conduct found proved in charge 1 above was motivated by you seeking sexual gratification. The panel noted that, regardless of any other activity that took place in the plaster room whilst you were taking blood samples and conducting Covid-19 tests on Patient A, you continued with your job as a registered nurse by obtaining the necessary samples from Patient A. You were also in a work related setting on duty. The panel has not found charges relating to your closeness to and touching Patient A to be proved and this is indicative that you were not seeking sexual gratification. For these reasons the panel concluded that there is no evidence that you were seeking sexual gratification in relation to the facts found proved under charge 1.

The panel took into consideration your assertion that it was your intention to put Patient A at ease with your '*banter*'. The panel noted your assertion that you deleted her telephone number from your phone after the consultation having recognised that your behaviour had been inappropriate. During your first Trust investigation interview, you pointed out the age gap between yourself and Patient A inferring that any relationship would be unlikely. During that interview it was pointed out that you had said that when you were back in the plaster room, you realised that the patient was the same age as your Mother, and were asked what was the relevance of her age? To which you replied:

' I think because if I was five years younger this situation would be completely different. You wouldn't be questioning me, you would be questioning the patient. I am 23 years old not even 24 and the patient I believe is 40, 40 something. My mum is that age so obviously I was just trying to make it clear that I was not attracted to the patient at all. That was not my intention to, I don't know, to have a relationship with the patient or to do anything malicious with the patient at all'.

You said in the interview that you became aware of Patient A's age from the In Case of Emergency (ICE) form and when asked had you not realised her approximate age during your interactions with her, you replied:

'Not at all...I didn't pay attention to her face or her facial details – not at all and she had a mask on. And I'm not even that good with age anyway so I can't tell if someone is 25 or 85'.

Having regard to the above, the panel found that you gave conflicting views about the significance of Patient A's age and its potential impact on your intentions. Whilst you highlighted the age gap between yourself and Patient A, you went on to state that you were not aware of her approximate age during your interactions with her, pointing out that Patient A had worn a mask and reinforcing your comments by explaining that you are not '*good*' at estimating age.

The panel could find no other explanation for the comments you made regarding Patient A's ex-husband in charge 1(c) (found proved), other than that it was an overtly sexual reference. When taken together with the other words and actions found proved in charge 1, the panel concluded that there was a clear escalation from '*small talk*' to discussions around dinner and taking drinks together through to the exchange of telephone numbers. The panel therefore concluded that you were intending to pursue a future sexual relationship with Patient A. Accordingly, the panel found charge 2 proved.

Charge 3

3. On or around 11 June 2022, in relation to Colleague A
 - a. Said "I like the view from here", or words to that effect;
 - b. Touched or slapped their bottom at least once;
 - c. Said "But it's just so good", or words to that effect when Colleague A told you to stop.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the written and oral evidence of yourself and Colleague A, notes of a Trust investigation interview held on 1 July 2022 (the second Trust investigation interview), The panel also saw your undated '*reflection on professional boundaries*' and two CCTV extracts from the Trust both timed between

04.39 – 04.41 hours on 11 June 2022. The panel also had regard to Colleague A's contemporaneous statement made soon after the alleged incidents in charge 3. Her statement identifies the comments and activity made during the incident of 11 June 2022 and states:

'SN Mo came walking from the east entrance doors and said to me "I like the view from here". I laughed at this comment and kept walking and making more conversation asking what he was up to trying to diffuse from the comment he had made. At this point he walks next to me and slaps my bottom. Once again, I nervously laughed and told him "stop, take your hand away." He proceeded to say, "but it's just so good" and slapped my bottom again. I then said "seriously take you [sic] hand away" to which he just laughed and walked back.'

The panel noted that Colleague A was consistent in her account of events that took place on 11 June 2022 in her witness statement and oral evidence.

In the second Trust investigation interview you acknowledged that you met Colleague A on the hospital corridor and made a comment *"oh I love to watch you [Colleague A] walk", something like that, and then she laughed about it.'*

In your oral evidence you were consistent with your account during the first Trust investigation interview and told the panel that *'...I mentioned to her that I liked the view from where I was'*.

During the second Trust investigation interview, you acknowledged that there had been physical contact between you and Colleague A but you did not make specific reference to having touched her bottom. However, in your oral evidence you accepted that you had done so. When asked why it was that you decided to touch her bottom, you replied:

'I mean, just thinking about it again, trying to put myself again, ... I think ... I'm a completely different person from ... who I used to be, I probably wouldn't even dare to do anything like that today. but basically I thought about it as uh, the same way I do with my personal friends. And when you, as in tapped them on the

bottom for a good job or when you're playing football or basketball in that case and a friend taps you on the back and on the bottom and say it's a good shot or whatever.'

The panel noted your flat denial, both in the initial Trust investigation interview and oral evidence to having said ‘*“But it's just so good”, or words to that effect*’. You told the panel that saying this ‘*...makes no sense whatsoever*’.

The panel also noted Colleague A's intention was to teach you professional boundaries and not for you to be brought before your Regulator. Her intention was for you to learn a lesson in order that other colleagues who were perhaps less confident than she was would not be made to feel uncomfortable by similar behaviour being repeated.

The panel preferred the evidence of Colleague A over yours in part because it saw no reason for Colleague A to embellish her evidence in this respect. In addition, the words you were alleged to have said did indeed make sense in the context of the account given by Colleague A. Colleague A characterised the whole incident as consisting of unwelcome comments and physical touching by you to which she made her objections clear. The panel concluded that the words alleged indeed made sense as your response to her clear objections.

With reference to the CCTV footage, the panel noted the consistency between the video evidence and Colleague A's evidence. It shows that you encountered Colleague A on a hospital corridor. Whilst there was not audio attached to the footage, it is clear that conversation took place and that you put your arm around Colleague A's shoulders and then touched her bottom as you both walked, after which Colleague A pushed you away with her left arm. Accordingly, the panel finds charge 3 proved in its entirety.

Charge 4

4. Your conduct at any and/or all of charge 3 above was sexual in nature.

This charge is found proved.

The panel went on to consider the underlying motivation for your behaviour in relation to the facts found proved in charge 3 above and whether it was sexual in nature. In doing so, the panel took into account your evidence, the oral and written evidence of Colleague A and the CCTV footage.

The panel determined that your words and actions found proved in charge 3 above were unwelcomed by Colleague A, that she objected to your behaviour at the time and that you therefore acted without her consent. During her oral evidence, Colleague A said:

'... I never wanted this to happen...I wanted this to be a learning situation, you know, he's a young guy...it was immaturity...He blurred lines and I wanted this to be a learning process...'

When Colleague A was asked whether your actions were meant as friendly gestures, she responded: *'I wouldn't say yes, but I wouldn't say no.'* She said that she did not think your actions were malicious or intended to hurt her. She said that *'I think they were immature'*.

The panel noted your comments within the second Trust investigation interview explaining your intention regarding the incident.

During the second Trust investigation interview, you admitted physically touching Colleague A and said that, *'the motive was not to sexually harass her or anything like that'*.

You went on to say:

'It's important to know what my motive was in all of this really because I've been labelled as a sexual harasser which could be nothing further from the truth. It was all in a friendly manner and it's not the first time I've said this'

...

'...I approached her and we had some physical contact but I didn't mean it in a sexual way, as in "let's hang out later" or "let's hook up later" or anything like that. And at the time she laughed about it as well. She didn't say "oh Mo, I'm feeling uncomfortable right now, why are you doing this?" – then I would have apologised immediately and I would respect her boundaries then. But this was not the first time so I was really really surprised to learn that Colleague A did indeed initiate all this process because this is not the first time this has happened.'

...

'I mean I would have apologised straight away if she came to me and obviously I would have respected her boundaries and kind of took a step back from physical contact just to respect her again, because I didn't mean it in a sexual way'.

When asked whether you had touched other people on their bottom when speaking to them, you acknowledged that you had done so with other friends both male and female and you pointed out that is why *'it is not in a sexual way at all it is not sexually driven'*. You added that you had done this in the workplace as well with both male and female people and *'no one has ever complained'*.

In terms of how your conduct could be defined you maintained this position during your oral evidence. However, the panel found that your behaviour was inappropriate, insensitive and unwelcome. In considering whether your behaviour was sexual in nature, the panel took account of all of the circumstances and the facts found proved in charge 3 including the words that you used. The panel found that your behaviour was inappropriate and unprofessional regardless of the depth or extent of your friendship with Colleague A. Taking the words and your touching of Colleague A's bottom, a private part of her body, in the way that you did, the panel was of the view that an objective observer could only conclude that your behaviour was sexual in nature, arising out of your own immaturity and lack of boundaries. The panel therefore found this charge proved.

Charge 5

5. You breached condition 1 of your NMC Interim Conditions of Practice Order imposed on 18 July 2022, in that between 3 October 2022 and 20 October 2022 you worked on one or more dates, as a registered nurse, for an employer other than the Portsmouth NHS Trust.

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence and the written and oral evidence of Witness 3. The panel also had regard to the communications to you from the NMC dated 19 July 2022 and the determination of an NMC interim order review hearing dated 20 October 2022, along with payslips issued by the Home.

The panel noted that on 19 July 2022 the NMC sent you a letter along with the determination of an interim order panel meeting held the previous day on 18 July 2022. This informed you that, amongst other conditions imposed on your practice:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.’

‘1) You must only work for Portsmouth NHS Trust.’

The panel also noted the determination of an interim order review hearing on 20 October 2022. This shows that you attended the hearing and were represented. On your application, the review hearing agreed to vary condition 1 to read as follows:

1) You must work for one employer. If this is an agency, any placement must be for a minimum of three months on one ward or clinical setting.

The panel was of the view that having been sent by email the original decision, on 19 July 2022 and having applied for condition 1 to be varied as described above, you were aware of the condition and also aware that it was not varied until 20 October 2022. The panel had regard to the written statement of Witness 3, the deputy manager at the Home during October 2022. He said:

'The Registrant worked at the Home between 03/10/2022 and 29/03/2022. He was employed directly, and not supplied through an agency. I am therefore able to provide copies of payslips as proof of employment at Exhibit FD/1.'

The panel had sight of the payslips referred to by Witness 3.

When cross-examined, Witness 3 said that he was not present when you were interviewed for the role and consequently could not tell the panel what was discussed during the interview. In particular, Witness 3 accepted that he could not rule out whether the conditions of practice order made by the NMC was discussed. It was put to Witness 3 that for the first month of your work, during October 2022, you were in a probationary shadowing role and did not perform independent nursing duties which Witness 3 agreed with.

In re-examination by Ms Buckell, Witness 3 was referred to the payslips and, in particular, the reference to 'Department 1 – QUAL/Nurses'. Witness 3 explained that this reflects various roles in the Home for example, carer, nurses, deputy manager and domestic. He said that this is how roles are recognised in payroll.

Witness 3 told the panel that there is not a particular reference code for nurses in the first month in their probation period in the payroll, the reference is simply 'nurses'. Witness 3 was asked what your job title was to which he replied 'registered nurse'. It was put to Witness 3 that the first month period working under supervision is as such, a probationary period which could apply to any role, to which he replied 'yes'. You told the panel that you applied for the role of registered nurse at the Home and attended the interview for that role. You went on to explain that you told the interviewer of the restrictions on your practice and worked for the first month of your employment in

a shadowing role. As such, you suggested that you were not fulfilling the responsibilities of a registered nurse until after condition 1 above had been varied. When questioned by Mr Nash about your rate of pay you agreed that it was set at £19.57 per hour, as set out in payslips covering the period from the start of your employment at the Home through to 15 March 2023.

In terms of your first month at the Home, you drew an analogy with your early working at the Trust. You told the panel that when first employed by the Trust and awaiting full registration with the NMC you were employed as a band 3 healthcare assistant and promoted to a band 5 nurse subsequently on registration. You told the panel that similarly, you first joined the Home in a reduced capacity, simply shadowing and observing other registered nurses. It was pointed out to you that your hourly rate of pay remained unchanged throughout your employment at £19.57 per hour. This did not reflect your moving to a more senior role once your conditions had been varied. You were unable to explain this other than to say that the Home left you on the pay scale of a registered nurse for '*simplicity*' even though you were not performing the duties.

The panel did not find this explanation to be plausible. The panel determined that although you may have been on a probationary period for one month at the start of your employment, and that involved some shadowing and training, you did so as a registered nurse and not as an unqualified member of staff. The evidence of Witness 3 together with the payslips establish that you were employed and paid as a registered nurse with effect from 3 October 2022. Therefore, you were in breach of your conditions of practice order.

Charge 6

6. Your conduct at charge 5 was dishonest in that you intentionally made a representation to your employer that you could work for them which you knew to be false.

This charge is found proved.

The panel considered your subjective state of mind at the time you commenced working at the Home in relation to condition 1. The panel determined that you knew that you could not work as a registered nurse at the Home and also that a review hearing was scheduled for 20 October 2022 to hear an application from you to vary condition 1. The panel noted that you applied for the role of registered nurse on the Indeed website and attended an interview on that basis. You told the panel that you declared the restriction on your practice during the interview. However, other than your evidence on this point, the panel had no other direct evidence of what took place and instead relied on its analysis of the overall evidence and circumstances. The panel concluded that you knew of your pay rate and that it was the same rate as a registered nurse and consequently reject your assertion of having worked at a lower band at the Home before condition 1 was varied.

In relation to the interim order review hearing on 20 October 2022, the panel noted that submissions were made on your behalf indicating that you had a potential job offer, subject to variation of condition 1, from Mayday Healthcare Nursing Agency (the Agency). The panel thought it unusual that no mention was made of your (then) existing employment at the Home with, according to your account, advancement to a band 5 registered nurse role, should condition 1 be varied. You explained this by claiming that the job offer from the Agency was your preferred option. However, the panel found this to be a weak explanation given that you were already employed and working at the Home. The panel concluded that your mindset was such that you sought to hide your employment at the Home. The panel concluded that your subjective mindset was that you knew that you were breaching condition 1 by applying for, attending an interview for and taking on the role as a registered nurse at the Home. In doing so, you made a representation to the management at the Home that you could work for them.

The panel considered the test in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 in relation to how an informed objective observer would view your behaviour in relation to the allegation in charge 6. It concluded that an objective observer would consider your actions, in representing a false ability to work for the Home to be dishonest. The panel therefore found charge 6 proved.

Fitness to practise

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

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

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

Submissions on misconduct and impairment

Ms Buckell invited the panel to take the view that the facts found proved amount to misconduct. Ms Buckell identified parts of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) which are engaged in this case, specifically sections 1 and 20, which were breached by your actions.

Ms Buckell addressed the panel on the issue of impairment and reminded the panel 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.

Ms Buckell submitted that all four limbs of the test in *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927*

(Admin) are engaged in this case. She submitted that your past behaviour demonstrates a pattern of behaviour which has been repeated over time and that this goes to future risk. It was her submission that your conduct is serious and that your actions may have put patients and colleagues at risk of harm.

Ms Buckell submitted that the nature of the concerns in your case involved sexual motivation and dishonesty are more difficult to put right and have the potential to damage public confidence in the profession.

Ms Buckell submitted that your actions fell short of what is expected of a registered nurse and that this undermines public trust and confidence in the nursing profession. Your breach of the fundamental tenets of the nursing profession includes attitudinal concerns and inappropriate behaviour towards a patient, a colleague, the NMC as your regulator and your dishonest conduct. She further submitted that there is a risk of repetition should you return to practice as a nurse.

Ms Buckell referred the panel to the case of *Yeong v General Medical Council [2009] EWHC 1923 (Admin)*, which states that there is a difference between cases involving clinical errors or incompetence, and those that involve breaching the fundamental tenets of the profession. She said your failure to maintain professional boundaries was widespread and serious and there remains a risk that you may be tempted to repeat your misconduct.

Ms Buckell submitted that whilst you provided the panel with a document entitled '*Reflecting on Professional Growth*' you have not fully considered the impact your actions had on patient A and Colleague A and the wider public's opinion of nurses. She submitted that your insight is not fully developed as you have yet to consider the full impact of your conduct and still consider it to be a "jokey manner". She submitted that there is a risk of repetition as the inappropriate conduct was repeated across a patient, a colleague and your case also involved dishonesty allegations.

In light of the above, Ms Buckell submitted that a finding of impairment is appropriate in this case on both public protection and public interest grounds.

Mr Nash provided the panel with his written submissions and summarised the following:

'The registrant respects the conclusions of the panel. The guidance on sanctions makes the point that professionals are fairly entitled to defend themselves, and that simply disputing charges is not automatically a factor that properly aggravates a charge. There was an element of immaturity to these incidents, coming as they did when Mr Khdach was 22 years old and fairly new to the profession. Mr Khdach has reflected fully on the incidents, and the proceedings themselves have been a learning process. In particular, he has moved from an initial focus on proving his own capabilities, to a focus on the principles of ethical care and the values of the profession.'

Taking the three incidents as a whole, the fact that there was sexual misconduct and dishonesty will be a matter of concern. However, a fair assessment of the specific facts in this case might lead the panel to conclude that the gravity of each of these elements was towards the lower end. Bearing in mind age, lack of maturity and subsequent insight, the panel could (it is submitted) step back from concluding that the public interest required a finding of impairment in this case..

Turning to the first incident, in finding charges 1 and 2 proved, the panel found sexual misconduct.

However, there is an important element of the charge that was not found proved. Charge 2 as drafted alleged 'seeking sexual gratification and/or intend[ing] to pursue a future sexual relationship'. The panel found (at page 23 of the reasons) that there was no evidence Mr Khdach was seeking sexual gratification. The allegations in charge 1g and 1h that Mr Khdach moved too close, or made unnecessary physical contact, were not proved. The sexual motivation related solely to the seeking of a relationship. No relationship actually ensued, and the encounter was ended by the registrant, who did not seek to use the phone number he had obtained.

This is an important point, going to the 'public interest' aspect of impairment. The registrant respectfully submits that his conduct, while rightly concerning, is not 'so serious that a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession', given the examples set out in that guidance.

In relation to charges 3 and 4, the panel found that 'an objective observer could only conclude that your behaviour was sexual in nature, arising out of your own immaturity and lack of boundaries'. It is submitted that the lack of maturity, and insufficient understanding of boundaries, are matters that are remediable. The panel has the benefit of the registrant's bundle, showing the work he has undertaken, his insight into these matters and his testimonials from others. Given his age at the time, and his relatively recent qualification, the panel might feel that this type of sexual behaviour does not demonstrate that the registrant is a lost cause. A fully informed member of the public would differentiate between this behaviour being displayed by someone at an early stage of their working life, and someone in a position of more seniority and power.

*In relation to charges 5 and 6, the panel found that Mr Khdach had acted dishonestly. The panel will be aware that, while dishonesty is a serious issue for all professionals, if remediable and placed in context, it is not an automatic factor leading to impairment. As Lang J observed in *PSA v GMC and Uppal* [2015] EWHC 1304 at [27]: "even in cases of dishonesty, a separate assessment of impairment is required, and not every act of dishonesty results in impairment."*

The registrant submits that the panel might consider the following aspects of the case relevant to the question of impairment.

The time since the conduct. The question for the panel is whether the registrant's fitness to practise is currently impaired. The conduct in question took place in 2022. The registrant's bundle contains evidence to demonstrate what the registrant has been doing since these incidents, and in particular, his creditable conduct in his subsequent employment, making good use of his time while suspended.

Relatedly, the registrant's age and inexperience. These incidents took place when he was 23 years old. He is now 26 years old. It is well-known that young adults under the age of 25 are still developing neurologically and consequently may be less able to evaluate the consequences of their actions, limit impulsivity and limit risk taking. The purpose of these proceedings is to safeguard the profession and the public interest. Given the panel's findings, the registrant's ability to practise safely and professionally may have been impaired at the time by his immaturity and lack of experience. These are matters that age and valuable experience has been able to remedy.

The working environment and culture at the time. The guidance provides that the panel should consider the context of the conduct, and that includes the working environment and culture. The evidence the panel heard from Colleague A in particular suggests that the environment at Portsmouth NHS Trust was far from satisfactory. As a place to start a nursing career after training in a different cultural context in Spain, it was not ideal. The panel can take comfort from the fact that Mr Khdach has now been able to thrive (as indicated by the testimonials) in a different working environment and impress his colleagues. These are further indications that the factors leading to impaired working have now been remedied.

Positive references/testimonials and training records. The panel will note in the registrant's bundle that the witnesses therein attest to the registrant's professionalism, willingness to learn, ethical conduct, maturity and responsiveness to feedback. The feedback received directly relates to the question of impairment. Mr Khdach, it is submitted, has carried out the kind of remediation work the panel would need to see, to be satisfied that he is not currently impaired. The panel will note that Ms Mortimore, his current manager and the Deputy Clinical Operations Manager at SecureCare, 'strongly supports' Mr Khdach's return to nursing practice.

In his reflective piece in the registrant's bundle, Mr Khdach highlights that he has changed his behaviour significantly. He has provided honest, open reflections on

the incidents, including being open where he has had difficulty in agreeing with the findings against him. The panel will be aware of the guidance on sanctions, which makes the point that professionals are fairly entitled to defend themselves, and that simply disputing charges is not automatically a factor that properly aggravates a charge. The panel would be entitled to find that Mr Khdach has properly addressed the risk factors that led to these incidents, and that he has recognised and absorbed the lessons.

It is submitted that the registrant has received a salutary lesson from these proceedings. It is highly unlikely there would be any repetition of the behaviours that led to this conduct. The registrant has identified the risk factors and endeavoured to correct his practice, even while under suspension. An informed member of the public would conclude that his continued practice is compatible with the low level of risk, if any, that remains, as well as the wider public interest in retaining dedicated, enthusiastic and reflective members of the nursing profession.

The panel heard evidence from you under oath.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Calhaem v GMC* [2007] EWHC 2606 (Admin), *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Grant*.

The panel also had regard to NMC guidance, your evidence at stages 1 and 2 of this hearing and the bundle of documents submitted on your behalf. This included testimonials, training certificates and a reflective piece.

Decision and reasons 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.'

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

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 *Treat people with kindness, respect and compassion*

1.5 *Respect and uphold people's human rights*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 *Act with honesty and integrity at all times, treating people fairly and without*

discrimination, bullying or harassment

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

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

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

their families and carers

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges individually and collectively.

Charges 1a, 1b, 1c, 1d, 1e and 1f

The panel was of the view that these charges amount to serious misconduct. The panel concluded that you breached professional boundaries by taking advantage of a vulnerable patient inappropriately in a closed room. The panel heard evidence from Patient A as to how she was made to feel by your actions.

A nurse is expected to be professional at all times and your actions in this charge would by the standards of ordinary people, and fellow professional nurses, be judged to fall far below the standards expected of a registered nurse and would be considered deplorable by other members of the profession. The panel determined that your actions in relation to charges 1a, 1b, 1c, 1d, 1e and 1f amount to a serious departure from acceptable standards expected of a registered nurse.

Charge 2

The panel was of the view that this charge amounted to serious misconduct. The panel concluded that you breached professional boundaries with Patient A having found your behaviour to be sexually motivated. The panel were particularly concerned that Patient A was vulnerable, unwell and seeking medical assistance at the time.

A nurse is expected to be professional at all times and your actions in this charge would by the standards of ordinary people, and fellow professional nurses, be judged to fall far below the standards expected of a registered nurse and would be considered deplorable by other members of the profession. The panel determined that your actions in relation to this charge amounted to a serious departure from acceptable standards expected of a registered nurse.

Charges 3a, 3b and 3c

The panel was of the view that these charges amount to serious misconduct. The panel noted that you breached professional boundaries with Colleague A, and took advantage of her in a professional setting including unwanted physical touching. Further, the panel was of the view that you were persistent even when Colleague A asked you to desist.

A nurse is expected to be professional at all times and your actions in this charge would by the standards of ordinary people, and fellow professional nurses, be judged to fall far below the standards expected of a registered nurse and would be considered deplorable by other members of the profession. The panel determined that your actions in relation to charges 3a, 3b and 3c amounted to a serious departure from acceptable standards expected of a registered nurse.

Charge 4

The panel concluded that this charge amounted to serious misconduct. The panel noted that you breached professional boundaries with Colleague A and it found your behaviour was sexual in nature.

A nurse is expected to be professional at all times and your actions in this charge would, by the standards of ordinary people, and fellow professional nurses, be judged to fall far below the standards expected of a registered nurse and would be considered deplorable by other members of the profession. The panel determined that your actions in relation to this charge amounted to a serious departure from acceptable standards expected of a registered nurse.

Charge 5

The panel was of the view that this charge amount to serious misconduct. You disregarded and undermined your regulator by breaching condition 1 of your Interim Conditions of Practice Order imposed on 18 July 2022. You were aware of the condition but nevertheless sought and took up employment as a registered nurse in breach of it. The panel determined that your actions in relation to this charge amounted to a serious departure from acceptable standards expected of a registered nurse.

Charge 6

The panel was of the view that this charge amounted to serious misconduct. The panel noted that was a proven allegation of dishonesty which relates to you misleading your employer about your regulator's investigation, hearing, findings and order, and then being dishonest about this, is inherently serious.

The panel determined that your actions in relation to this charge amounted to a serious departure from acceptable standards expected of a registered nurse.

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.

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

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

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

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

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

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

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

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

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

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

The panel found that your treatment of Patient A and Colleague A put both at risk of emotional harm. The panel heard evidence from them as to the impact your actions had. It also considered that your conduct in relation to Patient A had the potential to dissuade her from seeking further medical help at a time when she was in need of it. Your actions in this regard and your failure to comply with conditions imposed on your registration by the NMC are such that they clearly bring the nursing profession into disrepute. The panel found that your conduct breached fundamental tenets of the nursing profession, relating to professional boundaries, treating people with respect and honesty and integrity. 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* are fully engaged. The panel went on to consider whether your conduct is remediable and if it has, the extent to which it has been remediated. The panel also considered the risk of repetition.

The panel took the view that although your behaviour and breaches of the code may be remediable, this would be difficult having regard to the seriousness of the facts found proved in this case. The panel found you responsible for failing to maintain professional boundaries and overtly inappropriate behaviour towards a patient which was sexually motivated. Additionally, it found your behaviour - including physical touching - towards Colleague A to be inappropriate and sexual in nature. Finally, you ignored a conditions of practise order imposed by your regulator and misled your employer as to your regulatory situation. These matters, taken together, in the view of the panel are all serious with elements of attitudinal problems and therefore may be difficult to remediate.

Regarding insight, the panel determined that you currently have poorly developed insight into the impact of your behaviour on, in particular, Patient A. You appear to accept that your behaviour was inappropriate and unprofessional but you do not appear to have any empathy into how your behaviour made Patient A feel. The panel consider that your insight is developing but that you have yet to demonstrate how your reflections and your learning in the area of professional boundaries will prevent any risk of repetition. Further, the panel determined that you did not demonstrate any insight into the dishonesty charges. The panel considered that your reflections focused primarily on

meeting professional standards such as those set out in the Code, rather than demonstrating a full understanding of your behaviour, it causes and impact.

In regard to remediation, the panel noted the positive testimonials provided. In particular, it noted the testimonials provided by your current line managers which spoke of your commitment and hard work and of your very positive professional relationships with colleagues and service users. The panel took into account your current role with SecureCare in considering overall remediation. It noted that you have worked continuously in this role since May 2023 and, based on your explanation of what it entails, concluded that your role is highly relevant in terms of remediating the concerns in this case. The panel saw that some of your testimonials were either undated, made no mention of the current proceedings or were clearly prepared for reasons other than these proceedings. Whilst the panel took account of these testimonials, it consequently gave less weight to them.

Having regard to the training courses you have undertaken, the panel noted that they appear relevant to your conduct in maintaining professional boundaries. These were Continual Professional Development (CPD), courses of short duration. However, you have not adequately explained how the insight you gained from these courses would inform your workplace behaviour in the future.

The panel observed that you are unable to explain any mechanisms, strategies or supervision processes that you may use for preventing the events in this case recurring. Your reflection and evidence focused on offering simple reassurances that you will not repeat the behaviour rather than demonstrating a full understanding of why you acted as you did.

The panel determined that your insight is developing but limited at this time for the reasons set out above. Whilst you have clearly started a journey towards remediation and taken steps to do so, these are limited and do not address some significant aspects of the facts found proved against you. The panel noted your encouraging recent work history and testimonials however, it considers that you have not yet fully remediated in relation to this case. In considering your lack of insight, particularly around the

dishonesty aspect of this case and the negative impact of your behaviour on your patient, colleague and the NMC, together with your incomplete remediation, the panel concluded there remains a risk of repetition.

The panel decided that a finding of impairment is necessary on the grounds of both public protection, and in the wider public interest. Your actions in the charges found proved are serious, and, if repeated, could cause future harm and further damage the reputation of the profession and that of the regulator. A well-informed member of the public would expect a nurse in this situation to have their practice found to be impaired.

The panel bore in mind that the overarching objectives of the NMC are 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, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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 carefully and decided to make a suspension order for a period of 9 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 had regard to all the evidence adduced in this case and to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Buckell informed the panel that the sanction bid by the NMC, is that of a striking off order. She outlined to the panel what, in the NMC's view, were mitigating and aggravating features in your case.

Ms Buckell submitted that taking no action or imposing a caution order would be insufficient in your case given the seriousness of the case.

Ms Buckell submitted that there is evidence of harmful, deep-seated attitudinal concerns, therefore workable or practicable conditions cannot be formulated and/or that can be imposed through a conditions of practice order particularly having regard to the panel's finding of impairment on the grounds of public interest.

Ms Buckell invited the panel to consider the NMC's guidance on '*Suspension order*' reference: SAN-3d where a checklist was provided.

Ms Buckell reminded the panel that your actions were a significant departure from the standards expected of a registered nurse such that they are fundamentally incompatible with you remaining on the register.

For these reasons, Ms Buckell submitted that a striking-off order is the only sanction that would adequately protect the public and meet the public interest.

Mr Nash submitted at the time of the incidents, you were 22/23 years old. You are now 26 years old, a more mature age where you are better able to evaluate your actions before you act upon them.

Mr Nash submitted that whilst the NMC have directed the panel to factors in the guidance which would tend to lead towards removal from the register, none of these directly apply to you. He invited the panel to bear that in mind when making its decision on sanction, submitting that a strike-off order would not be the most appropriate sanction.

Mr Nash submitted that you continue to do relevant work and have made significant steps towards the developing insight and remediation. He submitted that you undertook training in relation to professional boundaries which was directly relevant to your misconduct. He submitted you continue to gain experience in a healthcare role while being open and honest with your current line managers from whom you have obtained positive references.

Mr Nash submitted that you have been on a journey and that your misconduct is remediable with the right conditions as a result of the changes you made in your personal life. It was his submission that a conditions of practice order would be the most appropriate order which would give you the right support and guidance and enable you to return to nursing practice when deemed fit.

Mr Nash submitted that if the panel does not agree with him then a period of suspension would be the most appropriate sanction to allow you time to develop your insight and enable you to be the nurse you are capable of being. He submitted there has been no repetition of any of the concerns, even though you have been working in a healthcare setting with vulnerable service users. He submitted you do have some insight and although it is developing, a further period of suspension would allow you to continue developing insight and appropriate strategies and continue to gain experience.

Mr Nash submitted that despite having your practice suspended for 18 months, you managed to find a highly relevant role working in healthcare and you have been able to continue to maintain your skills in relation to patient care. This demonstrates your commitment to healthcare in general and your determination to change your behaviour and achieve the standards of the nursing profession.

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 bore 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 breached the Code which involved sexual misconduct, dishonesty and disregard for professional boundaries. The issues were wide-ranging spanning across the whole spectrum of patients, colleagues and your regulator.
- Your behaviour was characterised by a breach of trust.
- You behaved in a dishonest way which enabled you to breach one of the conditions of practice to benefit yourself to gain employment.
- The incident with Colleague A took place only four months after the incident with Patient A, and after you were made aware of the concerns about your behaviour towards Patient A.

The panel also took into account the following mitigating features:

- There is evidence of safe, effective and kind practice whilst working with SecureCare in a role which is closely aligned with the nursing profession.
- You have demonstrated limited insight and made attempts to begin remediation.
- Your line managers provided positive testimonials confirming that you have been honest with them concerning the current regulatory proceedings.
- There is no evidence of any repetition of this sort of behaviour.

In considering which sanction to impose, the panel had regard to the NMC sanctions guidance '*Considering sanctions for serious cases*'. The panel determined that your misconduct is serious for the following reasons as set out in the guidance.

In relation to your dishonesty, whilst this was a one off incident, it was aimed at facilitating your breach of an interim conditions of practice order imposed by the NMC. Consequently, the panel took the view that your dishonesty is more serious than otherwise may have been the case.

Your actions included a deliberate breach of an interim order. NMC guidance identifies such behaviour as follows:

“If a nurse..... doesn't comply with an interim..... order this will be taken very seriously. This is because it is likely to show a disregard by that person for the steps the NMC has put in place to keep the public safe or a poll public confidence in the profession.”

Additionally, your case involves sexual misconduct. NMC guidance states:

“Sexual misconduct can have a profound and long-lasting impact on people..... acts of sexual misconduct directly conflict with the standards and values set out in the code Sexual misconduct poses risks to both people receiving care and colleagues and can seriously undermine trust and confidence in our professions.”

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 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 includes dishonesty, which is not something that can be addressed through retraining. Furthermore, the panel noted that you previously had conditions of practice imposed on your registration and

that you breached these. The panel has no evidence to support that you would adhere to further conditions on your practice and were not sufficiently confident that your current level of insight would ensure this breach would not be repeated.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

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 noted that this case is not concerned with a single incident of misconduct but noted that all of the issues subject to the charges arose during a short period of time of your career. The panel acknowledged that there are elements of attitudinal issues that you display but did not conclude on the evidence it heard that these were deep-seated. There is no evidence of repetition of your behaviour.

In reaching its decision, the panel also had regard to the NMC Guidance, SAN-3d which requires it to take into account when determining sanction:

- *whether the seriousness of the case require temporary removal from the register?*
- *will a period of suspension be sufficient to protect patients, public confidence in nurses, midwives or nursing associates, or professional standards?*

In considering the appropriateness of suspension order, the panel took account of the seriousness factors set out above and concluded that the facts found proved in this case such a temporary removal from the register is required. It also considered the evidence of Colleague A who told the panel that she believed your behaviour towards her was not born out of malice but out of your immaturity and lack of boundaries. She added that her intention in reporting matters had been to ensure that you learnt a lesson.

The panel noted your settled work record with SecureCare as a feature of overall remediation in this case. You have engaged with the NMC and indicated your desire to continue in the nursing profession.

Balancing all of these factors, the panel concluded that a suspension order is the appropriate and proportionate sanction in this case.

In considering the length of suspension, the panel noted that your behaviour in relation to all charges is, by definition serious and that your insight and remediation is currently limited. Consequently, in order to provide sufficient time for you to develop, and also to meet the public interest and uphold the reputation of the profession in this case, the panel determined to impose a suspension order for 9 months.

The panel considered that, having regard to the factors set out above, a striking off order would not be proportionate in this case and that the public interest and public protection concerns can be properly met with a suspension order.

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.

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:

- Evidence of continued development of your insight, including a reflective piece.
- Further up to date testimonials from line managers and any other people you think appropriate.
- Evidence of your efforts to maintain your professional nursing knowledge.

This will be confirmed to you in writing.

Interim order

As the 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 Ms Buckell. She submitted an interim suspension order for a period of 18 months was necessary to cover any potential period of appeal.

Mr Nash made no submissions in respect of this application.

Decision and reasons on interim order

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

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

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.