Conduct and Competence Committee

Substantive Hearing

Various dates throughout 2012

Nursing and Midwifery Council, First Floor, 61 Aldwych, London, WC2B 4AE

Name of Registrant:	**Catherine Igbokwe**
NMC PIN:	**67C0095O**
Part of the Register:	**Registered Nurse, Adult**
Type of Case:	Misconduct
Panel Members:	Susan Sauter (chair – registrant member) Jeffrey Heath (registrant member) Wilma Hainsworth (lay member)
Legal Assessor:	Nicholas Leviseur
Panel's Secretary:	Peter Newman

Representation -

The Nursing and Midwifery Council (NMC) were represented by John Lucarotti and Shelley Brownlee, Regulatory Legal Team (RLT).

Catherine Igbokwe was not present and not represented.

Facts proved:	**Charges 2(a),(b), (c), (d), (e), 3(a),(b), 4(b), (c), 5(b), (c) and 6(b)**
Facts not proved:	**Charges 1, 4(a) and 5(a)**
Fitness to practise:	**Impaired**
Sanction:	**Striking off order**
Interim order:	**Interim suspension order imposed for 18 months**

Determination on proceeding in the absence of Ms Igbokwe:

The registrant was served with the notice of hearing on her registered address by recorded delivery and first class post on 5 January 2012. Notice has also been sent the RCN, who previously acted on behalf of the registrant, on the same date. The panel is satisfied that service has been affected in accordance with the Rules.

The panel is satisfied that all reasonable efforts in accordance with the Rules have been made to serve the registrant. The registrant has not attended and has not responded to the notice of hearing. The panel noted a response from the RCN dated November 2010 indicating that the registrant did not wish to respond to the allegations and did not wish to engage in the matter any further. The panel has decided that the registrant has voluntarily absented herself from today's hearing. No useful purpose would be served by an adjournment as she would be unlikely to attend on any future occasion. The panel noted that there are 4 witnesses and 3 registrants, each of whom is represented, in attendance. The panel has decided that the registrant will not be prejudiced by proceeding today and there is a clear public interest in dealing with this hearing expeditiously. The panel has decided that it would be in the interest of justice and fairness to proceed in the absence of the registrant.

Determination on Mr Suter's application that Ms Enriquez's statement should not be admitted

The panel has considered the submissions made by all parties. It has heard and accepted the advice of the legal assessor.

Mr Suter and Ms Misczanyn submit that Ms Enriquez's undated second statement be not admitted into evidence. It is suggested by Mr Suter and Ms Misczanyn that directions made at a preliminary meeting held on 19 August 2011 ordered that witness statements which were to be relied upon were to be produced prior to this hearing and served on all parties by 30 November 2011. The panel has been told that Ms Enriquez has supplied a new statement at the commencement of this hearing which differs from her original statement and some 20 pages long. Mr Suter and Ms Misczanyn submit that her original statement should stand as her evidence in chief.

Ms Russell-Mitra, on behalf Ms Enriquez, submits that preventing the statement being admitted would effectively 'gag' Ms Enriquez. She submits that Ms Enriquez's earlier statement did not accurately represent her views of the events which led to the allegations. Ms Russell-Mitra further submits that it would be unfair and unjust to prevent Ms Enriquez from admitting her latest statement.

Mr Lucarotti directed the panel to Rule 18(8) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (amended 6 February 2012) which states that "The Chair of the preliminary meeting shall keep a record of the directions given and shall

send written confirmation of such directions to the parties promptly". The NMC sent a decision letter on 25 August 2011 stating that the chair's direction in relation to witnesses was that "the witness statements of each of the NMC witnesses be allowed to stand as their evidence in chief, with liberty for all parties to pose supplementary questions of each witness". There were no issues raised with the accuracy of the decision letter. None of the four parties present and represented made any representations about the contents of this letter and none sought to correct or amend it in any way. He submits the application is premature and the NMC should be allowed to open its case without that panel needing to make a determination on this application at this stage. Whilst not supporting Ms Enriquez's application Mr Lucarotti did not seek to oppose any application she might make in due course.

The panel reminds itself that Rule 18 (f) provides that "Directions given by the Chair of the preliminary meeting may include, but shall not be limited be to …. where agreed between the parties, a direction that the witness statement of witness shall stand as the evidence in chief of that witness". The panel notes that all the parties were not present at the preliminary meeting of 19 August 2011; Ms Igbokwe and Ms East were neither present nor represented. The panel concludes that no order under Rule 18(f) should have been made. The panel further reminds itself that the order which was actually made is in the terms already set out above and is absolutely clear in referring only to witnesses to be called by the NMC. Ms Enriquez is not and never will be a witness for the NMC.

The panel has considered whether, if it is wrong about both Rule 18(5)(f) and the actual determination of the preliminary meeting, it would be appropriate to restrict the evidence of Ms Enriquez to that served by her former representatives at the end of November 2011. The panel reminded itself that it is required to conduct these proceedings in such a way as the interest of justice demand. The parties have not been able to point to any unfairness to them that would result from the admission of this statement. They have not suggested that they cannot cross examine Ms Enriquez nor have they suggested that their case would have been prepared or conducted in any different way as a result of this second statement.

The panel can itself see no unfairness in admitting this statement although it recognises that the question as to whether Ms Enriquez will in fact give evidence does not fall to be determined until after the close of the NMC's case. The panel considers that there is no proper reason for delaying the reading of the charges. If any party requires further time to consider the nature and extent of any admission to be made by them in the light of this second statement, the panel will view any such application sympathetically.

Charges in relation to Ms Igbokwe read:

That you, whilst employed by Care UK Limited as a Registered Nurse at Lennox House between 28 November 2007 and 8 December 2007:

1. Failed to document the care and assistance provided to Resident A from 2200 hours on 6 December 2007 up to 0600 hours on 7 December 2007.

2. Failed to identify Resident A's deteriorating condition and/or take appropriate action on 7 December 2007 in that :

(a) At 0600 hours when you noted that Resident A was "very agitated and fidgety", and "had a tendency to lay herself on the floor" you did not seek medical assistance,

(b) At 0800 hours, when you noted that Resident A was suffering from spasms of 5-7 minutes duration, you did not seek medical assistance,

(c) When you finished your shift at approximately 0910 hours, you did not:

(i) communicate Resident A's need for medical attention during the handover, and

(ii) document Resident A's need for medical attention in the daily record

(d) When you commenced the night shift at approximately 2000 hours, you failed to take any action after obtaining urine test results at 2000 hours which showed abnormal glucose and ketones levels;

(e) At 2200 hours when you noted "obvious dysphasia" you did not seek medical assistance.

3. Failed to identify Resident A's deteriorating condition and/or take appropriate action on 8 December 2007 in that :

(a) At 0100 hours, when you noted that Resident A "has spasms of the whole muscles lasting for nearly half an hour" you did not immediately call emergency medical services.

(b) Between 0600 hours and 0830 hours, when you left Resident A lying on a mattress whilst she was in continuous muscle spasm and unresponsive, you did not call emergency medical services,

4. Despite noting that Resident A had problems swallowing on multiple occasions between 6 December 2007 and 8 December 2007, you:

(a) Failed to carry out a basic assessment of Resident A's swallowing ability throughout the relevant period.

(b) Fed Resident A fluids orally through a syringe.

(c) Did not seek guidance from the Speech and Language Therapist or the GP.

5. Failed to ensure that Resident A's health records were adequately completed during her time at the Home between 28 November and 8 December 2007, in that you:

(a) Failed to ensure that the relevant Care Plans were completed;

(b) Failed to update and adhere to the Care Plans that had been completed previously; and

(c) Failed to ensure that the various Risk Assessment forms were completed and updated.

6. Failed to take appropriate steps to protect Resident A from the risks associated with Diabetes between 28 November and 8 December 2007 in that:

(a) You failed to put a diabetic care plan in place; and

(b) You failed to periodically monitor Resident A's blood glucose through urine tests and/or blood tests;

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

Determination on the panel's motion to require the re-call of (witness) Ms Irene Clarke:

The panel informed the parties to this hearing that, of its own volition, it would like to re-call the witness Irene Clarke. The panel, having read further material in this case, and having received a document relating to the transfer of Resident A to hospital, have further matters that it would like to raise with the witness. The panel had the opportunity to spend yesterday reading the statement of Miss Clarke and the documents which she produced. That opportunity had not been available to it until after Miss Clarke had finished giving her evidence late on Wednesday evening.

Mr Lucarotti, for the NMC, was neutral on this issue.

Mr Suter, Ms Misczanyn and Ms Russell-Mitra opposed the application. They reminded that panel that the relevant parts of the Rule (Rule 22) were as follows:-

"22:

(3) Witnesses -

(a) shall first be examined by the party calling them;

(b) subject to rule 23(4) and (5), may then be cross examined by the opposing party;

(c) may then be re-examined by the party calling them; and

(d) may then be questioned by the Committee.

(4) Any further questioning of the witnesses shall be at the discretion of the Committee.

(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents."

The panel has accepted the advice given to it by the legal advisor.

Mr Suter submitted that Rule 22 (4) and (5) does not adequately deal with the scenario of recalling a witness who has been previously heard and released. The other represented registrants supported this submission.

The panel is mindful of the fact that although the case for the NMC was closed after Miss Clarke was released none of the Registrants have begun to open or call evidence in support of their case. The panel has also had in mind the position of the Registrants who are not present. None of the Registrants pointed to any specific injustice or difficulty which would or might flow from the recalling of this witness.

In light of the competing factors and of the need to ensure justice is done for all the parties, the panel is satisfied that it has powers under Rule 22(5) to recall this witness and is further satisfied that the position of all the parties will be properly protected by affording each party the opportunity to ask the witness questions following the panel's questions.

In these circumstances, the panel has determined to recall Irene Clarke of its own volition.

Determination under Rule 24(7) in relation to Ms Igbokwe:

The panel of its own volition considered whether there was a case to answer under Rule 24(7) in respect of charge 1 and charge 2(c)(ii) both of which allege a failure to document matters in the patient's daily record. The written notes available to the panel at exhibit 1 p.74-76 contain no entries documenting the care and assistance provided to Resident A between 22.00 on 6 December and 06.00 on 7 December. Likewise there is no note documenting Resident A's need for medical attention at about the time that this registrant finished her shift in the morning of 7 December 2007.

The panel heard oral evidence from Mrs Gibson that there was a parallel system of documentation using a computer system at the home. The panel has not been provided with any evidence as to the contents of that parallel record and it has not been provided with any computer printouts. There is no evidence before the panel one way or another as to whether anyone let alone Ms Igbokwe used this recording system.

In these circumstances the only evidence before the panel is that which has been presented to it in written form. Those written records do not show any relevant entries by Mrs Igbokwe.

Having considered the matter carefully the panel has concluded that there is evidence before it that this registrant did not make the relevant notes in the patient's daily record.

The panel considered whether charge 2(c)(ii) required the registrant to document the patient's need for medical attention in specific terms. The panel accepts that what was documented revealed such a serious situation as would alert any competent registered nurse to call for medical attention. The panel however is clear that the registrant did not, as the charge alleges, document the need for medical attention in the daily record in clear and unambiguous terms.

The panel determined that there is evidence before it that would be sufficient to prove the facts alleged in this charge. The panel finds there to be a case to answer in respect of charges 1 and 2(c)(ii).

Determination on application under Rule 24(8) to dismiss charges 1(d) and (g) in relation of Ms Baquerfo and charge 6(a) in relation to Ms Igbokwe:

The panel heard the submissions made by Ms Misczanyn, on behalf of Ms Baquerfo. Mr Lucarotti opposes the application.

The panel considered charge 6(a) under Rule 24(8) in relation to Ms Igbokwe on its own volition.

The panel has received and accepted the legal assessor's advice. He referred to the case of Baldry v Finetuck in support of the proposition that a confession well proved is the best evidence.

In essence, Ms Misczanyn submits that as the application under Rule 24(8) in respect of charges 1(d) and (g) faced by Ms Enriquez was successful it stands to reason that the same charges faced by Ms Baquerfo should be dismissed under the same Rule. Ms Misczanyn submits that as Ms Baquerfo was not the named or key nurse for Resident A on 7 December 2007 she could not be responsible for failing to initiate or putting in to place care plans. She further submits that although misconduct was admitted in respect of each of these charges those admissions are not determinative and it is still a matter that the panel is required to determine under the Rules.

Mr Lucarotti referred the panel to Ms Baquerfo's earlier admission to the facts and misconduct to both charges 1(d) and (g). He also submits that, whilst the charges are identical, the responsibilities held by Ms Baquerfo and Ms Enriquez on 7 December 2007 differed. The panel accepted that Ms Enriquez was not the named or key nurse on that day and that it was only her second day working at the home. Mr Lucarotti submits that Ms Baquerfo had more seniority than Ms Enriquez and, therefore, had more responsibility.

The panel note that the admissions made by Ms Baquerfo in relation to charges 1(d) and (g) have not been withdrawn whether in respect of the facts or misconduct. Ms Misczanyn despite being invited to consider this by the Legal Assessor made it clear that that she does not wish to go behind those admissions. The panel considers that that is precisely what she is attempting to do by making this submission but it recognises that the Rules permit her to do precisely this.

In relation to charge 1(d):

The panel has previously concluded when considering the submissions made in this respect by Ms Enriquez that there was no evidence before it that it was the responsibility of Ms Enriquez to put a care plan in place.

The written evidence of Mrs Gibson (exhibit 1 p.161) in relation to nursing policy says that it is the responsibility of the named nurse to ensure "that assessments have been carried out and care planned", and "to ensure that the identified care plan is implemented". The evidence of Mrs Bradwell Smith was to like effect. There is evidence before the panel that Ms Luna was the named nurse for Resident A and that she was working on the day of admission. The panel has heard that the Care UK policy (exhibit 1 p150) was that the key worker had the responsibility for delegating tasks to a specific nurse. There is no evidence before the panel that this was done by Ms Luna. It would therefore not have been the responsibility of Ms Baquerfo, as an RGN who was not the named nurse or the key nurse, to put a diabetic care plan in place.

In the light of this evidence the panel is not satisfied that there is any evidence before it which would allow it to conclude that Ms Baquerfo was responsible for putting a diabetic care plan in place. It follows that the submission in respect of charge 1(d) is accepted.

In relation to charge 1(g):

The panel has previously concluded that there is evidence before it which would allow it to conclude that Resident A was in pain on the 7 December between 11.00 and 22.40. The evidence of Maureen Clarke was that she had the clear impression that her aunt was trying to stretch her hand towards the panic alarm but she could not do so. Her impression of her aunt at the time was "of someone lying there with her mouth open to scream but with no sounds coming out." The evidence of Ms Clarke combined the serious condition revealed by the nursing notes is such as would justify the panel in concluding that Resident A was in a great deal of pain throughout the period between 11.00 and 20.40 on 7 December 2007.

Unlike Ms Enriquez, there is evidence which would allow the panel to conclude that Ms Baquerfo knew Resident A's history and was aware of her condition (patient records in exhibit 1 p.70-71, 75, 99-100 and 101-105 which show involvement with Resident A on 5 days between her admission on 28 November 2009 and 7 December 2007). There is evidence that Ms Baquerfo knew of Resident A's diabetes as she had made an entry stating "Resident A is on a diabetic diet" into that resident's care plan (p.101 of exhibit 1). Ms Baquerfo was with Resident A for most of 7 December 2007, including when the doctor attended at about 13.30.

The panel has before it evidence which would if accepted enable it to conclude that there were significant differences between Ms Enriquez and Ms Baquerfo in terms of their specific responsibilities towards Resident A. Ms Enriquez had various duties throughout the home and was only intermittently with Resident A. It was only her second day of working at the home and she had no prior knowledge of Resident A. The panel reminds itself that there is evidence which would allow it to conclude that the pain which Resident A suffered must have been significant. A doctor attended her at about 13.30 and prescribed an antibiotic (p.75 of exhibit 1).

In the absence of Ms Luna, the named nurse, there was a responsibility on some one to initiate a care plan for Resident A's pain management. Because pain may arise in circumstances which have arisen in unforeseen ways it may be necessary to initiate a plan when one had not hitherto existed. To initiate a plan, as opposed to giving reactive pain relief, requires some knowledge of the resident and a certain level of responsibility. The panel is satisfied that there is evidence before it which would allow it to conclude that Ms Baquerfo had that knowledge and was with Resident A for long periods on 7 December 2007 such that as a RGN she had the responsibility to initiate this care plan despite not being the named nurse nor having been expressly delegated the task by the named nurse.

For these reasons the panel is satisfied that there is sufficient evidence before which would enable it to conclude that the admission made by Ms Baquerfo that the facts disclosed misconduct was amply supported by the evidence presently available to it.

It follows that the panel is satisfied that there is sufficient evidence before it in relation to Impairment for there to be a case to answer in respect of charge 1(g).

In relation to charge 6(a) faced by Ms Igbokwe:

As the panel has already noted in respect of submissions made on behalf of both Ms Enriquez and Ms Baquerfo, the evidence before the panel is that it was the responsibility of the named nurse, in this case Ms Luna, to prepare care plans. There is no evidence before the panel that Ms Luna delegated this responsibility to Ms Igbokwe, in accordance with the Care UK policy. Diabetes is not to be viewed as an acute condition in the way that pain may be. It would therefore not have been the responsibility of Ms Igbokwe, as an RGN who was not the named nurse or the key nurse and had not been delegated the task, to put a diabetic care plan in place.

In the light of this evidence the panel is not satisfied that there is any evidence before it which would allow it to conclude that Ms Igbokwe was responsible for putting a diabetic care plan in place. It follows that charge 6(a) is dismissed under Rule 24(8).

Determination on proceeding in the absence of Ms Igbokwe on 9 July 2012:

The registrant was served with the notice of hearing on her registered address by recorded delivery and first class post on 26 March 2012. This notice notified Ms Igbokwe of the resuming dates for May and July. The panel is satisfied that service has been affected in accordance with the Rules.

The panel is satisfied that all reasonable efforts in accordance with the Rules have been made to serve Ms Igbokwe. She has not attended the hearing at any stage and has not responded to any notice sent to her. The panel has decided that Ms Igbokwe has voluntarily absented herself from today's hearing. No useful purpose would be served by an adjournment as she would be unlikely to attend on any future occasion. The panel has decided that Ms Igbokwe will not be prejudiced by proceeding today whilst the Registrants who are here would undoubtedly be prejudiced if today's hearing is adjourned. There is a clear public interest in dealing with this hearing expeditiously. The panel has decided that it would be in the interest of justice and fairness to proceed in the absence of the registrant.

Determination on service (29 October 2012):

The panel received evidence from Ms Brownlee on behalf of the Nursing and Midwifery Council (NMC) concerning service of the notice of hearing.

The panel heard submissions from Ms Brownlee that the notice of hearing was in proper form and had been served in accordance with the NMC Fitness to Practise Rules 2004 (the Rules).

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

The panel noted that the Notice of Hearing had been posted by 1st class post and recorded delivery on 28 August 2012 to Ms Igbokwe's registered address and that it contained the correct and relevant details of the hearing.

The panel concluded that service had been effected in accordance with Rules 11 and 34.

Determination on proceeding in the absence of Ms Igbokwe (29 October 2012):

The panel considered whether to proceed notwithstanding the absence of Ms Igbokwe, under Rule 21 of the Rules, or whether to adjourn the hearing, under Rule 32 of the Rules.

The panel had regard to all the information before it. It heard submissions from Ms Brownlee, on behalf of the NMC and accepted the advice of the legal assessor.

Ms Brownlee submitted that the panel should proceed in Ms Igbokwe's absence.

Mr Suter, on behalf of Ms Ali, Ms Miszczanyn, on behalf of Ms Secuya , and Ms Russell-Mitra, on behalf of Ms Enriquez, endorsed Ms Brownlee's submissions.

The panel, in considering this matter, had regard to the public interest in the expeditious disposal of the case, the potential inconvenience caused to a party or any witnesses to be called by that party, and fairness to Ms Igbokwe.

The panel has exercised the utmost care and caution in coming to its decision.

The panel, following its determination on service, pursuant to Rule 21(2)(a), was satisfied that all reasonable efforts had been made to serve the Notice of Hearing on Ms Igbokwe.

Ms Igbokwe has not requested an adjournment of the case. She has not attended at any hearing and has not engaged with these proceedings.The panel considered that adjourning the hearing would serve no purpose, there being no indication that Ms Igbokwe would attend on a future occasion.

In all of the circumstances, the panel concluded that it was in the public interest to proceed today, and that it would be fair and reasonable to do so.

For all these reasons the panel has determined to proceed in the absence of Ms Igbokwe.

Application from Ms Misczanyn to adduce two witness statements of Miss Baquerfo:

The panel heard an application from Ms Misczanyn, on behalf of Miss Baquerfo to adduce two witness statements in support of her client's case made by Miss Baquerfo on 7 December 2011 and 3 May 2012.

Ms Misczanyn referred the panel to Rule 24 (9) and Rule 31 of the Rules. She submitted that the witness statements were relevant to proceedings and that it would be unfair not to admit them at this stage, the fact finding stage as, she submitted some or all of the other Registrants might not be involved in the impairment stage of proceedings.

The panel heard submissions from Mr Suter, on behalf of Mrs Ali, from Miss Russell-Mitra, on behalf of Ms Enriquez and from Ms Brownlee on behalf of the NMC.

Mr Suter submitted that the evidence Ms Misczanyn sought to adduce was not relevant at this stage, as her client has made admissions to all the charges and has admitted misconduct in respect of them. He submitted that there was no fact or matter in issue between Miss Baquerfo and the NMC. Not only had she admitted the facts but the committee had already found all the charges against her proved. Further, he submitted that it would be wholly unfair to admit such evidence as he would not have the opportunity to cross-examine the author of the witness statements.

Miss Russell-Mitra adopted those submissions and amplified them.

Ms Brownlee submitted that since, under Rule 24(6) of the Rules, the NMC may present evidence supporting any of the alleged facts including those admitted by a Registrant it followed as a matter of basic procedural fairness that Ms Misczanyn should have the opportunity to present evidence in support of her client's case. She accepted that the panel would have to consider the potential effect of the evidence on each of the Registrants. She submitted that the weight to be placed on the evidence, which would be less than if the witness had given oral evidence, would be such as to reduce any unfairness.

The legal assessor referred the panel to Rules 11(3)(f), 24, 30 and 31 of the Rules which state:

11(3) The notice of hearing shall;

(f) inform the registrant of her right to adduce evidence in accordance with rule 31

24(1) Unless the Committee determines otherwise, the initial hearing of an allegation shall be conducted in the following stages—
(a) the preliminary stage (paragraphs (2)–(5));
(b) the factual stage (paragraphs (6)–(11));

(c) where the allegation is of a kind referred to in article 22(1)(a) of the Order, the impairment stage (paragraph (12));
(d) the sanction stage (paragraphs (13) and (14))…

(5) Where facts have been admitted by the registrant, the Chair shall announce that such facts have been found proved.

(6) The presenter shall open the Council's case and may present evidence in support of any alleged facts in the allegation, including those admitted by the registrant…

(9) Unless the Committee has determined that there is no case to answer under paragraphs (7) or (8), the registrant may present her case to the Committee and present evidence in support of her case.

(10) The Committee may hear final argument from the parties.
(11) The Committee shall deliberate in private in order to make its findings on the facts and then shall announce to those parties present the findings it has made.

30. Where facts relating to an allegation are in dispute, the burden of proving such facts shall rest on the Council.

31(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).

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

The panel first considered whether the statements had any relevance at this stage of proceeding. It concluded that they did not. Miss Baquerfo has admitted all the charges against her and misconduct in relation to those charges. At this stage the panel is not required to determine any facts or matters in relation to Miss Baquerfo. It has found all the charges proved in respect of her. The panel is thus only considering matters in relation to Mrs Ali, Miss Enriquez and Mrs Igbokwe at this stage.

The panel further decided that it would not be fair to the other Registrants to adduce the statements at this stage. There is no opportunity for the statements to be tested by the other parties, including Mrs Igbokwe who is not present, since Miss Baquerfo will not be giving oral evidence. The panel has reminded itself that the burden of proving every charge lies on the NMC and it closed its case months ago. The evidence which Miss Baquerfo seeks to adduce is almost wholly against the interests of the other Registrants. The panel having considered the provisions of Rule 24 is not satisfied that the purpose of the Rules is such as to enable Registrants, who have admitted every allegation and admitted misconduct and who have had findings of fact made against them, to give evidence. In the panel's view Rules 24(9) and (10) presuppose that the panel has yet to make its findings of fact. When, as in this case, the facts have been found they have little or no effect. Whilst the panel accepts that it would be required to decide the weight to be attached to this evidence, if it was to be admitted, it does not consider that this would properly address the fundamental objections to it. This may well

be evidence which the NMC would wish the panel to have before it because it is, at the fact finding stage, properly to be regarded as being “cut throat” in nature but the NMC’s case is closed and so far as Miss Baquerfo is concerned it adds nothing whatsoever to her case which at this stage of proceedings is also closed.

Miss Baquerfo can of course call evidence at the impairment stage which could quite properly draw attention to the relative culpabilities of the Registrants and set these events in context. That can be done whether or not any of the other Registrants are present or indeed whether any of the other Registrants are still involved in these proceedings.

The panel has for these reasons decided to refuse the application to admit either of these statements in evidence at this stage of the proceedings.

Determination on the facts

The panel heard submissions from Ms Brownlee, on behalf of the NMC, Mr Suter, on behalf of Mrs Ali, and Miss Russell-Mitra, on behalf of Ms Enriquez. It has considered all the evidence, both oral and documentary, adduced during the case.

In relation to the burden and standard of proof, the panel reminded itself that the burden of proof rests on the NMC throughout and that the standard of proof to be applied is the civil standard, namely the balance of probabilities.

The panel accepted the advice given to it by the legal assessor. In relation to the allegation of dishonesty faced by Mrs Ali, he referred the panel to the case of R v Ghosh [1982] Q.B. 1053. He advised the panel that when dealing with dishonesty there is a two-part test. First, whether according to the standards of reasonable and honest people what was done by the defendant was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails. If it was dishonest by those standards then the panel should apply the second part of the test; namely, to consider whether the defendant herself must have known that what she was doing was, by those standards, dishonest.

The allegations faced by all the registrants relate to the care afforded to Resident A, a resident at Lennox House Nursing Home (the home). Resident A was transferred to a nursing bed in Lennox House on 28 November 2007 until a residential EMI bed became available in Lennox House. On 8 December 2007, Resident A was transferred on an emergency basis to the Accident and Emergency department of Whittington Hospital, and then became an inpatient, where she died on the 29 December 2007.

The panel heard evidence from four witnesses called by the NMC. They were Mrs Braddell-Smith, Independent Nurse Consultant; Mrs Gibson, Director of Nursing, Clinical and Care Governance, Care UK; and Maureen and Irene Clarke, both nieces of Resident A.

The panel also heard evidence from Sheffa Uddin, Events Coordinator at Lennox House, called on behalf of Mrs Ali, and from Mrs Ali and Ms Enriquez.

Charges in relation to Mrs Igbokwe:

According to the duty rota (ex1/222), Mrs Igbokwe was on duty for the night shifts of 28 and 30 November and 1, 2, 6, 7 and 8 December 2007 at Lennox House. Mrs Gibson told the panel that Mrs Igbokwe was employed as a registered nurse at Lennox House (Day 3/48 E). The panel finds that Mrs Igbokwe was employed as a registered nurse at Lennox House between 28 November 2007 and 8 December 2007.

Charge 1:

"Failed to document the care and assistance provided to Resident A from 2200 hours on 6 December 2007 up to 0600 hours on 7 December 2007"

In order to find the charge proved the panel must be satisfied that care or assistance was given to Resident A from 22.00 on 6 December 2007 and 06.00 on 7 December 2007. The panel finds it entirely unacceptable that Mrs Igbokwe made no records in Resident A's nursing records; however this is not what is charged. There is no evidence before the panel that Mrs Igbokwe gave any care or that she assisted Resident A during this period. Regardless of whether she should have given that care or not, given that there was, or appears to have been, no care given by Mrs Igbokwe, the panel cannot possibly determine that she failed to document the care and assistance given by her when there is no evidence that she gave any. The panel, therefore, finds charge 1 not proved.

Charge 2(a):

"Failed to identify Resident A's deteriorating condition and/or take appropriate action on 7 December 2007 in that:

At 0600 hours when you noted that Resident A was "very agitated and fidgety", and "had a tendency to lay herself on the floor" you did not seek medical assistance"

Mrs Braddell-Smith's report sets out Resident A's deterioration between 6 and 8 December 2007 (exhibit 1 page 4). Mrs Igbokwe made a total of five entries in Resident A's nursing records between 06.00 and 9.10 on 7 December 2007.

With regard to the entry at 06.00, the panel is satisfied that experiencing spasms and a note of difficulty swallowing constitutes a deteriorating condition in Resident A. Mrs Braddell-Smith's report states that "best practice would have been that the night nurse contact the GP or call for an ambulance given [Resident A] was experiencing spasms". There is no evidence that Mrs Igbokwe sought any medical assistance following that entry. The panel is satisfied that, as the nurse on duty, Mrs Igbokwe had a duty to take appropriate action and that she failed to do so by not seeking medical assistance. It therefore finds charge 2(a) proved.

Charge 2(b):

"At 0800 hours, when you noted that Resident A was suffering from spasms of 5-7 minutes duration, you did not seek medical assistance"

With regard to the entry at 08.00, which noted spasms lasting 5-7 minutes, Mrs Braddell-Smith's report states that there was not "any proposed nursing intervention to manage her spasms". Again, as the nurse on duty, the panel is satisfied that Mrs Igbokwe had a duty to take appropriate action and that she failed to do so by not seeking medical advice. It therefore finds charge 2(b) proved.

Mrs Igbokwe made three further entries at 08.30, 09.00 and 09.10. These included clinical observations. These entries also emphasised Resident A's difficulty swallowing.

Charge 2(c):

"When you finished your shift at approximately 0910 hours, you did not:

> (i) communicate Resident A's need for medical attention during the handover, and
>
> (ii) document Resident A's need for medical attention in the daily record"

The evidence as to what happened at handover is derived from the second statement of Ms Enriquez. It is clear that during the handover process (para 46-54) there was a discussion about the need to call a doctor, which appears to have been initiated by Ms Enriquez, between herself and Miss Baquerfo. Mrs Igbokwe was present but there is nothing to suggest that it was she who had communicated the need to seek medical attention. The panel is satisfied that she had a duty to do so and that she failed in that duty. It finds charge 2(c)(i) proved.

Having examined the entries in Resident A's nursing notes (ex 1/74-75) the panel is satisfied that there is nothing noted by Mrs Igbokwe which documents Resident A's need for medical attention. Mrs Braddell-Smith's evidence was quite clear in this respect; the need for medical attention ought to have been noted. The panel finds charge 2(c)(ii) proved.

Charge 2(d):

"When you commenced the night shift at approximately 2000 hours, you failed to take any action after obtaining urine test results at 2000 hours which showed abnormal glucose and ketones levels"

The nursing notes at ex 1/75-76 show that no action was taken by Mrs Igbokwe in relation to the abnormal glucose and ketone levels which were recorded in the notes at 20.00. Mrs Braddell-Smith described those results as alarming. They were, and it was Mrs Igbokwe's duty to seek medical assistance immediately (Braddell-Smith ex 1/6 para 37). She did not do so. The panel finds charge 2(d) proved.

Charge 2(e):

"At 2200 hours when you noted "obvious dysphasia" you did not seek medical assistance"

Mrs Igbokwe noted obvious dysphasia at 22.00 on 7 December 2007(ex 1/76). She did not call for assistance. Mrs Braddell-Smith did not give direct evidence that this entry required medical assistance to be summoned, but (day 2/40 D) she said that there was a "grave emergency" throughout the time that Mrs Igbokwe was on duty that night. This was a further sign that should have alerted Mrs Igbokwe to the need to call for medical assistance. She did not do so. The panel finds charge 2(e) proved.

Charge 3 (a):

"Failed to identify Resident A's deteriorating condition and/or take appropriate action on 8 December 2007 in that:

At 0100 hours, when you noted that Resident A "has spasms of the whole muscles lasting for nearly half an hour" you did not immediately call emergency medical services"

The panel is satisfied that Resident A's condition deteriorated throughout 8 December 2007. As Mrs Braddell-Smith said this was a "grave emergency". At 01.00 Mrs Igbokwe noted that Resident A had spasm lasting nearly half an hour. She should have called the emergency services and did not. The panel finds charge 3(a) proved.

Charge 3(b):

"Between 0600 hours and 0830 hours, when you left Resident A lying on a mattress whilst she was in continuous muscle spasm and unresponsive, you did not call emergency medical services"

The nursing notes (ex 1/76) show the Resident's condition in the terms set out in the charge. Mrs Igbokwe did not call the emergency services. As Mrs Braddell-Smith said, she should have done so. The panel finds charge 3(b) proved.

Charge 4(a):

"Despite noting that Resident A had problems swallowing on multiple occasions between 6 December 2007 and 8 December 2007, you:

Failed to carry out a basic assessment of Resident A's swallowing ability throughout the relevant period"

The nursing records show that Mrs Igbokwe noted swallowing difficulties at 06.00, 08.30, 09.10 and 22.00 on 7 December 2007 (ex 1/74-76).

Mrs Igbokwe had a duty to carry out a basic assessment (ex 1/175). In evidence, Mrs Braddell-Smith (day 2/26) gave evidence about this. In summary the evidence establishes that when a nurse sees a patient with swallowing difficulties she should introduce a small amount of liquid into the mouth and if it is expelled should note that there is a swallowing difficulty. Since Mrs Igbokwe noted the swallowing difficulty it follows that she must have carried out the very basic test as explained by Mrs Braddelll-Smith.

In these circumstances, the panel finds charge 4(a) not proved.

Charge 4(b):

“Fed Resident A fluids orally through a syringe”

Mrs Igbokwe makes a clear entry in Resident A’s Daily record at 01.00 on 8 December 2007 stating “sips of diluted fruit were given using the syringe”. In evidence Mrs Braddell-Smith (day 2/23 D-E) said that this should not have been done save under medical direction. There is no evidence that any such direction was given. The panel therefore finds charge 4(b) proved.

Charge 4(c):

“Did not seek guidance from the Speech and Language Therapist or the GP”

The panel had sight of the Home’s policy entitled ‘Best Practice Guideline: Maintaining the Service User’s Nutritional Status’ (ex 1 p.175). The policy clearly states that “Service Users who have swallowing difficulties and are at risk of choking are referred to a speech and language therapist for assessment and advice”. Mrs Braddell-Smith gave evidence about this (day 2/23 B) which the panel accepts. There is no evidence before the panel that Mrs Igbokwe did seek guidance from the Speech and Language Therapist or the GP despite noting that Resident A was having difficulty swallowing on several occasions (ex 1/74-76). The panel finds charge 4(c) proved.

Charge 5(a):

“Failed to ensure that the Resident’s health records were adequately completed during her time at the Home between 28 November and 8 December 2007, in that you:

(a) Failed to ensure that the relevant Care Plans were completed”

The responsibility of the named nurse/key worker is set out by Mrs Braddell-Smith (Day 2/ 26); “the key worker, as outlined in the Care UK, is responsible for drawing up the care plan, registering the resident with the doctor and liaising with the relatives and professionals involved in a resident’s care”. The panel noted the email from Sheila Ali to Ms Irene Clarke at page 130 stating that “Myla is the specific member of staff who is allocated to [Resident A]”. It also noted Mrs Braddell-Smith’s evidence that “Resident A was allocated to Myla Luna as a key worker”. The panel also noted that Myla Luna is named as the ‘Name nurse/Key worker’ on Resident A’s Daily Record (ex 1/79).

The panel is satisfied that Myla Luna was Resident A’s key worker between 28 November 2007 and 8 December 2007. It therefore considered that it was not Mrs Igbokwe’s duty to complete the relevant care plans. Charge 5(a) is not proved.

In relation to charge 5(b):

“Failed to update and adhere to the Care Plans that had been completed previously”

The care plan for Resident A is (ex 1/99 and 101-105). In evidence Mrs Braddell-Smith told the panel that "the care plan should be updated continuously by all the individuals involved in providing care to any patient. It is a dynamic document which requires entries to be made on it regularly and contemporaneously" (day 2/28 G). Having considered the care plan the panel is satisfied that there was a failure by Mrs Igbokwe to note Resident A's dysphasia and the need for her to be assessed by a speech and language therapist. To that limited extent, it finds charge 5(b) proved.

In relation to charge 5(c):

"Failed to ensure that the various Risk Assessment forms were completed and updated"

The panel is not satisfied that it was a night nurse's duty to see that risk assessment forms were completed in the first instance. Mrs Braddell-Smith said in her evidence that "it is everybody's duty and responsibility to carry out and update the risk assessment especially the key worker of a relevant patient. In [Resident A]'s case it was Myla Luna". However, it is also clear from Mrs Braddell-Smith's evidence that no updating took place at all by Mrs Igbokwe; "None of the risk assessments were re-visited to clearly identify [Resident A]'s changing needs as her condition deteriorated. If they had, there would have been a clearer account for the nurses to advise the GP and they could have called the GP earlier" (Braddell-Smith day 2/29-32).

In these circumstances, the panel is satisfied that charge 5(c) is proved so far as updating various risk assessments is concerned.

Charge 6(b):

"Failed to take appropriate steps to protect the Resident from the risks associated with Diabetes between 28 November and 8 December 2007 in that:

You failed to periodically monitor the Resident's blood glucose through urine tests and/or blood tests"

Resident A was a diabetic. Ex 1/42 (the Discharge Action Plan to Lennox House) provides that Lennox House staff should monitor Resident A's blood sugar on a regular basis and should encourage compliance with her prescribed medication (and see also ex 1/101, the nutrition care plan). The panel is not satisfied that this could properly be required of a night nurse who would never be on duty at meal times and who would not be responsible for administering the relevant medication to Resident A.

In evidence Mrs Braddell-Smith (day 2/21 C) gave specific evidence about the events of 7 and 8 December 2007. At 06.00 Mrs Igbokwe noted that Resident A was suffering from spasms. She should at that stage have sought to test Resident A's blood glucose levels. At 20.00 on 7 December 2007 the nursing notes contained an entry giving the results of urine testing (ex 1/75). At 06.00 on 8 December 2007 (ex 1/76) when the Resident is noted as being incontinent of urine, Mrs Igbokwe should have done a urine test because of the earlier noted spasms at 01.00 and the results of 20.00 on 7 December 2007.

The panel is satisfied that it would not be proper to require Mrs Igbokwe to have carried out periodic monitoring of the patient's blood glucose by means of blood tests because for reasons already made clear in its determination for Ms Enriquez, the panel is not satisfied that testing strips which would have enabled this to be done were available during the relevant period in the home.

The panel is satisfied that Mrs Igbokwe had a duty to monitor the blood glucose levels by way of urine analysis once spasms had been noted by her at 06.00 on 7 December 2007. She did not do so. The panel therefore finds charge 6(b) proved in relation to the 7 and 8 December 2007 and in relation only to a failure to analyse Resident A's urine.

In summary, the panel finds charges 1, 4(a) and 5(a) not proved, and charges 2(a),(b), (c), (d), (e), 3(a),(b), 4(b), (c), 5(b), (c) and 6(b) proved.

Determination on proceeding in the absence of Ms Igbokwe (17 December 2012):

The panel considered whether to proceed notwithstanding the absence of Ms Igbokwe, under Rule 21 of the Rules, or whether to adjourn the hearing, under Rule 32 of the Rules.

The panel had regard to all the information before it. It heard submissions from Ms Brownlee, on behalf of the NMC and accepted the advice of the legal assessor.

Ms Brownlee submitted that the panel should proceed in Ms Igbokwe's absence.

The panel, in considering this matter, had regard to the public interest in the expeditious disposal of the case, the potential inconvenience caused to a party or any witnesses to be called by that party, and fairness to Ms Igbokwe.

The panel has exercised the utmost care and caution in coming to its decision.

The panel, following its determination on service, pursuant to Rule 21(2)(a), was satisfied that all reasonable efforts had been made to serve the Notice of Hearing on Ms Igbokwe.

Ms Igbokwe has not requested an adjournment of the case. She has not attended at any hearing and has not engaged with these proceedings. The panel considered that adjourning the hearing would serve no purpose, there being no indication that Ms Igbokwe would attend on a future occasion.

In all of the circumstances, the panel concluded that it was in the public interest to proceed today, and that it would be fair and reasonable to do so.

For all these reasons the panel has determined to proceed in the absence of Ms Igbokwe.

Determination on misconduct and impairment in relation to Miss Baquerfo and Mrs Igbokwe:

At the outset of the hearing, Miss Baquerfo admitted all charges against her and the panel accordingly found those charges proved. Miss Baquerfo also admitted misconduct in relation to charges 1 (c)(d)(f)(g) and (h).The admissions as to misconduct are not determinative because the Rules provide that this is a matter for the panel itself to decide. In relation to Mrs Igbokwe, the panel has previously found charges 2 (a)(b)(c)(d)(e), 3(a)(b), 4(b)(c), 5(b)(c) and 6(b) proved.

The panel has considered, on the basis of the matters found proved, whether Miss Baquerfo and Mrs Igbokwe's fitness to practise is impaired by reason of their respective misconduct. It has had regard to Ms Brownlee's submissions as well as those from Ms Misczanyn, on behalf of Baquerfo. The panel again considered all the evidence before it, including the testimonials, references and certificates produced on behalf of Miss Baquerfo at the impairment stage. Mrs Igbokwe has taken no part in these proceedings but the panel has reminded itself of the contents of a letter written on her behalf by the RCN to the NMC on the 18th of November 2010.

Ms Brownlee referred the panel to the cases of Roylance v GMC (No 2) [2000] 1 A.C. 311, CHRE v NMC & Grant [2011] EWHC 927 (Admin) and Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin).

Ms Misczanyn referred the panel to the cases of Cohen v General Medical Council [2008] EWHC 581 (Admin), Martin v GMC [2001] EWHC 3204 (Admin), Yeong v GMC [2009] EWHC 1923 (Admin) and Brennan v HPC [2011] EWHC 41 (Admin). She also referred the panel to the case of Grant.

The panel has received and accepted the legal assessor's advice.

In considering Miss Baquerfo and Mrs Igbokwe's fitness to practise, the panel reminded itself of its duty to protect patients and its wider duty to protect the public interest which includes the declaring and upholding of proper standards of conduct and behaviour, and the maintenance of public confidence in the profession and in the regulatory process.

The panel bore in mind that, in relation to impairment by reason of misconduct, there is a two stage process: it must first consider whether, on the facts found proved, the registrant's actions and omissions constitute misconduct, and secondly, if so, whether their fitness to practise is currently impaired by reason of that misconduct.

The panel noted Lord Clyde's dictum in the case of Roylance that misconduct is "a word of general effect involving some act or omission falling short of what would be proper in the circumstances".

In relation to Mrs Igbokwe:

In respect of each of the charges found proved, the panel is satisfied that Mrs Igbokwe failed to reach the standards which were properly to be expected of her as a nurse.

The panel considered that the charges found proved were extremely serious and could, when viewed cumulatively or independently, have placed Resident A at significant risk of harm. The facts found establish that at 6 and 8 am and 8 and 10 pm on the 7th and at 1, 6 and 8.30 am on the 8th of December Mrs Igbokwe failed to summon medical

assistance and see that Resident A was admitted to hospital when her condition was deteriorating alarmingly. She failed to act in any meaningful way when Resident A's condition was clearly deteriorating. The care and attention, or lack there of, given by Mrs Igbokwe was wholly inadequate. She failed to act when faced with a very seriously ill resident, and provided little care to a person who was almost entirely helpless and reliant on others. No nurse should ever behave in the way that Mrs Igbokwe did. The panel considered Mrs Igbokwe's failures to amount to a wholesale dereliction of her duty. The panel is in no doubt whatsoever that the charges found proved amount to serious misconduct.

The panel then went on to consider whether by reason of her misconduct Mrs Igbokwe's fitness to practise is now impaired.

Mrs Igbokwe has taken no part in these proceedings and the panel has received no information about her current circumstances beyond that disclosed in the letter from the RCN of the 18th December 2010 which indicates that she has retired from practice. There is no evidence of any insight or remediation by Mrs Igbokwe. The panel is in no doubt that there is a real risk that the misconduct identified will be repeated. Accordingly, the panel concluded that there is a risk of potential harm to members of the public were Mrs Igbokwe to be permitted to remain on the register without restriction. The panel is also in no doubt that public trust and confidence in the profession, and in its regulation would be significantly undermined were a finding of current impairment not to made.

In all the circumstances, the panel concluded that Mrs Igbokwe's current fitness to practise is impaired.

Determination on sanction in relation to Miss Baquerfo and Mrs Igbokwe:

The panel heard submissions of Ms Brownlee, on behalf of the NMC, and Ms Misczanyn on behalf of Miss Baquerfo. It again considered all the documentation before it, including Miss Baquerfo's statement about sanction dated 7 December 2011 and the letter from the RCN on behalf of Mrs Igbokwe of December 2010.

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

The panel considered the NMC's Indicative Sanctions Guidance but exercised its own judgement in reaching its decision. It applied the principle of proportionality at all times.

The panel had regard to both the public interest and Miss Baquerfo and Mrs Igbokwe's own interests. The public interest includes the protection of members of the public, the maintenance of public confidence in the profession and the regulation of the profession and the declaring and upholding of proper standards of conduct and behaviour.

The panel was mindful that any sanction must demonstrate in each case a considered and proportionate balance between the interests of the public and the particular registrant, and the mitigating and aggravating factors in the particular case. It is not intended to be punitive, although it may have that effect.

The panel considered, in ascending order of seriousness, what sanction, if any, would be appropriate and proportionate in this case.

In relation to Mrs Igbokwe:

The panel first considered taking no action. This would be wholly inappropriate due to the seriousness of the misconduct found.

The panel next considered whether to impose a caution order. This is not a case that can be considered to be at the lower end of the spectrum of impaired fitness to practise. The case involved a total lack of basic and fundamental nursing care. Accordingly, the panel concluded that a caution order would be insufficient to adequately protect the public in this case

The panel then considered whether a conditions of practice order would be appropriate. Given the case relates to a total lack of nursing care, the panel concluded that there were no specific and identifiable areas of practice that could be addressed with appropriate conditions. Accordingly the panel determined that there were no workable conditions that could be formulated. In any event, the panel noted the letter from the RCN dated 18 November 2010 that Mrs Igbokwe no longer intends to practise as a nurse. As such, the panel decided that a conditions of practice order would be insufficient to adequately protect the public, address the public interest or be proportionate in this case.

The panel next considered whether a suspension order should be imposed. Mrs Igbokwe completely disregarded the majority of her nursing duties over a period of three night shifts. Particularly aggravating is the fact that she was the sole registered nurse on duty and was supposed to be nursing vulnerable residents. Her misconduct strikes at the very heart of nursing care, that is to say actually providing care to members of the public. Her actions, or lack there of, towards the end of 2007 fell significantly short of what members of the public are entitled to expect of a caring professional. The panel has received no evidence of any insight, remediation or remorse from Mrs Igbokwe. The panel had little difficulty in concluding that Mrs Igbokwe's failure to act in any meaningful way to help Resident A when her condition was deteriorating is fundamentally incompatible with remaining on the register. The panel concluded that public trust and confidence in the profession and its regulation would not be sustained if Mrs Igbokwe were not removed from the register.

The panel decided that the only appropriate and proportionate sanction in this case sufficient to protect the public interest and adequately protect the public is that of a striking off order.

Determination on interim order in relation to Mrs Igbokwe (21 December 2012):

The panel took into consideration the submissions from Ms Brownlee and accepted the advice of the legal assessor.

The panel determined that it was necessary to make an interim suspension order. This is necessary for the protection of the public and otherwise in the public interest. The reasons for making this order are the same as those given by thr panel in making the

substantive order. In the event of a statutory appeal the process could take many months during which the public would be at risk. It is therefore appropriate and proportionate that the interim order should be for a period of 18 months.