Conduct and Competence Committee

Substantive Hearing

Various dates throughout 2012

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

Name of Registrant:	**Maria Rholyn Secuya (nee Baquerfo)**
NMC PIN:	**06I0669O**
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
Facts proved by way of admission:	**Charges 1(a)(b)(c)(d)(e)(f)(g) and (h)**
Fitness to practise:	**Impaired**
Sanction:	**Caution order imposed for 3 years**

Representation -

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

Maria Rholyn Secuya (nee Baquerfo) was present and was represented by Nadia Misczanyn, Unison.

Charges in relation of Ms Baquerfo read:

That you, whilst employed by Care UK Limited as a Registered Nurse at Lennox House:

1. On 7 December 2007, between 1100 hours and 2040 hours:

(a) Did not telephone a GP to visit Resident A until prompted at 1130 hours by Maureen Clarke, even though her condition had deteriorated,
(b) Failed to undertake regular clinical observations of Resident A,
(c) Fed Resident A fluids orally through a syringe even though her swallowing problems were documented in the daily records,
(d) Failed to put a diabetic care plan in place for Resident A,

(e) Failed to adequately monitor Resident A's blood glucose through urine tests and/or blood tests,
(f) Failed to adequately record the pain experienced by Resident A,
(g) Failed to initiate a care plan for Resident A's pain management,
(h) Failed to take any action after obtaining urine test results at 2000 hours which showed abnormal glucose and ketones levels

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.

Reasons for the panel's determination on the submissions of no case to answer pursuant to Rule 24 (7) and (8):

The panel has received applications on behalf of Mrs Ali, Ms Enriquez and Ms Baquerfo that, at the close of the NMC's case, it has heard insufficient evidence to find certain facts proved, or that it has heard insufficient evidence to support a finding of impairment. These submissions were put to the panel pursuant to Rules 24 (7) and (8) of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2004. The panel further determined that it would, of its own volition, in the interests of fairness and justice, consider like applications in relation to the registrants who have not attended these proceedings.

The allegations faced by all the registrants save Mrs East 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 allegations against Mrs East relate to a pre-admission assessment visit made by her on 22 November 2007.

The terms of Rule 24 (7) and (8) are as follows:

> *"**24.** (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and—*
>
> *(i) either upon the application of the registrant, or*
>
> *(ii) of its own volition,*

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

(8) Where an allegation is of a kind referred to in article 22(1)(a) of the Order, the Committee may decide,—

(i) either upon the application of the registrant, or

(ii) of its own volition,

to hear submissions from the parties as to whether sufficient evidence has been presented to support a finding of impairment, and shall make a determination as to whether the registrant has a case to answer as to her alleged impairment."

Mr Suter, on behalf of Mrs Ali, Miss Russell-Mitra, on behalf of Ms Enriquez, and Ms Miszczanyn, on behalf on Ms Baquerfo made detailed submissions to the panel. Mr Lucarotti on behalf of the NMC, responded to those submissions.

The legal assessor advised the panel that it should consider each of the factual elements of the charges relating to each registrant separately where submissions were made pursuant to Rule 24 (7). Where submissions were also made in respect of impairment under Rule 24 (8) those too should be considered separately.

In relation to applications made under both rules the panel was reminded that the test it was to apply was whether there was evidence before which was sufficient to support a finding of fact or of impairment. The panel reminds itself that the test is not whether it accepts the evidence or believes a witness, but whether there is evidence capable of supporting the allegation in respect of which a submission is made.

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

Determination of the submissions of no case to answer in respect of impairment:

Mr Suter, on behalf of Mrs Ali, and Ms Miszcanyn, on behalf of Ms Baquerfo, made submissions on impairment pursuant to Rule 24(8). The panel has reminded itself that impairment means current impairment. It also reminds itself that impairment is a matter of judgement. The NMC has defined impairment as being unable to remain on the register without restriction. The panel has also reminded itself that the question before it is whether there is sufficient evidence to support a finding of impairment. The panel's task is not to evaluate that evidence but to establish whether there is evidence which is capable of being sufficient to found a finding of impairment. The panel has considered each registrant separately and each submission in relation to each registrant separately.

The panel has accepted the advice given to it in respect of impairment by the legal assessor.

Ms Baquerfo

Ms Misczanyn's application, on behalf of Ms Baquerfo, under Rule 24(8), is that there is no case to answer of current impairment. In addition she submits that the facts admitted

and found proved in respect of allegations 1(a) and (e) cannot amount to misconduct. She further submits that if misconduct is not found in respect of those allegations there can be no finding of impairment.

Ms Baquerfo has admitted all the charges and admitted misconduct in relation to charges 1(b)(c)(d)(f)(g) and (h). She referred the panel to the cases of Cohen v GMC [2008] EWHC 581(admin); Zygmunt v GMC [2008] EWHC 2643(admin) and CHRE v NMC and Grant [2011] EWHC 927(admin).

In relation to charge 1(a) (did not call a GP to visit Resident A until prompted at 11.30 by Maureen Clarke even though her condition had deteriorated) Ms Misczanyn submitted that Ms Baquerfo followed the home's procedure by sending a fax to the GP's surgery rather than make a telephone call. Given that she followed the protocol put in place by the surgery and that Ms Baquerfo sent her first facsimile prior to Ms Clarke arriving at the home on 7 December it is submitted that there cannot be a finding of misconduct in relation to this charge. The extremely short answer to this submission is to be found on the same facsimile relied on by Ms Misczanyn (exhibit 1 p.132) in which it makes it clear that all urgent visit requests should be phoned through. Given the evidence before it as to the very serious condition of Resident A the panel is satisfied that a finding of misconduct in respect of this allegation could be made.

Ms Misczanyn submitted that there could not be a finding of misconduct in relation to charge 1(e) (failed to monitor Resident A's blood glucose through urine tests and/or blood tests). Mrs Braddell-Smith gave evidence that there were no glucose strips available at the home for testing blood. The panel also heard some evidence that Resident A did not pass urine until late on in Ms Baquerfo's shift, and that Ms Baquerfo had carried out urine tests at that time.

There is evidence that Resident A was a known diabetic. It is clear that an RGN would be expected to monitor the glucose levels of a known diabetic. Mrs Braddell-Smith gives evidence to this effect. The panel has evidence that because of the lack of blood/glucose strips it was not possible to monitor Resident A's blood/sugar levels at the home in December 2007. The absence of this equipment would have been known to Ms Baquerfo. The panel could not properly criticise a nurse for failing to do that which was not physically possible. The absence of this equipment would not however prevent glucose levels being monitored by way of urine analysis.

There are no records of any urine analysis on 7 December for Resident A between 11.00 and the results noted at 20.00 hours (exhibit 1 p.75). There was oral evidence from Mrs Braddell-Smith that whilst the note of urinalysis was entered at 20.00 the test and results might well have occurred and been available much earlier. Given that Resident A is noted as being incontinent of urine at 17.00 there is clearly some force in this suggestion. The patient was clearly deteriorating and was a known diabetic. It would appear from a review of the nursing records that no testing had been done since Resident A's urine results were noted on admission to be normal (exhibit 1 p.113). Mrs Braddell-Smith (exhibit 1p.5 para 27) gave evidence that following the 0830 observation that no urine had been obtained for analysis there was a need to obtain urine for testing.

The panel has already recorded its views as to the evidence before it about the responsibilities of an RGN. Ms Baquerfo was at all material times an RGN. There is evidence that she was employed as such. There is evidence that this resident was a

known diabetic. There is evidence that her blood/glucose should have been monitored. There is evidence that her blood/glucose was not monitored. There is evidence that over 1.3 litres of fluid went into Resident A (Braddell-Smith exhibit 1 p.28 para 5.0). As Mrs Gibson said in oral evidence that is a very large amount of fluid to go into a patient with noted swallowing difficulties. There should have been a note of output as well as input and there was not.

In these circumstances the panel is satisfied that there is evidence upon which a finding of misconduct could be made.

In relation to the remaining charges Ms Misczanyn submits that Ms Baquerfo's current fitness to practise is not impaired. She submits that although there are a number of charges, they all relate to one time period and so can be viewed as an isolated incident. She also submits that Ms Baquerfo has shown a high level of insight through the admissions that have been made. Ms Baquerfo has continued to be employed by the home. Mrs Gibson told the panel that Ms Baquerfo has undergone relevant training to remedy the shortcomings in the events concerning Resident A and has had no other disciplinary issues or concern relating to her practice in the four years since the allegations.

Whilst the panel has had some evidence from Mrs Gibson that Ms Baquerfo has undergone training it has no evidence before it as to the specific details of that training. The seriousness of the shortcomings disclosed by the evidence are such that the panel, mindful of the need to uphold public confidence in the profession and in upholding standards in the profession, is satisfied that there is sufficient evidence before it as might allow a finding of impairment.

The panel finds there to be a case to answer in respect of impairment in respect of each of the charges faced by Ms Baquerfo.

Summary

In order to avoid any confusion the panel sets out below those charges which it dismisses at this stage.

Enriquez: 1(d), 1(g)

Determination on interim orders upon adjournment:

The panel decided that it was not necessary to impose any interim order in relation to any of the registrant at this stage.

Determination on application to adduce the Capita Report into evidence:

Mr Suter, on behalf Ms Ali, has made an application to adduce the Capita Report, referred to in the statement of Ms Irene Clarke and commissioned by Care UK, into evidence. Ms Misczanyn, on behalf of Ms Baquerfo opposed the application. Mr

Lucarotti, on behalf of the NMC, and Ms Russell-Mitra, on behalf of Ms Enriquez, remained neutral on the application.

The panel has received and accepted the legal assessor's advice. The panel has had in mind the provisions of rule 31 of its Rules of Procedure, which essentially states that the panel has the power to allow any oral or documentary evidence subject to the requirements of relevance and fairness. It is accepted that the report is relevant and therefore the panel need only concern itself with the requirement of fairness.

In considering fairness to all parties, both present and absent, the panel decided to reject the application.

The NMC has brought its case and does not rely on the report. As such, it does not intend on calling the authors of the report as witnesses.

Ms Misczanyn was careful not to tell the panel that the Capita report contained matters which were prejudicial to her client, but that in reality must be the basis upon which she resists Mr Suter's application. Mr Suter was equally careful not to say that the report was favourable to his client but that to can only be the reasons he asks for this report to be admitted in evidence.

Although it would be open to Ms Misczanyn to call the authors of the report as witnesses, she submits that it would be difficult to secure their attendance at this stage. In any event, she would be unable to cross-examine the authors which would deny her the opportunity to properly deal with matters in the report that would prejudice Ms Baquerfo.

Having considered both the interest of the immediately affected parties and the wider interests of justice the panel is satisfied that an inability to cross examine the authors of this report cannot adequately be compensated by the weight with which the panel might ultimately place on the report.

In these circumstances the panel is satisfied that it would be unfair to allow the report into evidence as it would prejudice Ms Baquerfo.

The panel did not attach a great deal of weight to Ms Masczanyn's submissions that allowing the report would be unfair on Ms Baquerfo on health grounds. The panel recognises that pregnancy is a stressful time for anybody and that this NMC case would add to that stress. However, it does not accept that an adjournment to seek the attendance of witnesses would significantly add to this stress.

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 whether Ms Misczanyn, on behalf of Ms Baquerfo, should be allowed to cross examine Ms Enriquez:

Ms Russell-Mitra has objected to Ms Misczanyn having the opportunity to cross examine Ms Enriquez. Her basis for this objection is that there are no live issues at the facts stage for Ms Baquefo as she has made full admission to the charges she faces. Ms Baquerfo's case at the facts stage has therefore concluded. Mr Suter likewise objected.

Ms Misczanyn says that it would be unfair to deny her the opportunity to cross examine Ms Enriquez. She submits that there are live issues involving Ms Misczanyn because the level of responsibility that lay with Ms Baquerfo is hotly disputed by Ms Enriquez and that while the facts and associated misconduct have been admitted by Ms Baferquo these issues are important in assessing culpability.

Mr Lucarotti supported the stance taken by Miss Misczanyn.

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

The panel decided to allow Ms Misczanyn the opportunity to cross examine Ms Enriquez. The panel is of the view that the issue of responsibility is a live one. When determining the facts, the panel will need to decide what level of culpability to place on both Ms Enriquez and Ms Barquero. Given that Ms Enriquez's evidence was effectively that Ms Barquerfo was responsible for Resident A rather then Ms Enriquez herself, the panel is of the view that it would be unfair to deny Ms Misczanyn, on behalf of Ms Baquerfo, the opportunity to test Ms Enriquez's evidence.

Determination on interim orders upon adjournment on 4 May 2012:

The panel decided that it was not necessary to impose any interim order in relation to any of the registrant at this stage.

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 application by Miss Russell-Mitra to re-open the case on facts in relation to Ms Enriquez (30 October 2012):

The panel received an application by Miss Russell-Mitra to re-open her case in relation to Ms Enriquez. She submitted that fresh information had come to light that is vital to Ms Enriquez's case. The fresh information consists of evidence from an employee at Lennox House at the time of the allegation. The employee has provided a witness statement and would be available to give oral evidence tomorrow (31 October 2012). Miss Russell-Mitra submitted that the witness' evidence goes to the stem of the charge against Ms Enriquez, (and in particular the capacity in which she was employed), which remains in dispute. Miss Russell-Mitra accepts that, should the panel accept the application, it would cause a delay in proceedings until the witness is available to give her evidence tomorrow morning. Nevertheless, she submitted, fairness to Ms Enriquez in allowing her to fully put her case outweighs any prejudice caused by any delay to the case however minor.

Ms Brownlee, on behalf of the NMC, opposes the application. She submitted that Ms Enriquez has known the nature of the case brought against her since, at the very latest, February 2012 and that directions in terms of case management were made at a preliminary meeting approximately one year ago. She therefore submitted that the witness' evidence should have been sought far sooner.

Mr Suter, on behalf of Mrs Ali, also opposed the application. He submitted that the witness' evidence, whilst not impacting directly on the charges faced by Mrs Ali, does impact on Mrs Ali's credibility. He submitted that at no stage was Mrs Ali cross examined in relation to the evidence of the witness and that she therefore has had no opportunity to address the evidence which will impact on her credibility. He submitted that, unless there were some extraordinary reasons as to why this evidence was not obtained sooner, it would be unfair to all parties in allowing the evidence at this very late stage.

Ms Misczanyn, on behalf of Miss Baquerfo, also opposed the application. She submitted that, in accepting the application, the case would not only be delayed in terms of losing the rest of today (20 October 2012), but the matter may well lead to further applications and that that loss of time would be unfair on Miss Baquerfo. She referred to the panel's earlier decision in rejecting an application to adduce Miss Baquerfo's written statements.

The legal assessor referred the panel to Rule 24 which sets out the order of proceedings at a substantive hearing "unless the Committee determines otherwise". He advised that it was a matter for the panel's discretion as to whether or not it accepted the application and that in exercising its discretion it should determine whether it was fair and appropriate in all the circumstances for this evidence to be admitted at this stage of the hearing.

The panel accepted the legal assessor's advice.

The panel noted the lateness of this application. Miss Russell-Mitra closed the case on behalf of Ms Enriquez on day 14 of these proceedings, which was 4 May 2012. The panel considers that there has been ample opportunity for the evidence of the witness in question to have been sought and indeed for the witness to have given evidence prior to today. Although the panel accepts that Ms Enriquez had different representatives up until just before the commencement of the substantive hearing in February 2012 she has, nevertheless, had representation throughout this case, save for a single day in July 2012. The only explanation which has been given is that the witness statement only became available at 22.00 hrs last night. During her submissions Miss Russell-Mitra accepted that the witness came forward because, although the witness had known about the hearing and had attended the building with her client in May 2012, she had only just been asked by her client to give a statement. The issue as to the capacity in which Ms Enriquez was employed by the home has been a live one since the first day of the substantive hearing.

Although Mrs Ali was cross examined about this issue it was on the basis of the documents and of the assertions of Ms Enriquez which at that stage were in the form of her witness statement. This was not supported by any statement from this or any other witness. As Mr Suter said during his submissions this inevitably put his client at a

disadvantage on an issue which went to her veracity. The panel is mindful that truthfulness lies at the heart of the third charge faced by Mrs Ali.

The panel has accepted the submission of Ms Brownlee, made at the invitation of the Legal Assessor, that the evidence which Miss Russell-Mitra seeks to adduce does not affect either Mrs Igbokwe or Miss Baquerfo.

The panel has concluded that allowing Miss Russell-Mitra to re-open the case for Ms Enriquez at this stage of proceedings would not be fair to Mrs Ali. It is satisfied that the evidence in question should have been sought sooner and had it have been sought would have been obtained. The potential unfairness to Mrs Ali in the panel's view outweighs the interests of Ms Enriquez in allowing this evidence to be adduced.

In these circumstances the application is refused.

Determination on the application to adjourn from Miss Russell-Mitra:

The panel heard an application from Miss Russell-Mitra to adjourn the case until tomorrow (1 November 2012). She told the panel that her closing submissions on facts were not ready and that she required a day to complete her preparations. By way of explanation as to why her submissions were not ready, she told the panel that, as it was aware, in May 2012 she was no longer instructed to represent Ms Enriquez. It was not until Sunday 28 October 2012, the day before this matter resumed, that she received all the papers for the case, including 18 days worth of transcripts, having being re-instructed to represent Ms Enriquez on the 24 October 2012. Having had to deal with two separate applications that arose on the first two days of this resumed hearing (29 and 30 October 2012), she told the panel that she simply has not had the time to prepare full closing submissions despite having worked through most of the night of the 29-30 October 2012 and all of last night.

Ms Brownlee, on behalf of the NMC, opposed the application. She first highlighted the fact that she, herself, had not been instructed to represent the NMC until day 19 (29 October 2012) yet is ready to give her closing submissions. She submitted that the panel needed to consider the public interest in the expeditious disposal of this case, any inconvenience to all parties and fairness to all registrants. She further submitted that the case against Ms Enriquez involves one charge involving incidents that occurred on one day with the NMC only calling four witnesses. It is not, she submitted, a complicated matter although she accepted that the circumstances of this case should be taken into consideration.

Mr Suter, on behalf of Mrs Ali, did not oppose the application. He did this on the specific instructions of his client who having seen Miss Russell-Mitra this morning took the view, as a nurse, that Miss Russell-Mitra was not in a fit state to conduct the hearing on behalf of Ms Enriquez.

Ms Misczanyn, on behalf of Miss Baquerfo, strongly opposed the application. She submitted that Miss Russell-Mitra had been fully involved in the case apart from one day. She submitted that Miss Russell-Mitra should be in a position to give her closing submissions, that she was an experienced member of the Bar, and that it would be unfair on Miss Baquerfo to delay the case any further, given that the case has already been delayed due to several applications from Ms Enriquez.

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

The panel first noted the length of time that this case has already taken but considered it entirely unfair to suggest that Ms Enriquez has been the primary contributor to any previous delays. There have been numerous applications by all the parties present in this case and the panel reject the notion that Ms Enriquez has deliberately or improperly lengthened this case in any way.

The panel carefully considered the matter of fairness to all parties.

Miss Russell-Mitra ceased to be instructed in May because Ms Enriquez could no longer afford to retain the services of lawyers. Thereafter Miss Russell-Mitra could have no right to retain notes and papers for the case when she was no longer instructed to represent Ms Enriquez. The task before Miss Russell-Mitra, as the panel knows from its own preparation for this resumed hearing, is a formidable one which requires her to read the transcripts and exhibits in a case in which evidence was given in February and May 2012. Given that she received the transcripts of the May hearing only through the good offices of Mr Suter on Sunday evening it is hardly surprising that her closing submissions are not completed. It is not appropriate for any advocate to be required to make submissions if they are not properly prepared particularly if they are physically exhausted.

Mrs Ali, who is directly affected by this application, does not oppose it and indeed through counsel considers it to be right to adjourn until tomorrow. The panel was struck by Mr Suter's observation that if an adjournment was not granted the probable result would be that Miss Russell-Mitra would make her submissions in a halting manner which would delay proceedings and be of no assistance to the panel and in such a way that the case would be part heard until tomorrow in any event.

Ms Misczanyn submitted that a delay of but a single day would be prejudicial to the interests of her client. Given that Miss Baquerfo is not present, and will not be present for any of this week's hearing, and given that there could be, and never was, any intention or expectation that the impairment stage (which is the stage in which she is next concerned) would begin until December the panel has considerable difficulty in understanding this submission.

The panel could, of course, begin to hear the submissions of the case presenter and could then, time permitting, hear those of Mr Suter. Only thereafter would it fall upon Miss Russell-Mitra to address the panel. Given the length of submissions of every party in this case it may well have been the case that her submissions might not have begun or if begun might not have got very far. Two reasons prevented this course being adopted. The first is that Miss Russell-Mitra is exhausted. The second is that neither Ms Brownlee nor Mr Suter wanted this to happen. Their position, which was explained to the panel yesterday, was that they wanted each party to give their submissions on the same day so that no one could take advantage of an overnight delay, having had sight of the other parties' submissions, to improve their client's position. The panel makes no comment about this: it simply records the position of the parties.

The panel acknowledges the public interest in the expeditious disposal of a case and has Ms Brownlee's submissions about this well in mind. However, it considered that

fairness to Ms Enriquez outweighs the public interest on this occasion. Written submissions from all the parties are likely to be of the greatest assistance to the panel in a case involving 4 registrants which has now lasted 21 days and which has been heard in February, May, July and October 2012. Standing back for a moment, as the panel is required to do, it cannot help but reflect that the effect of refusing this adjournment would be to leave Ms Enriquez with a strong sense of injustice in that she would be bound to feel that her case had simply not been properly put to her professional body. The panel has reminded itself that it was unlikely to be in a position to announce it's determination on facts by the end of this scheduled week (Friday 2 November 2012), even if the parties were to make their submissions today rather than tomorrow. The panel are due to sit in camera next week (5 to 9 November 2012) to consider the facts of the case with the view to announcing its decision prior to resuming in session in December 2012.

The panel has therefore concluded that it would be unreasonable and not in the interests of justice to reject the application and to require Miss Russell-Mitra to make her closing submissions when she is not in a position to do so.

In all the circumstances, the panel decided to accept the application and adjourn proceedings until 10.30 on Thursday 1 November 2012.

Determination on interim orders upon adjournment on 2 November 2012:

The panel decided that it was not necessary to impose any interim order in relation to any of the registrant at this stage given that the only material change in the case is the passage of time.

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.

Determination on the application to adjourn under Rule 32 from Miss Russell-Mitra on behalf Ms Enriquez (17 December 2012):

Miss Russell-Mitra, on behalf of Ms Enriquez, made an application to adjourn proceedings due to Ms Enriquez's absence. She submitted that Ms Enriquez is absent due to health reasons and that it would be unfair to proceed in her absence given that Ms Enriquez wished to give oral evidence at the impairment stage. She highlighted the fact that Ms Enriquez had attended all other days of this hearing and submitted that an adjournment was likely to secure her attendance at a future date.

Miss Russell-Mitra referred the panel to the case of R. v Jones and Hayward [2002] UKHL 5 and developed her submissions by reference to it.

Mr Suter, on behalf of Mrs Ali, did not oppose the application on the basis that any adjournment was a short one.

Ms Brownlee opposed the application. She submitted that the panel should consider the application in the context of its impact on three other registrants as well as the public interest in the expeditious disposal of the case. She submitted that the panel should not place one registrant's interests above the interests of the others or the public interest. She also submitted that the panel should scrutinise the documentation in exhibit 8 carefully. She submitted that the 'fitness to work' note was a month old and that the GP's notes were brief and lacking in detail in terms of assessment of Ms Enriquez. She also submitted that GP's note dated 13 December 2012 is identical to the note dated 20 November 2012 save for the signatures and dates.

Ms Brownlee referred the panel to the case of Chaudhari v The General Pharmaceutical Council [2011] EWHC 3433 (Admin).

Ms Misczanyn opposed the application. She submitted that it would be unfair to Miss Baquerfo. She told the panel that she was intending to call a witness on behalf of Miss Baquerfo who has been warned to attend tomorrow, 18 December 2012. She submitted that Miss Baquerfo has at no stage requested an adjournment herself despite being unable to attend. Ms Misczanyn also submitted that Ms Enriquez has had plenty of time to compile written submissions to the panel on impairment.

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

The panel has decided to accept the application. It is an extremely important principle that parties who face serious allegations and against whom findings of fact have been

made which may prevent them from working as a professional person are able to attend tribunals and to give evidence in person. Ms Enriquez has attended every day of this hearing and wishes to continue to attend. Furthermore, Ms Enriquez wishes to give evidence to the panel about her current fitness to practise. Accepted the medical evidence provided which establishes that Ms Enriquez is not fit to attend the hearing. There is no evidence before the panel to contradict this medical evidence. Accordingly, the panel decided that the interest of justice require Miss Russell-Mitra's application to succeed. The fact that Miss Baquerfo will supply written submissions on impairment has no bearing whatsoever on Ms Enriquez's desire to give oral evidence to the panel, especially given that oral evidence inevitably holds more weight than written submissions. The panel concluded that it would be unfair to Ms Enriquez to proceed in her absence, and deny her the opportunity to give evidence to the panel by reason of her ill health. The panel has given careful consideration to the factors which are set out in Rule 32(4) and has concluded that the interests of justice are such as to require an adjournment to allow Miss Enriquez to attend to give evidence.

The panel has given some thought to the question as to whether it would be appropriate in all the circumstances to continue with the hearing in respect of the other registrants. Before reaching any conclusion about this the panel will hear submissions from the remaining parties.

Determination on application to adjourn under Rule 32 from Mr Suter on behalf of Mrs Ali (18 December 2012):

Mr Suter made an application to adjourn the case in relation to Mrs Ali so that he might seek permission from the High Court to apply for an order quashing that part of the panel's determination which found facts proved against her. He submitted that the facts found were findings that no properly directed panel ought to have made. Mr Suter thus identified the ground upon which he intended to seek a judicial review of the panel's determination upon the facts but put no flesh upon the bones of that submission. Mr Suter submitted that, given that the issues of misconduct and impairment can only be dealt with on the basis on the findings of fact made by the panel, the entire substratum upon which the panel would proceed was fundamentally and fatally flawed. To proceed to an inevitable conclusion, given the serious findings in relation to dishonesty, upon a flawed premise rendered the proceedings so procedurally flawed as to make them susceptible to Judicial review. Whilst accepting that his client had a statutory right of appeal to the High Court under Article 38 of the Nursing and Midwifery Order 2001 he submitted that if procedural impropriety had occurred there was no reason in principle to delay an application and some authority to support his submission that there was nothing to be gained by continuing with a process that was flawed because of it.

Ms Brownlee, on behalf of the NMC, strongly opposed the application. She submitted that any registrant who has denied an allegation will inevitably refuse to accept any findings made against her. She submitted that it would be inappropriate to delay matters at this stage of the hearing. Mrs Ali had a statutory right of appeal at the conclusion of the case. She drew the panel's attention to Rule 32(4) and submitted that it would not be in the public's interest for there to be any further delay and that it would likewise not be in the NMC's interests, particularly given the decision taken by the panel at an earlier stage to sever the case of Ms Enriquez from the remaining Registrants. She referred the panel to the case of Mahfouz v GMC [2004] EWCA Civ 233.

Ms Misczanyn, on behalf of Ms Baquerfo, also opposed the application although the precise prejudice relied upon by her was difficult to identify.

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

The panel determined to accede to the application. The panel heard no convincing argument as to the impact on the remaining registrants should an adjournment be granted. So far as Mrs Igbokwe is concerned, given her lack of engagement with the process, it is fanciful to suggest that there could be any prejudice: so far as Ms Baquerfo is concerned none was identified by her advocate. With regard to the expeditious disposal of the case, this case commenced in February 2012 and has so far lasted 30 days. It concerns matters that occurred in December 2007. The panel considered that an adjournment in the interest of fairness to Mrs Ali would not significantly impact on the public interest in the expeditious disposal of this case.

The panel did not find Mr Suter's submission as to the fundamental flaws in its reasoning to be convincing. He did not set out in any detail whatsoever the basis for his submission as to the facts. The panel however recognises that it is not the best placed party to review its own findings which it clearly believes to be right. Mr Suter is an experienced advocate who, on instructions, intends to seek a judicial review and to do so on the basis which he has identified to the panel. Whatever the paucity of reasoning of Mr Suter, the panel accepts that its determination on fact will clearly be the basis, indeed the only possible basis, on which the issues of misconduct and current impairment of fitness to practise can be determined. Having reviewed the decision of the Court of Appeal to which it was referred, and in particular the matters set out in paragraphs 44 and 45 of the leading judgement of Carnwath LJ, the panel is satisfied that whilst ordinarily matters should be allowed to take their course there are occasions in which it is appropriate to allow adjournments so that the matter may be considered by the High Court. The panel has reached the conclusion on the particular facts of this case that allowing the adjournment to have the determination on facts in relation to Mrs Ali Judicially Reviewed would be fair to Mrs Ali. It concluded that fairness to Mrs Ali outweighed any prejudice to the other registrants and the NMC and that there were, in reality, no other public interest grounds upon which the application should be refused.

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 Miss Baquerfo:

The panel first considered misconduct in relation to charges 1 (f) and (g). It reminded itself of its findings of facts in relation to Ms Enriquez, who faced the same charges at the outset of the case. The allegation against Miss Baquerfo alleges a failure which connotes a duty to do something. For reasons which are more fully set out in its determination in respect of Miss Enriquez in respect of a submission of no case to answer the evidence is that the relevant duty in the absence of an acute event lay on the named nurse. That was not Miss Baquerfo. The panel previously found that, in the absence of any objective evidence that Resident A was in pain and the fact that Ms Enriquez was not Resident A's Named Nurse, charges 1 (f) and (g) were not proved. Given those findings, and the fact that Miss Baquerfo was also not Resident A's Named Nurse, the panel does not find Miss Baquerfo guilty of misconduct in relation to charges 1 (f) and (g).

In considering whether there is misconduct in relation to charges 1(a)(b)(c)(e) and (h), the panel had particular regard to the following provisions of the NMC's publication in force at the time of the allegations, The NMC code of professional conduct: standards for conduct, performance and ethics (2004) (the Code):

1.2 As a registered nurse, midwife or specialist community public health nurse, you must:

- protect and support the health of individual patients and clients…
- uphold and enhance the good reputation of the professions

1.3 You are personally accountable for your practice. This means that you are answerable for your actions and omissions, regardless of advice or directions from another professional.

1.4 You have a duty of care to your patients and clients, who are entitled to receive safe and competent care.

4.4 You must communicate effectively and share your knowledge, skill and expertise with other members of the team as required for the benefit of patients and clients.

6.2 To practise competently, you must process the knowledge, skills and abilities required for lawful, safe and effective practice without direct supervision. You must acknowledge the limits of your professional competence and only undertake practice and accept responsibilities for those activities in which you are competent.

8.3 Where you cannot remedy circumstances in the environment of care that could jeopardise standards of practice, you must report them to a senior person with sufficient authority to manage them and also, in the case of midwifery, to the supervisor of midwives. This must be supported by a written record.

In respect of each of these duties or obligations the panel is satisfied that Miss Baquerfo failed to reach the required standard which was properly to be expected of her as a nurse.

The panel considered that the charges found proved were serious and could, when viewed cumulatively, have placed Resident A at significant risk of harm. In this context the panel was particularly concerned with the potentially serious consequences, including choking and pneumonia, of feeding a patient through a syringe. The panel accepts however that there is no evidence that this caused Resident A any actual harm.

The panel considered that the facts found proved in charges 1(a)(b)(c)(e) and (h) all constitute extremely poor care. Miss Baquerfo failed to provide basic nursing care to a vulnerable, elderly patient. Although the charges all related to a single date, they disclose wide ranging failings in the provision of basic nursing care which raise serious questions about the basic competence and attitude of the registrant. The panel is in no doubt that Miss Baquerfo's actions, failures and omissions on 7 December 2007 fell far short of what would be proper in the circumstances and what is reasonably expected of a registered nurse. The panel concluded that the facts found proved in charges 1(a)(b)(c)(e) and (h) clearly amount to misconduct.

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

In reaching its decision, the panel had regard to all the circumstances of the case and in particular to the issues of remediation and insight. For this purpose the panel had regard to Miss Baquerfo's written submissions, training certificates, references and testimonials.

Miss Baquerfo did not give evidence to the panel and it was therefore necessary to consider how much weight it could properly give to the statements prepared by her. The panel accepts that Miss Baquerfo demonstrated some insight into her failings both by way of training, her early admissions of fact, and what she said in her statements. It had no evidence before it of how she specifically addressed the concerns disclosed by the facts which she has admitted. The panel considered the numerous certificates provided in exhibit 11 but noted that the majority of these were certificates of attendance and many were irrelevant to the charges found proved. For example, fire warden/marshal training, moving and handling, basic food safety, basic oral health care training and first aid at work. The majority are certificates of attendance, those provide no evidence that Miss Baquerfo has been assessed and passed competent in any of the fields to which they relate. The panel is unable to attach significant weight to these certificates especially given that it has been provided with no evidence as to the syllabus and what assessments, if any, the courses included.

There is no evidence of actions independently taken by Miss Baquerfo specifically to address her deficiencies, There is little evidence before the panel of any self-learning or reflection as to what Miss Baquerfo has learnt from the training she has undertaken. The panel has seen no explanation of how any training undertaken has enhanced her practice.

Miss Baquerfo has continued to work at Lennox House during the five years since the events in question. Positive testimonials were provided by Florence Clarke, who is now the home manager at Lennox House, and Debbie Mclean, Deputy Manager at Lennox House from August 2009 to February 2011. Neither reference indicated that either referee was a registered nurse and neither was called to give evidence to the panel. In response to a question Miss Misczanyn told the panel that it was her understanding that both were nurses. The panel has not been able to ask the questions of these witnesses that it would have wished in order to establish the extent to which either of them had directly assessed Miss Baquerfo against the core competencies which were so starkly missing from her practice in December 2007. The panel considered the oral evidence of Mrs Gibson (day 3 pages 55-57) with some care. When analysed it is noticeable that Mrs Gibson makes it clear that she knows nothing about Miss Baquerfo save that she has seen no complaints about her and that given her role she would anticipate that Miss Baquerfo would perform certain roles and would have undertaken certain training.

Despite the admissions made and the undoubted fact that Miss Baquerfo has continued in practice without giving cause for concern since 2007 the panel is not satisfied that Miss Baquerfo has fully remedied the deficiencies in her practice that this case has identified. The panel is not satisfied that Miss Baquerfo would take appropriate action should she find herself under pressure in unfamiliar surroundings with a compromised patient or resident. The panel considers that there is in these circumstances a real risk of repetition which could lead to a very real risk of significant harm to patients.

In all the circumstances the panel has concluded that Miss Baquerfo's fitness to practise is currently 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 Miss Baquerfo:

The panel first considered taking no action but decided that this would be a wholly inappropriate sanction. The charges found proved are too serious for no action to be taken.

The panel next considered whether a caution order would be appropriate. The facts found proved are serious and they amount to misconduct, although they occurred five years ago. Since then, Miss Baquerfo has worked continuously as a registered nurse at Lennox House without further concerns being raised in relation to her practice. The panel considered that Miss Baquerfo has demonstrated some insight and expressed genuine remorse in the various statements made by her. There was no evidence before the panel that Miss Baquerfo's acts and omissions resulted in direct harm to Resident A, although clearly there was potential for such harm.

Given Miss Baquerfo has been practising as a nurse without any further concerns over the past five years, the panel does consider her to be at the lower end of the spectrum of impaired fitness to practise. Nevertheless, the panel considered that the misconduct found is unacceptable and must not happen again. Accordingly the panel determined that a three year caution order appropriately marks the misconduct as unacceptable and adequately addresses the public interest in this matter.

The panel, for completeness, did consider whether a conditions of practice order would be a more appropriate sanction but concluded that it would not. Miss Baquerfo has been practising without conditions for the past five years without concern.

Miss Baquerfo's registration will show that she is subject to a caution order and anyone enquiring about her registration will be told of the order.

That concludes the case in relation to Miss Baquerfo