

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

16 – 18 May, 18 June and 22 August 2018

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

Name of registrant: Stelios Mitakoudis

NMC PIN: 16F0754C

Part(s) of the register: Registered Nurse - Adult
Nursing – 21 June 2016

Area of Registered Address: Greece

Type of Case: Misconduct

Panel Members: Trevor Spires (Chair, Lay member)
Catherine Askey (Registrant member)
Lorna Taylor (Registrant member)

Legal Assessor: William Hoskins

Panel Secretary: Vicki Watts (May 2018)
Richard Webb (June 2018)
Anita Abell (August 2018)

Mr Mitakoudis: Mr Mitakoudis was present via telephone
from Greece and was assisted, at all times,
by an interpreter (May 2018)

Not present (June and August 2018)

Nursing and Midwifery Council:	Represented by Jeremy Loran, Case Presenter (May and August 2018) Represented by Helen Fleck, Case Presenter (June 2018)
Facts proved:	1d, 2b (in respect of 1e and 1f)
Facts proved by admission:	1a, 1b, 1c, 1e, 1f, and 2a
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim Order:	Interim Suspension Order for 18 months

Charges as read

That you, a registered nurse, whilst employed as a band 5 nurse by Blackpool Teaching Hospitals NHS Foundation Trust:

- 1) *In or around the period of 01 September 2016 and 01 April 2017*
 - a) *Followed Patient 1 on one or more social media sites*
Proved by admission
 - b) *Contacted Patient 1 using one or more social media sites*
Proved by admission
 - c) *Invited Patient 1 to your home*
Proved by admission
 - d) *Asked Patient 1 to come on holiday with you*
Proved
 - e) *On an unknown date in or around March 2017 kissed Patient 1*
Proved by admission
 - f) *On an unknown date in or around March 2017 touched Patient 1's breast / breasts*
Proved by admission

- 2) *Your actions in relation to charge 1 above were:*

a) *Inappropriate*

Proved by admission

b) *Sexually motivated*

Proved in relation to charges 1e and 1f

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

Admissions

At the outset of the hearing, you made admissions to charges 1b, 1c, 1e, 1f, and 2a.

You denied all other charges.

In accordance with Rule 24(5) of the Rules, the panel found charges 1b, 1c, 1e, 1f, and 2a proved by virtue of your admissions.

Background

The background to the allegations was presented by Mr Loran on behalf of the NMC as follows:

You were employed as a staff nurse at Blackpool Teaching Hospitals NHS Foundation Trust (“The Trust”) and were working on a general short stay ward. In March of 2017, Patient 1 was on the general short stay ward awaiting a bed at a mental health hospital. She was 21 years old and was classified as vulnerable. She had previously been admitted to the ward following an attempted overdose and had been the subject of a “Section Order” under the Mental Health Act due to an attempt to abscond.

In March 2017, it is alleged that you went into the garden of the hospital with Patient 1 and kissed her and touched her breasts.

During the course of her previous admission some 5 – 6 months earlier you had become friendly with Patient 1. You exchanged social media details and engaged in

communications via social media with Patient 1 for a number of months. During these communications you allegedly invited Patient 1 to your house and asked her to come on holiday with you.

Another patient on the ward is said to have informed the ward manager that you and Patient 1 were in a relationship and described what is alleged to have occurred in the garden. Initially both you Patient 1 denied that any such relationship existed, however, at an informal meeting on 20 March 2017 you are admitted kissing Patient 1 and touching her breasts. By this stage Patient 1 had been transferred to a mental health hospital, therefore, no statement was taken from her.

At an investigatory meeting held on 9 June 2017, you made full admissions. The minutes of this meeting were signed by you as an accurate reflection of the meeting. The matter was then escalated to the Associate Director of Nursing and a disciplinary meeting was held on 28 June 2017. The outcome of that meeting was that you were dismissed from the Trust with immediate effect.

Determination on facts

In reaching its determination on facts, the panel had regard to all the evidence, including the exhibited documents and oral evidence. The panel heard submissions from Mr Loran and from you and it accepted the advice of the legal assessor.

The burden of proof rests entirely upon the NMC. You do not have to prove or disprove anything. The standard of proof is the civil standard, namely the balance of probabilities. This means that, for a fact to be found proved, the NMC must satisfy the panel that what is alleged to have happened is more likely than not to have occurred.

The panel took into account all the oral and documentary evidence which included your undated written responses to the allegations.

The panel heard evidence on behalf of the NMC from the following witness:

Ms 1 – Clinical Matron at the Trust

Ms 1 was employed by the Trust as the Clinical Matron, Ms 1 was responsible for investigating the allegations against you and she conducted the Investigatory Meeting on 9 June 2017, together with a colleague from the Human Resources department. The panel considered Ms 1 to be a fair witness who gave reliable and credible evidence. Ms 1 did her best to assist the panel but was not a direct witness to any of the events alleged. The evidence before the panel was therefore limited to the notes of the investigatory interview which included various admissions by you.

You participated in the hearing by telephone, and gave evidence under affirmation. You were assisted by an interpreter. The panel appreciated the difficulties of giving evidence remotely. The panel considered that you were open honest and keen to assist. Your evidence was largely consistent with the answers you gave during the Trust investigation. You acknowledged that your conduct was inappropriate but you strongly denied that it was sexually motivated.

During your evidence, you admitted charge 1a. You had initially not admitted this charge because you thought that the charge depended upon who initiated contact via social media. However, you acknowledged that there had been a linkage between you and Patient 1 on one or more social media sites and the panel therefore found charge 1a charge proved by way of admission.

In relation to charge 1d, you agreed that during your investigatory interview, you had admitted asking Patient 1 to go on holiday with you. However, you told the panel that you could not now remember whether in fact you had asked Patient 1 to go on holiday with you. In those circumstances, the panel decided that it should therefore, treat this charge as not admitted.

The panel went on to consider the remaining charges 1d and 2b and made the following findings.

Charge 1d

- 1) In or around the period of 1 September 2016 and 01 April 2017

d) Asked Patient 1 to come on holiday with you

This charge is PROVED

In determining this charge, the panel had regard to the Minutes of the investigatory meeting dated 9 June 2017 conducted by Ms 1. During the investigation meeting, you were asked the following questions:

CW – It is alleged that you whilst messaging B you invited her to your house and wanted to take her on holiday, is this correct ?

SM – Yes I invited her but I never saw her outside the hospital...

CW – ...

SM – ...

CW – what about asking her on holiday ?

SM – Yes I said that.

CW – Did anything come of that ?

SM – We made plans but we never went anywhere.

Ms 1 confirmed in her oral evidence that you admitted during the investigatory meeting to having asked Patient 1 to come on holiday with you.

You told the panel that you now could not remember asking Patient 1 to come on holiday with you but you accepted that you may have done.

The panel considered that the notes of the investigatory meeting had been agreed and signed by you. The contemporaneous notes were not disputed by you at the time and were written much closer to the date when the events took place. Further, the panel considered that you had made some annotations and corrections at the time the notes were provided to you regarding various other questions put to you but had not amended the answers you gave on this matter.

The panel considered that you were explicitly asked during the investigatory meeting whether you had asked Patient 1 to come on holiday with you and you agreed that you had.

The panel therefore concluded it was clear from the evidence in relation to this charge that in or around 1 September 2016 and 1 April 2017 you asked Patient 1 to come on holiday with you.

The panel therefore found **charge 1(d) proved.**

Charge 2 (b)

2) *Your actions in relation to charge 1 above were:*

a) *Inappropriate*

Proved by admission

b) *Sexually motivated*

This charge is proved in relation to 1e and 1f only

Mr Loran submitted that your motivation for engaging in the conduct alleged at charge 1 needed to be considered separately in relation to each of the sub charges but that the panel could also have regard to the situation as a whole. Mr Loran submitted that you had engaged in a course of conduct which was designed to develop a relationship with Patient 1 that would facilitate a sexual encounter and that the various steps taken at charges 1a, 1b, 1c, and 1d were designed to facilitate sexual contact which eventually occurred in the hospital garden in March 2017.

You told the panel that you now realise that you had made a huge mistake and had behaved inappropriately but you denied that you had any intention of sexually exploiting Patient 1. You said that at the time of the events, you were going through a difficult phase in your life as you had no friends or family in England and that you felt isolated. You told the panel that when Patient 1 showed an interest in you it felt nice. You said that the fact you invited Patient 1 to your home did not mean that you had a sexual motive.

You explained to the panel that you and Patient 1 were of similar ages, had similar interests and that at the back of your mind you thought that a relationship might develop. You said that when Patient 1 was on the ward she often seemed keen to engage in contact with you but that you resisted. However, in March 2017 Patient 1 was waiting for you outside the ward when you left at the end of a long shift and you were tired. You said that you agreed to go to the reflective garden in the hospital grounds with Patient 1 because she was so persistent and you thought that there may be something important she wanted to say to you.

You told the panel that during this visit to the reflective garden Patient 1 ended up sitting on your lap and you briefly kissed her and touched her breasts. You estimated that you were in the garden for no more than five minutes and that the kissing lasted no more than a minute or two. You ended the incident and left the garden. After the incident you realised that you had done something very wrong. You did not meet or have contact again with Patient 1 again and deleted her from your social media contacts.

You also told the panel that in Greece contacts between patients and nurses were not uncommon although of course sexual contact was not acceptable. You had previously worked as a nurse in Greece for six months before coming to the United Kingdom and this was your first job in the United Kingdom. You told the panel you were not familiar with the NMC code of conduct.

The panel bore in mind that it was for the NMC to prove that the conduct alleged at charges 1a, 1b, 1c, 1d, 1e, and 1f, was sexually motivated and that the standard of proof was the balance of probabilities.

Charge 1a

1. In or around the period of 01 September 2016 and 01 April 2017

a) Followed Patient 1 on one or more social media sites

This charge is not proved in relation to charge 2b

The panel did not consider that the NMC had proved that the linkage between you and Patient 1 on social media sites was sexually motivated on your part. It concluded on the basis of all the evidence it had heard that it was in fact more likely that you

hoped that a friendship, possibly leading to a relationship, might develop at a time when you felt alone and isolated in a foreign country.

Charge 1b

b)Contacted Patient 1 using one or more social media sites

This charge is not proved in relation to charge 2b

The panel concluded that this charge was not proved for the same reason as that set out in charge 1a. The panel noted that, on your account, the contact between you and Patient 1 on social media sites was intermittent and there was no other evidence to suggest that this contact was other than an attempt to develop a friendship.

Charge 1c

c)Invited Patient 1 to your home

This charge is not proved in relation to charge 2b

The panel determined that there was insufficient evidence to enable it to conclude that the invitation to your home was sexually motivated. Whilst such an invitation was wholly inappropriate, the panel had in mind your circumstances and concluded that the invitation did not arise out of a desire to facilitate a sexual relationship with Patient 1

Charge 1d

d) Asked Patient 1 to come on holiday with you

This charge is not proved in relation to charge 2b

The panel determined that there was insufficient evidence for it to conclude that an invitation to Patient 1 to come on holiday with you was extended for the purpose of facilitating a sexual encounter. It was wholly inappropriate but the panel had no information about the circumstances in which this invitation was made or the conversation that must have taken place in relation to it.

Charge 1e

e).On an unknown date in or around March 2017 kissed Patient 1

This charge is proved in relation to charge 2b

The panel noted that during the investigatory meeting you said “*one day after I had finished the handover I went off the ward and saw (Patient 1) waiting for me she was always spontaneous and I was impulsive as well I was swept away with her we were in the garden and we just kissed*”.

The panel concluded that, whilst the episode was not pre-meditated on your part, it did occur and that when you kissed Patient 1, whilst she was sitting on on your lap, that kiss was sexually motivated.

Charge 1f

f) On an unknown date in or around March 2017 touched Patient 1’s breast / breasts

This charge is proved in relation to charge 2b

During your investigation meeting you accepted that you touched Patient 1’s breasts, whilst she was sitting on your lap. This touching occurred in the same context as the kiss and was also, in the panel’s view, sexually motivated.

The panel therefore found charge **2b proved**, in respect of charges **1e and 1f**.

Determination on misconduct and impairment

Following its findings on fact, the panel invited submissions on the matters of misconduct and current impairment.

As to misconduct, Mr Loran referred the panel to the case of *Roylance v General Medical Council* [1999] UKPC 16, in particular to the judgment of Lord Clyde who described misconduct as “*a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed.....in the particular circumstances*”. He also referred to the cases *The Queen (on the Application of Remedy UK) v GMC* [2010] EWHC 1245

(Admin), *Calhaem v GMC* [2007] EWHC 2606 (Admin), and *Nandi v GMC* [2004] EWHC 2317 (Admin).

Mr Loran invited the panel to have regard to the professional standards required of you at the time, as set out in the NMC's publication, 'The Code: Professional standards of practice and behaviour for nurses and midwives' (March 2015) ("the Code"), in particular paragraphs 1, 1.1, 3, 4, 20, 20.5 and 20.6.

Mr Loran submitted that you spent a number of months communicating with this vulnerable 21 year old patient via social media. You blurred the lines between a professional and personal relationship by offering her professional advice as a nurse, whilst at the same time inviting her to your house and to go on holiday. He submitted that you developed that relationship over a number of months, which is a significantly aggravating feature. Mr Loran submitted that this was not a momentary lapse but a sustained breach of the code. Mr Loran referred the panel to its determination on the facts which states that these actions were wholly inappropriate.

Mr Loran submitted that this culminated in a sexual encounter which lasted a minimum of 1 – 2 minutes but potentially up to 5 minutes. This sexual encounter involved kissing the patient and touching her breasts whilst she sat on your lap. This occurred on hospital grounds whilst the patient was sectioned under the Mental Health Act. You took advantage of a vulnerable patient. This amounts to a gross breach of professional boundaries. By engaging in an emotional and sexual relationship with this patient, you abused your position of power.

As to the matter of impairment, Mr Loran referred the panel to the case of *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin), and to the approach formulated by Dame Janet Smith in her Fifth Shipman Report. He submitted that limbs a), b) and c) of that approach were engaged in this case.

Mr Loran also referred the panel to the guidance of Silber J in the case of *Cohen v GMC* [2008] EWHC 581 (Admin), in particular, the need to consider whether the conduct which led to the charge was easily remediable; whether it had been remedied; and whether it was highly unlikely to be repeated.

Mr Loran submitted that the panel may feel that, given the nature of the conduct and the significant wider public interest considerations, this conduct is not easily remediable. Although you admitted these allegations at a local level, it is relevant to note that although you now state that you realised it was wrong immediately, you did not report this yourself. The reason this was exposed was because another patient reported it to the ward manager. Mr Loran submitted that you are said to have initially denied the allegations. You then suggested that although you had communicated with the patient via social media and had been to the garden with her, you had only talked. Mr Loran submitted that this behaviour could therefore have gone unnoticed if the other patient had not reported it. Mr Loran submitted that any credit given for making these admissions must be considered in this full context.

Mr Loran asked the panel to consider what he referred to as your undated reflection document in which, he submitted, you have provided no reflection on the impact that your conduct may have had on the patient or on the profession. He submitted that you have not considered how you would deal with things differently in the future and you have not completed any reading or retraining. Mr Loran submitted that in the circumstances there is a significant lack of insight into the seriousness and the nature of your wrongdoing and therefore a real risk of repetition.

In closing, Mr Loran submitted that a finding of impairment was required both on the grounds of public protection and the wider public interest.

You told the panel that you took full responsibility for what happened between you and Patient 1 and that at no point have you tried to blame her. You said you do not agree that you were able to be seen by other patients or your colleagues as the garden was secluded. You told the panel that you made a huge mistake which will never be repeated. You said that these experiences will make you a much better nurse.

In reaching its decision, the panel had regard to all the oral and documentary evidence before it. It also had regard to the submissions of both parties and accepted the advice of the legal assessor.

The panel also took into account that the letter which you wrote to the NMC in September –October 2017 was not written in your first language and was not specifically intended as a reflective piece. It also recognised that all communication with you throughout this hearing has been through an interpreter.

In relation to impairment by reason of misconduct, the panel must engage in a two stage process: it must first consider whether, on the facts found proved, your behaviour amounts to misconduct, and secondly, if so, whether your fitness to practise is currently impaired by reason of that misconduct.

The panel was aware that not every instance of falling short from what would be proper in the circumstances, and not every breach of the Code, would be sufficiently serious that it could properly be described as misconduct. Accordingly, the panel had careful regard to the context and circumstances of the matters found proved.

You were, at the time, a nurse who had been working in the United Kingdom for approximately nine months. Patient 1 having been a patient on your ward was known to you and was a vulnerable patient. She was subject to a Section Order under the Mental Health Act. You embarked in a course of conduct initially via social media with Patient 1 which included you inviting her to your home and to come on holiday with you. In its findings on facts, the panel found that your conduct in respect of charges 1(e) and 1(f) was sexually motivated.

It is a fundamental responsibility of a registered nurse to maintain professional boundaries and not to abuse their privileged position. It is also paramount that a registered nurse must always act with integrity and uphold the reputation of the profession. To that end, it is never acceptable for a registered nurse to engage in a sexually motivated course of conduct with a patient in their care. Your conduct was aggravated by the fact that Patient 1 was vulnerable and was subject to a Section Order under the Mental Health Act.

The panel determined that by virtue of your conduct, you breached the following provisions of the Code:

Prioritise People

You put the interests of people using or needing nursing or midwifery services first...

3 Make sure that people's ... psychological needs are assessed and responded to

4 Act in the best interests of people at all times

20 Uphold the reputation of your profession at all times

20.1 keep to and uphold the standards and values set out in the Code

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

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

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

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly...

Your actions in kissing Patient 1 and touching her breasts were sexually motivated. The other matters referred to at charge 1, while not sexually motivated, were wholly inappropriate.

The panel was in no doubt that your conduct fell significantly below the standards expected of a registered nurse and was of the kind that other practitioners and the general public would consider deplorable. The panel concluded that your conduct was a very serious departure from acceptable standards and amounted to misconduct.

The panel then went on to consider the question of impairment. In considering your fitness to practise the panel reminded itself of its duty to protect patients and its wider duty to protect the public interest which includes declaring and upholding proper standards of conduct and behaviour, and the maintenance of public confidence in the profession and the regulatory process.

“Impairment of fitness to practise” has no statutory definition. However, the NMC has defined “fitness to practise” as a registrant’s suitability to remain on the register without restriction.

The panel was assisted by the observations of Mrs Justice Cox in the case of *Grant*:

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

[Paragraph 74]

The panel further took into account the approach formulated by Dame Janet Smith in her 5th Report on Shipman, which was cited with approval in the case of *Grant*:

“Do our findings of fact in respect of the [registrant’s] misconduct [...] show that [his] fitness to practise is impaired in the sense that [he]:

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

The panel was in no doubt that limbs a), b) and c) were engaged in this case.

Patient 1 was a vulnerable patient with mental health difficulties, your actions could have exposed Patient 1 to an unwarranted risk of psychological harm.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries.

You embarked on a sexually motivated episode with a vulnerable patient. You placed your own interests and desires above those of a vulnerable patient. Your

conduct amounted to an abuse of a position of power and trust. It is a fundamental tenet of the profession that registered nurses act to put the interests of people using or needing nursing services first; make the care and safety of patients their primary concern, preserving their dignity and recognising and responding to their needs; and treating them with respect. Registered nurses must always act with integrity and uphold the reputation of the profession. You failed to do this.

With regard to future risk, the panel considered the questions posed in the case of *Cohen*, namely whether your conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated. In considering these questions, the panel had particular regard to the issue of insight.

The panel was mindful that to effectively remediate past failings, registered nurses must demonstrate insight into their behaviour and undertake sufficient remedial steps to address the concerns in question. It is often said that attitudinal problems are difficult to remediate. In light of the specific issues raised, namely sexually motivated conduct, the panel considered that effective remediation in your case primarily required sufficient insight. The panel recognised that the level of insight shown by a practitioner is central to a proper determination of that practitioner's fitness to practise.

You told the panel that you were not aware of the NMC Code whilst you were working at the Trust, which the panel determined was wholly unacceptable. As a registered nurse you had a duty to have regard to your professional code of conduct. You should have been aware of your professional role and responsibilities. As a registered nurse you should have been aware of the need to maintain and uphold professional boundaries at all times. The panel considered it was evident, from your conduct that you failed to act in accordance with professional standards.

You have not presented the panel with any evidence of remedial action to address your misconduct since the incidents in question. You have demonstrated some remorse although, in the panel's judgment, you have placed a worrying emphasis upon the damage that this episode has caused to your own career rather than on the potential impact on Patient 1's health.

You engaged with the proceedings by telephone and gave evidence at the fact-finding stage of these proceedings. The panel had regard to the fact that English is not your first language and that there are subtleties within the language which could have been lost in translation. However, you were assisted throughout this hearing by an interpreter. Whilst you made some factual admissions, you denied that your conduct was sexually motivated. This was subsequently found proved by the panel in respect of charges, 1e and 1f.

The panel was concerned that at no point during your investigatory meeting, your evidence to this panel or in your letter have you acknowledged that your actions may have undermined Patient 1's wellbeing. Indeed you have not at any point shown any appreciation of Patient 1's vulnerabilities. You have not demonstrated any understanding of the impact of your actions on the wider public interest in terms of public confidence in you as a registrant and the profession generally. The panel had regard to the letter which you said you wrote in October 2017 and in which you state:

"...I did not bring the Trust or myself into disrepute and I have not been charged with criminal offense in any case..."

For all the reasons above, the panel could not be assured that you were highly unlikely to repeat your misconduct.

The panel had in mind that any approach to the issue of whether fitness to practise should be regarded as impaired must take account, not only of the need to protect members of the public, but also the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour.

The panel therefore went on to consider whether public confidence in the profession, and the NMC as regulator, would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.

The panel determined that this is a case where the firm declaration of professional standards so as to promote public confidence in the profession is required. The public needs to have trust and confidence in nurses to act with integrity, maintain professional boundaries and uphold the reputation of the profession at all times.

Your conduct at the time showed wholly impaired judgement, and a lack of appreciation of your responsibilities as a registered nurse. In the panel's view, your misconduct and lack of professionalism were such a material departure from appropriate nursing standards that a finding of no impairment would fundamentally undermine proper professional standards and public confidence in the profession, and significantly damage the regulatory process.

Accordingly, the panel determined that your fitness to practise is currently impaired by reason of your misconduct.

The hearing resumed on 18 June 2018

Decision on proceeding in the absence of Mr Mitakoudis:

The panel was informed that notice of this resuming hearing was sent to Mr Mitakoudis' registered address in Greece on 23 May 2018 but was returned to sender on the basis that it was not possible to identify the delivery address. The address has previously been successfully used in these proceedings. No further attempt was made to contact Mr Mitakoudis between the return of the notice on 12 June 2018 and today. Multiple attempts have been made this morning to contact Mr Mitakoudis by telephone and email however there has been no response.

Ms Fleck, on behalf of the NMC, told the panel that notice of today's hearing was also sent by unregistered airmail to the same address but there had been no response. She accepted that the panel might well consider that it was appropriate to adjourn today's hearing in view of the present situation but emphasised that this was a matter for the panel's judgement.

The panel accepted the advice of the legal assessor.

The panel took into account that Mr Mitakoudis has been sent notice of the hearing in accordance with the NMC Rules. It also considered that an interpreter has attended the today as have all other relevant parties aside from Mr Mitakoudis. The

panel considered the possibility that Mr Mitakoudis has decided to disengage with these proceedings.

However, the panel bore in mind that Mr Mitakoudis has been actively participating in the hearing on the previous dates and there has been no indication from him to say that he no longer wishes to be involved in the process. Mr Mitakoudis had previously stated that he was keen to retain his NMC registration. It is unfortunate that attempts have not been made, until very recently, to contact Mr Mitakoudis by email and telephone. Nevertheless, that is the situation and the panel could therefore not be satisfied that Mr Mitakoudis was aware that the hearing was listed to resume today.

In the circumstances, the panel decided it would be unfair to proceed in the absence of Mr Mitakoudis today. The panel determined that the resuming hearing should be relisted for a further day to give Mr Mitakoudis the opportunity to participate in the hearing and make representations, if he wishes to do so, at the next stage of proceedings. The panel stressed the importance of the NMC taking all appropriate steps to clarify Mr Mitakoudis' intentions regarding continued engagement with the regulatory process.

Accordingly the panel decided not to proceed today.

The proposed that the hearing be relisted for 22 August 2018.

22 August 2018

Decision on Service of Notice of hearing:

Mr Mitakoudis was not in attendance. Written notice of the resuming hearing date had been sent to his registered address by recorded delivery and by first class post on 26 June 2018. Although the notice was returned to the NMC an email had been sent to Mr Mitakoudis on 18 June 2018 informing him that 22 August had been set

aside for the resuming hearing. Mr Mitakoudis responded in an email also dated 18 June 2018 stating “I am not willing to take part in the meeting (*sic*) in August”.

In the light of the above information Mr Loran submitted that notice had been served correctly. Further, although the letter had been returned to sender Mr Mitakoudis was aware of the hearing reconvening on 22 August 2018.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Mitakoudis has been served with notice of this hearing in accordance with the requirements of Rules 32(3) (which relates to notice in the case of postponed or adjourned hearings) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004.

Decision on proceeding in the absence of the registrant

The panel then considered continuing in the absence of Mr Mitakoudis.

Mr Loran submitted that the panel should proceed in the absence of Mr Mitakoudis. The panel had already concluded that notice was served in accordance with the Rules. Further, the email of 18 June 2018 from Mr Mitakoudis is clear that he is aware of today’s hearing and that he does not wish to participate.

Mr Loran informed the panel of an additional consideration. In the first notice of hearing sent to Mr Mitakoudis on 11 April 2018 the NMC stated

“Sanction bid

If the panel concludes that your fitness to practise is currently impaired, at this stage, we will ask the panel to consider imposing the following sanction:

6 month suspension with review before expiry

You will also be able to tell the panel which sanction you think they should impose, and why you think it is appropriate.

We may change our position on what we consider to be the most appropriate sanction during the hearing. This may happen if some of the facts are not found proved, or if impairment of fitness to practise is found on a different basis than we expected.

If the NMC’s case presenter decides it is necessary to change the sanction bid, they will let you know as soon as possible. If you are not present at the hearing, you will not be notified of any changes to the NMC’s sanction bid.”

The NMC had since changed its view and the sanction bid that Mr Loran intends to put forward if the hearing proceeds today is a striking off order. Mr Loran submitted that it was clear from the letter that the NMC could change its position on the most appropriate sanction. He informed the panel that as Mr Mitakoudis is not attending the hearing today he was not aware of this change.

Mr Loran submitted that whilst the matter of a sanction bid was an additional issue for consideration, the panel should nonetheless proceed in Mr Mitakoudis’ absence. Mr Loran submitted that it was clear from the answers Mr Mitakoudis gave in evidence earlier in the hearing when he frequently used words to the effect that “I don’t want to lose my PIN” and from his email of 18 June, when he states “I would not like to lose my PIN number” that he was aware of the possibility of striking off order being imposed.

The panel heard and accepted the advice of the legal assessor. He reminded the panel of the need to balance the public interests with those of with those of Mr Mitakoudis when deciding on this matter and that fairness to a registrant was cardinal principal which underlay all proceedings.

The panel concluded from the documents before it that Mr Mitakoudis was aware of today's hearing, that he had chosen not to engage today and that he was aware that the hearing could proceed in his absence. Indeed, his email implied that he expected it to do so and that he wished "to forget and go forward". The panel concluded from the contents of the email that is was very unlikely that Mr Mitakoudis would engage if this hearing were to be postponed to a later date.

When reaching its decision the panel considered the issue raised by Mr Loran about the sanction bid having changed since April 2018, and balanced that with the need to be fair to all parties involved.

The panel took into account:

- the public interest in proceeding with this matter which relates to events in the period September 2016 to April 2017
- the fact that Mr Mitakoudis made a decision not to participate today
- that it has concluded that Mr Mitakoudis is very unlikely to participate if the hearing was adjourned
- Mr Mitakoudis' email of 18 June 2018 indicates that he has no intention of participating further in this hearing
- Mr Mitakoudis appeared to be aware that all sanctions were available to the panel including a striking off order, as indicated in the letter of 11 April 2018.

The panel noted his evidence on day two of the hearing when he said: “Nothing would change if I lost my permit to work here for one or five years”. The panel took this to be reference to the possibilities of both a suspension order or a striking off order.

- although the NMC can put forward a sanction bid, it is simply a submission and is not determinative. The panel’s responsibility is to exercise its own independent judgement based on the evidence before it when deciding on sanction

and concluded that it was in the interests of justice and in the public interest in the expeditious disposal of hearings that this matter proceed today.

Determination on sanction

Having determined that Mr Mitakoudis’ fitness to practise is impaired, the panel went on to consider what sanction, if any, it should impose on his registration.

The panel took into account the submissions made by Mr Loran and all of the evidence before it. Mr Loran submitted that the appropriate and proportionate sanction in this case was a striking off order. He drew attention to what the NMC considered to be aggravating and mitigating features of this case and he reminded the panel of its earlier conclusion that Mr Mitakoudis lacked insight. He submitted that the panel must take into account that this case involved an abuse of a position of trust by Mr Mitakoudis and involved a vulnerable patient.

The panel accepted the advice of the legal assessor.

Under Article 29 of the Nursing and Midwifery Council Order 2001, in relation to the misconduct charges, the panel can take no further action or impose one of the

following sanctions: make a caution order for one to five years; make a conditions of practice order for no more than three years; make a suspension order for a maximum of one year; or make a striking off order. The panel has borne in mind that the purpose of a sanction is not to be punitive, though it may have a punitive effect. It took into account the NMC publication, *Sanctions Guidance (the SG)*.

The panel considered the sanctions in ascending order of seriousness, and recognised that it should impose the least restrictive sanction compatible with the maintenance of patient safety.

The panel has applied the principles of fairness, reasonableness and proportionality, weighing the interests of patients and the public with Mr Mitakoudis' own interests and taking into account the mitigating and aggravating factors in the case. The public interest includes the protection of patients, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

The panel concluded that the aggravating features in this case were:

- Patient 1 was particularly vulnerable, as she was in hospital and the subject of a section order under the Mental Health Act
- the case involves a range of behaviours all of which breach professional boundaries and taken together extend over a period of several months
- those behaviours were also a persistent breach of the trust implicit in any relationship between a nurse and patient
- the incidents of sexually motivated behaviour took place on hospital premises
- the incidents of sexually motivated behaviour took place in a secluded part of the hospital grounds and were not a momentary event

- there has been a continuing lack of insight, demonstrated most recently in the email of 18 June 2018, by Mr Mitakoudis into why his actions were inappropriate.

The panel concluded that the mitigating features in this case were that Mr Mitakoudis:

- made full admissions to the Trust, engaged with its disciplinary process, and engaged with the NMC from an early stage in these proceedings
- was socially isolated in an environment relatively unfamiliar to him
- had qualified as a registered nurse in Greece relatively recently with no previous experience of practising in the UK.

The panel first considered taking no further action but determined that this would be inappropriate. It would not address the seriousness of the misconduct. In addition, the lack of insight which the panel has identified means there is a risk of repetition of similar behaviour. To take no further action would not provide sufficient public protection. Further, it would not be in the public interest to take no further action as it would be wholly insufficient to maintain public confidence in the profession nor would it uphold the standards of behaviour expected of a registered nurse.

The panel then went on to consider whether a caution order would be appropriate. The panel concluded that a caution order was not appropriate as the matters of concern were too serious and could not be described as being at the lower end of the spectrum of impaired fitness to practise. The panel has identified that there remains a risk of repetition and a caution order would allow Mr Mitakoudis to practise without restriction. Further, a caution order would not be in the public interest as it would not maintain confidence in the profession, it would not provide sufficient public

protection and it would not uphold the standards of behaviour expected of a registered nurse.

The panel next considered a conditions of practice order. The panel considered that it might be possible for Mr Mitakoudis to develop insight through training and development. However, the panel concluded, given the contents of his email of 18 June 2018, that it could not be confident he would be willing to comply with conditions. In any event, the panel considered that conditions of practice would not be sufficient to satisfy the public interest in upholding standards and maintaining confidence in the profession and in the NMC as regulator.

The panel considered whether a suspension order would be appropriate in this case. The panel took into account the factors listed in the SG which render a suspension appropriate and concluded

- this was not a single instance of misconduct but was a range of behaviours which took place over a period of several months
- the persistent lack of insight, which was demonstrated by Mr Mitakoudis' failure to recognise the risk his behaviour posed to Patient 1, is indicative of an attitudinal problem
- the panel has no evidence of insight and thus has identified there remains a risk of repetition.

These factors led the panel to consider a striking off order in relation to the misconduct charges.

Before considering a striking off order the panel reviewed the paragraphs in the SG on sexual misconduct. It concluded that although there was an element of sexual misconduct in this case, it was not so significant as to make a striking off order inevitable. The panel was of the view that the sexually motivated behaviour (a kiss and a touching of Patient 1's breasts) occurred in the context of a developing

inappropriate relationship rather than as a result of predatory behaviour planned from the outset.

The panel then considered a striking-off order. The panel has been concerned in this case by the persistent lack of insight by Mr Mitakoudis into the seriousness of his actions. He has not acknowledged the harm that could have been caused to Patient 1 and he has not expressed remorse for the impact his behaviour could have had on Patient 1. Indeed his concern and remorse have been for the impact these events have had on his own career. In these circumstances the panel has concluded that there is a deep-seated attitudinal problem which gives rise to public protection concerns and is incompatible with Mr Mitakoudis remaining on the register.

The public interest alone would require a serious sanction in this case in order to maintain public confidence in the profession and in the regulatory process. The case involved serious departures from professional standards, and an abuse of trust in relation to a vulnerable patient. It is possible that in certain circumstances a significant period of suspension might have satisfied that interest. However, in view of the public protection concerns set out above the panel has decided that a striking off order is the only sanction which will satisfy the public interest in this case.

Determination on Interim Order

Pursuant to Article 29 (11) of the Nursing and Midwifery Order 2001, this panel's decision will not come into effect until after the 28 day appeal period, which begins on the date that notice of the striking off order has been served. Article 31 of the Nursing and Midwifery Order 2001 outlines the criteria for the imposition of an interim order. The panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, or is otherwise in the public interest or in Mr Mitakoudis' own interest. The panel may make an interim conditions of practice order or an interim suspension order for a maximum of 18 months.

Mr Loran, on behalf of the NMC, made an application that the panel impose an interim suspension order for an 18 months period to cover the appeal period and any possible appeal, having regard to the terms of the panel's determination.

The panel has accepted the advice of the legal assessor. It has also had regard to the NMC's guidance to panels in considering whether to make an interim order. The panel has taken into account the principle of proportionality, bearing in mind the interests of the public and Mr Mitakoudis' own interests.

The panel has taken into account its reasons for making a striking off order. For those same reasons, the panel is satisfied that it necessary for the protection of the public and it is otherwise in the public interest for Ms Mitakoudis' registration to be subject to an interim order. The panel first considered whether an interim conditions of practice order would be appropriate and proportionate and determined, for the same reasons given in the substantive order, it would not. The panel therefore imposes an interim suspension order.

The period of this order is for 18 months to cover any potential appeal, but if at the end of a period of 28 days, Mr Mitakoudis has not lodged an appeal the interim order will lapse and be replaced by the substantive order. On the other hand, if Mr Mitakoudis does lodge an appeal, the interim order will continue until the appeal is concluded.

That concludes this determination.