**Conduct and Competence Committee**

**Substantive Hearing**

**Various dates throughout 2012**
**and**
**16 – 19 April 2013**

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

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|---|---|
| **Name of Registrant:** | **Dahlia Dela Cerna (nee Enriquez)** |
| **NMC PIN:** | **06E0640O** |
| **Part of the Register:** | **Registered Nurse, Adult** |
| **Type of Case:** | Misconduct |
| **Panel Members:** | Susan Sauter (chair – registrant member)<br>Jeffrey Heath (registrant member)<br>Wilma Hainsworth (lay member) |
| **Legal Assessor:** | Nicholas Leviseur |
| **Panel's Secretary:** | Peter Newman |
| **Facts proved:** | **Charges 1(b) and (e)** |
| **Facts not proved:** | **Charges 1(a)(c)(d)(f) and (g)** |
| **Fitness to practise:** | **Impaired** |
| **Sanction:** | **Caution order imposed for 2 years** |

**Representation -**

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

Dahlia Dela Cerna (nee Enriquez) was present and was represented by Jessica Russell-Mitra, counsel.

**Determination on proceeding in the absence of Ms East:**

The registrant was served with the notice of this hearing at her registered address by recorded delivery and first class post on the 5 January 2012. 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 responded to the notice of hearing indicating that she would not be attending today's hearing. 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 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 Ali read:**

That you, whilst employed by Care UK as the Manager of the Lennox House Nursing Home ('the Home') between August 2007 and 12 January 2008:

1. Between August 2007 and December 2007:

(a) failed to ensure formal supervision arrangements were in place for nursing staff working within the Home,
(b) failed to ensure that nursing staff were provided with sufficient training and or induction,
(c) failed to implement an effective induction programme for new members of staff,
(d) failed to effectively audit documentation within the Home.

2. On 7 December 2007, upon seeing Resident A at 7.45pm:
(a) failed to document your observations in Resident A's records,
(b) failed to contact a GP to inform them of Resident A's condition.

3. On 11 January 2008,
(a) falsely stated on a complaints form that Relative B had apologised to you, when this was not true.
(b) and this was dishonest

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

**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.

**Charges in relation to Ms Enriquez 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,

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

**Charges in relation to Ms East read:**

That you, whilst employed by Care UK as the Deputy Manager of the Lennox House Nursing Home:

1. On 22 November 2007, when visiting Resident A on Pearl Ward for the purposes of a pre-admission assessment:
    a) failed to adequately assess Resident A's needs,
    b) failed to adequately complete the pre-admission documentation

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

**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 at application, on behalf of the NMC, to amend charge 2 (a) against Mrs Ali and charge 1 (f) against Ms Enriquez:**

Mr Lucarotti, on behalf of the NMC, made an application to amend charge 2 (a) against Ms Ali and charge 1 (f) against Ms Cerna (nee Enriquez).

The proposed amendments were not objected to by the representatives for Ms Ali and Ms Cerna.

The proposal is that charge 2 (a), against Ms Ali, should read as follows:-

> *2. On 7 December 2007, upon seeing Resident A at 7.45pm:*
> *(a) failed to document your observations in Resident A's **written** records,*

And, in relation Ms Enriquez, that charge 1 (f) should be amended to read as follows:-

> *(f) failed to adequately record the pain experienced by Resident A **in the written records for that resident**,*

The panel heard and accepted the advice of the legal assessor and were reminded that, pursuant to Rule 28, the charge may be amended at any stage prior to making a finding on the facts of that charge, subject to the necessary considerations of fairness and justice. The panel noted that the relevant registrant's representatives do not object to the amendments.

Rule 28 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004("the Rules") reads as follows:-

> *"Amendment of the charge:*
> *Rule 28. - (1) At any stage before making its findings of fact, in accordance with rule 24(1)(d) or (i), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Conduct and Competence Committee, may amend -*
>
> *(a) the charge set out in the notice of hearing; or*
>
> *(b) the facts set out in the charge, on which the allegation is based,*
>
> *unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.*

*(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue."*

In light of the above the panel considered whether or not it was fair to amend the charge as proposed at this stage and determined that it was and that that amendment could be made without prejudice to the registrants. The amendments as proposed were therefore accepted and read in to the record in the amended form.

**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.

**Reasons for the panel's determination on the submissions of no case to answer made on behalf of Ms Ali:**

Mr Suter made submissions to the panel either under rule 24 (7) or rule 24(8) in relation to all the allegations that Mrs Ali faces. The panel dealt first with the applications that relate to the factual evidence (rule 24(7)).

**Charge 1(b)**

"Failed to ensure that nursing staff were provided with sufficient training and/or induction".

In relation to charge 1(b), Mr Suter submitted that the evidence of Mrs Braddell-Smith was unreliable and that there was no evidence that Mrs Braddell-Smith asked for training documentation when she had been at pains to ask for other documentation that she had not received. He referred the panel in this context to exhibits 2 and 3.

The panel has before it evidence from Mrs Gibson who produced the Home Manager Job Description (exhibit 1 p.212-213*).* In that document, under the heading People Management*,* it states that the Manager is "responsible for the selection, recruitment, induction, retention and development of all staff in accordance with legislation and company guidelines" (exhibit 1 p.213).

Mrs Braddell-Smith, in her written evidence (exhibit 1 p.9 para 55 and 56) dealt with this issue. She said that "Another important responsibility the manager has is ensuring that the training needs of the staff have been identified and addressed." In oral evidence Mrs Braddell-Smith said, *"*I asked for evidence of training and it was never given to me".

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 charge 1(b).

**Charge 1(c)**

"Failed to implement an effective induction programme for new members of staff"

In relation to charge 1(c), Mr Suter submitted that Ms Bradell-Smith's oral evidence about this was inconsistent with her written evidence. He also submitted that the evidence of Mrs Braddell-Smith was contradicted by that of Mrs Gibson, the director of nursing at Care Home UK. He submitted that the evidence adduced in support of the charge was inherently unreliable and should be rejected.

The panel again had before it evidence from Mrs Gibson who produced the Home Manager Job Description (exhibit 1 p.212-213). In that document under the heading 'People Management' it says that the manager is "to be responsible for selection, recruitment, induction, retention and development of all staff in accordance with legislation and company guidelines".

Mrs Braddell-Smith, in her written evidence (exhibit 1 p.9 para56) says that "there was no evidence during my investigation to show that any auditing or monitoring of records had taken place". In oral evidence she repeated this and made it clear that she had seen no evidence of induction training of any substance taking place. The inconsistencies which Mr Suter pointed to do not in the panel's view have a great deal to do with the allegation as to a failure to implement an effective induction programme but rather touch only on the length and form of any such programme.

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 charge 1(c).

**Charge 1(d)**

"Failure to affectively audit documentation within the home"

In relation to charge 1(d), Mr Suter submitted that because the home had recently opened the manager could not be expected to have put in place a record keeping audit. In this respect he highlighted the evidence of Mrs Braddell-Smith to this effect. He also relied on the evidence of Mrs Gibson that post these events until Mrs Ali left in July 2008 Care UK had no concerns about this.

The short answer to these submissions is the evidence of Mrs Braddell-Smith that there was no evidence of any auditing of documentation in the home at all. There was not even evidence of a review of nurses' records, nor any evidence of the review of nursing records of patients or of their care plans.

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 charge 1(d).

**Charge 2(a)**

"On 7 December 2007 upon seeing Resident A at 7.45 pm failed to document your observation in Resident A's paper records"

In relation to charge 2(a), Mr Suter submitted that there was insufficient evidence to show that Sheila Ali failed to document her observations in Resident A's paper records.

Mrs Braddell-Smith, in her written evidence (exhibit 1 p.10 para 57) said that "The manager reported seeing [Resident A] at 7:45pm on 7 December 2007. She reported that [Resident A] was 'warm and pink' but did not respond to her."

This observation does not appear in any of the patient records which are before the panel (exhibit 1 p.75). The panel gave careful consideration to the question of whether or not there was any responsibility on Ms Ali to note her observations. This was a very sick resident who was unresponsive. Mrs Ali was both the manager of the home and a registered general nurse (RGN). This, prima facie, was an important observation which should have been noted.

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 charge 2(a).

**Charge 2(b)**

"On 7 December 2007 upon seeing Resident A at 7.45pm failed to contact a GP to inform them of Resident A's condition"

In relation to charge 2(b), Mr Suter submitted that the evidence contained in Mrs Braddell-Smith's witness statement of 26 May 2010 cannot be relied on given that all the documents produced by her in the preceding two and a half years were silent as to this. Furthermore he submitted that the evidence appeared to be inherently implausible given that Mrs Ali did not know of the urine test results. In addition, Mr Suter submitted that Mrs Braddell-Smith's response to cross examination (the production of exhibits 2 and 3) was itself evidence of serious unreliability because an examination of those documents show Mrs Braddell-Smith to be misrepresenting the position seriously.

The panel reminds itself that its duty at this stage is to consider whether there is evidence before it which is worthy of credit which would support the allegation. The written and oral evidence of Mrs Braddell-Smith was that the words were said by Mrs Ali to her during the course of her investigation. She was cross examined about this and did not resile from it. So far as the urine test results are concerned there is no evidence for the panel at this stage as to when Mrs Ali learnt of their results; simply a submission about this from her counsel which is not evidence. The short answer to Mr Suter's second submission is that an examination of exhibit 3 shows that Mrs Ali herself acknowledged receipt of the statements. It would be difficult in these circumstances for the panel to conclude that Mrs Braddell-Smith's evidence as to this was so incredible as to be worthless.

So far as the substance of the charge is concerned there is no evidence at all that Mrs Ali called for any medical assistance for Resident A and certainly not at 7.45pm on 7

December 2007. As the panel has noted in respect of allegation 2(a) there is evidence before it that resident A was a sick woman. If Mrs Ali saw her and indeed formed the impression that she was unresponsive there is evidence from both Mrs Braddell-Smith and Mrs Gibson that medical assistance should have been sought.

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 2(a) and (b).

**Charge 3(a)**

"Falsely recording on a complaints form that a relative of Resident A had apologised to her when that was not true"

Mr Suter submitted that the terms in which Ms Irene Clarke (a relative of Resident A) gave her evidence rendered it inherently unreliable. The panel does not at this stage evaluate the evidence but is required to see whether there is some evidence to support the allegation. Ms Clarke's written evidence (exhibit 1 p.126 para 28) about this is crystal clear. She repeated that evidence orally and persisted in it under cross-examination.

**Charge 3(b)**

Mr Suter's submission that if the entry was honest it cannot be dishonest has the merit of simplicity. The corollary is equally clear. If the entry was not true it might clearly not be regarded as an honest entry. There is evidence upon which the panel might conclude that Mrs Ali was not honest in this respect.

In respect of both charges 3(a) and (b), 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 these charges.

**Determination on the submissions of no case to answer made on behalf of Ms Enriquez:**

Ms Russell-Mitra made submissions of no case to answer on the facts under Rule 24(7) only.

In her submissions of no case to answer Ms Russell-Mitra submitted Ms Enriquez was employed at the relevant shift as a Healthcare Assistant and not as a Registered Nurse, she argues that this has a significant impact on the allegations her client faces.

Ms Russell-Mitra submitted that there was no duty incumbent upon Ms Enriquez because she was not employed on that shift as a registered nurse; as she had only begun working at the home on 6 December 2007; and as she was undergoing induction at the home. Other registered nurses, particularly Ms Baquerfo, were responsible as key workers for the care of Resident A.

Whilst accepting that there was evidence which might tend to suggest that Ms Enriquez might have been employed as an RGN and evidence of the duties of an RGN even if employed as a care assistant, Ms Russell-Mitra nevertheless submitted that on the facts

the responsibilities of Ms Enriquez were very much less than they would have been if she had been a long standing employee of Lennox House.

The panel had particular regard to the Nursing rota (exhibit 1 p. 222) showing a list of registered nurses employed at the Home over the relevant period. Ms Enriquez appears on that rota as an RGN. The panel heard evidence form Mrs Gibson, the group director of nursing, that the rota was "live" and "on-line" so that corrections could, should and would be made to it if staff were sick or were for some other reason unavailable for duty. Mrs Gibson told the panel that there was a separate rota for health care assistants. In their oral evidence both Mrs Braddell-Smith and Mrs Gibson told the panel that a registered nurse remained a registered nurse with all her duties and responsibilities whether she was employed as an RGN or as a care assistant.

The panel note that, regardless of the stage of the registrant's induction, or her status, Ms Enriquez performed some of the duties that would only be performed by a registered nurse, for example at 0800 (in evidence Mrs Braddell-Smith suggested that this time might actually have been 2000 rather than 0800) on 6 December 2007 making notes in the Nursing Record (exhibit 1 p.74), as to which the panel heard oral evidence from Maureen Clarke, a relative of Resident A.

**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"

The wording of the allegation is such that the NMC is required to establish that a deterioration in Resident A's condition had occurred between 11.00 and 11.30 hours on 7 December 2007. That is a narrow window in which to establish deterioration.

The evidence before the panel shows that Resident A was very unwell. Both Mrs Braddell-Smith and Mrs Gibson gave evidence to this effect. Given the serious condition of Resident A at 0800; and indeed the deteriorating condition from 0600 on 7 December (exhibit 1 p.74); the deterioration evidenced by the vital signs at 0830 and 0900 (compared with a base line on admission evidenced at exhibit 1 p.46 and 113); the worsening ability to swallow (recorded as dysphagia), evidenced by the need to commence syringe feeding at or shortly before 1100, and Ms Maureen Clarke's observation of her aunt after 11.30, the panel considers that the only proper inference that could be drawn from the evidence now before it is that Resident A's condition did deteriorate between 1100 and 1130 on 7 December 2007.

In relation to charge 1(a) the panel is satisfied that there is evidence that a GP was not called to visit Resident A before 11.30. The Nursing Records do not show when a telephone call was made to the GP but Mrs Braddell-Smith (exhibit 1 p.28) recalls that the surgery records receiving a call at 12.30. It is common ground that no telephone call was made by anyone to the GP surgery before 11.30.

The panel considered very carefully whether, or not, Ms Enriquez had a duty to call a GP in the circumstances set out in charge 1(a). The registrant was an RGN. The evidence before the panel was that the patient was very ill and her condition was deteriorating and was in need of emergency medical assistance. There is therefore evidence before the panel which is capable of establishing this duty.

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 charge 1(a).

**Charge 1(b)**

"Failed to undertake regular clinical observations of Resident A"

In respect of charge 1(b) the nursing notes at p.74, 75 and the observation chart at p.84 show that there were few clinical observations undertaken by anyone between 09.10 and 20.00 on 7 December 2007 and certainly no regular clinical observation. The panel has already made reference to the evidence before it as to Ms Enriquez's role and duties as an RGN. It repeats its summary of the evidence as to the serious condition that Resident A was in throughout this period.

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 charge 1(b).

**Charge 1(c)**

In relation to charge 1(c) which alleges that Resident A was fed fluids orally through a syringe even though her swallowing problems were documented in the Daily Record, the oral evidence of Ms Maureen Clarke was that both Ms Baquerfo and Ms Enriquez were in the room and that both of them took it in turns to feed Ms Clarke's aunt by syringe. The Nursing Records document Resident A's swallowing problems (exhibit 1 p.74 and 75). The records at p.75 show that Resident A was fed by syringe.

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 charge 1(c).

**Charge 1(d)**

"Failed to put a diabetic care plan in place for Resident A".

Resident A's care plan dated 1 December 2007 is exhibited at page 101. That care plan makes reference to Resident A's diabetes but is not a care plan specific to her needs in relation to her diabetes.

Mrs Braddell-Smith's statement described the requirements of a care plan, it stated (at para 90) that the nursing staff at the Home "did not put a care plan in place for diabetes".

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 before the panel is that Ms Enriquez was not the named nurse or key worker. She was on her second day at work and had no prior knowledge of Resident A. There is no evidence before the panel that in these circumstances it would

have been the responsibility of an RGN who was not a named nurse or a key nurse to put a diabetic care plan in place.

The panel is not satisfied that there is any evidence to satisfy it that Ms Enriquez was responsible for putting a diabetic care plan in place. It follows that the submission in respect of charge 1(d) is accepted.

**Charge 1(e)**
"Failed to adequately monitor Resident A's blood glucose through urine tests and/or blood tests"

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 Enriquez shortly after she began working at the home on the 6 December 2007. The panel could not properly criticise a nurse for failing to do that which was not physically possible especially given that Ms Enriquez only began working at the home the previous day. The absence of this equipment would not however prevent glucose levels being monitored by way of urine analysis.

Ms Russell-Mitra submitted that there was no evidence that Ms Enriquez was responsible for such monitoring nor that the task had been delegated to her. She further submitted that there was no evidence that Ms Enriquez was present when urine was passed nor that she would have known that it had been passed. It followed that in the absence of urine she could not, regardless of responsibility, be in a position to test something that was not available whilst she was on duty.

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 regardless of their level of responsibility. Ms Enriquez 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.

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 charge 1(e).

**Charge 1(f)**

"Failed to adequately record the pain experienced by Resident A in the paper records for that Resident"

Ms Russell-Mitra submitted that there was no evidence that any duty lay on Ms Enriquez to record any pain experienced by Resident A. She also submitted that there was only limited evidence that Resident A was in pain. She submitted that Ms Maureen Clarke who was present during the relevant period did not actually say that her aunt was in pain.

The evidence before the panel shows that no pain recording took place at all. The panel is clear that it is the duty of an RGN to record pain levels. There was evidence from Mrs Gibson and Mrs Braddell-Smith in support of this contention. 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.

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 charge 1(f).

**Charge 1(g)**

"Failed to initiate a care plan for Resident A's pain management"

For like reasons to those which the panel have already addressed in relation to charge 1(d) the panel has concluded that there is no evidence before it which would support the contention that it was Ms Enriquez's duty to initiate a care plan for Resident A's pain management. The submission of no case to answer under Rule 24(7) is therefore accepted.

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

*That you, whilst employed by Care UK as the Deputy Manager of the Lennox House Nursing Home:*

2. *On 22 November 2007, when visiting patient A [Resident A] on Pearl Ward for the purposes of a pre-admission assessment:*

    a) *failed to adequately assess patient A's [Resident A's] needs,*

    b) *failed to adequately complete the pre-admission documentation*

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

The panel of its own volition considered whether there was a case to answer under Rule 24(7) in respect of both allegations faced by Mrs East.

The panel has before it a pre-admission assessment form (exhibit 1 p.88-92) which is undated and unsigned. The written evidence of Mrs Braddell-Smith is that this form was used by Mrs East who went to Pearl Ward where Resident A was then living in order to carry out a pre-admission visit. Mrs Braddell-Smith did not interview Mrs East about this but her evidence was that she understood from others that the visit had been unsuccessful because Resident turned her face to the wall and would not co-operate with Mrs East. That too was the understanding of Ms Clarke.

Mrs Gibson gave evidence as to the company's procedures and both she and Mrs Braddell-Smith said that the form was not adequately filled in. They accepted that some personal details would have come from Resident A and given her lack of co-operation they had no criticism of the absence of those details. However, much else that could have been filled in was not and their evidence was that the preadmission document was not in these important respects completed adequately.

The panel reminds itself that the allegation has been specifically drawn to allege a failure to assess and complete on 22 November 2007.

The panel has before it multi disciplinary notes from Pearl Ward which contained the following entry timed and dated at 19.45 hours on 23 November 2007 (exhibit 1 p.148). "Assessed by Lennox House staff yesterday (Resident A) refused to say anything and will come another day to assess her". In these circumstances the panel has evidence before it that Resident A would not co-operate and that a decision was taken to return on another day to assess the patient. That was clearly a reasonable decision. The allegation relates only to 22 November 2007 and not to any other day. In these circumstances the panel cannot be satisfied that there is sufficient evidence before it to find the charge proved.

The panel decided that in respect of both charges 1(a) and 1(b) against Mrs East there is no case to answer.

**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 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.

**Mrs Ali**

**Charge 1(a)**

"Failed to ensure formal supervision arrangements were in place for nursing staff working within the home"

In relation to charge 1(a), Mr Suter submitted that as the home had only been opened for 5 months by early December 2007 it would be unreasonable to expect Mrs Ali to have undertaken formal supervisions by that time. He submitted that Mrs Ali had already undertaken informal supervision of staff. He further submitted that the failures admitted in respect of charge 1(a) could not have contributed to the events of 6-8 December 2007.

The panel accepts that the evidence of both Mrs Gibson and Mrs Braddell-Smith was that they would not have expected formal interviews to have taken place but they would have expected interviews to have been in the diary to take place at some stage in the future. It follows that the panel must accept that no interviews would in fact have taken place. The panel reminds itself that impairment in this case relates to the ability to remain on the register without conditions. Mrs Ali may not have done all that was required of her as a manager but the evidence is such as to lead the panel to conclude that since both Mrs Braddell-Smith and Mrs Gibson would not have expected formal interviewing to have taken place that this failure cannot amount to evidence which would support a finding of impairment. There is no evidence before the panel that would allow it to conclude that formal supervision, as opposed to the informal supervision which it is accepted was in place, would have affected the outcome of the care afforded to Resident A between the 6 and 8 December 2007.

The panel is not satisfied that there is sufficient evidence before it in relation to impairment. It follows that the submission in relation to charge 1(a) is accepted.

**Charge 1(c)**

"Failed to implement an effective induction programme for new members of staff"

There is no evidence before the panel that there was any effective induction programme for new members of staff. Neither Mrs Braddell-Smith nor Mrs Gibson pointed to any aspect of the care afforded to Resident A or any other patient which might have been improved by such a programme being in place. As with charge 1 (a) the panel reminds itself that impairment relates not to an ability to be the manager of a home but an ability to remain on the register of nurses without restriction.

The panel is not satisfied that there is sufficient evidence before it in relation to impairment. It follows that the submission in relation to charge 1(c) is accepted.

**Charge 1(d)**

"Failure to audit documentation effectively within the home"

Mr Suter submitted that having regard to the degree of scrutiny that this case had been subjected to by Care Homes UK, by Capita on behalf of Care Homes and by Mrs Braddell-Smith on behalf of Camden and Islington Mental Health and Social Care Trust, "It would be extraordinary if there was sufficient evidence in these events to support a finding of impairment".

The answer to this submission is to be found in the evidence of both Mrs Braddell-Smith (exhibit 1 p.10 para 60) and Mrs Gibson, and in particular her answers to panel questions about the purpose and effect of audit. Had an audit of even limited scope been carried out it might have had an effect on the quality of care afforded to Resident A and have highlighted what appears to be lamentable failures by those caring for her. Mrs Ali was an RGN and was responsible in overall terms for that care.

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(d).

**Charge 2(a)**

"On 7 December upon seeing Resident A at 7.45pm failed to document your observations in Resident A's paper records"

Mr Suter submitted that "A vague failure to make a note 'somewhere on Resident A's paper records' does not provide sufficient evidence which could support a finding of impairment." The allegation is that Mrs Ali, having seen Resident A at 7.45pm on the 7 December 2007 failed to document her observations in Resident A's paper records.

Record keeping is an important part of the responsibilities of an RGN. It is the basis upon which all other health care professionals are informed as to the state of any patient. It informs the way in which care is to be provided, it records what care has been provided and the results of that care. It is at the heart of effective nursing. If Mrs Ali saw a patient who was unresponsive and failed to note it, the panel is satisfied that would be evidence upon which a finding of impairment might be founded.

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 2(a).

**Charge 2(b)**

"Failing to contact a GP at 7.45pm on the 7 December 2007 having seen Resident A"

Whilst Mr Suter has made a submission of no case to answer in respect of this allegation under Rule 24(8) it is not possible to identify the basis for that submission.

Given the serious condition of Resident A, if Mrs Ali saw her at 7.45pm on 7 December 2007 the panel is satisfied that a failure to telephone the GP would be capable of establishing a finding of impairment.

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 2(b).

**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.

**Ali: 1(a), 1(c)**

**Enriquez: 1(d), 1(g)**

**East: all charges. This concludes the case against Mrs East.**

**Determination on an application for the panel to hear a witness out of turn:**

Mr Suter, on behalf of Mrs Ali, made an application for the panel to hear from a witness prior to Mrs Ali giving evidence. Mr Lucarotti, on behalf of the NMC, has made an objection to the application.

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

The witness that Mr Suter wishes to call is to give evidence as to what happened after the funeral of Resident A. Mrs Ali faces two allegations that she dishonestly recorded an apology that was never made to her.

The panel is mindful of the serious nature of the allegation which is one of dishonesty. The panel will have to assess the credibility of both this witness and Mrs Ali. It is, in the panel's view, undesirable for a witness to be called before a registrant when the critical issue is the truthfulness and reliability of the witness about an issue of honesty.

Having considered the interest of all the parties the panel has determined that it would not be appropriate for this witness to be heard before Mrs Ali.

**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 Ms Russell-Mitra's application to withdraw Ms Enriquez's first written statement:**

Ms Russell-Mitra has submitted that Ms Enriquez's first written statement provided in the bundle of witness statements is not an accurate reflection of what Ms Enriquez wants to tell the panel. She further submits that it would be fair to allow Ms Enriquez to only rely on what she says is true.

Mr Lucarotti, Mr Suter and Ms Misczanyn initially opposed the application, but following discussion between the parties and the legal assessor accepted that they will have the opportunity to cross-examine Ms Enriquez in due course and that if they chose to do so they would be able to put previous inconsistent statements to her. On that basis the parties accepted that there was little to be gained by opposing the application.

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

The panel decided to grant the application. In the interest of fairness the panel notes that ample opportunity will arise in cross examination to put any inconsistencies to Ms Enriquez. In these circumstances the panel sees no unfairness in allowing Ms Enriquez to withdraw her first statement from the bundle of statements before it.

**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 re-adducing Mr Enriquez's first statement:**

Mr Lucarotti has applied to have Ms Enriquez's first statement re-adduced into evidence as a previous inconsistent statement. That statement was removed from the bundle on Miss Enriquez's application on day 13. He has cross examined Ms Enriquez about two matters as to both of which Ms Enriquez has accepted that her first statement differs in material respects from her second. He says that rather than have Ms Enriquez read out her first statement paragraph by paragraph it would save time to simply allow the panel to have sight of it. He submits that it is clearly relevant in terms of testing Ms Enriquez's evidence and it is fair to cross examine her on the inconsistencies between that evidence and her first statement. These matters, so he submits, go both to credit and to factual issues. The application is supported by Ms Misczanyn and Mr Suter both of whom submitted that it was in their client's interests to admit this document.

Ms Russell-Mitra opposes the application. She submits that it would prejudice Ms Enriquez given that she has explained how the first statement came about and why she no longer wishes to stand by that statement.

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

The panel has decided to allow the application. The alleged inconsistencies go towards Ms Enriquez's credibility which will clearly have an impact on the panel's determination of fact. The issues also critically go to material differences between the parties as to facts. Having considered the interests of the parties the panel has concluded that it would be right to permit this application.

**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 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 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.

**Charges in relation to Mrs Ali:**

The panel first considered the allegations against Mrs Ali.

The charges she faces are 1(b) and (d), 2(a) and (b), and 3(a) and (b). It is not disputed that Mrs Ali was employed by Care UK as the Manager of the Home between August 2007 and 12 January 2008, and the panel so finds.

Charge 1(b):

"Between August 2007 and December 2007:

Failed to ensure that nursing staff were provided with sufficient training"

The panel has before it evidence from Mrs Gibson who produced the Home Manager Job Description (ex 1/212-214*).* In that document, under the heading People Management*,* it states that the Manager is "responsible for the selection, recruitment, induction, retention and development of all staff in accordance with legislation and company guidelines" (ex 1/213).

Mrs Braddell-Smith, in her written evidence dealt with this issue. She said (ex1/9 para 52) that "The manager has overall responsibility for the running of the Home. This includes… responsibility to train the members of staff". She went on to say (ex1/9 para 55 and 56 "another important responsibility the manager has is ensuring that the training needs of the staff have been identified and addressed." She also said (ex1/10 para 59) "A number of nurses I spoke to during my investigation were not aware of the purpose of certain documentation, as the manager had never provided them with training".

In oral evidence Mrs Braddell-Smith, during cross examination from Mr Suter, conceded that she would not have expected supervision and training to have been done as the Home had only been opened for a short period of time, but that she would have expected there to be dates in the diaries for training needs to be assessed (day 2/57 F). Mrs Braddell-Smith told the panel that, "I asked for evidence of training and it was never given to me".

At no stage has the NMC produced the personal records, physical or electronic, for staff at the Home. Those files contained the staff training records. Mrs Ali told the panel that she was never asked for evidence of training and went on to say that some training was provided. The panel did not consider it necessary to establish whether or not Mrs Ali had been asked by Mrs Braddell-Smith to produce evidence of training. It is not Mrs Ali's responsibility to prove that she provided sufficient training. In any event she left the employ of Care UK in June 2008 and had no access to any documentation thereafter. It is for the NMC to prove that she did not provide the necessary staff training. Given Mrs Braddell-Smith's evidence that she would not have expected training to have been provided and Mrs Ali's evidence that some training was given, the panel concluded that there is insufficient evidence before it to conclude that Mrs Ali failed to provide sufficient training to staff. Charge 1(b) is not proved.

Charge 1(d):

“Failed to effectively audit documentation within the Home”

Mrs Bradell-Smith gave evidence about the requirement to audit documentation within the Home. She identified a general failure in this respect (day 2/25 D). It was clear that auditing of much of the Home’s documentation was taking place by Mrs Ali’s manager, Mrs Appleby, a senior member of staff of Care UK (Gibson 3/66 G-27 C). In respect of the documents being audited by others there could be no criticism of Mrs Ali. Mrs Braddell-Smith told the panel whilst being questioned by it (Day 3/34) that auditing provided a measurable tool to enable improvement and highlight any deficiencies. Mrs Ali’s job description (ex 1/212) required her to audit documentation.

Mrs Braddell-Smith told the panel (day 3/41 C), “The issue for Sheila was actually did she have time from August to November to actually put that audit system in place, and I think she had a dilemma in terms of actually putting all the systems in place within that length of time… I could understand why [Mrs Ali] had not put it in place”. However, as Mrs Braddell-Smith also told the panel (day 2/25 C), Mrs Ali did have a duty to regularly monitor nursing records; “…given that the home had actually been open for a few months, there was obviously systems that could be put in place within that time and systems that could not be put in place in that time and my preference would have been to have seen learning and training plans, formal learning and training plans for staff taking precedence perhaps over an audit, a formal audit, given that Sheila actually did do regular visits and rounds and did informally look at patients’ record” (re-examination day 3/32 E-F). During panel questions (day 3/34 B) it became clear that Mrs Braddell-Smith was restricting her criticisms to a failure to monitor nursing records (and in this context see also day 2/25 C).

The panel is satisfied that Mrs Ali did have a duty to monitor nursing records and that she failed to audit them. The panel is therefore satisfied that, on that limited basis, charge 1(d) is proved.

Charge 2(a):

“On 7 December 2007, upon seeing Resident A at 7.45pm:

Failed to document your observations in Resident A’s paper records”

There is no evidence before the panel that Resident A was sufficiently unwell to have required Mrs Ali to make clinical observations when she saw her at 19:45 on 7 December 2007. Mrs Ali described Resident A as “warm and pink” and said that she did not respond to her. When the distinction between not responding and being unresponsive was pointed out to her, Mrs Braddell-Smith accepted that it was only the latter (a medical term) which would be sufficiently significant to be recorded. Mrs Braddell-Smith conceded in evidence that these did not need to be recorded in Resident A’s written records. In answer to Mr Suter’s question as to whether there would be a reason to report this on the records, Mrs Braddell-Smith said “no, not on the records, not particularly, no…” (day 3/46 E).Mrs Ali told the panel that she was on call that night and there is no evidence that she was telephoned after 19:45. It is clear from the records (ex1/75) that Resident A’s condition deteriorated significantly at about 22:00 but there is no evidence that she was significantly unwell at 19:45. It should also be noted in this context that, at 21.50 Resident A was clearly responsive because she was noted as taking sips of liquid.

Mrs Ali, as the manager of the Home, was not the nurse on duty or the named nurse for Resident A. As a Registered Nurse, Mrs Ali would only have had a duty to record any clinical observation if there was a sufficient need to do so. There is no evidence before the panel that there was any need to do so at 19:45. The urine test results for Resident A are noted at 20:00 in the Daily Record, but Mrs Ali was no longer at the Home by this time. There is no evidence that Mrs Ali was informed of the urine test results either before or after they were entered in the nursing notes.

The panel is not satisfied that there is any evidence to suggest that Resident A was sufficiently unwell for Mrs Ali to have had a duty to document any observations in Resident A's written records. The panel finds charge 2(a) not proved.

Charge 2(b):

"On 7 December 2007, upon seeing Resident A at 7.45pm:

Failed to contact a GP to inform them of Resident A's condition"

Charge 2(b) follows from charge 2(a). There were no clinical signs that Resident A's condition justified calling the GP at 19:45 on 7 December 2007. There is nothing in the notes which would justify such a call. This against a background of antibiotics having been prescribed and directions given by a doctor to observe Resident A for 24 hours (ex 1/53).

In all the circumstances, the panel is not satisfied that Resident A was sufficiently unwell to warrant a call to the GP at 19:45 on 7 December 2007. The panel finds charge 2(b) not proved.

Charge 3(a):

"On 11 January 2008,

Falsely stated on a complaints form that Relative B had apologised to you, when this was not true"

There is a clear conflict of evidence in relation to this charge. Mrs Ali and Mrs Uddin were adamant that an apology was tendered by Ms Clarke at the funeral of Resident A on 11 January 2008. Ms Irene Clarke was adamant that no apology was tendered and that the language allegedly used by her was not the sort of language that she would ever use.

Ms Irene Clarke's evidence about this matter was consistent and clear in both her written evidence and her oral evidence. She was adamant that she did not apologise to Mrs Ali. In her statement, Ms Irene Clarke said that "I did not apologise to her nor did I ever indicate that my concerns had been addressed" (day 3/97 B). In examination in chief, when asked if she said anything that could have been construed as an apology she said "No. No. Or if I did, me being – I mean, it was a funeral – me being me. Apology? Apology for what? No… I certainly did not say 'sorry for being such a cow" (day 3/99 E).

Mrs Ali's evidence to the panel on this matter was also consistent. She maintained that Ms Irene Clarke had apologised to her at the funeral. She said that, following the funeral, "I went straight back to the incident form that I was completing and documented that so I would not forget that" (day 11/33 D, the document is at page 137 of exhibit 1).

The panel did not consider Mrs Uddin's evidence to be reliable or credible. Her evidence was inconsistent, with discrepancies between her written statement and her oral evidence. Despite stating that she remembered the events at the funeral clearly, she told the panel that the first thing that happened at the funeral was that Ms Irene Clarke shook hands with Mrs Ali and herself yet there is no mention of this in her statement. Mrs Uddin was then unsure as to whether she gave Ms Clarke a sympathy card and then hugged her whether this was the other way round. Her statement says that she gave her the card first and then hugged but in her evidence she told the panel it was the other way around. Despite being, in her own words, confused, Mrs Uddin said she could clearly remember Ms Irene Clarke apologising to Mrs Ali. Having assessed the content of her evidence and the way in which she gave it, the panel did not believe Mrs Uddin.

The panel recognised its responsibility to make a judgement on the quality of the evidence it has heard. It considered Ms Irene Clarke a truthful and credible witness, for whom the death of her aunt had such importance that it would be unlikely that she would forget even apparently insignificant details of events at the funeral. The panel considered that Ms Irene Clarke was trying to give her evidence as dispassionately as possible on a difficult matter. The panel preferred her evidence to that of Mrs Ali and Mrs Uddin on this point. The panel did not believe Mrs Ali. It is in no doubt that no apology was tendered and that nothing was said by Ms Irene Clarke that could be misconstrued as an apology.

Charge 3(b):

"And this was dishonest"

The panel heard Ms Irene Clarke (Resident A's niece) give evidence about the events of the day of her aunt's funeral (day 3/92-115 and day 4/8-25). The panel was very struck by the real sincerity of her evidence when asked about the phrase, noted by Mrs Ali as having been tendered by way of apology, "sorry for being such a cow". Ms Irene Clarke could not have been clearer that this was not language she would ever use (day 3/104 H). The panel accepts this evidence. It does not believe that these words or anything like them were said by Ms Irene Clarke that day.

Mrs Ali and Mrs Uddin gave clear evidence that those words were used. Having heard the evidence of all three witnesses the panel does not believe either Mrs Uddin or Mrs Ali. The panel has considered with very great care the possibility that Mrs Ali mistakenly believed that an apology had been proffered. It has reminded itself of Mr Suter's submissions and in particular of Ms Irene Clarke's pause during evidence on Day 3/99 E when she was being examined by Mr Lucarotti. "No. No. Or if I did, me being – I mean, it was a funeral – me being me. Apology? Apology for what? No… I certainly did not say 'sorry for being such a cow".

In the end, and notwithstanding Mrs Ali unblemished character, the panel has reached the conclusion that no apology was tendered and Mrs Ali, however mistakenly did not think that one had been. The terms of the suggested apology made with reference to behaving like a cow are not words about which one could be easily mistaken. The panel found Mrs Uddin's evidence to be unsatisfactory in respect of the chronology of events, and in particular in relation to the alleged hug and the giving of the condolence card. The panel has reached the clear conclusion that in this respect Mrs Ali is not telling the truth.

Having found that Mrs Ali had falsely stated on a complaints form that Relative B had apologised to her, when this was not true, the panel applied the test set out in the case of Ghosh. It asked itself whether, according to the standards of reasonable and honest people what was done was dishonest. The panel concluded that it was clearly dishonest.

The panel then asked itself whether the registrant must have realised that what she was doing was by the ordinary standards of reasonable and honest people, dishonest. The panel concluded that she did. It, therefore, finds charge 3(b) proved.

In summary the panel finds charges 1(b), 2(a) and 2(b) not proved, and charges 1(d), 3(a) and 3(b) proved.

**Charges in relation to Ms Enriquez:**

The panel next considered the charges in relation to Ms Enriquez.

The panel first turned its attention to the stem of the charges which reads; "That you, whilst employed by Care UK Limited as a Registered Nurse at Lennox House".

Miss Russell-Mitra submitted Ms Enriquez was employed on the relevant shift as a Healthcare Assistant and not as a Registered Nurse; she submitted that this has a significant impact on the allegations her client faces.

Miss Russell-Mitra submitted that there were fewer duties incumbent upon Ms Enriquez because she was not employed on that shift as a registered nurse; as she had only begun working at the home on 6 December 2007; and as she was undergoing induction at the home. Other registered nurses, and in particular Ms Baquerfo, were responsible for the care of Resident A.

The panel heard evidence from Mrs Ali (Day 11/42-43) that Ms Enriquez was employed by Lennox House as a registered nurse. She said that "when Ms Enriquez came to us she was working as a nurse at Bridgeside Lodge and I took her on as a nurse". When asked whether Ms Enriquez had originally come as a Health Care Assistant (HCA), Mrs Ali responded "No". She also denied that Ms Enriquez was issued with a uniform similar to that of an HCA.

The panel had before it the Duty Rota (ex 1/222). Ms Enriquez appears on that rota as an RGN. Mrs Gibson gave evidence that there was a separate rota for HCAs (day 3/62 C).

The panel also considered Ms Enriquez's evidence (day 13/29). Whilst Ms Enriquez continued to assert that she had been asked to work in a different capacity, she accepted that in some respects she would be acting as a nurse because she would be working alone as one of only two nurses working in the Home on that day.

Mrs Gibson, the Director of Nursing for Care UK, (day 3/48) gave evidence that Ms Enriquez was employed at the Home as an RGN.

The panel finds that Ms Enriquez was employed as a Registered Nurse on 7 December 2007.

Ms Enriquez's evidence was that she was on duty on 7 December 2007 from 08.00 to 20.00 and those were the hours that the rota suggested she was on duty. There is no evidence that this is not correct. The panel finds that Ms Enriquez left the home shortly after 20.00 on 7 December 2007 when her shift ended.

Charge 1(a):

"On 7 December 2007, between 1100 hours and 2040 hours:

Did not call a GP to visit Resident A until prompted at 1130 hours by Maureen Clarke, even though her condition had deteriorated"

Ms Maureen Clarke, Resident A's niece, told the panel that she had visited Resident A on 7 December 2007. Upon entering Resident A's room she witnessed Ms Baquerfo feeding Resident A through a syringe. Ms Enriquez was also present in the room. Ms Maureen Clarke said that Resident A was clearly distressed and had the expression of someone who was trying to scream but no sounds were coming out. At approximately 11.30 Ms Maureen Clarke insisted that a doctor be called immediately as she believed that one had not been called earlier.

The wording of the allegation is such that the NMC is required to establish that deterioration in Resident A's condition had occurred between 11.00 and 11.30 hours on 7 December 2007. That is a narrow window in which to establish deterioration.

The evidence before the panel shows that Resident A was very unwell. Both Mrs Braddell-Smith and Mrs Gibson gave evidence to this effect. Given the serious condition of Resident A at 0800; and indeed the deteriorating condition from 0600 on 7 December (exhibit 1 p.74); the deterioration evidenced by the vital signs at 0830 and 0900 (compared with a base line on admission evidenced at exhibit 1 p.46 and 113); the worsening ability to swallow (recorded as dysphagia), evidenced by the need to commence syringe feeding at or shortly before 1100, and Ms Maureen Clarke's observation of her aunt after 11.30, the panel considers that the only proper inference that could be drawn from the evidence now before it is that Resident A's condition did deteriorate between 1100 and 1130 on 7 December 2007.

The panel considered very carefully whether, or not, Ms Enriquez had a duty to call a GP in the circumstances set out in charge 1(a). It is accepted by all the parties that a telephone call was made by Miss Baquerfo at about 11.30 and it is common ground that at no stage did Ms Enriquez make a telephone call to the surgery. Miss Baquerfo was the named nurse for Resident A. The panel considered that, had Miss Baquerfo not

called a GP at 11.30, Ms Enriquez would have had a duty as an RGN to make a telephone call. However, Miss Baquerfo did make a telephone call at 11.30, and two facsimiles had been sent to the GP surgery asking for a doctor to visit Resident A at approximately 09.50 and 11.30.

Ms Maureen Clarke gave evidence that Miss Baquerfo seemed to be the more senior of the nurses because she "seemed to tell the other one what to do" (day 3/75 C). Ms Enriquez gave evidence that between 08.30 and 10.30 she had not had contact with Resident A. She had taken observations at 08.30 and had given them to the nurse who had asked for them to be taken (Mrs Igbokwe). Between 08.30 and 10.30 she was carrying out duties on the other side of the house and only returned to Resident A and Miss Baquerfo at about 10.30. The panel considers this evidence is likely to be correct.

The panel accepts that the fundamentally flawed policy which had been instituted by the General Practice of seeking a Home visit from a doctor by way of a faxed request was not in the best interests of the residents. That, however, is not something that can be laid at the door of Ms Enriquez on only her second day in the Home.

The panel finds, as is common ground, that Ms Enriquez never called a General Practitioner but that, given the particular circumstances, she was under no duty to do so. The panel finds charge 1(a) not proved.

Charge 1(b):

"Failed to undertake regular clinical observations of Resident A"

The panel has already accepted that Ms Enriquez was on duty from 08.00 to 20.00. The nursing notes (ex 1/74-75) and the observation chart (ex 1/84) show that clinical observations were recorded at 08.30, 20.00 and 22.00 on 7 December 2007. The allegation is that Ms Enriquez failed to undertake regular clinical observations between 11.00 and 20.40.

Ms Enriquez, in her second statement, says that she took Resident A's vital signs at 13.00 and that she had written them down on a bit of paper she found in her handbag. The doctor appears to have taken and recorded observations at about 13.30.

Ms Maureen Clarke told the panel that both Miss Baquerfo and Ms Enriquez had been present in Resident A's room for most of the time that she was visiting. Ms Enriquez, in her own evidence, admitted not taking observations after 13.00.

Resident A was clearly unwell and had been seen by a doctor who had requested Resident A to be observed for 24 hours. The panel finds there to have been a general duty on the nursing staff in these circumstances to take observations at about two hourly intervals. This meant that observations should have been taken at about 15.00 and 17.00. Given that a handover was to take place at 20.00 the panel does not consider that it would have been obligatory to take observations at 19.00. Given that Ms Enriquez was not with Resident A in the period immediately before handover the panel does not consider that Ms Enriquez had a duty to take observations between 19.00 and 20.00. Even though Ms Enriquez was not the nurse providing direct care to Resident A, she had a great deal of contact with Resident A. If Miss Baquerfo was not taking any clinical observations, Ms Enriquez had a duty to prompt her to do so. Thereafter, given

that Miss Baquerfo clearly did not take any observations, Ms Enriquez had a duty, as a registered nurse in attendance upon a patient, to take clinical observations at the least at about 15.00 and 17.00 on 7 December 2007.

The panel finds charge 1(b) proved.

Charge 1(c):

“Fed Resident A fluids orally through a syringe even though her swallowing problems were documented in the daily records”

Ms Maureen Clarke’s evidence (day 3/73 C) was that Miss Baquerfo was “trying to feed my aunt breakfast through a syringe and a teaspoon” and that she was “trying to squeeze the food in between my aunt’s lips”. She told the panel that Ms Enriquez was also present in the room but under cross examination from Miss Russell-Mitra (day 3/80) conceded that it was only “one of the nurses” who fed her in that manner and that it was Miss Baquerfo not Ms Enriquez.

During her oral evidence, Ms Enriquez denied that she had done this and, although cross-examined about this by Mr Lucarotti, she was consistent about this.

The evidence from Ms Maureen Clarke and from Ms Enriquez (second statement para 61-62) is that what was being fed was breakfast. The charge alleges that fluids were being fed and the evidence is silent as to this. Ms Brownlee, in her closing submissions, referred the panel to Ms Enriquez’s evidence (Day 14/46). When read carefully, however, this takes the matter no further because whilst feeding is referred to, fluids are not mentioned.

There is no evidence to suggest that Ms Enriquez fed Resident A fluids orally through a syringe at any stage. The panel finds charge 1(c) not proved.

Charge 1(e):

“Failed to adequately monitor Resident A’s blood glucose through urine tests and/or blood tests”

Ms Enriquez acknowledges in her second statement at paragraph 75 that, as a nurse, she had a duty to check blood glucose sugar. Ms Enriquez knew for the first time at 13.00 on 7 December 2007 that Resident A had diabetes because she overheard Ms Maureen Clarke telling the doctor about this.

The evidence of Mrs Ali (day 11/49-50) was that there were strips available in the Home to carry out blood glucose testing. The Resident’s notes (ex 1/75) indicate in the clearest possible terms that no strips were available. Ms Irene Clarke thought that strips were not available in the Home (Braddell-Smith ex1/26). The panel is not satisfied on the balance of probabilities that strips were available in the Home to test blood glucose levels. In these circumstances, the only duty that could have been required of a nurse was to monitor blood glucose levels by urine analysis. However, the nursing notes indicate that Resident A had not passed urine between 13.00 when Ms Enriquez first knew of the diabetic condition and 17.00 when she was recorded as having been incontinent of urine (ex 1/75). In these circumstances, the panel is satisfied that the duty

upon a registered nurse was to carry out a urine analysis so soon thereafter as was possible. The duty upon Ms Enriquez, for the reasons that the panel have already set out in its findings about nursing observations, was to remind Miss Baquerfo to do this. If she did not do so, then it was Ms Enriquez's duty to do it herself as a matter of urgency. Reminding Miss Baquerfo at a little before 20.00 (which is what Ms Enriquez said she did at paragraphs 87 and 88 of her second statement) did not discharge the duty of care that she had to resident A.

In these circumstances, the panel finds charge 1(e) proved in respect only of a failure to conduct urine analysis between 17.00 and 20.00 on 7 December 2007.

Charge 1(f):

"Failed to adequately record the pain experienced by Resident A in the written records for that resident"

This charge is predicated on the fact that Resident A was in pain between 11.00 and 20.00 on 7 December 2007. Ms Maureen Clarke described seeing Resident A as having the expression of someone who was trying to scream but no sounds were coming out, but at no stage did she say that she thought her aunt was in pain despite being lead by Mr Lucarotti in this respect during his examination of her (day3/76 H-77 B). Resident A was seen by Dr Toun at approximately 13.30. The doctor records Resident A's observations and at no stage does she elicit or note any pain (ex1/132 and ex1/53).

Ms Maureen Clarke clearly describes a woman in distress but that is entirely consistent with somebody who is having difficulty speaking, is the wrong way round in her bed and has an elevated temperature. However, she does not say her aunt was in pain; there is no note of pain in the nursing records; and the doctor does not record Resident A as having been in pain.

The panel considered that Ms Enriquez would clearly have a duty to record the pain experienced by Resident A in the written records had she been in pain but there is no objective evidence that Resident A was in pain. The panel finds charge 1(f) not proved.

In summary, the panel finds charges 1(a), (c) and (f) not proved, and finds charges 1(b) and (e) proved.

**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 Rule 19(3) with regard to the application by Ms Russell-Mitra to adjourn (17 December 2012):**

The panel heard an application from Miss Russell-Mitra to have part of her application to adjourn heard in private under Rule 19. She submitted that medical reasons, that went substantially beyond the merely trivial, were going to make up part of her application to adjourn and that the details of that should be heard in private.

Under Rule 19 (3), Ms Irene Clarke was given the opportunity to address the panel. She submitted that she wished to remain during the entirety of Miss Russell-Mitra's submissions given that these proceedings relate to the treatment of her aunt.

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

The panel decided to accept the application. Having considered the medical evidence the panel is satisfied that Miss Enriquez interests outweigh the interests of any other interested party and that it would not be appropriate for that part of the application which deals with sensitive medical matters to be heard in public. The panel having so determined was satisfied that under Rule 19 (4) there was no power to permit Ms Clarke to remain in the hearing.

The panel will hear the matters relating to Ms Enriquez's health in private.

**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 severance of Ms Enriquez's case:**

The panel decided, having received submissions from all parties and accepted the legal assessor's advice, that it does have the power to sever the case of Ms Enriquez. Rule 29 gives the panel the power to join cases. It therefore follows that the panel has the power to sever cases.

Having decided to grant an adjournment to Ms Enriquez, the panel concluded that it would be in the public interest and the interest of fairness to all the registrants in this case to sever Ms Enriquez's case. It decided that in doing so, it would not prejudice any of the registrants or the NMC and would be in the wider public interest for Ms Enriquez case to be severed from the remaining registrants.

**Determination on interim upon adjourning Ms Enriquez's case (17 December 2012):**

Brownlee, on behalf of the NMC, did not apply for an interim order on Ms Enriquez's registration at this stage of proceedings.

Miss Russell-Mitra submitted that an interim order should not be imposed. She submitted that the facts now found proved against Ms Enriquez are limited. She highlighted the fact that there has been no interim order imposed throughout the case so far.

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

The panel decided that no order is necessary for the protection of the public nor is one otherwise in the public interest. Clearly, an order would not be in Ms Enriquez's own interest. The panel was not satisfied that there was a significant risk of harm to patients or members of the public should an order not be made at this stage. Although some of the charges have been found proved, there is no material change as to Ms Enriquez's current fitness to practise given the panel is yet to make any findings in this regard. The imposition of an interim order at this stage would be disproportionate.

**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 interim order upon adjourning Mrs Ali's case (19 December 2012):**

The panel considered this application carefully and decided to make an interim suspension order. The period of this order is for 9 months to enable sufficient time for Mr Suter to seek a Judicial review of the determination of facts, and have that matter dealt with prior to concluding the substantive case.

Ms Brownlee submitted that an interim suspension order should be imposed on the grounds of public interest. She submitted that there was no necessity threshold, as there would be were it an application for an order on the grounds of public protection, and that it was a matter for the panel's professional judgement. She submitted that, given the panel has found a charge of dishonesty proved against Mrs Ali, an order was in the public interest.

Mr Suter submitted that no order was necessary. He highlighted that there has been no order imposed on Mrs Ali until now and that the charges date back to five years ago. He submitted that there is no suggestion of any order being required for public protection and that an interim order on the grounds of public interest alone requires a very high threshold. He referred the panel to the case of Sheikh v General Dental Council [2007] EWHC 2972 (Admin).

He also submitted that the panel's findings on fact are not set in stone until the High Court has dealt with the Judicial review that he plans to seek. Accordingly, there has been no material change in the case and that an interim order would therefore be disproportionate and unfair on Mrs Ali. He submitted that an order would have a devastating financial impact on Mrs Ali, who is currently employed as a deputy manager of a care home.

The panel accepted the advice of the legal assessor and took account of the guidance issued to panels by the NMC when considering interim orders and the appropriate test as set out at Article 31 of The Nursing and Midwifery Order 2001. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Ali's own interest.

The panel is of the view that, based on its findings of facts, an order is necessary on the grounds of public interest. The panel has found a charge of dishonesty against Mrs Ali. Dishonesty is particularly serious as it can undermine the public's trust and confidence in the profession. Honesty, integrity and trustworthiness are to be considered the bedrock of any nurse's practice. Although the panel recognised that the threshold for imposing an interim order on public interest grounds alone is set very high, it considered that a finding of dishonesty meets that threshold in this case. It decided that the public's trust and confidence in the profession, and in the NMC as a regulatory body, would be undermined were it not to impose an interim order at this stage.

The panel took into consideration the following matters, namely: that the charges relate to incidents that are five years old, that there has been no repetition and that there has been no interim order in place against Mrs Ali to date. Nevertheless, until its determination on facts was delivered on Monday 17 December 2012 there had been no finding of dishonesty. Having so found, the panel decided that this was a significant, material, change to the circumstances of Mrs Ali's case. Mrs Ali was in a position of responsibility and was expected to maintain appropriate standards. By acting dishonestly she failed to do so.

The panel therefore concluded that some form of interim order is in the public interest.

The panel next considered whether an interim conditions of practice order would be sufficient. Given the serious finding of dishonesty, it decided that there were no conditions that could be imposed that would be workable or practicable in this case. It did not consider that there were specific, measurable conditions that could be imposed that would adequately address the public interest concerns in a case relating to dishonesty. Accordingly, such an order would be insufficient and inappropriate.

The panel is satisfied that, in the particular circumstances of this case, an interim suspension order is appropriate, necessary and proportionate. It recognises that it is yet to hear evidence or submissions on misconduct and impairment. The panel is in no way bound by this determination when it comes to making findings in relation to those matters.

The panel has noted that this order will prevent Mrs Ali from working as a registered nurse and, as a consequence, she will be caused financial hardship. However, in applying the principle of proportionality, the panel determined that, in any event, the need to protect the wider public interest outweighed Mrs Ali's interests in this regard.

Unless the substantive case has already been concluded or there has been a material change of circumstances, a panel of the Conduct and Competence Committee will review the interim suspension order at a review meeting within the next six months and every three months there after. The panel will be invited by the NMC to confirm the order at this meeting and Mrs Ali will be notified of the panel's decision in writing following that meeting.

Where there has been a material change of circumstances that might mean that the order should be revoked or replaced, or there has been a request for an early review, a panel will review the order at a hearing to which Mrs Ali will be invited to attend in person, send a representative on her behalf or submit written representations for the panel to consider. At any such review hearing the panel may revoke the order, it may confirm the order or it may replace it with an interim conditions of practice order.

**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 Miss 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.

**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 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

**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 the 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.

**Determination on misconduct and impairment in relation to Mrs Ali (17 April 2013):**

The panel has considered, on the basis of the matters found proved, whether Mrs Ali's fitness to practise is impaired by reason of her misconduct. It has had regard to Ms Brownlee's submissions on behalf of the NMC. Mr Suter, on behalf of Mrs Ali who was not present today, told the panel that, due to these proceedings taking their toll on Mrs Ali, she has decided to retire from nursing with immediate effect. He told the panel on instructions that Mrs Ali continues to deny that she had ever acted dishonestly as alleged. Mr Suter then withdrew.

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), Cohen v General Medical Council [2008] EWHC 581 (Admin), Cheatle v General Medical Council [2009] EWHC 645 (Admin) and Yeong v GMC [2009] EWHC 1923.

The panel has received and accepted the legal assessor's advice. He additionally referred the panel to the case of R (on the application of Dr. Malcolm Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) and Nandi v GMC [2004] EWHC 2317 (Admin).

In considering Mrs Ali'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 charge 1(d), the panel reminded itself of its finding of fact. It was satisfied that Mrs Ali did have a duty to monitor nursing records and that she failed to audit them. There is no evidence to suggest that there was any harm to a resident as a result of this failure. However, it was a fundamental system failure that could have placed patients at risk of harm. It was not a single, isolated incident as Mrs Ali failed to effectively audit documentation over a period of several months. The panel bore in mind that the Home in question was recently opened. Nevertheless, there is a clear duty on a manager to ensure nursing records are in accordance with the appropriate standards. Effective auditing is a tool that identifies any deficiencies at an early stage in nursing records. It ensures that practice is safe and consistent throughout the Home. The panel considered that in failing to effectively audit documentation, Mrs Ali's omissions fell well short of what would be proper in the circumstances.

The panel concluded that charge 1(d) constituted misconduct.

In relation to charge 3, the panel again reminded itself of its finding of fact that an apology was not tendered by Ms Irene Clarke to Mrs Ali, that Mrs Ali had falsely stated on a complaints form that an apology had been tendered and that, in this respect, Mrs Ali was not telling the truth. The panel concludes that Mrs Ali had dishonestly made the note on the complaint form for personal gain; not in a financial sense but in order to appear to her superiors that she had resolved the complaint from Ms Irene Clarke. The panel has already found that Mrs Ali must have realised that making a false statement on the complaints form was, by the ordinary standards of reasonable and honest people, dishonest. As a manager, she held a position of responsibility. She had a duty to act on the complaint, a duty to make a note of any interaction with Ms Irene Clarke and a duty to make it accurately and truthfully. In making an untrue statement on the complaints form, the panel was in no doubt that such behaviour would be deemed deplorable by any member of the profession and an act that would fall well short of what would be proper in all the circumstances. Honesty and integrity lies at the very heart of the nursing profession. Patients, members of the public and employers must be able to trust a nurse.

The panel had little difficulty in concluding that charge 3 constituted misconduct.

The panel then went on to consider whether by reason of her misconduct, Mrs Ali'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 insight, likelihood of repetition and remediation.

In considering the issue of insight, the panel has received no submissions in relation to the failure to effectively audit documentation and a submission by counsel on specific instructions that Mrs Ali continues to deny she ever acted dishonestly. There is no evidence before the panel of Mrs Ali demonstrating any insight or understanding into her omissions and her dishonest behaviour. There has been no remorse expressed by her or any recognition of the potential impact that the failure to audit nursing records could have had on patients and the potential impact that her dishonest behaviour could have had on Ms Irene Clarke or the wider public interest and reputation of the profession.

The panel considered whether Mrs Ali's misconduct is easily remediable, whether it has been remedied and whether it is likely to be repeated. The panel considered that some types of misconduct are more easily remedied than others, and that misconduct involving attitudinal problems such as dishonesty was less easy to remediate than failings which involved clinical errors or incompetence. In any event, the panel has not received any evidence of any remediable actions taken by Mrs Ali, such as any training she may have undertaking in relation to auditing since the allegations. It has received no references or testimonials commenting on her trustworthiness or honesty. There is no evidence of any change of attitude or reflection on Mrs Ali's behalf.

The panel has drawn no adverse inference from Mrs Ali's decision to withdraw from proceedings and therefore her decision not to address the panel at this stage. In all of the circumstances, the panel was unable to conclude that Mrs Ali has remediated her misconduct, or that she is unlikely to repeat misconduct of the kind found proved. Accordingly, the panel concluded that Mrs Ali remains liable in the future to place patients at unwarranted risk of harm, to bring the profession into disrepute, to breach

fundamental tenets of the profession and to act dishonestly. There is no evidence that Mrs Ali would act any differently should a similar situation occur.

The panel then considered whether, in any event, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of this case. The panel was in no doubt that it would.

For all the reasons outlined above, the panel determined that Mrs Ali's fitness to practise is now impaired by reason of her misconduct.

**Determination on sanction in relation to Mrs Ali (17 April 2013):**

In reaching its decision on sanction, the panel considered all the evidence before it as well as the submissions of Ms Brownlee.

Ms Brownlee referred the panel to the case of Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin).

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

The panel has considered the advice set out in the NMC indicative sanctions guidance (June 2012) (ISG). It had regard to the principle of proportionality, weighing the interests of Mrs Ali against the public interest.

The panel bore in mind that the purpose of a sanction is not to be punitive, although it may have that effect; rather, the purpose of a sanction is to protect patients and the wider public interest. The wider public interest includes maintaining public confidence in the profession and the NMC, and declaring and upholding proper standards of conduct and behaviour.

The panel reminded itself of its findings at the impairment stage, especially with regard to seriousness, remediation and insight. It approached the question of which sanction, if any, to impose, by considering the least restrictive sanction first and moving upwards.

It first considered taking no action but concluded that this would be wholly inappropriate, given the seriousness of Mrs Ali's misconduct which included a finding of dishonesty.

The panel then considered whether to make a caution order. The panel considered that Mrs Ali's case was at the higher end of the spectrum of impaired fitness to practise. It was mindful of its finding that she was liable to repeat her misconduct, and that repetition could place patients at unwarranted risk of serious harm, bring the profession into disrepute, breach fundamental tenets of the profession and be dishonest. It bore in mind that a caution order would not restrict her practice rights. In all the circumstances, the panel concluded that a caution order would not be sufficient to protect the public, and, moreover, such a sanction would not satisfy the wider public interest.

The panel next considered the imposition of a conditions of practice order. The panel considered that it may be possible to formulate conditions that could address the concerns with regard to Mrs Ali's failure to effectively audit nursing records. However, the panel considered that Mrs Ali's dishonesty demonstrated deep-seated attitudinal

problems and an alarming absence of understanding of the seriousness of her misconduct and its potential impact on those in her care. The panel also bore in mind the information provided by Mr Suter that Mrs Ali wished to retire from nursing with immediate effect. Accordingly, there is no evidence of any willingness to comply with any potential conditions. The panel concluded that in these circumstances, no workable conditions could be formulated which would fully address the risks posed by Mrs Ali. For these reasons, a conditions of practice order would be neither appropriate nor sufficient to protect the public or the wider public interest.

The panel next considered the imposition of a suspension order. The finding of dishonesty demonstrates serious departures from the standards to be expected of a registered nurse. The panel has found evidence of attitudinal problems, evidence of a lack of insight and that there is a risk of repetition of dishonest conduct. In all the circumstances, the panel had no doubt that Mrs Ali's misconduct was fundamentally incompatible with her continuing to be a registered nurse.

The panel had regard to paragraph 39 of the ISG which states: *"Dishonesty....is particularly serious because it can undermine the trust the public place in the profession. Honesty, integrity and trustworthiness are to be considered the bedrock of any nurse or midwife's practice."*

The panel also noted the case of *Parkinson v NMC:*

*"A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register."*

The panel however accepts that each case must be determined on its specific facts. It reminded itself that Mrs Ali had continued to deny that she had acted dishonesty, even after the panel's finding of facts. Members of the public, patients and colleagues must be able to trust a registered nurse. The panel considered that by reason of its findings, neither the public nor patients could now place any trust in her.

In all the circumstances, the panel concluded that a striking-off order is the only sanction which is sufficient to protect the wider public interest, and that public confidence in the professions and the NMC can only be sustained if Mrs Ali is removed from the register.

The panel had no specific information before it about the impact, financial or otherwise, such an order would have on Mrs Ali, but concluded that, in any event, Mrs Ali's interests were outweighed by the public interest in this matter. It considered that a striking off order was the only appropriate and proportionate sanction.

Mrs Ali will be advised that her name will be removed from the NMC register. She may not apply for restoration until five years after the date that this decision takes effect. Anyone who enquires about her registration will be advised of this.

**Determination on interim order in relation to Mrs Ali (17 April 2013):**

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 the 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.

**Determination on misconduct and impairment in relation to Ms Enriquez (19 April 2013):**

The panel has considered, on the basis of the matters found proved, whether Ms Enriquez's fitness to practise is impaired by reason of her misconduct. It has had regard to Ms Brownlee's submissions as well as those from Miss Russell-Mitra, on behalf of Ms Enriquez. The panel received and considered the bundle of training certificates provided by Ms Enriquez. It heard further oral evidence from Ms Enriquez and oral evidence from Vivian Tagalan, Registered Nurse who worked as a Senior Nurse with Ms Enriquez at the Whittington Hospital in London between January and October 2012.

The panel also received a statement from Ms Makalo, Ms Enriquez's former manager at Bridgeside Lodge, the nursing home at which Ms Enriquez worked between 2005 and December 2012. Ms Makalo was unwilling to give oral evidence to this panel having been instructed not to do so by her employer yesterday afternoon. In these circumstances, the panel gave Ms Makalo's statement less weight than it otherwise might have done.

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), Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin), Cohen v General Medical Council [2008] EWHC 581 (Admin), Cheatle v General Medical Council [2009] EWHC 645 (Admin) and Yeong v GMC [2009] EWHC 1923. Miss Russell-Mitra made submissions about some of these cases.

The panel has received and accepted the legal assessor's advice. He additionally referred the panel to the case of R (on the application of Dr. Malcolm Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) and Nandi v GMC [2004] EWHC 2317 (Admin).

In considering Ms Enriquez'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 her 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 charge 1(b), the panel reminded itself of its finding of fact that Ms Enriquez had a duty to take clinical observations at the least at about 15.00 and 17.00 on 7 December 2007. Undertaking regular clinical observations is a fundamental part of providing nursing care. Ms Enriquez herself accepted in her evidence that she had a duty of care to Resident A. As already outlined numerous times in its previous determinations, Resident A was an extremely ill and vulnerable person whose condition was deteriorating rapidly. Although Ms Enriquez was not the nurse with specific responsibility for Resident A, she was in her room intermittently throughout the day and knew that Miss Baquerfo, who had primary nursing responsibility for the resident, was not discharging her duty of care to Resident A. In these circumstances, the panel considered that failing to undertake clinical observations at approximately 15.00 and 17.00, given the condition of Resident A, was an omission that fell short of what would be proper in the circumstances and would be regarded by the profession as deplorable and unacceptable. Accordingly, the panel concluded that the facts found proved in charge 1(b) amounts to misconduct.

In relation to charge 1(e), the panel reminded itself of its finding of fact that Ms Enriquez failed to adequately monitor Resident A's glucose by failing to conduct urine analysis between 17.00 and 20.00 on 7 December 2007. The panel found that Resident A had not passed urine until 17.00 on the day in question as the nursing notes establish. Ms Enriquez quite obviously could not have undertaken a urine analysis prior to this. The nursing notes indicate that Resident A was changed and washed after being incontinent of urine at 17.00. There is no evidence before the panel that Ms Enriquez was present at this time. Her detailed witness statement at paragraph 80 suggests that when she attended the room at the relevant time Resident A had already been washed and changed. There is no evidence to show whether Resident A had been provided with incontinence pads. It may, therefore, had been pads or clothing that contained the necessary urine. If Ms Enriquez was not present when the soiling was dealt with, or if she was not aware that she had been changed at this time, Ms Enriquez could not have been able to conduct a urine analysis. There is no evidence that Resident A passed urine again between 17.00 and 20.00. The panel cannot conclude that Ms Enriquez is guilty of misconduct for failing to do something that was simply not possible for her to do. The panel therefore does not find misconduct in relation to charge 1(e).

The panel then went on to consider whether by reason of her misconduct in charge 1 (b) alone, that is to say failing to undertake clinical observations at about 15.00 and 17.00 on 7 December 2007, Ms Enriquez's fitness to practise is impaired. In reaching its decision, the panel had regard to all the circumstances of the case and in particular to remediability, remediation and the likelihood of repetition with particular reference to insight.

In considering the issue of insight, the panel had concerns as to Ms Enriquez's genuine level of insight. It took note of the impressive bundle of up to date training certificates provided, including training in Effective Communication, Advanced Dementia Care and Safeguarding Adults. However, the panel was concerned with Ms Enriquez's responses to questioning whilst giving her evidence. She told the panel that she had reflected on the matters only a couple of days ago, some five and a half years since the incident.

Although in re-examination she indicated that this process had begun when her statements were being prepared for this hearing. The panel finds that her understanding of the impact her failures could have had on the care of Resident A was low. The panel considered that, although she had completed several theoretical components and the references establish that there had been no repetition of the failure to make clinical observations, her explanation on her reflective style did not satisfy the panel that she would always take direct actions rather than simply escalating her concerns to others.

The panel considered whether Ms Enriquez's misconduct is easily remediable, whether it has been remedied and whether it is likely to be repeated. A failure to take clinical observations on two occasions during part of a single shift is clearly capable of being remedied. The panel bore in mind that the incident occurred on her first full day of working at the Home and that she was still in a period of induction who had been in practice as a nurse in this country for over a year. It noted the written reference from Julia Keane, Ward Sister at Whittington Health NHS where Ms Enriquez has been employed since January 2012. Ms Keane states that Ms Enriquez is "competent in testing urine, recording observations and record keeping". She also states that "there has been no problems in relation to her nursing care". Ms Keane confirms that, in relation to this NMC hearing, Ms Enriquez has informed her "from the beginning" and kept her up-to-date. No objection was raised by the NMC of this reference being put before the panel. The panel accepts the factual content of Sister Keane's reference. Ms Keane was not required to give oral evidence so that the panel was not able to test this evidence directly.

There is no evidence of any further concerns in Ms Enriquez's practice arising in the five and a half years since the incident. There have been no further referrals to the NMC and Ms Enriquez is of previous good character.

Notwithstanding the fact that Ms Enriquez has practised safely as a registered nurse for the some five and a half years and the positive reference from a credible source that directly addresses charges found proved, the panel was not satisfied that it could be confident that Ms Enriquez was not liable to repeat conduct of the sort found. In all of the circumstances, the lack of insight demonstrated by Ms Enriquez in giving evidence at this hearing meant that the panel concluded that she remains liable in the future to place patients at unwarranted risk of harm, to bring the profession into disrepute and to breach fundamental tenets of the profession. The panel is not satisfied that Ms Enriquez would act any differently should a similar situation occur.

The panel then considered whether, in any event, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of this case, involving a registrant failing to take observations on at least two occasions in a single shift. The panel decided that it would.

For all the reasons outlined above, the panel determined that Ms Enriquez's fitness to practise is now impaired by reason of her misconduct.

**Determination on sanction in relation to Ms Enriquez (19 April 2013):**

In reaching its decision on sanction, the panel considered all the evidence before it as well as the submissions of Ms Brownlee and of Miss Russell-Mitra. It received and

accepted the legal assessor's advice.

The panel has considered the advice set out in the NMC indicative sanctions guidance (June 2012) (ISG). It had regard to the principle of proportionality, weighing the interests of Ms Enriquez against the public interest.

The panel bore in mind that the purpose of a sanction is not to be punitive, although it may have that effect; rather, the purpose of a sanction is to protect patients and the wider public interest. The wider public interest includes maintaining public confidence in the profession and the NMC, and declaring and upholding proper standards of conduct and behaviour.

The panel reminded itself of its findings at the impairment stage, especially with regard to seriousness, remediation and insight. It approached the question of which sanction, if any, to impose, by considering the least restrictive sanction first and moving upwards.

It first considered taking no action. Given the concerns expressed by the panel with regard to not being satisfied that Ms Enriquez would always take direct actions rather than simply escalating her concerns to others, the panel cannot justify taking no action. Such an order would be disproportionate given its previous findings and would therefore be insufficient to maintain public confidence in the profession.

The panel next considered whether a caution order would be appropriate. The facts found proved in this case are serious and amount to misconduct, although it occurred over five years ago. However, the panel did consider the misconduct found to be at the lower end of the spectrum of fitness to practise. The panel was satisfied that a caution order reflects the gravity of the misconduct, that it is unacceptable and that it must not happen again. Given the limited insight demonstrated by Ms Enriquez, the panel, decided that a caution order for a period of two years is proportionate and adequate to protect members of the public and the public interest in maintaining and upholding proper standards of the profession. It will also act as a reminder to Ms Enriquez of her duties of care to patients as a registered nurse.

The panel did consider whether a conditions of practice order would be a more appropriate sanction but concluded that it would not given Ms Enriquez has been practising as a nurse without any further concerns over a period exceeding five years.

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