

**Nursing and Midwifery Council**

**Fitness to Practise Committee**

**Substantive Meeting**

**9 October 2020**

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

<b>Name of registrant:</b>	Mr Cyril P Palada
<b>NMC PIN:</b>	04J00090
<b>Part of the register:</b>	Nursing – Sub Part 1
<b>Area of registered address:</b>	England
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Michael Murphy (Chair, Registrant member) Pauline Esson (Registrant member) Alice Rickard (Lay member)
<b>Legal Assessor:</b>	Oliver Wise
<b>Panel Secretary:</b>	Leigham Malcolm
<b>Facts proved:</b>	Charges 1, 2 & 3
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-Off Order
<b>Interim order:</b>	Interim Suspension Order (18 months)

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Palada's registered email address on 3 September 2020.

The panel took into account that the Notice of Meeting provided details of the allegations, the date, time and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Palada has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

*That you a registered nurse whilst employed by the University College Hospitals NHS Foundation Trust*

- 1. Between November 2016 and December 2017 used the work mobile telephone to access internet gambling sites for your own personal use which was not permitted.*
- 2. Your actions in charge 1 was dishonest in that you knew that you were not permitted to access internet gambling sites for your own personal use via the work mobile telephone, but did so any way.*
- 3. Your actions in charge 1 caused the University College Hospitals NHS Foundation Trust financial loss in the sum of approximately £2410.00.*

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

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the written representations made by the NMC.

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 a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Ms 1, Deputy Chief Nurse, at University College Hospital NHS Foundation Trust;
- Mr 2, Clinical Implementation Manager at University College Hospital NHS Foundation Trust;
- Ms 3, Service Delivery and Operations Manager at University College Hospital NHS Foundation Trust.

## **Background**

Mr Palada began employment as a Clinical Site Manager at University College Hospital NHS Foundation Trust in September 2010. It is alleged that between November 2016 and December 2017, Mr Palada used a Trust mobile phone allocated to him to access unauthorised gambling sites. Further, that Mr Palada billed his stake on the online gambling websites onto the Trust's phone bill and gambled the Trust's money. The Trust carried out an investigation into Mr Palada's conduct and he was invited to attend a disciplinary hearing on 18 April 2018, which he did not attend. Mr Palada was subsequently dismissed from the Trust on 25 April 2018.

Before making any findings on the facts the panel considered the documentary evidence adduced in this case and accepted the advice of the legal assessor. He advised that cogent evidence of dishonesty was required; and the panel should consider Mr Palada's state of mind, for example, whether he might have mistakenly thought that he was using his own mobile telephone. The panel made the following findings:

### **Charge 1**

1. Between November 2016 and December 2017 used the work mobile telephone to access internet gambling sites for your own personal use which was not permitted.

### **This charge is found proved.**

In reaching this decision, the panel took into account all of the evidence before it, particularly the witness statements of Ms 1 and Mr 2, records of the mobile internet sites visited and the times, dates, and sums of money billed.

There was clear evidence before the panel that Mr Palada had been allocated use of the mobile telephone in question and that he had used it to access internet gambling sites between November 2016 and December 2017, on dates that he was on-shift. It took account of the witness statement of Ms 2 in which she stated:

*'The registrant was allocated use of a Trust mobile phone in September 2010 when he joined the Trust as a Clinical Site Manager. As a Clinical Site Manager, the registrant was allowed to use the phone for ensuring site safety i.e. placing patients in appropriate beds...'*

The panel had regard to a spreadsheet containing details of the mobile internet sites visited using the mobile allocated to Mr Palada, and the times, dates, and sums of money billed. The mobile sites included CozyGames, Netbet and Pocketwin and the dates and times fell within the timeframe of the charge 1.

Ms 2's witness statement further stated:

*'...the registrant would never have been given permission to pay for services through the Trust's mobile phone account.'*

The panel also had regard to an email dated 27 November 2017 sent from Mr 2 to Mr Palada. The email read:

*'...you admitted to registering yourself on an online betting site using the Clinical Site Management mobile phone number... when asked why you had used the Clinical Site Management mobile phone number to register yourself on an online betting site you told me that it was because you had self-excluded your own mobile phone numbers from being able to access these sites... you have not denied that these charges may be attributable to you and you have offered no other defence against this allegation...'*

The panel reached the view that there was compelling evidence before it to conclude that Mr Palada acted as set out in charge 1.

## **Charge 2**

2. Your actions in charge 1 was dishonest in that you knew that you were not permitted to access internet gambling sites for your own personal use via the work mobile telephone, but did so any way.

### **This charge is found proved.**

In reaching this decision, the panel had regard to the witness statement of Mr 2, in which he stated:

*'...I asked him whether or not he had any knowledge of the gambling related charges... Cyril's initial response was 'I need to go home'. At no time did he deny that the costs were attributable to him. Cyril did say that he had used the mobile phone to register himself as he had excluded his own mobile number. I asked him if he had accessed the gambling sites. He admitted to registering the Trust's phone number to at least one of the sites...'*

The panel bore in mind the evidence that Mr Palada had excluded his personal mobile number from being used to register with gambling sites. The panel considered Mr Palada's admission to using the Trust's mobile phone to register with gambling sites, because he was unable to use his own, was strong evidence that he knew that it was his work phone rather than his own phone that he was using to gamble.

The panel took account of the Trust's 'Anti Fraud and Bribery' policy, which Mr Palada should have been aware of, and which states that all employers have a personal responsibility to protect the assets of the Trust, including money, from fraud and theft.

The panel also took account of Ms 2's witness statement in which she confirmed that Mr Pallida had completed information governance training in January 2016.

In view of the evidence before it, the panel was satisfied that Mr Palada knew that he was not permitted to access internet gambling sites via his work phone and that by doing so he acted dishonestly, as set out in charge 2.

### **Charge 3**

3. Your actions in charge 1 caused the University College Hospitals NHS Foundation Trust financial loss in the sum of approximately £2410.00.

### **This charge is found proved.**

In reaching this decision, the panel had regard to the witness statement of Ms 3 along with records of the mobile internet sites visited and the times, dates, and sums of money billed between November 2016 and December 2017. The detailed records covered 41 pages and indicated a sum total of £2,410.00. On the basis of the comprehensive evidence before it the panel found this charge proved.

## **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Palada'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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. 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, Mr Palada's fitness to practise is currently impaired as a result of that misconduct.

## **Misconduct and impairment**

The panel was advised that misconduct requires a serious breach of duty, which other nurses would regard as deplorable.

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The NMC identified the specific areas of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code") which it considered Mr Palada to have breached.

The NMC invited the panel to bear in mind its overarching objective to protect 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. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Palada's fitness to practise impaired on the grounds of public protection and the wider public interest.

### **Decision and reasons on misconduct**

In determining whether the facts found proved amount to misconduct, the panel accepted the advice of the legal assessor and had regard to the terms of the Code.

The panel was of the view that Mr Palada's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Palada's actions amounted to a breach of the Code. The following standard was breached:

*21.3 act with honesty and integrity in any financial dealings you have with everyone...*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the evidence before it illustrated how Mr Palada seriously abused his position of trust as a Band 7 nurse and failed to act with the integrity expected of a professional nurse. The panel was of the view that fellow professionals and the public would find Mr Palada's conduct deplorable. It determined that Mr Palada's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Mr Palada'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. 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 judgment of Mrs Justice Cox in the case of *CHRE v NMC and 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.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'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) ...
- 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 Mr Palada's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that

confidence in the nursing profession would be undermined if its regulator did not take charges relating to dishonesty extremely seriously.

The panel was of the view that Mr Palada's conduct did not put patients at risk of harm but that in regard to the Grant test, three of the four limbs were engaged.

The panel noted that there was no information before it as to whether or not Mr Palada had repaid any of the money to the Trust. However, it noted that Mr Palada has failed to engage with the NMC in these regulatory proceedings and has provided no evidence of insight or attempts at remediation.

The panel was of the view that given Mr Palada's past dishonesty, and in the absence of any evidence of insight or remediation, he remains liable to be dishonest again.

The panel was therefore satisfied that Mr Palada's fitness to practise is currently impaired.

### **Decision and reasons on sanction**

Having found Mr Palada's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. 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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mr Palada's personal financial gain from a breach of trust;
- The financial loss caused to the Trust;
- The conduct was premeditated and constituted a longstanding deception.

The panel also took into account the following mitigating feature:

- No patient harm resulted from Mr Palada's conduct.

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.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the dishonesty present, an order that does not restrict Mr Palada's practice would not be appropriate in the circumstances. The SG 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 that Mr Palada's dishonest conduct 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 Mr Palada's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the dishonest nature of the charges in this case. The dishonesty present in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Palada's registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction in light of the dishonest conduct in breach of a position of trust which took place over a lengthy time period. There was also no evidence of insight or remorse.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of 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?*

Mr Palada's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Palada's actions were serious and to allow him to continue practising 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. Having regard to the matters it identified, in particular the effect of Mr Palada's longstanding deception in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary 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.

This will be confirmed to Mr Palada in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Palada's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel took account of the representations made by the NMC.

### **Decision and reasons on interim order**

The panel was satisfied that an interim 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.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.