

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**24 – 27 February 2020**

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

<b>Name of registrant:</b>	Miriam Lopez
<b>NMC PIN:</b>	16G0030C
<b>Part(s) of the register:</b>	Sub part 1 RN1: Adult Nurse (4 July 2016)
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Graham Park (Chair, lay member) Jonathan Coombes (Registrant member) John Weeden (Lay member)
<b>Legal Assessor:</b>	Robin Leach
<b>Panel Secretary:</b>	Catherine Acevedo
<b>Miss Lopez:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Sylvia McLean, Case Presenter
<b>Facts proved:</b>	1.1, 1.2, 1.3, 1.4, 2, 5, 6, 7, 8
<b>Facts not proved:</b>	3
<b>No case to answer</b>	4, 4.1
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking off order
<b>Interim Order:</b>	Interim suspension order (18 months)

## Details of charges (as amended)

That you a registered nurse,

1. On an unknown date in March 2018, in relation to Patient C:
  - 1.1. Lifted up her legs quickly **[proved]**
  - 1.2. Threw her onto the bed **[proved]**
  - 1.3. Said to Patient C “we do not have time for this” or words to that effect **[proved]**
  - 1.4. When informed by Patient C that she was in pain, you did not respond and walked away **[proved]**
2. On 24 August 2018, whilst Doctor A was speaking to a patient you said “if you want to know anything, you should ask a nurse as doctors do not know anything” or words to that effect **[proved]**
3. On 17 September 2018, gave Patient A an enema when it was not clinically justified or prescribed **[not proved]**
4. On 18 September 2018, said in front of Patient B that your colleague was “fucking useless” or words to that effect **[no case to answer]**
  - 4.1. During an admission process with Patient B, said that she was “nothing to do with me” or words to that effect **[no case to answer]**
5. On 21 February 2019 incorrectly informed your employer (“Medicspro Agency”) that you were not under investigation by the NMC **[proved]**
6. On or around 17 June 2019, signed and submitted a review form which incorrectly recorded that you had never “been subject to disciplinary action or currently being investigated due to alleged misconduct” **[proved]**

7. On 3 July 2019, during a revalidation meeting you incorrectly informed your employer that you were not subject to an NMC investigation **[proved]**
  
8. Your actions as set out in charges 5-7 above were dishonest in that you deliberately attempted to mislead your employer that you were not under investigation when you knew that you were **[proved]**

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Lopez was not in attendance and that written notice of this hearing had been sent to Miss Lopez's registered address by recorded delivery and by first class post on 2 January 2020.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Lopez's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Mclean submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Lopez has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

## **Decision on proceeding in the absence of Miss Lopez**

The panel next considered whether it should proceed in the absence of Miss Lopez. The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Ms Mclean invited the panel to continue in the absence of Miss Lopez on the basis that she had voluntarily absented herself. Ms Mclean submitted that there had been limited engagement by Miss Lopez with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “*with the utmost care and caution*” as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. The panel further noted the case of *General Medical Council v Adeogba [2016] EWCA Civ 162* and the case of *Sanusi v General Medical Council [2019] EWCA Civ 1172*.

The panel noted that numerous attempts have been made by the NMC to contact Miss Lopez. The panel had sight of a letter from the NMC to Miss Lopez dated 16 January 2020 and emails dated 23 January 2020 and 6 February 2020, which Miss Lopez had not responded to. The panel also had sight of notes of two telephone calls made to Miss Lopez. The note on the 6 February 2020 stated:

*"I made a call to the registrant when the registrant eventually picked up her phone. I asked if I was speaking with Miriam Lopez and the registrant said yes. I introduced myself and asked if she had a moment to speak with me. The registrant began to speak to a man I could overhear and once she finished speaking to the man, she said "sorry, I'm at work". I asked if she had a moment to speak about her fitness to practise case and she said no she is at work. I asked for a quick chat for two minutes and the registrant hurriedly said she will call me back later when she can. I suggested she call me before 4pm today. The registrant then ended the call".*

A subsequent note of a telephone call dated 13 February 2020 stated:

*"I made a call to the registrant but after two rings the call went to vodafone voicemail message. I left a voicemail message introducing myself, requesting a call back and providing my direct dial. I made an attempt to contact the registrant to ask about hearing attendance, submissions and responses to CMF and bundles".*

The panel noted that there had been no further responses from Miss Lopez.

The panel has decided to proceed in the absence of Miss Lopez. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Miss Lopez;
- Miss Lopez has not engaged in any meaningful way with the NMC and has not responded to any of the letters sent to her about this hearing;
- there is no reason to suppose that adjourning would secure her attendance at some future date;

- four witnesses have attended today to give live evidence, others are due to attend;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Lopez in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she will not be able to challenge in person the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgment, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Lopez's decision to absent herself from the hearing, waive her rights to attend and/or be represented and not to provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Lopez. The panel will draw no adverse inference from Miss Lopez's absence in its findings of fact.

## **Background**

On 15 October 2018, the NMC received a referral about Miss Lopez's fitness to practise from the Ward Manager at North East London Treatment Centre ('the Hospital'). At the material time Miss Lopez was employed as a Ward Shift Leader at the Hospital. As a result of the concerns Miss Lopez was made subject to a local investigation whereby

her employment was subsequently terminated following a disciplinary hearing.

Between 16 March and 19 March 2018, Patient C went into hospital for a hip replacement. During that time, Miss Lopez was one of the nurses who took care of her. Patient C says that she was in extreme pain after the surgery, leading to her having some difficulties in moving and getting around.

In the evening following her morning surgery, Patient C was being assisted into bed by a male nurse. Patient C was moving very slowly due to the pain. It is alleged that Miss Lopez came into the room, came over to the bed and asked the male nurse “what he was doing?” to which the male nurse replied that he was assisting Patient C into bed.

It is alleged that Miss Lopez lifted both Patient C’s legs very rapidly, threw Patient C on to the bed and said “*we do not have time for this*”. Patient C describes falling backwards on to the bed and screaming out as shooting pain went down her leg.

Approximately 20 mins later, Patient C describes suffering spasms in her hip and she informed Miss Lopez that she was in extreme pain. It is alleged that Miss Lopez responded that Patient C would receive her medication at 22.00. Patient C explained that she was not asking Miss Lopez for her medication but letting Miss Lopez know she was in pain. Miss Lopez is alleged to have just walked away without bothering to respond.

Patient C informed the Ward sister about what happened and was asked if she wanted to make a formal complaint. Patient C explained that she did want to do so. Patient C spoke to the ward manager, who made a note of Patient C’s experience but Patient C did not hear anything further about the incident.

On 24 August 2018 Patient C was back in hospital for a further hip replacement and was at hospital over the weekend for recovery. At the material time Miss Lopez was on duty. Dr A was also on duty. Dr A explains that it was his first shift at the hospital and



his first job in the United Kingdom.

Patient C states that she observed Dr A advising a patient on her medication. There appeared to be some issue that Dr A was trying to resolve with the patient's prescription.

Miss Lopez was assisting another patient, but upon hearing the conversation with Dr A, Miss Lopez is alleged to have interrupted and said "this is already written down" and then said "if you want to know anything, you should ask a nurse as doctors do not know anything" or words to that effect. Dr A did not respond. It is alleged that Miss Lopez said this loudly in front of patients. Patient C raised her concerns with the ward sister and sent a written complaint to the hospital.

Dr A did not complain about the incident, but provided a statement to the Hospital who were investigating the complaint. Dr A stated that Miss Lopez had called out to him from across the ward to cross out a medication that the anaesthetist prescribed to be given in the evening because it had already been given in theatre.

Dr A walked across the ward and spoke to Miss Lopez and stated that he wanted to check first with the Anaesthetist before striking out the medication. Dr A stated that Miss Lopez appeared upset that he did not follow her instruction and she stated that she was trying to help him understand how the system worked, since he was new and he was not cooperating. Dr A states that the conversation took place in the ward in front of all the patients.

Patient A was an inpatient at the Hospital from 17 - 19 September 2018. Patient A had a colonoscopy due on the 18 September 2018. On 17 September 2018, in preparation for her procedure, Patient A received oral medication in the afternoon and early evening to clear her bowels prior to the colonoscopy.

In the evening Miss Lopez took over her care. Patient A says that Miss Lopez informed

her that she needed to give her an enema and Miss Lopez did not explain the reasons why she had to have the enema and Patient A did not challenge this as she had not had a colonoscopy before.

After the enema Patient A needed to use the bathroom and had diarrhoea and needed assistance from the staff. Two nurses came to assist Patient A and Patient A informed the nurses that she had been given an enema.

Patient A heard the nurses discussing this amongst themselves as one nurse questioned why she had been given an enema. Patient A questioned the nurses and they confirmed that she should not have been given an enema.

On 18 September 2018, Ms 1 states that nurse, Mr 4 came into the office and told them that Patient A had informed him that Miss Lopez had administered an enema that was not prescribed to her on 17 September 2018.

No investigation was carried out as Patient A did not formally complain.

Miss Lopez denies giving a non-prescribed enema to Patient A and in her response to the NMC says she would not do so without the RMO's instruction.

Miss Lopez worked with Medicspro agency as an agency nurse from July 2018. Ms 3 is the clinical nurse manager and is responsible for interviewing new registrants, dealing with appraisals, revalidation and complaints.

The NMC had written to Miss Lopez on 19 October 2018 confirming that they had received a referral and this letter was also forwarded by email on 25 October 2018. On 26 October 2018 Miss Lopez called the NMC confirming she had received and read the bundle and was shocked by the information provided by the referrer. On 31 October 2018 Miss Lopez was informed by email from the NMC that further investigation of her case was required.

On 21 February 2019 Ms 3 held an informal appraisal meeting with Miss Lopez. Miss Lopez was asked whether she was subject to any investigations by the NMC or if she had received any complaints from any place of work that she had done recently and Miss Lopez stated that she had not.

Similarly, Ms 3 held an annual review meeting with Miss Lopez on 17 June 2019. The review included completing a form which included a question under the declarations section as to whether Miss Lopez had "ever been subject to a disciplinary action or currently being investigated due to alleged misconduct". Miss Lopez circled 'no' and the form is dated 17 June 2019.

On 3 July 2019 a telephone conversation took place between Ms 3 and Miss Lopez to discuss her revalidation form. During the discussion Miss Lopez was asked if she was being investigated by the NMC. Miss Lopez responded that she was not.

### **Decision and reasons on application pursuant to Rule 31**

The panel heard an application made by Ms McLean under Rule 31 of the Rules to allow the hearsay evidence of Patient B. This included a complaint letter from Patient B and responses letter to Patient B's complaint. Patient B was not present at this hearing. Attempts were made by the NMC to engage Patient B in the hearing but reasons why she has not are unknown.

Ms McLean submitted that the documentation is relevant, as the exhibits detail the events. She submitted that the hearsay evidence is decisive in that the letter provides the crucial detail of what happened.

Ms McLean submitted that the hearsay evidence is demonstrably reliable and there is no reason to question the reliability of Patient B. She submitted that the hearsay evidence can be tested against other evidence in this case. Ms McLean also submitted that the hearing bundles had been sent to the Miss Lopez in advance of this hearing

and there has been no response or rejection of any of the evidence. Miss Lopez made the decision not to attend this hearing. On this basis Ms McLean advanced the argument that there was no lack of fairness to Miss Lopez in allowing the hearsay evidence of Patient B into evidence.

The panel heard and accepted the advice of the legal assessor. In particular, the panel was referred to the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

The panel noted that the letter from Patient B was undated and uncorroborated. It noted that Miss Lopez denied using the language set out in charges 4 and 4.1 in her responses to the NMC, and Patient B's evidence cannot be tested at this hearing. The panel also took into account that Patient B's evidence is the sole and decisive evidence relating to charge 4.

The panel determined in the circumstances, that so little weight can properly be attached to the hearsay evidence of Patient B, that it would be unfair to admit it.

### **Application to allow telephone evidence of Patient A**

The panel heard an application made by Ms McLean under Rule 31 of the Rules to allow Patient A to give evidence via telephone.

Ms McLean submitted that Patient A was a direct witness to events relating to charge 3 and was unable to attend the hearing due to being house bound by her physical disability. She submitted that Patient A had informed the NMC in advance of the hearing of her disability and that this was a good and cogent reason for her not attending the hearing in person.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel determined no prejudice would arise from hearing the evidence by telephone, in light of the fact that the witness could still be effectively questioned. Accordingly, the application for Patient A to give evidence by telephone was allowed.

### **Decision and reasons on application of no case to answer**

In light of its finding in relation to the admissibility of the hearsay evidence of Patient B, the panel invited the NMC to address it in relation to the issue of no case to answer in respect of charges 4 and 4.1. The relevant provision is Rule 24 (7) of the Rules. This rule states:

- 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.

Ms McLean submitted that as the hearsay evidence of Patient B was determined inadmissible and had been the sole and decisive evidence in respect of charges 4 and 4.1, these charges should not be allowed to remain before the panel.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

The panel was of the view that, taking account of its finding that the evidence of Patient B was inadmissible, the panel determined that there was no other evidence against

Miss Lopez and accordingly determined there was no case to answer in respect of charges 4 and 4.1.

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Ms Mclean on behalf of the NMC, to amend charge 6. Ms McLean submitted that the proposed amendment would provide clarity and more accurately reflect the evidence.

#### Original charge 6

*On 17 June 2019, during an annual review meeting, incorrectly recorded on the review form that you had never “been subject to disciplinary action or currently being investigated due to alleged misconduct”*

#### Proposed charge 6

*On or around 17 June 2019, submitted an annual review form which incorrectly recorded that you had never “been subject to disciplinary action or currently being investigated due to alleged misconduct”*

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise 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.

The panel was of the view that the following amendment dealt more effectively with the mischief of charge 6 and such an amendment was in the interests of justice.

#### The panel's amendment of charge 6

*On or around 17 June 2019, signed and submitted a review form which incorrectly recorded that you had never "been subject to disciplinary action or currently being investigated due to alleged misconduct"*

The panel was satisfied that there would be no prejudice and no injustice would be caused to Miss Lopez by the panel's amendment. Ms McLean agreed the panel's proposed wording. It was therefore appropriate to allow the amendment to ensure clarity and accuracy.

#### **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 McLean on behalf of the NMC and the denials made by Miss Lopez to the NMC.

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

The panel was aware that the burden of proof rests on 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 has drawn no adverse inference from the non-attendance of Miss Lopez.

The panel heard oral evidence from six witnesses tendered on behalf of the NMC.

Witnesses called on behalf of the NMC were:

*Ms 1 – Governance Administrator at the Hospital;*

*Ms 2 – Ward Manager at the Hospital;*

*Ms 3 – Clinical Nurse Manager at Medicspro Agency;*

*Dr A – Resident Medical Officer “RMO” at the Hospital;*

*Patient A – Patient at the Hospital;*

*Patient C – Patient at the Hospital.*

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

The panel found Ms 1 to be a credible and reliable witness. It noted that she did not have any direct knowledge of the events but assisted the panel where she could.

The panel found Ms 2 to be a credible and reliable witness. Ms 2 tried her best to answer questions. Ms 2 was fair in her evidence and acknowledged the boundaries to her knowledge in relation to specific clinical procedures.

The panel found Ms 3 to be a clear and reliable witness. The panel found no reason to doubt her evidence. Ms 3 was a fair witness and identified an inaccuracy in her written statement.

The panel found Dr A to be a reliable and credible witness. Dr A was consistent in his recollection of events. He was candid in his answers and presented as a fair and balanced witness. The panel had no reason to doubt Dr A’s evidence.



The panel found Patient A to be a credible and reliable witness. Patient A's evidence was clear and consistent and she had a good recollection of events. The panel did not identify any malice towards Miss Lopez from her answers.

The panel found Patient C to be a credible and reliable witness who spoke clearly of her recollection of events. Patient C's evidence was consistent and she provided detail which was helpful to the panel. The panel did not detect any malice towards Miss Lopez from her answers.

The panel considered each charge and made the following findings:

**Charge 1:**

1. *On an unknown date in March 2018, in relation to Patient C:*
  - 1.1. *Lifted up her legs quickly*
  - 1.2. *Threw her onto the bed*
  - 1.3. *Said to Patient C "we do not have time for this" or words to that effect*
  - 1.4. *When informed by Patient C that she was in pain, you did not respond and walked away*

**This charge is found proved.**

In reaching this decision, the panel noted that Miss Lopez, in her response in relation to charge 1, had denied that this incident had taken place. It noted that the male nurse said to be present and a direct witness to the events, had not been called to give evidence at this hearing.

Nevertheless, the panel accepted the written and oral evidence of Patient C. It noted in Patient C's oral evidence that she recalled in detail when questioned that she had been sitting on her "good side" on the edge of the bed and that Miss Lopez had suddenly thrown her (Patient C's) legs onto the bed and that she ended up lying on her back on

the bed. Patient C confirmed that she was thrown. She also recalled clearly that Miss Lopez said words to the effect of “we do not have time for this” and that when she later complained of pain Miss Lopez did not respond and walked away.

The panel was satisfied, on the balance of probabilities, that the events had occurred as described by Patient C.

**Charge 2:**

*On 24 August 2018, whilst Doctor A was speaking to a patient you said “if you want to know anything, you should ask a nurse as doctors do not know anything” or words to that effect*

**This charge is found proved.**

In reaching this decision, the panel noted that in her initial letter of complaint, Patient C had stated that Miss Lopez had undermined Dr A and only in a later statement described specifically the words that Miss Lopez had used. The panel also noted that Dr A in his evidence had stated that he had not felt undermined by what Miss Lopez had said.

However, the panel accepted the written statement and oral evidence of Patient C. The panel was of the view that Patient C had a good detailed recollection of what happened. It noted in her oral evidence that she did not think that what Miss Lopez had said had been said as a joke.

The panel therefore concluded that on the balance of probabilities it was more likely than not that Miss Lopez had said what was described or words to that effect.

**Charge 3:**

*On 17 September 2018, gave Patient A an enema when it was not clinically justified or prescribed*

**This charge is found not proved.**

In reaching this decision, the panel took into account that Patient A in her witness statement and oral evidence was unable to recall the name of the nurse who she says administered the enema. Miss Lopez denies it was her. Patient A was able to provide a description of this nurse but was not able to satisfactorily identify the nurse as being Miss Lopez. The panel noted that in the Multi-Disciplinary Records “Miriam” had been named as the nurse who had administered the enema in a retrospective note made by nurse Mr 4. The panel noted that Mr 4 was not called as a witness at this hearing. The panel considered Mr 4’s evidence to be hearsay evidence and was of insufficient weight for the panel to be satisfied that the nurse who had administered the enema had been Miss Lopez.

In these circumstances, charge 3 is found not proved.

**Charge 5:**

*On 21 February 2019 incorrectly informed your employer (“Medicspro Agency”) that you were not under investigation by the NMC*

**This charge is found proved.**

In reaching this decision and those on charges 6, 7 and 8, the panel took into account that Miss Lopez will have been aware well before the date in the charge that she was under investigation by the NMC. This was supported by the note of a telephone call dated 26 October 2018 between Miss Lopez and the NMC which states *“incoming call from registrant... confirming she has read the bundle and is shocked by the information provided by the referrer”*, together with the correspondence referred to above.

The panel also took into account the performance appraisal form under the heading *“Complaints – have you received any complaints from any place of work that you have done recently or have you any investigations with the NMC or any cautions/convictions on your DBS?”* It noted that the section was completed as *“None”*. The panel were satisfied that this phrase covers the allegation in the charge 5 and Miss Lopez would have understood what this meant. The panel also accepted the oral evidence of Ms 3. Ms 3 stated that each page had been initialled and dated by Miss Lopez in her presence to indicate agreement to the contents of the form.

The panel therefore concluded that on 21 February 2019, Miss Lopez incorrectly informed her employer (“Medicspro Agency”) that she was not under investigation by the NMC.

**Charge 6:**

*On or around 17 June 2019, signed and submitted a review form which incorrectly recorded that you had never “been subject to disciplinary action or currently being investigated due to alleged misconduct”*

**This charge is found proved.**

In reaching this decision, the panel took into account the review form which was produced by Ms 3. It noted that it was signed and dated 17 June 2019. The panel accepted the oral evidence of Ms 3. Ms 3 stated she recognised the signature on the review form as being that of Miss Lopez. Above that signature, the word “no” had been circled as the answer to the question *“have you ever been subject to disciplinary action or are currently being investigated due to alleged misconduct?”*

The panel was satisfied on the balance of probabilities that on or around 17 June 2019, Miss Lopez had signed and submitted a review form which incorrectly recorded that she had never *“been subject to disciplinary action or currently being investigated due to alleged misconduct”*

**Charge 7:**

*On 3 July 2019, during a revalidation meeting you incorrectly informed your employer that you were not subject to an NMC investigation*

**This charge is found proved.**

In reaching this decision, the panel took into account and accepted the oral evidence of Ms 3. Ms 3 was consistent in her oral evidence and in her written statement that she became aware of the NMC referral regarding Miss Lopez on 2 July 2019. Ms 3 stated that she challenged Miss Lopez in a telephone conversation on 3 July 2019 and that Miss Lopez denied twice that she was under an NMC investigation.

The panel therefore concluded on the balance of probabilities that on 3 July 2019, during a revalidation meeting Miss Lopez incorrectly informed her employer that she was not subject to an NMC investigation.

**Charge 8:**

*Your actions as set out in charges 5-7 above were dishonest in that you deliberately attempted to mislead your employer that you were not under investigation when you knew that you were*

**This charge is found proved.**

In reaching this decision, the panel took into account the note of a telephone call dated 26 October 2018 between Miss Lopez and the NMC, together with the correspondence referred to earlier. The panel was satisfied that this note demonstrates that Miss Lopez was aware before any of the dates in charges 5-7 that she was under investigation by the NMC. The panel also took into account the evidence of Ms 3 that Miss Lopez, on at least three occasions stated that she was not subject to an investigation when she knew that she was. The panel noted that there was no evidence to suggest that Miss Lopez

was confused about what she was being asked and it was not a simple oversight in incorrectly answering a question on a form. Miss Lopez was specifically asked the question more than once and she deliberately chose to give misleading information.

The panel was of the view that Miss Lopez must have suspected that she would not be able to work if she admitted to her employer that she was under NMC investigation. Miss Lopez would benefit from withholding this information in that she would be able to continue working.

The panel was satisfied that Miss Lopez was aware of the concerns about her practise at the Hospital and her referral to and investigation by the NMC. She therefore was well aware that there were ongoing investigations about her practice, which she failed to disclose to her employer, when asked, on a number of occasions.

The panel therefore concluded that Miss Lopez's actions as set out in charges 5-7 above were dishonest in that she deliberately attempted to mislead her employer that she was not under investigation when she knew that she was.

**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 Miss Lopez's 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 McLean invited the panel to take the view that Miss Lopez's actions amount to a breach 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, 1.1, 1.2, 2.6, 8.1, 8.2, 20.1, 20.2 and 20.3 and identified where, in the NMC's view, Miss Lopez's actions amounted to misconduct.

Ms McLean 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 McLean submitted that Miss Lopez's failings are plainly serious and are actions which fall seriously short of the values and standards expected of a registered nurse. She submitted that treating patients with compassion and respect and delivering treatment and care in a way that does not cause physical harm or distress to patients, are values which go to the heart of the nursing profession. She submitted that Miss Lopez's abusive handling of Patient C is a serious breach of the Code.

Ms McLean submitted that treating colleagues and patients with respect and acting in a professional manner at all times are basic qualities, which are fundamental to any nurse's practice. It is submitted that Miss Lopez has demonstrated a poor attitude and communicated with both patients and colleagues in a disrespectful and demeaning manner.

Ms Mclean referred the panel to its earlier finding of dishonesty and submitted that this raises the overall seriousness of Miss Lopez's conduct and also raises serious questions about her integrity and honesty.

Ms McLean submitted that Miss Lopez's failings as noted in the charges found proved are sufficiently serious to warrant a finding of serious professional misconduct for the following reasons: i) the misconduct covers failings in fundamental aspects of care, ii) Miss Lopez's actions caused harm to Patient C and iii) Miss Lopez has been found to have acted dishonestly.

She 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 McLean referred the panel to the

case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).

Ms McLean submitted that Miss Lopez's actions caused physical harm and emotional distress to Patient C and she has breached fundamental tenets of the profession to treat people with kindness, respect and compassion. These are basic skills which the general public would expect any registered nurse to exemplify in their clinical practice. She submitted that good communication skills, between nurses and patients and/or colleagues, are an essential part of safe, effective nursing practice. They ensure continuity of care and are a building block in maintaining trust and confidence in medical practitioners.

Ms McLean further submitted that a member of the public would be shocked to hear Miss Lopez had acted in the manner described in the charges. It is behaviour which damages the trust the public have in nurses and would deter people from accessing medical services.

In addition, Ms McLean submitted that acting with honesty and integrity at all times is also a fundamental tenet of the profession. As such, dishonest behaviour will always be considered to be serious, as patients, colleagues and the wider public, need to be able to trust people responsible for their wellbeing. To earn that trust, a nurse needs to act with the highest levels of professionalism and demonstrate a personal commitment to the values and standards of the profession. The dishonest behaviour in this case is particularly serious as it relates to a lack of candour by covering up potential failings and furthermore it was repeated on more than one occasion.

Ms McLean told the panel that as of today's date, there is no evidence that Miss Lopez has remedied her misconduct. There are no up to date training records or up to date employment references attesting to Miss Lopez's clinical practice and character. In addition, there is no reflective statement from Miss Lopez's addressing the concerns, or



how allegations of this nature could impact upon patients, colleagues and the reputation of the profession.

Ms McLean submitted that there is also nothing before this panel to evidence any insight. Apart from denying the charges Miss Lopez has shifted blame on to her ward manager, focusing on allegations of bullying and harassment. As Miss Lopez has demonstrated no insight, remorse or remediation into the seriousness of her misconduct in this case, there is a real risk that Miss Lopez is liable to act in a similar way in the future.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311.

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, Miss Lopez's fitness to practise is currently impaired as a result of that misconduct.

### **Decision on misconduct**

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (the Code).

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.

The panel was of the view that Miss Lopez's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to 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*

*1.2 make sure you deliver the fundamentals of care effectively*

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

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

*20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

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

In relation to charge 1, the panel was of the view that treating patients with compassion and respect and delivering treatment and care in a way that does not cause physical harm or distress, is fundamental to nursing and is expected of all registered nurses. The panel concluded that Miss Lopez's actions, when looked at collectively, amounted to serious misconduct and fell well short of the values and standards expected of a registered nurse.

In respect of charge 2, the panel noted that Dr A did not report the incident or take offence to anything that Miss Lopez had said to him. The panel was of the view that although this charge did amount to a breach of the Code, it was not satisfied that Miss Lopez's actions amounted to serious misconduct.

In respect of charges 5, 6, 7 and 8, the panel took into account its earlier findings that Miss Lopez had purposely misled her employer and knew she was being dishonest. It noted that Miss Lopez had repeated her dishonesty on a number of occasions and had demonstrated a consistent course of misconduct where she had failed to act with honesty and integrity. The panel was of the view that Miss Lopez's dishonesty was a serious departure from the values and standards expected of registered nurses and amounted to serious misconduct.

### **Decision on impairment**

The panel next went on to decide if, as a result of the serious misconduct found in respect of charges 1, 5, 6, 7 and 8, Miss Lopez's 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 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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel finds that on the proved facts of this case referred to earlier all four limbs are clearly engaged.

Regarding insight, the panel noted that there is no reflective statement from Miss Lopez addressing the concerns, or how allegations of this nature could impact upon patients, colleagues and the reputation of the profession. There is only Miss Lopez's denial of all the charges. The panel was of the view that there is nothing before it to demonstrate any insight.

Regarding remediation, the panel was of the view that the dishonesty identified in this case is not easy to remediate. The matters concerning Miss Lopez's attitude, communication and behaviour towards patients are however remediable by training and supervision. The panel noted that Miss Lopez has not provided any information to this panel regarding remediation of her practice. It noted that there are no up to date training records or up to date employment references attesting to her clinical practice and character. There is no evidence that Miss Lopez has remedied her practice.

The panel is of the view that, based on the lack of information provided to it regarding the above, there is a substantial risk of repetition of her misconduct. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that the need to uphold proper professional standards and public confidence in the

profession would be undermined if a finding of impairment were not made on public interest grounds in the particular circumstances of the case.

Having regard to all of the above, the panel was satisfied that Miss Lopez's fitness to practise is currently impaired on both public protection and public interest grounds.

**Determination on sanction:**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Lopez off the register. The effect of this order is that the NMC register will show that Miss Lopez has been struck-off the register.

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

Ms McLean informed the panel that the sanction bid for this case was that of a striking-off order. She submitted what the NMC perceived to be the aggravating factors of the case. She submitted that the NMC could find no mitigating factors. Ms McLean invited the panel to make a striking-off order.

The panel considered the following to be aggravating factors in the case:

- Miss Lopez's actions caused actual harm to a patient.
- Miss Lopez's repeated dishonesty.
- Miss Lopez's lack of demonstrable insight.
- The pattern of misconduct was sustained over a period of time.

The panel could find no obvious mitigating factors in this matter.

The panel had regard to the NMC guidance entitled “Considering sanctions for serious cases” and especially the section relating to cases involving dishonesty. The panel determined that this case fell at the higher end of the spectrum of dishonesty and included the following factors:

- vulnerable victims
- direct risk to patients
- premeditated, systematic or longstanding deception

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 neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, 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, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that Miss Lopez’s misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Lopez’s registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG.

The panel is of the view that there are no practical or workable conditions that could be formulated in relation to the dishonesty charges in this case. Further, it took into account Miss Lopez's lack of engagement with the NMC and noted it therefore had no information that could assist it in reaching a conclusion that Miss Lopez would engage with any conditions that were put in place. The panel decided that a conditions of practice order was not therefore appropriate in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel had regard to the fact that Miss Lopez's actions caused actual harm to a patient in her care. It noted that Miss Lopez repeated her dishonesty, which showed attitudinal problems, and her actions occurred over a sustained period of time. Further, it was the panel's view that Mrs Lopez had demonstrated no insight into her actions.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering a striking-off order, the panel took note of the following from the SG:



- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel decided that Miss Lopez's actions demonstrated attitudinal issues which showed a lack of care for her patients, putting them at serious risk of harm, and also involved repeated attempts to deceive her employers. Further, Miss Lopez's behaviour showed disregard for the fundamental tenets of nursing including integrity, trust and honesty.

Miss Lopez's actions were significant departures from the standards expected of a registered nurse, and the panel concluded that they were fundamentally incompatible with Miss Lopez remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Lopez's actions were particularly serious and to allow Miss Lopez to remain on the register would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

The panel considered that this order was necessary in view of the seriousness of the misconduct and to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

### **Determination on Interim Order**

The panel has considered the submissions made by Ms McLean that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the striking-off order 28 days after Miss Lopez is sent the decision of this hearing in writing.

That concludes this determination.