

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

25 – 27 March 2019

and

30 – 31 May 2019

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

Name of registrant:	Beullah Thozama Ntsulumbana
NMC PIN:	03L0444O
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing – 10 December 2003
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Paula Burton (Chair, Lay member) Catherine Rice (Registrant member) Rama Krishnan (Lay member)
Legal Assessor:	Adrienne Morgan
Panel Secretary:	Zainab Mohamed (Days 1 – 3) and Philip Austin (Day 4)
Ms Ntsulumbana:	Present and represented by Laura Bayley, Counsel, instructed on behalf of the Royal College of Nursing
Nursing and Midwifery Council:	Represented by Dulcie Piff, Case Presenter
Facts proved:	1(a), (b) and (d)
Facts proved by admission:	None
Facts not proved:	1(c)
Fitness to practise:	Currently impaired
Sanction:	Caution order – 4 years
Interim Order:	N/A

Charges (as amended)

That you, a registered nurse:

1. *On the night shift of 17-18 March 2018:*

- a) placed tape over Patient A's mouth.*
- b) said to Patient A "that will keep you quiet" or words to that effect.*
- c) laughed at Patient A when he attempted to remove the tape.*
- d) said to Patient A "I will shoot you, I will shoot you, I will shoot you" or words to that effect.*

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

Application to amend the charges

The panel heard an application made by Ms Piff, on behalf of the NMC, to amend the stem of charge 1, which previously read, “*On 17 March 2018*” to “*On the night shift of 17-18 March 2018*”. She submitted that the proposed amendment would more accurately reflect the evidence and that there was no dispute about the date of the shift on which the alleged events had taken place. She submitted that there would be no prejudice to you and that it would be proper in these circumstances.

Ms Bayley, on your behalf, made no objections.

The panel accepted the advice of the legal assessor and was mindful of Rule 28 of the Rules which states:

28 (1) At any stage before making its findings of fact ...

(i) ... the Conduct and Competence Committee, may amend

(a) the charge set out in the notice of hearing ...

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

The panel accepted that the amendment would more accurately reflect the evidence and particularise the charges. The panel was of the view that such amendment, as applied for, would be in the interests of justice. It noted that Ms Bayley on your behalf made no objections. The panel was satisfied that there would be no prejudice to you or injustice caused to either party by the proposed amendments being allowed. It was therefore fair to allow the application.

Background

The NMC received a referral from Royal Devon & Exeter Foundation NHS Trust ('the Trust') in relation to your conduct on a particular night shift you had worked. You worked as an Agency nurse on this particular shift through Your World Agency ('the Agency').

It is alleged that during an overnight shift at the Trust on 17 to 18 March 2018, you placed tape over the mouth of Patient A, an elderly male patient suffering from a urinary tract infection (UTI) and confusion. It is also alleged that you laughed at Patient A when he attempted to remove the tape and said "I will shoot you, I will shoot you, I will shoot you" to the patient.

Ms 3, Health Care Assistant at the time, who was on duty during the same shift as you, reported her concerns to Ms 4, a registered nurse at the Trust, when she was next on shift.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence presented in this case together with the submissions made by Ms Piff, on behalf of the NMC and those made by Ms Bayley on your behalf.

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

The panel was aware that the burden of proof rests with the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard oral evidence from three witnesses called on behalf of the NMC, who at the time of these events were employed at the Trust in the following capacities:

Ms 1, Registered Nurse

Ms 2, Healthcare Assistant

Ms 3, Healthcare Assistant

The panel found Ms 1 to be an honest witness. It also found her to be careful and measured in her answers. However, she was not entirely helpful to the panel in dealing with the charges as she was not a direct witness to the alleged events. It therefore found her to be of limited assistance.

With regard to Ms 2, the panel found the passage of time had affected the details of her recollection of the events. She did her best to help and she was of some assistance to the panel.

The panel found Ms 3 to be a credible and honest witness. The panel found that although there were parts of her evidence that she could not recall, she was clear about what she saw and heard. The panel noted that Ms 3 felt uncomfortable with what she had witnessed at the time of the alleged incidents and had reported it to the nurse on duty on her next shift.

The panel considered that you were generally consistent in your answers and explanations. The panel found that there were aspects of your evidence that were believable and other areas which were unclear.

The panel found that there were some differences in the recollection of all the witnesses in relation to the details of what occurred on that shift, due to the passage of time.

The panel went on to consider the charges and made the following findings:

That you, a registered nurse:

Charge 1(a)

1. On the night shift of 17-18 March 2018

(a) placed tape over Patient A's mouth.

This charge is found proved.

In reaching this decision, the panel took into account all the written and oral evidence.

The panel heard evidence that Patient A was very noisy during the night shift, shouting and asking for help to such an extent that he was moved from a bay with other patients to the corridor opposite the nurse's station.

The panel noted the email Ms 3 originally sent on 20 March 2018, which stated as follows:

"I came on shift with [Ms 1], [Ms 2] and an agency nurse. Patient A in B4 was being very disruptive and the patients around him were becoming agitated with the noise as it was getting late. We moved him out to the nurses [sic] station around 10.11pm. He was very noisy [sic] all night, and in the early hours of the morning the agency nurse taped [Patient A]'s mouth shut "to keep him quiet" and left the tape in place for 5 or so minutes before removing it. She later told Patient A 3 or 4 times that she would shoot him. Patient A was distressed by this and said he was very frightened,

hiding under his bed sheet, shaking and screaming if he saw anyone move or come towards him.”

The panel also noted that at paragraph 7 of Ms 2’s witness statement, she stated that “I immediately asked the Registrant if she put the tape over Patient A’s mouth and she confirmed that she did...”.

In your oral evidence, you told the panel that Patient A was very unsettled and disruptive. You told the panel that it was a stressful situation to deal with as whatever you tried to do to calm Patient A was not working. He continued to shout and was agitated. You therefore decided to try alternative non-verbal communication tactics to settle him. You said you tore off a piece of micropore tape and placed it on your mouth and you said you indicated by a gesture on your mouth to say ‘shhhh’. You then gave Patient A a strip of the tape to put on his mouth, which he placed on his upper lip. You told the panel that your intention was to calm him down. You also told the panel that you felt that you had failed in your duties as a nurse to manage Patient A’s behaviour effectively.

The panel noted that the evidence it heard was that Patient A was very agitated and was shouting “go away” when anyone approached him. It also heard evidence that Patient A had continually refused medication, offers of food and fluids from you and was constantly pulling off his covers. Thus, the panel considered that it would be unlikely that Patient A would be in a position to take the sticky tape from you and place it on his own mouth. The panel therefore preferred the evidence of Ms 2 and Ms 3 in relation to this matter and determined that it was more likely than not that you had placed the tape over Patient A’s mouth.

Accordingly, the panel found this charge proved.

Charge 1(b)

1. On the night shift of 17-18 March 2018

(b) said to Patient A “that will keep you quiet” or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account all the written and oral evidence.

The panel noted the evidence of Ms 3 who at paragraph 10 of her witness statement stated that “I then heard the Registrant say to Patient A ‘that will keep you quiet’ or words to that effect.” Ms 3 confirmed this in her oral evidence.

You told the panel that you had said to Patient A that “we need to keep quiet” and “let’s be quiet”.

The panel was satisfied based on the evidence it heard that the words “keep quiet” were said by you to Patient A in an attempt to get him to quieten down. The panel noted that the charge was not specific and includes ‘words to that effect’. The panel accepted the evidence of Ms 3 and was satisfied that on the balance of probabilities, it was more likely than not that you had said words to the effect of “that will keep you quiet”.

Accordingly, the panel found this charge proved.

Charge 1(c)

1. On the night shift of 17-18 March 2018

(c) laughed at Patient A when he attempted to remove the tape.

This charge is found NOT proved.

In reaching this decision, the panel took into account all the written and oral evidence.

The panel noted at paragraph 10 of Ms 3’s witness statement she stated that “The Registrant just looked at him and started laughing.” However, it noted that no mention of laughter was made in Ms 3’s contemporaneous email when she had originally reported the matter to the nurse in charge.

The panel also noted that in Ms 2's contemporaneous note regarding the incident, which was written within a week of the night shift of 17-18 March 2018, she stated "Staff nurse Ntsulumbana laughed and said she had put it over his mouth". The panel considered that this mention of you laughing was during a conversation between you and her. It was therefore not satisfied that this was directed at Patient A.

Further, the panel noted that no other evidence was presented by the NMC on this particular matter.

You told the panel that you had been stressed and that there was no way that you would have been laughing at Patient A as it had been a difficult and stressful time on the shift.

The panel noted that the burden of proof rests upon the NMC at the fact finding stage and concluded that the NMC had not proved this charge to the requisite standard.

Accordingly, the panel found this charge not proved.

Charge 1(d)

1. On the night shift of 17-18 March 2018

(d) said to Patient A "I will shoot you, I will shoot you, I will shoot you" or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account all the written and oral evidence.

The panel noted that in Ms 3's contemporaneous email of 23 March 2018 she stated that you had said you would shoot patient A three or four times, she confirmed what she had heard both in her NMC statement and in her oral evidence. Ms 3 said that she was certain about what she had heard.

You told the panel that you did not say those words and that you would never say such a thing to a patient.

The panel noted that Ms 2's email did not refer to these words being said. However, it accepted Ms 3's evidence and found that it was more likely than not that you had said words to the effect of "I will shoot you" to Patient A. The panel relied in part on the contemporaneous email sent by Ms 3 which referred to these words being said by you.

Taking into account all of the evidence, the panel considered that on the balance of probabilities these words were said. The panel is only concerned at this stage, whether you said these words. The appropriateness and potential effect behind these words are a matter for further consideration at the next stage. However, as to the factual element, whether or not you had stated the words which Ms 3 stated she heard, the panel was satisfied that on the balance of probabilities, you had done so.

Accordingly, the panel found this charge proved.

Decision on interim order and reasons

Ms Piff, on behalf of the NMC, informed the panel that the NMC's position is neutral. She reminded the panel that it must take into consideration the public interest and any public protection concerns in this case.

Ms Bayley, on your behalf, submitted that no interim order was necessary. She submitted that although there are findings of facts, the panel had not considered the appropriateness or seriousness of the facts found proved. She therefore submitted that a risk has not been established to create a necessity for an interim order. Ms Bayley submitted that to impose an interim order at this stage would be disproportionate. She informed the panel that you have never had any restrictions placed on your PIN and submitted that the evidence before the panel attests to your good character and kind and caring nature.

The panel accepted the advice of the legal assessor.

The panel did not consider that an interim order was necessary. Although the panel had handed down its decision on facts, it did not consider the seriousness of the facts found proved at this stage. It therefore considered that the necessity for an interim order on public protection concerns was not met. Nor was the high threshold of imposing an interim order on public interest grounds alone, established.

In these circumstances, the panel decided not to impose an interim order.

Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

In her submissions, Ms Piff invited the panel to take the view that your actions amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). She then directed the panel to specific paragraphs 1, 1.2, 2.6, 3.4, 4, 4.2, 20, 20.5, 20.8 and identified where, in the NMC's view, your actions amounted to misconduct.

Ms Piff referred the panel to the case of *Roylance v GMC (No. 2) [2000] 1 AC 311* which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Piff submitted that your actions were serious and had the potential to cause physical and emotional harm to Patient A, who was a vulnerable and confused patient. She submitted that although your conduct occurred over a single shift, your actions were unacceptable, and could never be seen to be appropriate in any caring role.

Ms Piff submitted that a registered nurse would be expected to de-escalate the situation by acting in a comforting and reassuring manner. However, in acting in the way that you did, members of the nursing profession would consider your actions to be deplorable, and to have fallen far below the standards expected of a registered nurse. Furthermore, she also submitted that members of the public would be shocked to learn that a registered nurse behaved in the way that you did towards Patient A.

Ms Piff then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Ms Piff referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* and *Cohen v General Medical Council [2008] EWHC 581 (Admin)*.

Ms Piff submitted that there is no evidence of Patient A suffering actual harm as a result of your actions, however, she submitted that you breached a fundamental tenet of the nursing profession by not delivering appropriate nursing care. Ms Piff also submitted that you had brought the nursing profession into disrepute, and that public confidence in the profession and in the NMC as a regulator would be undermined should a finding of impairment not be made.

Ms Piff invited the panel to consider whether your conduct is remediable, whether it has been remedied, and whether or not it is likely to be repeated.

Ms Piff submitted that, in the NMC's view, your conduct is capable of remediation. However, Ms Piff submitted that your behaviour could be suggestive of an attitudinal issue which may be more difficult to remediate, and may elevate the risk of repetition in this case.

Ms Piff invited the panel to take account of your level of reflection and the training you have undertaken in an attempt to remediate the failings identified. She submitted that, at this stage, you have not been able to demonstrate that your fitness to practise as a registered nurse is not currently impaired in considering the level of insight and the remediation you have offered.

Ms Bayley submitted that you accepted from the outset that your behaviour towards Patient A was inappropriate. She submitted that you recognise that you did not perform to your own high standards, nor the standards expected of a registered nurse.

Ms Bayley submitted that the panel should have regard to the NMC guidance on misconduct, in considering whether the threshold is reached for serious misconduct to be identified in this case. She submitted that a finding of misconduct is a serious matter but that current impairment does not necessarily follow on from a finding of misconduct. The two are distinct decisions which the panel must make. Ms Bayley referred the panel to the case of PSA v NMC [2017] CSlH 29. She submitted that your nursing practice has been subject to regulatory scrutiny since the incident. However, there is no evidence of similar conduct having been repeated, nor any other concerns raised. Public confidence in the profession could be maintained without the imposition of a sanction due to the regulatory process and the finding of misconduct.

Ms Bayley submitted that you have shown sufficient insight into your failures and that you have provided evidence by way of remediation.

Ms Bayley reminded the panel that the incident occurred over the course of one shift, and is an isolated incident in an otherwise long and unblemished career.

Ms Bayley invited the panel to have regard to the positive references provided on your behalf, all of which attest to your good character, professionalism and your kind and caring nature.

Ms Bayley submitted that your conduct is undoubtedly remediable. She submitted that you have displayed genuine remorse and regret for your actions, and that you apologised to Patient A at the end of the night shift. Ms Bayley submitted that you had acknowledged what you did wrong, what you should have done differently, as well as what risks Patient A and your colleagues were exposed to.

Ms Bayley drew the panel's attention to the training you have undertaken, and submitted that you have adopted this learning in your nursing practice in order to de-escalate situations involving vulnerable patients displaying challenging behaviour. She submitted that in light of all of your remediation, the risk of repetition is low, and

a finding of impairment on public protection grounds is neither necessary nor justified.

Ms Bayley submitted that the public interest elements of this case are satisfied by the NMC having conducted a thorough investigation into your nursing practice, with these matters being considered at a full substantive hearing and a potential finding of misconduct. Therefore, she submitted that there is no justification for a finding of impairment on wider public interests grounds to maintain public confidence in the profession and in professional standards.

Ms Bayley invited the panel to find that your fitness to practise as a registered nurse is not currently impaired.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: Roylance, Grant, Cohen, PSA v NMC [2017] CSIH 29, Nandi v GMC [2004] EWHC 2317 (Admin), and GMC v Meadow [2007] QB 462 (Admin).

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

Decision on misconduct

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the Code.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and it considered your actions to have amounted to multiple breaches of the Code. Specifically:

“1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.6 recognise when people are anxious or in distress and respond compassionately and politely.

4 Act in the best interests of people at all times

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel noted that the three subcharges found proved related to a single patient over the course of one night shift.

In respect of charge 1(a), the panel was of the view that your actions in placing tape over Patient A's mouth to quieten him to be completely inappropriate in any circumstances. You failed to act towards him in a caring and compassionate way. You failed to treat Patient A with respect and had no regard for his personal dignity. The panel noted that Patient A was admitted to hospital with a UTI and was said to be vulnerable, agitated and confused. The panel considered your actions to demonstrate a fundamental lack of care for Patient A's health and wellbeing. The panel determined that your actions in respect of charge 1(a) alone were so serious so as to amount to misconduct in the circumstances of this case.

In respect of charge 1(b) and 1(d), the panel considered you saying 'that will keep you quiet' or words to that effect, and repeatedly saying "I will shoot you, I will shoot you, I will shoot you" or words to that effect, amounted to serious misconduct. The panel noted that this was said as part of a continuing response to Patient A's behaviour. It considered your actions to have been wholly inappropriate to speak to a vulnerable patient in this way. This is something which no registered nurse should do to a patient. The panel determined that your actions in charges 1(b) and 1(d) were sufficiently serious so as to amount to misconduct in the circumstances of this case.

The panel found that your actions in charges 1(a), 1(b) and 1(d) did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision on impairment

The panel next went on to decide if, as a result of this misconduct, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* in reaching its decision, in paragraph 74 she said:

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

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

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

The panel finds that limbs a, b and c are engaged in this case.

The panel first considered whether a finding of impairment was needed to protect the public.

The panel had regard to the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, and considered whether the misconduct identified is capable of remediation, whether it has been remediated, and whether there is a risk of repetition.

The panel accepted that the conduct was capable of remediation. It therefore considered your level of insight and remediation.

The panel noted that you do not accept its findings in respect of charge 1(a) and 1(d). You set out a different version of events in your reflective statement. However, the panel was satisfied that you had demonstrated a sufficient understanding of your wrongdoing. You recognised that the actions as set out in charge 1(a) were wholly unacceptable for a registered nurse. It considered you to have reflected on your conduct, shown remorse for your failings and demonstrated some insight. However, you did not fully address the impact your actions might have had on Patient A. You assured the panel during your oral evidence at the facts stage of this hearing, and through Ms Bayley during her submissions on misconduct and impairment, that you would never put yourself in a similar position again, should you be permitted to continue practising as a registered nurse. The panel considered these proceedings to have been a salutary lesson for you.

The panel noted that no actual physical harm came to Patient A as a result of your actions.

The panel had regard to the relevant training, in particular, the training that covered safeguarding and de-escalation techniques. It considered it to have addressed the concerns identified. It noted that you have been working as a registered nurse since these incidents and that there is no evidence of any other concern being raised in respect of your nursing practice.

The panel also had regard to the testimonials provided by you which attest positively to your professionalism and your kind and compassionate nature, although some referees have known you for a few months only.

In taking account of the above, the panel considered the risk of repetition to be low in the circumstances of this case.

The panel considered there to be sufficient evidence before it to satisfy it that you do not pose a risk to patient safety. It therefore determined that it was not necessary to find that your fitness to practise is currently impaired on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC include maintaining public confidence in the nursing profession and upholding the proper professional standards.

The panel considered there to be a high public interest in these matters. It was of the view that a fully informed member of the public would be shocked and seriously concerned by the misconduct identified. The misconduct involved the treating of a particularly vulnerable patient in an undignified manner and the potential impact this may have had on Patient A. The panel was of the view that the public would require a finding of impairment for the maintenance of confidence in the nursing profession and in professional standards. The panel determined that the public interest considerations of this case do require a finding of impairment to be made.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on wider public interest grounds alone.

Determination on sanction:

The panel considered this case very carefully and decided to make a Caution Order. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence that has been before it in this case.

Ms Piff submitted that there is a high public interest involved in this case. She submitted that the public would be shocked and seriously concerned that a vulnerable patient had been treated in such an undignified manner.

Ms Piff invited the panel to impose a suspension order for a period between three and six months but without the need for a review prior to its expiry in light of the panel's findings on impairment. There is also no evidence to suggest that your conduct has been repeated.

Ms Bayley invited the panel to impose a caution order as this is the most appropriate and proportionate sanction. She submitted that this sufficiently marks your conduct as inappropriate and makes it clear that your behaviour should not reoccur in future.

Ms Bayley reminded the panel that there are no current public protection concerns, and that it had found current impairment on the ground of it being in the wider public interest alone. She submitted that there is also a high public interest in allowing a kind, caring and compassionate nurse to continue to work.

Ms Bayley submitted that these proceedings have had an effect on you, both psychologically and financially. She took the panel through your current financial and personal circumstances. Ms Bayley submitted that the rigors of the regulatory process had and will continue to impact upon your reputation as a registered nurse, as well as your health, relationships, and future job prospects.

Ms Bayley submitted that a conditions of practice order is inappropriate as there are no identifiable areas of retraining that have not already been addressed. She further submitted that a suspension order will be disproportionate, as this will prevent you from working as a registered nurse in any capacity.

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

The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences.

The panel had careful regard to the Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

As regards aggravating factors, the panel has considered the following as relevant:

- Your conduct involved a particularly vulnerable patient.

As regards mitigating factors, the panel has considered the following as relevant:

- You have remediated your misconduct, and demonstrated some insight and remorse.
- You have provided testimonials, although the recent testimonials only cover a limited period.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be inconsistent with the panel’s findings at the misconduct and impairment stage to take no further action, and that it would be neither proportionate, nor in the public interest to take no further action.

The panel next considered whether a caution order would be appropriate in the circumstances. The panel took into account the Sanctions Guidance, which states

that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered you to have shown some insight and remorse for your misconduct. It had also found you to have remediated your misconduct through the training you have completed to the extent that there are no current public protection concerns. The panel noted that you have engaged with these proceedings throughout. It also noted that there are no other adverse regulatory findings against you in relation to your nursing practice, in what has been a lengthy and otherwise unblemished career.

The panel considered that a caution order might be a proportionate sanction, it went on to consider whether a conditions of practice order or a suspension order might be more appropriate.

The panel considered whether placing a conditions of practice order on your registration would be a sufficient and appropriate response. It determined that a conditions of practice order would not be an appropriate response as there are no longer any identifiable areas of retraining and no current public protection concerns.

The panel considered the imposition of a suspension order, but determined that this would be disproportionate given your insight, remorse and the steps you have made to address the deficiencies in your nursing practise. The panel did not consider there to be any evidence of a deep-seated attitudinal issue, as the evidence before it demonstrated that your misconduct related to a single patient over the course of one shift. The panel also determined that it would not be in the public interest to unduly restrict an experienced registered nurse that has practised for a significant number of years without any other concerns being raised. It noted that you have been practising as a registered nurse without restriction since the date of the misconduct.

The panel has therefore decided that a caution order would adequately mark the public interest considerations in this case. Having considered the general principles

above, and in looking at the totality of the findings on the evidence, the panel has decided to impose a caution order for a period of four years, in light of the high public interest concerns. The panel considers that this is sufficient to maintain public confidence in the profession, and also send the public and the profession a clear message about the standards required of a registered nurse. For the next four years, your employer or any prospective employer will be on notice that your fitness to practise had been found to be impaired and that your nursing practice is subject to a caution order.

At the end of this period, the caution order on the NMC register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practice is impaired, the record of this panel's finding and decision will be made available to any future panel that considers any further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.