Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Meeting

Wednesday, 19 February 2025 – Thursday, 20 February 2025

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

Friday, 21 February 2025
Monday, 24 February 2025 – Tuesday, 25 February 2025

Virtual meeting

Name of Registrant:	**Anthony James John Bird**
NMC PIN	10B0254W
Part(s) of the register:	Registered Nurse – Adult (23 February 2010)
Relevant Location:	Wales
Type of case:	Misconduct
Panel members:	Des McMorrow (Chair, Registrant member) Jessica Read (Registrant member) James Carr (Lay member)
Legal Assessor:	Oliver Wise
Hearings Coordinator:	Dilay Bekteshi
Facts proved:	Charges 1, 2(a), 2(b), 2(c), 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Bird's registered email address by secure email on 13 January 2025.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, and that the meeting will take place on or after 17 February 2025.

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

Details of charge

That you, a registered nurse:

1) During a night shift on or around 20 January 2021, behaved in an aggressive and/or unprofessional manner in that you threw the Home's iPad on the ground causing it to smash and break;

2) During a night shift on 25 February 2021, you behaved in an unprofessional and/or intimidating manner towards staff in that you:
   a) Shouted at a health care professional;
   b) Said to a health care professional "what the fuck are you doing" or words to this effect
   c) On at least one occasion, told one or more health care professional, to "fuck off home" or words to this effect

3) On 20 January 2022, completed an application form with a prospective employer in which you did not disclose that you were subject to an NMC investigation;

4) Your conduct at charge 3 was dishonest as you intended to mislead your prospective employer into believing that you had no pending investigations when you had;

5) On 27 January 2022, informed your regulator, the Nursing and Midwifery Council, that you were unemployed and/or not working when you were employed by Sensible Staffing Agency and working with Fresenius Kabi LTD & Calea UK Ltd.

6) Your conduct at charge 5 was dishonest as you intentionally sought to mislead your regulator into believing that you were not employed when you were;

7) On an unknown date in May 2022, having discovered that Patient A had only received 2507ml of parenteral nutrition instead of the prescribed 3000ml, you failed to report the medication error;

8) On 5 July 2022 in relation to Patient B, administered an Aqueous bag but incorrectly documented the JPN number for a Lipid bag;

9) On 5 July 2022 in relation to Patient C, documented that you had changed the dressing and/or needle free connector when you had not;

10) Between 14 August 2022 and 22 August 2022, on one or more occasion, carried out a subcutaneous infusion procedure on Patient D without having the subcutaneous competency signed off by your employer;

11) On 1 November 2022, programmed Patient E's pump to administer a volume of 1977ml of Nutriflex instead of a volume of 2000ml as prescribed;

12) On 7 November 2022 behaved in an aggressive and/or intimidating manner towards Patient F's neighbour during a home visit;

13) On 1 December 2022, behaved in an intimidating and/or aggressive manner towards Colleague A;

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

Background

Between October 2020 and April 2021, Mr Bird was employed by Silvercrest Care ('Silvercrest') as a Peripatetic Nurse, working across various homes. On 23 March 2021 Silvercrest submitted a referral to the Nursing and Midwifery Council (NMC), raising concerns about Mr Bird's practice (082853/2021).

Between February and November 2022, Mr Bird worked as an agency nurse via Sensible Staffing Agency ('the Agency') for Fresenius Kabi Ltd & Calea UK ('Fresenius'). Fresenius employs nurses to work with patients in the community in their homes who have intestinal failure to deliver Intravenous ('IV') therapy. On 8 December 2022 the Agency submitted a referral to the NMC, raising concerns about Mr Bird's practice (091843/2022).

Decision and reasons on facts

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

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 had regard to the written statements and exhibits of the following witnesses on behalf of the NMC:

- Witness 1: Care Assistant at Mill View Care Home
- Witness 2: Care Home Assistant Practitioner at Silvercrest
- Witness 3: Home Manager at Silvercrest
- Witness 4: Health Care Assistant at Morden Care

- Witness 5: Head of Quality at Sensible Staffing
- Colleague A: Regional Nurse Manager at Fresenius Kabi
- Witness 6: Patient F's neighbour
- Witness 7: Clinical Nurse Advisor at Fresenius
- Witness 8: Regional Nurse Manager at Fresenius
- Witness 9: Clinical Nurse Advisor at Fresenius
- Witness 10: Team Leader at Fresenius
- Witness 11: Senior Case Officer for the NMC

Before making any findings on the facts, the panel accepted the advice of the legal assessor, who referred the panel to the case of *Ivey v Gentings Casinos* (UK) Ltd [2017] UKSC 67 in relation to dishonesty.

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

Charge 1

1) During a night shift on or around 20 January 2021, behaved in an aggressive and/or unprofessional manner in that you threw the Home's iPad on the ground causing it to smash and break;

This charge is found proved.

The panel considered the witness statement from Witness 4, who observed the incident first-hand. In her statement, she described it:

> *"The incident took place in the tea room, which is also known as the dining room, within the Morgana Court building. I witnessed the entirety of the incident.*
>
> *I remember that [Person B] and I were sat on Mr Bird's right hand side, and [Person A] and the other staff member (whose name I cannot recall) were sat on Mr Bird's left hand side. Mr Bird was entering information on the tablet, but he became hot and heated over the littlest things on the tablet, and this is when he threw the tablet.*

He then stormed out of the tea room. I cannot remember exactly why Mr Bird threw the tablet.

The agency staff members and I then just looked at one another and said "What now?"

I know that Mr Bird intentionally threw the tablet as he got up in a temper. I do not think that he intended for the tablet to end on up the floor, but he threw it like a frisbee and it smacked on the floor and smashed. He did not appear shocked when it smacked on the floor and smashed. I cannot remember what Mr Bird said when he threw the tablet."

The panel also took into account a handwritten statement by Witness 4, which described the January 20 incident, and it was completed before going off shift and handed to management. This letter was signed by Witness 4, Person A, and Person B, all of whom were present during the incident.

The panel also considered the rota which shows that Mr Bird and those who signed the statement were also on duty.

Additionally, the panel considered the investigation meeting notes from 11 March 2021, where Mr Bird denied the allegation:

"[Mr Bird]: I have never thrown a tablet, you would have a broken tablet in the workplace.
[Person C]: Well, we do have a broken tablet in the workplace.
[Mr Bird]: First I have heard of it."

The panel gave weight to the evidence from Witness 4, supported by the handwritten statement signed by the three individuals who were present. It also determined that Witness 4 provided a detailed account of the event, and her evidence was consistent with the statements of others. Therefore, the panel concluded that charge 1 is proved.

Charge 2(a), 2(b) & 2(c)

2) During a night shift on 25 February 2021, you behaved in an unprofessional and/or intimidating manner towards staff in that you:
   a) Shouted at a health care professional;
   b) Said to a health care professional "*what the fuck are you doing*" or words to this effect
   c) On at least one occasion, told one or more health care professional, to "*fuck off home"* or words to this effect

These charges are found proved.

Charge 2(a)

With regard to charge 2(a), the panel considered the NMC witness statement from Witness 1, which states:

> *"Mr Bird started shouting and swearing at me. He had come out of the nurse's station and had walked to the corridor where I was. He told me to "fuck off home" and that I could report him. [Witness 2] witnessed Mr Bird say this to me because she was also walking to the corridor when this happened. I don't know why Mr Bird started shouting at me…I told Mr Bird that I was not going home or leaving the building as I was not going to leave the Home short staffed as this was not fair on the residents, and I was not going to leave vulnerable adults without any care. I told him to wind his neck in because I was defending myself. I did not swear back at Mr Bird. I told Mr Bird that I will be reporting him and he said that he did not care.*
>
> *I felt a bit nervous and anxious when Mr Bird was shouting at me. I was shaking inside, but I was angry more than anything else. I was angry because the incidents should never have happened. I kept my distance from Mr Bird for the rest of the shift."*

The panel also noted the consistency of the handwritten statement of Witness 1 made at the time of the incident, dated 25 February 2021, with his NMC witness statement.

The panel also took into account the NMC witness statement of Witness 2, which states:

> *"When I returned from the Lodge, Mr Bird was still ranting and raging about what had happened between him and the agency staff member. I heard Mr Bird telling the agency staff member that he did not want her in the building and he did not want her to come back. Mr Bird was shouting, which is not like him as he is usually quite calm…*
>
> *I saw Mr Bird have a go at [Witness 1] and say "if you don't like it, you can go home as well". I think the argument between Mr Bird and [Witness 1] had stemmed from [Witness 1] getting involved in the argument between Mr Bird and the agency staff member. I cannot say this for certain as I did not actually see what had happened.*
>
> *No one else witnessed this, as it was just [Witness 1], Mr Bird and I outside the clinical room within Morgana Court, which is where Mr Bird and [Witness 1] were arguing.*
>
> *…my concern is that Mr Bird had raised his voice and I could see his anger when he shouted back at [Witness 1]."*

The panel also considered the undated Internal statement of Witness 2**,** which states:

> *"He then started shouting at [Witness 1] that he would not mind himself being reported and that [Witness 1] should 'get a pair of bollocks between his legs' and he could go as well if he 'fucking wanted to'.*

The panel concluded that Witness 2's account is consistent with that of Witness 1 and her own NMC witness statement.

Additionally, the panel considered Person D's statement, which states: *"The nurse barged in like a wild animal let loose, his veins were popping out of his neck and face screaming at that time of the night nor caring about the residents resting asleep in their rooms."*

The panel then took into account the Investigation minutes with Mr Bird dated 11 March 2021, which states:

> *"[Person C]: Ok, so I am going to go through her statement now, "I write this statement in regards to a night shift at Morgana court .I started the shift 7pm -7am. Right at the beginning of the shift I noticed the nurse on duty "Tony" [Mr Bird] was behaving in an aggressive manner towards all staff on shift. He would storm past staff on duty, I with see him coming out of the nurses station slamming the door literally so hard the walls were shaking, marching off down the corridor like an animal let loose" Do you recall being like this Tony [Mr Bird]?*
>
> *[Mr Bird]: No, not at all that is all fictious. This is the lady that I refused to sign her timesheets for, they were all sat in the lounge watching TV eating food and not answering buzzers."*

The panel was satisfied that there is sufficient evidence to conclude that Mr Bird shouted at a health care professional. Consequently, the panel found charge 2(a) proved.

Charge 2(b)

Regarding charge 2(b), the panel took into account the internal statement of Person D, which states:

> *"He violently screamed at me belittling me where the fuck do you think you are going? I calmy replied "just going out for a quick break and some fresh air, is that a problem?"*

The panel also considered the investigation minutes with Mr Bird and Person C (HR Consultant), dated 11 March 2021, which states:

> *"[Person C]: The statement goes on to say "He violently screamed at me belittling me where the fuck do you think you are going? I calmy replied "just going out for a quick break and some fresh air, is that a problem?...so one of the allegation states that you said "where the fuck are you going? Did you ask her in this manner?*

[Mr Bird]: No"

Mr Bird, in the investigation meeting report, also stated:

[Person C]… we have a total zero tolerance within the home, due to the nature of the environment, did you swear?
[Mr Bird]: No.
…
[Person C]: Did you swear at that point?
[Mr Bird]: No. Of course I didn't."

Furthermore, the panel considered the NMC witness statement of Witness 1, which states:

"Mr Bird shouted "what the fuck are you doing" at the agency staff member and I. Mr Bird was waving his arms around and acting like a raging bull. It was hard to believe that a nurse was acting in that way in a care environment."

The panel found that there is sufficient evidence, on the balance of probabilities, that Mr Bird said to a health care professional "what the fuck are you doing" or words to this effect. The panel therefore found charge 2(b) proved.

Charge 2(c)

In relation to charge 2(c), the panel considered the witness statement of Witness 1, which states:

"The agency staff member told me that Mr Bird was shouting and swearing at her, that he refused to let her back in the building and that he told her to "fuck off home".
…
Mr Bird starting shouting and swearing at me. He had come out of the nurse's station and had walked to the corridor where I was. He told me to "fuck off home" and that I could report him."

Additionally, the panel also considered the handwritten note by Witness 1, which states:

"she was at the main door could not open it. [Mr Bird] then went out after her playing hell yet again and told agency girl to leave the building to fuck off home.
…
Tony told me to fuck off home."

The panel took into account the NMC witness statement of Witness 2, which states:

"I saw Mr Bird have a go at [Witness 1] and say "if you don't like it, you can go home as well". I think the argument between Mr Bird and [Witness 1] had stemmed from [Witness 1] getting involved in the argument between Mr Bird and the agency staff member. I cannot say this for certain as I did not actually see what had happened."

Lastly, the panel considered the investigation minutes with Mr Bird dated 11 March 2021, which states:

"[Person C]: [Witness 1] further confirms "the agency staff told [Mr Bird] that he was bang out of order. He yet again told her to fuck off and leave". Do you think that is appropriate / did you swear [Mr Bird]…?
[Mr Bird]: Again, [Witness 1] wasn't even present, he wasn't even on the floor as far as I was aware…there was no other member of staff present.
[Person C]: he then confirms "[Mr Bird] told me then to fuck off home" Did you state that?
[Mr Bird]: No, not at all. I actually said because the agency said I am not the only one that is going to report you and when I did actually see [Witness 1] in the morning, if you are going to complain about me, take a ticket and join the queue."

The panel found that there is sufficient evidence, on the balance of probabilities, that Mr Bird on at least one occasion, told one or more health care professional, to *"fuck off home"* or words to that effect. The panel therefore found charge 2(c) proved.

Having found charges 2(a), 2(b), and 2(c), the panel then considered whether Mr Bird's conduct constituted unprofessional and/or intimidating behaviour towards staff. The panel

concluded that, based on the evidence presented, Mr Bird's actions, both independently and collectively, demonstrated a clear pattern of unprofessional and intimidating conduct.

Charge 3

3) On 20 January 2022, completed an application form with a prospective employer in which you did not disclose that you were subject to an NMC investigation;

This charge is found proved.

The panel considered the witness statement provided by Witness 11, a Senior Case Officer at the NMC, along with a letter sent to Mr Bird on 26 April 2021, regarding NMC case reference 082853/2021. This letter informed Mr Bird that a concern had been raised about his fitness to practise, which was being referred for investigation.

The panel also took into account the witness statement of Witness 5, which states:

> *"I have never met Mr Bird in person. Mr Bird first registered with the Agency on 20 January 2022 and this was the date on which his application was accepted and we were able to give him work….Mr Bird completed some general mandatory training with the Agency on 24 January and 25 March 2022."*

The panel also considered the copy of Mr Bird's application form submitted on 20 January 2022. Under the section titled "Professional Conduct," the form asked: *"Are you currently subject to or have previously been subject to any suspension, investigation, serious complaint or dismissal by an employer, professional body or regulator?"* Mr Bird answered *"No".*

Furthermore, the panel noted the "Declaration" section, which states: *"…I confirm that I am not currently under investigation, or currently suspended, by my professional regulatory body or previous employer…."* This declaration was signed by Mr Bird.

The panel also took into account a file note from a call between Mr Bird and Witness 5, dated 25 November 2022. This note records that Witness 5 asked Mr Bird to clarify

information he had previously provided to a colleague regarding a pending NMC hearing. When asked about "*when the investigation dates from*", Mr Bird stated it dated back three years. Witness 5 then questioned why he had answered "*No*" to the professional conduct enquiry on his application form. Mr Bird replied that the question pertained to restrictions, and he had none. Upon being reminded of the clarity of the question, Mr Bird admitted, *"Well, I lied because I have to be able to pay for my family."*

Based on the evidence, the panel concluded that Mr Bird failed to disclose to Fresenius that he was subject to an NMC investigation. Consequently, the panel found charge 3 proved.

Charge 4

4) Your conduct at charge 3 was dishonest as you intended to mislead your prospective employer into believing that you had no pending investigations when you had;

This charge is found proved.

In considering this charge the panel adopted the test for dishonesty as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67. It considered the 2-limb test when considering this charge:

> *(i) What is the Registrant's genuine state of knowledge or belief regarding his act?*
> *(ii) Was the Registrant's act in light of that state of mind dishonest according to the standards of ordinary decent people?*

The panel considered the complaint telephone meeting notes dated 25 November 2022, which states:

> *"… [Witness 5] then asked [Mr Bird] to clarify some information he had provided to her work colleague on the telephone last week that he had a pending NMC hearing for an investigation. She asked when this investigation dates from. [Mr Bird] said it was from 3 years ago. [Witness 5] then asked why if it was from 3 years ago when*

he completed his application form he had said No to the professional conduct question. [Mr Bird] said because it just says about any restrictions and I don't have any. [Witness 5] read out the question to [Mr Bird] and said very clear he would have to declare everything. [Mr Bird] then said "Well I lied because I have to be able to pay for my family".

The panel considered Mr Bird's own admission. It determined that his acknowledgment of knowingly providing false information demonstrates awareness of his actions and an intent to deceive. The panel determined that this act was motivated by personal financial gain. Furthermore, Mr Bird signed a declaration affirming the truthfulness of his application, which clearly states:

"…I confirm that I am not currently under investigation, or currently suspended, by my professional regulatory body or previous employer. If at any time during my application or employment with Sensible Staffing I am investigated or suspended by another employer or my professional regulatory body..."

The panel therefore concluded that Mr Bird's actions would be deemed dishonest by the standards of ordinary, decent people. Consequently, the panel found charge 4 proved.

Charge 5

5) On 27 January 2022, informed your regulator, the Nursing and Midwifery Council, that you were unemployed and/or not working when you were employed by Sensible Staffing Agency and working with Fresenius Kabi LTD & Calea UK Ltd.

This charge is found proved.

The panel took into account the witness statement of Witness 11 and the exhibited notice of referral was sent to Mr Bird on 16 April 2021. This letter was in relation to the NMC case number 082853/2021 and informed Mr Bird that a concern had been received regarding his fitness to practise which was being referred for investigation.

On 27 January 2022, Mr Bird submitted a personal contact and employment details form related to NMC case number 082853/2021. In this form, he indicated in two sections that he was "*currently unemployed."*

The panel then considered the witness statement of Witness 5, which states:

> *"Mr Bird first registered with the Agency on 20 January 2022 and this was the date on which his application was accepted and we were able to give him work."*

Additionally, the panel considered the application form Mr Bird completed with the Agency on 20 January 2022, along with his training certificates for mandatory training completed on 24 January and 25 March 2022.

Based on this evidence, the panel concluded that Mr Bird was employed at the time he filled out the Personal Contact and Employment Form submitted to the NMC on 27 January 2022. Consequently, the panel found charge 5 proved.

Charge 6

6) Your conduct at charge 5 was dishonest as you intentionally sought to mislead your regulator into believing that you were not employed when you were;

This charge is found proved.

The panel found that Mr Bird had misrepresented his employment status on the Personal Contact and Employment Form submitted on 27 January 2022, despite being aware of his employment, as evidenced by his attendance at training on 24 January 2022 at Fresenius. The panel concluded that Mr Bird's actions were deliberate and sought to mislead his regulator into believing that he was not employed when he was.

Nursing professionals have a duty of candour, which includes cooperating with both internal and external investigations and being honest when completing forms submitted to the NMC. It determined that there was no plausible explanation for his actions other than an intention to mislead the NMC.

Furthermore, the panel concluded that had Mr Bird truthfully indicated that he was employed, the NMC would have informed his employer of the ongoing investigation into his fitness to practise. It determined that Mr Bird's intention was to conceal this information from the NMC to prevent them from contacting his employer.

The panel therefore found charge 6 proved.

Charge 7

7) On an unknown date in May 2022, having discovered that Patient A had only received 2507ml of parenteral nutrition instead of the prescribed 3000ml, you failed to report the medication error;

This charge is found proved.

The panel took into account the NMC witness statement of Witness 8, which states:

> *"…he failed to report a medication error which he discovered. Mr Bird had discovered that Patient A had received a deficit of 493ml of their parenteral nutrition. The patient was prescribed 3000ml parenteral nutrition but only received 2507ml. The patient had recently had their prescription changed which contributed to the error. Mr Bird did not make the error but he discovered it and he documented the discovery of the error in the patients notes. The error did not have any impact on the patient on this occasion but it is important that this error is reported as it could make the patient feel unwell and they could need to be administered the amount that they were missing. It is also important that a timely discussion is completed with the Nurse who made the error to help identify the possible cause and ensure that preventative actions are implemented.*
>
> *Once he documented the error in the patient notes he should have called the clinical account lead who could then have decided whether the patient required any additional parenteral nutrition. They would have then raised a Ulysses report on the incident system."*

The panel also considered the notes of incident discussion with Mr Bird and Witness 8 who conducted the meeting on 19 May 2022, which states:

> *"4)Anthony recalls finding the PN deficit and realising it was because the Nurse had not correctly programmed the Total Volume to be infused. He states that he did not escalate this as he was unsure of the process and who to inform."*

Furthermore, the panel also considered Mr Bird's reflective accounts form regarding Patient A, which states*:*

> *"… I remember talking to patient and partner, checking the notes, noticing the simple error and stating that I would flag it up, and then failing to do so when back at the car through being distracted."*

Based on the evidence presented, the panel concluded that Mr Bird did not report the medication error. The panel noted Mr Bird's admission and his explanation regarding the oversight. Therefore, the panel found charge 7 proved.

Charge 8

8) On 5 July 2022 in relation to Patient B, administered an Aqueous bag but incorrectly documented the JPN number for a Lipid bag;

This charge is found proved.

The panel considered the NMC witness statement from Witness 7, which outlined Patient B's nutritional regimen: she was prescribed a white lipid bag and a yellow aqueous bag, receiving five aqueous bags weekly and two lipid bags on assigned days. The days of administration were flexible as long as the weekly totals were met.

Witness 7 recounted checking the patient's notes on 7 July 2022, prior to administering a second lipid bag. Noting a discrepancy in Mr Bird's documentation, where he recorded JPN number 33304006 for what should have been a lipid bag, Witness 7 said that despite

Mr Bird's error in documentation, the patient received the correct Aqueous bag. The error stemmed from a single digit in the JPN number being documented incorrectly.

The panel also considered the record made by Witness 7 of the error in the communication log which identifies that the wrong JPN number documented on 5 July 2022, "*written as aqueous which should have had the number 007 but lipid 006 was documented."*

The panel noted that Patient B received the appropriate medication with no harm, although the documentation error could have led to a misunderstanding regarding her nutrient intake. The panel considered the documentation which included Patient B's prescription, clinical records, and an error log, all indicating that an Aqueous bag was prescribed and administered.

Additionally, witness statements from other professionals, including Witness 5 and Witness 8, supported the conclusion that Mr Bird had administered the correct Aqueous bag while documenting it as a Lipid bag. Consequently, charge 8 was found proved.

Charge 9

9) On 5 July 2022 in relation to Patient C, documented that you had changed the dressing and/or needle free connector when you had not;

This charge is found proved.

The panel took into account the witness statement of Witness 8, which details a documentation error by Mr Bird concerning Patient C's clinical records. According to Witness 8:

> *"The incident form related to a documentation error made by Mr Bird on Patient C clinical records. It appears that someone (I'm not sure who) reviewed Patient C clinical records for 5 July 2022 as a result of the patent [sic] complaint and noticed that Mr Bird had written that he had changed Patient C dressing and needle free connector when it was not due to be changed."*

The panel also considered Patient C's clinical records, confirming that Mr Bird attended to him on the evening of 5 July 2022. These records indicated that Patient C's dressing and needle-free connector were scheduled to be changed every Tuesday. The panel noted that Mr Bird visited on a Tuesday evening, while the records show that Patient C's dressing was changed that Tuesday morning, as indicated by an 'A' for achieved, recorded in the morning entries. Although Mr Bird also marked an 'A' for the evening visit, it was established that the dressing did not need to be changed again that evening since it had already been completed earlier that day.

The panel considered the incident discussion where Mr Bird acknowledged the error in his documentation, stating: "*"[Mr Bird] confirmed that he did not carry out a dressing or bionector change his visit. He does not know how he made this documentation error."* Mr Bird expressed his commitment to double-checking his documentation in the future and being more careful.

The panel took into account the witness statement of Witness 7's evidence, which states:

> *"On a date I cannot recall, I visited Patient C I can recall him complaining about Mr Bird. I do not know when Mr Bird had visited him. Patient C complained a lot and I imagine he would have complained to other nurses visiting him too. I cannot recall much about Patient C complaint but it may have had something to do with him not changing a dressing and needle free connector. I do not believe that I made any documentation or reported Patient C complaint as the nurse he complained to first would have done this. I cannot recall seeing any documentation for this patient in relation to his complaint regarding Mr Bird.*
>
> *The nurse who visited after Mr Bird may not have been able to tell whether Patient C dressing and needle free connector had been changed by Mr Bird as Patient C looks after his dressing well.*
>
> *Patient C requires a dressing and needle free connector change every week. The needle free connector is like a valve so nothing can go up into the patient's body and it is used to connect syringes and nutrient bags. Every week it has to*

be flushed with alcohol and the dressing changed. This is important as it stops feed building up in the line which can make the line stiff and blocked. If it got blocked the patient would have to go back to the hospital to have a new line fitted which is not a nice experience for the patient. Patients are very protective of their lines and the watch what nurses are doing carefully because it is dangerous if it is not managed properly and patients can get sepsis.

It is clear when a patient requires a dressing and needle free connector change because it is stipulated on the connection and disconnection sheet in the patients records. When completing the records, the Registrant would have had to tick off whether the dressing and needle free connector had been changed during the visit. It is like a tick box exercise. When Mr Bird was shadowing me, I trained him on how to check the paperwork to determine whether a dressing change was required. I did not speak to Mr Bird about Patient C complaint. As I cannot recall much about the complaint, I am unable to provide any further information in relation to this."

Furthermore, the panel considered the witness statement of Witness 5 and an email from Person E, Senior Clinical Governance Manager at Fresenius, which raised concerns regarding Mr Bird's documentation on 5 July 2022, stating:

"On 5 July 2022, in relation to Patient C, Mr Bird documented that he had changed the patients dressing and needle free connector when he had not."

In conclusion, the panel considered the evidence that Mr Bird documented changing Patient C's dressing and needle-free connector on 5 July 2022, when it was not due for a change. This documentation error was noted after a complaint was raised by Patient C.

The panel considered the clinical records which shows that Mr Bird visited Patient C on the evening on 5 July 2022. These records confirm that Patient C's dressing and needle-free connector are scheduled for change every Tuesday. Mr Bird's visit occurred on Tuesday evening, but the dressing was already changed that same morning, as indicated by an 'A' for achieved recorded for the morning.

During the incident discussion, Mr Bird admitted that he did not change the dressing or the needle-free connector during his visit. He expressed uncertainty about how the documentation error occurred and committed to being more careful in the future.

The panel also noted Witness 7's statement that Patient C frequently complained to staff, particularly about Mr Bird's visit. Although she could not recall specific details, she implied that the complaint involved Mr Bird not changing the dressing and needle-free connector as required.

The panel noted inconsistencies between Mr Bird's documentation and the clinical timeline. While he marked an 'A' for his evening visit, the dressing did not need to be changed again that evening since it had already been done in the morning.

Based on this evidence, the panel concluded that there was sufficient evidence to find charge 9 proved.

Charge 10

10) Between 14 August 2022 and 22 August 2022, on one or more occasion, carried out a subcutaneous infusion procedure on Patient D without having the subcutaneous competency signed off by your employer;

This charge is found proved.

The panel took into account Witness 10's witness statement, which states:

> *"It came to light that Mr Bird did not have the subcutaneous competency signed off with Fresenius Kabi so should not have been caring for. This competency assesses the skill of the nurse when administering fluid into the subcutaneous layers of the skin via a small needle as oppose to in a vein. This is not a sterile procedure. Mr Bird cared for [Patient D] on 22 August 2022 and also on 14 August 2022…"*

The panel considered the clinical records from the visit on 14 August 2022, which clearly documented that Mr Bird performed the procedure.

Further, the panel noted that while Mr Bird had extensive experience in other roles, which provided him with relevant knowledge and training, he did not have the required competency formally signed off through Fresenius. His competency tracker indicated “not required” and did not reflect any official sign-off from the company, demonstrating that he conducted a medical procedure for which he was not authorised.

Additionally, the panel considered the incident form, under outcome details, which detailed that the *“Incident discussion completed with visiting nurse. Nurse unaware they didn’t have a competency, Nurse not to visit patient until competency gained.”*

The panel also took into account the witness statement from Witness 5, alongside an email from Person E, Senior Clinical Governance Manager at Fresenius, which raised concerns stating: “*On 16 and 22 August 2022 Mr Bird completed a procedure without having the subcutaneous competency with Fresenius Kabi.”*

The panel determined that the evidence clearly supports the charge that Mr Bird carried out a subcutaneous infusion procedure on Patient D without having the subcutaneous competency signed off by Fresenius. Therefore, the panel found charge 10 proved.

Charge 11

11) On 1 November 2022, programmed Patient E’s pump to administer a volume of 1977ml of Nutriflex instead of a volume of 2000ml as prescribed;

This charge is found proved.

The panel took into account the witness statement of Witness 9, which states:

> *“Mr Bird had visited Patient E to set her pump to administer Nutriflex on the evening of Tuesday 1 November 2022. I knew this because I could see the patient records which he had completed and signed for the visit.*

During my visit I disconnected the infusion and checked the pump settings and noticed that it had been programmed to deliver Nutriflex at a volume of 1977ml instead of a volume of 2000ml as prescribed. It appeared that Mr Bird had failed to change the settings from what was programmed on Monday night when the patient received the Smofkabiven12 infusion. When you turn the pump on it keeps the same settings as the last time it was programmed unless you change it.

Mr Bird had recorded that the volume infused was 1977ml. This is what the pump was programmed at so this was a true reflection of what was administered however, it should have been administered at a volume of 2000ml…

Patient E also told me that the pump had finished early and she said that Mr Bird seemed to be unsure about how to use the pump as he had to call someone to ask for guidance on how to use it."

The panel also considered the witness statement of Colleague A, which states:

"An incident form was sent through to me via Ulysses (which is an incident reporting platform) in relation to an incident involving Patient E. When a nurse reports an incident, they call the advice line and then the advice line will raise an incident form via Ulysses…

Patient E on the morning of 2 November 2022 and noticed that the pump was set up to administer a volume of 1977ml of Nutriflex when it should have been set to administer a volume of 2000ml Nutriflex."

The panel considered the incident form and the list of the nurses who attended to Patient E. The records indicated that Mr Bird visited Patient E on 1 November 2022, at 17:36, and Witness 9 attended on 2 November 2022, at 10:56, establishing that Mr Bird was the nurse who programmed the pump prior to Witness 9's visit the next morning.

Furthermore, the panel considered Patient E's clinical records, which indicated that she was supposed to receive 2,000 ml of Nutriflex five nights a week (Tuesdays, Wednesdays, Fridays, Saturdays, and Sundays). The panel noted that Witness 9 recorded on 2

November 2022, at 10:40 that the pump was incorrectly programmed, resulting in a deficit of 23 ml; however, the patient was reported to be well. Mr Bird documented the administered volume as 1,977 ml on the medication administration chart, matching the pump's programming.

The panel noted that Colleague A had an incident discussion with Mr Bird on 3 November 2022 and the panel considered the minutes of this meeting, which Mr Bird agreed were accurate.

In the incident discussion minutes dated November 3, 2022, Mr Bird responded to, "*4a. Were you aware a mistake may have happened?"* with "*No*." Under the question, "5. *What would the employee do differently should the situation happen again*?" he answered, "*More confident with pump after pump training. Ensuring that I check volume of bag with the prescription Incorporating this in final checks".* Additionally, for the question, "6. *Does the employee have any suggestions for how to ensure the incident doesn't happen again*?" Mr Bird answers, *"Make more familiar with the pump, will download the PDF and seek online training."*

The panel also considered the email dated 3 November 2022 from Person E, Senior Clinical Governance Manager from Fresenius, which states:

> *"…Nutriflex On 1/11/22 the pump was programmed to administer 1977ml nutriflex, which is the incorrect volume. The volume of nutriflex to be infused is 2000ml as per prescription. It appears that the pump volume was not altered from the previous night where patient received Smofkabiven, which the volume is 1977ml."*

The panel considered an email sent to Mr Bird on 18 November 12022, addressing these concerns, in which he said to Witness 5 that *"There had been a lot of confusion regarding the pump set up, the pump this lady uses is not used in Wales and I had not been "over the water" for some time and I had complete brain fog…*"

In conclusion, the panel considered the evidence confirming that Mr Bird incorrectly programmed Patient E's pump to deliver 1,977 ml of Nutriflex instead of the prescribed 2,000 ml. It noted that the clinical records showed Patient E was supposed to receive

2,000 ml, and an incident report noted the programming error resulted in a 23 ml deficit. Mr Bird also admitted to being unaware of the mistake and expressed uncertainty in operating the pump.

The panel was satisfied that Mr Bird programmed Patient E's pump to administer a volume of 1977ml of Nutriflex instead of a volume of 2000ml as prescribed. The panel therefore found charge 11 proved.

Charge 12

12) On 7 November 2022 behaved in an aggressive and/or intimidating manner towards Patient F's neighbour during a home visit;

This charge is found proved.

The panel took into account the witness statement of Witness 6, who recounted an incident involving Mr Bird. Witness 6 described how, after returning home with his wife and having difficulty walking due to a recent discharge from hospital following surgery, he parked his car near their house. While getting out, his car door made light contact with Mr Bird's vehicle. Witness 6 said that there was no visible damage to either car. Witness 6, in his NMC witness statement, stated:

> *"Mr Bird got out of his car and was shouting at me about his car and shouting at me to get out of my car. I said to him that the door hardly touched his car and that it was a tap and there are no marks or damage. Mr Bird shouted something back to me but I cannot recall what it was. I then told him that I had shopping to get out of the car and that I had just come of the hospital after having a transplant and cannot carry the shopping bags far. Mr Bird walked over to me at a fast speed and had his chest sticking out. I was surprised, as he was making a big scene out of nothing. We had a few more words face to face at that point but I cannot recall the exact details of what was said. Mr Bird did not say anything which was rude or insulting and he did not touch me or my wife, he was just shouting at me about his car but his mannerisms were threatening (such as walking over to me at a fast speed and sticking his chest out whilst shouting)…Mr Bird said he was a nurse and that was*

seeing a patient down the road and then he got back into his car. I then decided to reverse my car back further away from Mr Bird's car…

Patient F's mother was at Patient F's uncles house and she came out of the house because she could hear Mr Bird shouting at me. They saw about 2 minutes of the argument in the street. Patient F's mother told Mr Bird not to go and visit her daughter.

…

I was surprised by the way he behaved as there was no need for him to shout and display threatening mannerisms. His reaction was over the top. Although his behaviour surprised me, it did not impact me in any way. Mr Bird did not apologise for his actions."

Colleague A provided an account of a discussion on 10 November 2022:

"Mr Bird told me that he arrived an hour early to see the patient so he sat in his car. The patient's mother reported that Mr Bird was asleep in the car but Mr Bird said that he had his head down as he was sending emails. Mr Bird said that whilst he was sending emails he heard a bang on his car. He said that he could not see what had happened in his mirror so he opened the car door and it appeared that Patient F's neighbour had hit his car with his car door and scratched it. He said that [Witness 6's] wife told him he was in the way and he said 'I would rather you ask me to move my car instead of bash it'. He said that Patient F's neighbour said 'shut up or ill smash your fucking face in'. Mr Bird said that he then moved his car and stayed in his car and continued doing emails until the patient came over to his car and told him to leave. Mr Bird said that he did not swear at Patient F's neighbour and he could not use his solo protect device as it was not working that morning. The solo protect device records the incident if the user presses a button. Mr Bird called the Clinical Account Manager to report the incident. I have not seen any minutes on the file of the conversation between Mr Bird and the Clinical Account Manager."

The panel also referred to a record of a call to Fresenius from the mother of the patient referred to in the statement of Witness 6.

> *"Then was an argument, Neighbour reported Anthony pushed passed/ into wife and Patient reported she overheard Calea Nurse call neighbour a fucking idiot.*
>
> *Patient reported she went up to Nurse and asked if was there to see wasn't this type of behaviour/ trouble in street Patient F he replied yes and she asked him to leave as didn't Mum reported Neighbour has Leukaemia and awaiting a Bone marrow transplant and might have been having a bad day and not saying Neighbour may or may not have been just as bad and also Nurse having a bad day and didn't want to get anyone in trouble but doesn't want anyone with that type of aggression around her daughter or upsetting neighbours as all the neighbours know each other and get on well"*

The panel determined that Mr Bird displayed aggressive behaviour towards Witness 6 during their confrontation. Witness statements indicated that Mr Bird shouted and approached Witness 6 in a way that could be perceived as confrontational. While his actions were recognised as aggressive, there was no evidence to suggest that Witness 6 felt genuinely intimidated during the encounter. Consequently, the panel found charge 12 proved on the basis that Mr Bird was aggressive, but not on the basis of his being intimidating.

Charge 13

13) On 1 December 2022, behaved in an intimidating and/or aggressive manner towards Colleague A;

This charge is found proved.

The panel considered the witness statement from Colleague A, emails, and a video from the incident.

The panel took into account the witness statement of Colleague A, which stated:

“In advance of the meeting I sent Mr Bird an equipment return form to complete. It is important to complete the equipment return form as this is where the passwords for the Ipads should be recorded to ensure that we can use them…

When I arrived there was no parking inside McDonalds so I drove round to a lay by and pulled in directly behind Mr Bird's car…Mr Bird opened his car boot and I said hello to him but he did not say anything to me and just looked at me. He had never been hostile towards me prior to this. I can recall him looking very different in that he had facial hair and was acting really cold, like a different person. Mr Bird took two items out of his boot and put them on my car bonnet. They were boxes which contained literature and equipment so they were not light. I asked him not to put the boxes there and asked him to wait so that I can document what I was receiving back from him. Mr Bird paused then he gave me a ruck sack full of enteral feed. I asked him if he could discard it and he said no as it was not his responsibility. His tone was aggressive and I felt uncomfortable at that point.

Mr Bird then took his phone out and placed it on the ridge inside his car boot with a camera facing me and I asked him whether he was recording me and he said that he was recording me so that he had proof of 'anything and everything'. I told him that I did not give consent to be recorded and he raised his voice over me and said that he is a private citizen and was pointing at me. It was difficult to obtain the password for the Ipad from Mr Bird but he gave it to me eventually but said it really quickly.

I started putting the boxes in the car and whilst I was doing this, he was piling more boxes on top of my car roof. I stopped and waited for him to get everything out of his car and then he said 'people lie about me all the time'. Mr Bird handed me the last item which was heavy and then he said 'Merry Christmas' in a harsh tone and got back in his car and slammed the door. He had to wait until I had finished loading the boxes in my car as I was parked right behind him.

Mr Bird made me feel nervous during the interaction as he was very harsh and I did not consent to being filmed. I was crying and felt shaky after the incident. He made

me feel like this because he raised his voice, was pointing at me, speaking over me and he passed the boxes to me in a hard way (the boxes were quite heavy). Whenever I had seen Mr Bird before, he had always been quite pleasant and had never acted like this…

I would have expected Mr Bird, as a registered nurse, to have behaved professionally in that situation. Even if he was upset, he should not have filmed me without my consent and he should not have been aggressive with me as this is not how I would expect a nurse to behave..."

The panel considered an email Colleague A sent following the incident on 1 December 2022 and her completed written statement. The panel noted that in the email, Colleague A states: *"I felt intimidated by Anthony during our short meeting due to his aggressive behaviour. When I left the scene, I was physically shaking and tearful."*

The panel considered the email sent by Witness 5 to Mr Bird dated 7 December 2022 to *"cease all contact with Fresenius Kabi immediately and provide proof that you [Mr Bird] have deleted the video, which the other party gave you no consent to film."* It also considered Mr Bird's response to Witness 5's email on 7 December 2022, where he states: *"[Witness 5], I no longer work for you, I am no longer a nurse, this is harassment please do me a favour and don't contact me again, as a precaution you will be blocked."*

The panel considered the video of the interaction and noted Mr Bird's unprofessional behaviour during the transfer of equipment. This meeting was intended as a formal handover between two professionals, yet Mr Bird demonstrated a lack of respect for Colleague A's requests by continuing to video the exchange despite her objections. The panel noted that Colleague A described his behaviour as raising his voice, pointing at her, and disregarding her instructions regarding the handling of the equipment.

Regarding the issue of recording without consent, Mr Bird filmed the encounter without Colleague A's permission, which contributed significantly to her feelings of intimidation. Although recording in public does not require consent, the panel deemed it inappropriate in the context of their work related meeting.

The panel noted that Colleague A reported feeling nervous, shaky, and tearful following the incident. The panel determined that as a registered nurse, Mr Bird was expected to conduct himself professionally, especially during a formal equipment handover in any work environment. Given that Colleague A experienced distress and reported that she was shaking and crying after the encounter, the panel concluded that Mr Bird's actions were intimidating and aggressive. Consequently, the panel found charge 13 proved.

Fitness to practise

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

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

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

Decision and reasons on misconduct

The panel considered the NMC's written representations on misconduct and impairment and accepted the advice of the legal assessor.

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

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

Unprofessional and aggressive behaviour in charges 1, 2(a), 2(b), 2(c), 12 and 13

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

***1.1** treat people with kindness, respect and compassion*

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

***2.1** work in partnership with people to make sure you deliver care effectively*

8 Work cooperatively

To achieve this, you must:

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

***8.2** maintain effective communication with colleagues*

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

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

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 considered the NMC Guidance on "How we determine seriousness" (FtP-3, last updated on 27 February 2024), which states:

"Some behaviours are particularly serious as they suggest there may be a risk to people receiving care; examples include:

- *conduct or poor practice which indicates a dangerous attitude to the safety of people receiving care,"*

The panel found that the charges against Mr Bird reveal a troubling pattern of aggressive and unprofessional behaviour. Specific incidents, such as throwing an iPad during a shift, shouting at colleagues, and using inappropriate language towards staff members, demonstrate a failure to meet the standards expected in the nursing profession. Furthermore, his intimidating behaviour towards both colleagues and patients raises significant concerns about the safety and well-being of family members and carers. The panel concluded that such actions undermine the trust placed in nurses.

Regarding charge 12, the panel noted that it involved members of the public rather than patients. Mr Bird's shouting in the street led to Patient F's mother expressing that she does not want her child treated by him. In the Ulysses form, Patient F's mother stated her preference for Mr Bird to refrain from providing treatment, even if that means her daughter would miss necessary care.

For charge 13, the panel noted that the incident occurred in a McDonald's car park, potentially witnessed by others, and within the context of a formal work related handover. There was a clear disregard for the professional standards expected of nurses.

The panel therefore found that Mr Bird's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Dishonestly and misleading conduct in charges 3, 4, 5, 6

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*

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

The panel took into account the NMC Guidance "Serious concerns which are more difficult to put right" (FtP-3a, last updated on 27 February 2024), which states:

- *"deliberately using or referring to false qualifications or giving a false picture of employment history which hides clinical incidents in the past, not telling employers that their right to practise has been restricted or suspended, practising or trying to practise in breach of restrictions or suspension imposed by us;"*

The panel determined that by failing to disclose an ongoing investigation with the NMC in his job application, he misrepresented his professional situation to a prospective employer. Furthermore, informing the NMC that he was unemployed while he was, in fact, working with Fresenius shows a deliberate attempt to mislead the regulator. The panel determined that these actions undermine the principles of honesty and integrity that are crucial in the nursing profession. The panel also determined that failing to disclose this information led to employment where Mr Bird's alleged shortcomings were not considered by the employer, potentially putting patients at significant risk of harm. The panel therefore found that Mr Bird's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Medication errors and patient care in charges 7, 8, 9, 10 and 11

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 *make sure you deliver the fundamentals of care effectively*

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.1 *pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages*

6.2 *maintain the knowledge and skills you need for safe and effective practice*

8 Work cooperatively

To achieve this, you must:

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

8.2 *maintain effective communication with colleagues*

8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

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

8.6 *share information to identify and reduce risk*

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.1 *complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event*

10.2 *identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*

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

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

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

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

To achieve this, you must:

16.1 *raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices*

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

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

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*

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

Charge 7 – 11 involved a series of similar clinical errors made within a short period of time. Actions such as not reporting a medication error, incorrect documentation, and carrying out procedures without being authorised to do so reflect a pattern of clinical practise that could negatively impact on patient care and cause harm. The panel determined that collectively, Mr Bird's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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. At 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.'*

At 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/their fitness to practise is impaired in the sense that s/he:

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

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that all four limbs (a, b, c and d) of the Grant test are engaged for both past and future actions.

The panel determined that Mr Bird put patients and colleagues at risk of unwarranted harm, particularly highlighting an incident involving Patient F, whose mother reportedly overheard a concerning interaction with Mr Bird and subsequently requested that he not undertake his clinical visit to Patient F. The panel also took into account Mr Bird's aggressive and intimidating behaviour toward staff, which can contribute to a toxic work environment, decrease team morale, and ultimately lead to risk of harm. Furthermore, the panel considered Mr Bird's documentation and medication errors and noted that while no actual harm resulted from these errors, there was a significant risk of potential harm. The panel also considered Mr Bird's dishonesty regarding his NMC investigation and work history as particularly serious, as this led to an employer unknowingly putting patients at risk by employing a nurse under investigation by the NMC.

The panel determined that Mr Bird's misconduct had breached fundamental tenets of the nursing profession and brought its reputation into disrepute. It was satisfied that public

confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel went on to consider whether Mr Bird was liable in the future to place patients at risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly. The panel determined that in the absence of any information from Mr Bird to demonstrate his insight, remorse and remediation, there was a risk of repetition and the limbs of Grant are therefore also engaged in respect of the future.

The panel considered the principles derived from *Cohen*:

- Whether the concern is easily remediable;
- Whether it has in fact been remedied; and
- Whether it is highly unlikely to be repeated.

In considering whether the concern is easily remediable, the panel took into account the nature and seriousness of the charges found proved. It noted that some of the charges found proved are directly linked to Mr Bird's clinical practice, and therefore are in theory capable of being remedied. In terms of Mr Bird's behaviour and the dishonesty element, the panel acknowledged that this would be difficult to put right. It referred to the NMC Guidance "Can the concern be addressed?" (FtP-15a, last updated on 27 February 2024):

> *"…In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice."*

The panel next considered whether the misconduct in this case has been remedied. The panel concluded that Mr Bird has not engaged with the NMC investigation process in any meaningful way. He has not provided any evidence of insight, remorse, remediation, or strengthening of practice.

While considering Mr Bird's responses during the investigation at a local level, the panel perceived a tendency to deflect blame rather than take accountability for his actions.

The behavioural issues indicated a concerning attitude reflected in his dishonesty towards both the NMC and his employer to achieve financial gain, ultimately placing patients at risk by allowing him to be employed without the knowledge of an ongoing investigation.

Although Mr Bird made some admissions regarding his clinical practice, calling them oversights and indicating what he might do differently in the future, the panel recognised a lack of reflection regarding the broader implications of his conduct. Furthermore, the panel found that Mr Bird's dishonesty and aggressive behaviour towards colleagues and the public represent a deeper attitudinal concern, which is often more challenging to remediate. It determined that Mr Bird has not acknowledged the behavioural issues that have been raised. Consequently, there is no evidence to indicate that he has taken responsibility for his conduct or that he recognises how others perceive his behaviour.

The panel went on to consider whether Mr Bird's actions are highly unlikely to be repeated. The panel is of the view that there is a risk of repetition given that there is insufficient evidence to indicate that Mr Bird has taken steps to address the misconduct in this case or to strengthen his practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required on wider public interest grounds. It noted that the proven charges and misconduct identified in this case are serious and include dishonesty. It considered that a fully informed member of the public would be appalled, and that public confidence in the nursing profession would be undermined, if a finding of impairment was not made.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Bird off the register. The effect of this order is that the NMC register will show that Mr Bird has been struck off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel considered the NMC's written representations on sanction and accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Risk of patient harm.
- Lack of meaningful insight.
- Disrespectful communication with the NMC.
- Attitudinal concerns.
- Premeditated deception for financial gain.
- Aggressive and inappropriate behaviour on more than one occasion against other members of staff in the vicinity of patients.
- Abuse of position of trust.

The panel also took into account the following mitigating features:

- Mr Bird made limited admissions at local level in respect of his clinical practice.
- No evidence of actual patient harm.

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

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

The panel next considered whether placing conditions of practice on Mr Bird's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case, particularly dishonesty, intimidating or aggressive conduct was not something that can be addressed through retraining or supervision and in any event the panel had no evidence that Mr Bird would comply with conditions given that he has indicated that he would not be retuning to nursing practice. Furthermore, the panel concluded that the placing of conditions on Mr Bird's registration would not adequately address the seriousness of this case and would not protect the public and satisfy the public interest.

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 identified there is an absence of real insight into the nature of Mr Bird's misconduct and there is a risk of repetition. The panel determined that Mr Bird's misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mr Bird's actions and the harmful deep seated attitudinal issues are fundamentally incompatible with Mr Bird remaining on the register.

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

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

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

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

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

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Interim order

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

The panel took into account the NMC's written representations on an interim order and accepted the advice of the legal assessor.

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 due to cover any potential period of appeal and to protect the public.

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

That concludes this determination.

This will be confirmed to Mr Bird in writing.