

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

**Substantive Hearing
Monday 5 July – Monday 12 July 2021**

Virtual Hearing

Name of registrant: Eric Legaspi

NMC PIN: 01Y0183O

Part(s) of the register: Registered Nurse - Sub part 1
RN1– Adult (July 2001)

Area of registered address: North Yorkshire

Type of case: Misconduct

Panel members: David Evans (Chair, lay member)
Susan Field (Registrant member)
Tricia Breslin (Lay member)

Legal Assessor: Charles Apthorp

Panel Secretary: Jasmin Sandhu

Nursing and Midwifery Council: Represented by Claire Stevenson, Case
Presenter

Mr Legaspi: Present and unrepresented

Facts proved by admission: Charges 1a, 1b, 1c, 1d, 2, 3, 4, 5, 6a

Facts proved: Charges 6b, 6c, 7c, 8a, 9a, 9b, and 10

Facts not proved: Charges 7a and 7b

Fitness to practise: Impaired

Sanction: Suspension order (12 months)

Interim order: Interim suspension order (18 months)

Details of charge (as amended)

That you, a registered nurse, whilst employed at Southlands Care Home;

1) On 2 February 2019 following an incident where Resident A suffered an unwitnessed fall; [PROVED IN ITS ENTIRETY BY WAY OF ADMISSION]

a) Did not call an ambulance.

b) Did not use a hoist to lift Resident A.

c) Instructed colleagues to manually lift Resident A.

d) Did not use slide sheets to lift Resident A.

2) On or around 2 February 2019 provided inaccurate information in a local statement indicating that you had moved Resident A using a hoist. [PROVED BY WAY OF ADMISSION]

3) On or around 3 February 2019 provided inaccurate information in a local statement indicating that you had moved Resident A using a hoist. [PROVED BY WAY OF ADMISSION]

4) On or around 19 February 2019 provided inaccurate information in a local statement indicating that you had moved Resident A using a hoist. [PROVED BY WAY OF ADMISSION]

5) *Your actions at one or more of charges 2, 3 & 4 were dishonest in that you sought to conceal from your employers/investigators that Resident A had been lifted manually. [PROVED BY WAY OF ADMISSION]*

6) *Between February & March 2019, on one or more occasion attempted to encourage/encouraged and/or coerce/coerced colleague B into providing a false account of the incident surrounding Resident A's fall, in that you;*

a) *On one or more occasion told colleague B that you/other colleagues had written statements indicating that a hoist/equipment had been used to lift Resident A. [PROVED BY WAY OF ADMISSION]*

b) *On one or more occasion told colleague B that during investigation interviews you had stated that a hoist/equipment had been used to lift Resident A. [FOUND PROVED]*

c) *On one or more occasion used words to the effect; [FOUND PROVED]*

i) *"Well everybody else has written a statement similar to mine, so you'll be getting everyone else in trouble if you don't do the same."*

ii) *"All of your hard work will be gone because you would lose your job"*

iii) *That colleagues should stick together*

iv) *That colleagues would get into trouble*

7) *Between February & March 2019, attempted to encourage/encouraged and/or coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;*

a) *On one or more occasion told colleague A that you/other colleagues had written statements indicating that a hoist/equipment had been used to lift Resident A. [FOUND NOT PROVED]*

b) *On one or more occasion told colleague A that during investigation interviews you had stated that a hoist/equipment had been used to lift Resident A. [FOUND NOT PROVED]*

c) *On one or more occasion used words to the effect; [FOUND PROVED]*

i) *"Stop being selfish and thinking of yourself"*

ii) *"We will all lose our jobs"*

iii) *"Southlands could close down"*

8) *Between February & March 2019, attempted to encourage/encouraged and/or coerce/coerced colleague D into providing a false account of the incident surrounding Resident A's fall, in that you;*

a) *During a conversation with colleague C & D in the bathroom on the second floor, told Colleague D words to the effect that "she would lose her job if she told the truth." [FOUND PROVED]*

9) *Between February & March 2019 attempted to encourage/encouraged and/or coerce/coerced colleague E into providing a false account of the incident surrounding Resident A's fall, in that you;*

a) Asked colleague E to change parts of her statement, namely that Resident A was sat in her comfy armchair. **[FOUND PROVED]**

b) Prior to colleague E's safeguarding meeting told colleague E words to the effect "Stick to what we said we would say." **[FOUND PROVED]**

10) Your actions at one or more of charges/sub-charges 6, 7, 8 & 9 were dishonest in that you sought to conceal from your employers/investigators that Resident A had been lifted manually. **[FOUND PROVED]**

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

Decision and reasons on application to amend the charge

At the outset of the hearing, the panel heard an application made by Ms Stevenson, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 7c(iii).

The proposed amendment was to change the wording from 'would' to 'could'. It was submitted by Ms Stevenson that the proposed amendment would provide clarity and more accurately reflect the evidence. She submitted that such amendment would not cause any unfairness as it does not alter the overall substance of the charge.

Original charge:

7) Between February & March 2019, attempted to coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;

[...]

c) *On one or more occasion used words to the effect;*

i) *“Stop being selfish and thinking of yourself”*

ii) *“We will all lose our jobs”*

iii) *“Southlands would close down”*

Proposed charge:

7) *Between February & March 2019, attempted to coerce/coerced colleague C into providing a false account of the incident surrounding Resident A’s fall, in that you;*

[...]

c) *On one or more occasion used words to the effect;*

i) *“Stop being selfish and thinking of yourself”*

ii) *“We will all lose our jobs”*

iii) *“Southlands ~~would~~ **could** close down”*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (‘the Rules’).

The panel was of the view that such an amendment, as applied for, was in the interests of justice. It was satisfied that there would be no prejudice to you and no injustice would be

caused to either party by the proposed amendment being allowed. The panel therefore decided it was appropriate to allow the amendment.

Background

On 16 July 2019, the NMC received a referral about your fitness to practise from the Case Referrals Adviser at Bupa. At the relevant time you were working as a Staff Nurse and Unit Manager at Southlands Nursing Home ('the Home').

It is alleged that on 2 February 2019, Resident A, an elderly female, was found to have fallen down a small flight of stairs whilst in her wheelchair. It is further alleged that you made the decision not to call an ambulance and that you and other colleagues moved Resident A back to her room and into her bed by manually lifting her. Resident A subsequently passed away the following day which prompted investigations by Bupa and Safeguarding from the County Council.

It is alleged that during these investigations you falsely stated that a hoist had been used to move Resident A. Allegedly, you also coerced colleagues to give the same account. It is said that later in March 2019, you admitted that a hoist was not used to lift Resident A.

You were suspended from your employment on 21 March 2019 following an allegation that you had falsely stated that a hoist had been used to move Resident A. You were subsequently dismissed from your employment at a disciplinary hearing.

Decision and reasons on facts

At the outset of the hearing, you made full admissions to charges 1a, 1b, 1c, 1d, 2, 3, 4, 5, and 6a. The panel therefore finds charges these charges proved, by way of your own admission.

In reaching its decision on the remaining facts which haven't been admitted, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Stevenson on behalf of the NMC and your own submissions.

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 heard live evidence from the following witnesses called on behalf of the NMC:

- Colleague A: Home Manager at the Home
- Colleague B: Trainee Care Practitioner at the Home
- Colleague C: Care Assistant at the Home
- Colleague D: Senior Carer at the Home
- Colleague E: Carer at the Home

The panel also heard live oral evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel considered the evidence of the witnesses and made the following conclusions:

Colleague A: The panel considered the evidence of Colleague A to be credible. She was clear about her non-clinical role and was very helpful in outlining the correct processes

and procedures at the Home. The panel also found Colleague A to be detailed and compassionate in her answers.

Colleague B: The panel also determined the evidence of Colleague B to be credible. She was honest in her recollection of events and admitted when there was something which she could not remember. From her answers, the panel considered that Colleague B had learnt a lot from this experience. She addressed questions regarding her own actions with frankness and candour. The panel found her to be a reliable and balanced witness.

Colleague C: The panel noted that an application for a witness summons was made in respect of this witness, who then attended to give oral evidence. The panel found the evidence of Colleague C to be credible. Colleague C was honest and fair in describing what happened and how events have made her feel. When questioned, she provided clear and considered answers without embellishment. Where there was something which she did not remember, she was honest in admitting this. The panel also noted that her oral evidence was consistent with her written evidence.

Colleague D: The panel found the evidence of Colleague D to be not entirely reliable. It considered that her recollection of events was patchy, and when asked about fundamental aspects of events, she stated on several occasions that she could not remember. Colleague D was reluctant and vague in many of her answers.

Colleague E: The panel found the evidence of Colleague E to be credible and consistent. Although she was uncomfortable in recalling the events, Colleague E was honest in describing how she was affected by the events. When questioned, she was straightforward in her answers and candid in her recollection of events. The panel also found Colleague E to be helpful in explaining the background to events.

Your evidence: The panel considered your evidence to be unreliable on several occasions. The panel noted that English was not your first language and it made allowances for this. The panel found that when you were given opportunities to describe

your account of events, you were evasive and not entirely convincing in your answers. The panel also found there were inconsistencies in your evidence which undermined the credibility of your account.

Decision and reasons on application to admit written statement of Mr 1

The panel heard an application made by Ms Stevenson under Rule 31 to allow the written statement of Mr 1 into evidence. Although willing to attend, Mr 1's attendance was not required for this hearing.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether it is admissible in civil proceedings.

The panel gave the application in regard to Mr 1 serious consideration. The panel noted that Mr 1's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my information, knowledge and belief' and signed by him.

The panel considered that as you have been provided with a copy of Mr 1 statement and you have not raised any objection, there would be no injustice to you in admitting this into evidence. The panel decided that it would give this written statement what it deemed appropriate weight once it had heard and evaluated all the evidence before it. The panel therefore decided to accept the written statement of Mr 1 into evidence.

Decision and reasons on application to amend the charges

After hearing the witnesses' oral evidence, the panel heard an application made by Ms Stevenson to amend the wording of charges 6, 7, 8, and 9. The proposed amendment was to include the words '*encourage/encouraged and/or*' to the stem of these charges.

Ms Stevenson submitted that when considering the word 'coerce', the ordinary dictionary meaning should be given '*persuade (an unwilling person) to do something by using force or threats: obtain something from someone by using force or threats*'. She stated that the proposed amendment would be preferable in light of the oral evidence given by the witnesses. Ms Stevenson submitted that in the written statements, there is a clear threat to persuade your colleagues to be dishonest about the incident. However, in their oral evidence, while your colleagues agreed that they felt pressured to be dishonest about events, they stated that you were panicked and that you were not aggressive. On this basis, Ms Stevenson invited the panel to amend the charges as requested to better reflect the evidence in this case.

You did not object to this application.

Original charges:

6) Between February & March 2019, on one or more occasion attempted to coerce/coerced colleague B into providing a false account of the incident surrounding Resident A's fall, in that you;

[...]

7) Between February & March 2019, attempted to coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;

[...]

8) *Between February & March 2019, attempted to coerce/coerced colleague D into providing a false account of the incident surrounding Resident A's fall, in that you;*

[...]

9) *Between February & March 2019 attempted to coerce/coerced colleague E into providing a false account of the incident surrounding Resident A's fall, in that you;*

Proposed charges:

6) *Between February & March 2019, on one or more occasion attempted to **encourage/encouraged and/or** coerce/coerced colleague B into providing a false account of the incident surrounding Resident A's fall, in that you;*

[...]

7) *Between February & March 2019, attempted to **encourage/encouraged and/or** coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;*

[...]

8) *Between February & March 2019, attempted to **encourage/encouraged and/or** coerce/coerced colleague D into providing a false account of the incident surrounding Resident A's fall, in that you;*

[...]

9) *Between February & March 2019 attempted to **encourage/encouraged** and/or coerce/coerced colleague E into providing a false account of the incident surrounding Resident A's fall, in that you;*

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such an amendment, as applied for, did not change the substance of the evidence. Whilst it noted that the inclusion of the words '*encourage/encouraged*' may lower the severity of the charges, it was satisfied that the amendment would not affect any decision on misconduct. The panel noted that you were given the opportunity to object to this application, but you did not choose to do so. It determined that there would be no prejudice to you and no injustice caused to either party by the proposed amendment being allowed. The panel therefore decided it was appropriate to allow the amendment.

Decision and reasons on facts continued

The panel then considered each of the remaining charges and made the following findings:

Charge 6b

6) *Between February & March 2019, on one or more occasion attempted to encourage/encouraged and/or coerce/coerced colleague B into providing a false account of the incident surrounding Resident A's fall, in that you;*

b) *On one or more occasion told colleague B that during investigation interviews you had stated that a hoist/equipment had been used to lift Resident A.*

This charge is found proved.

In reaching this decision, the panel took into account Colleague B's written evidence to the NMC. In her written statement, Colleague B stated '*When I came back to work after being away...Eric said to me that he had written a statement saying that we had used equipment to move the resident and that I had helped. I asked him why he said that we had used equipment to move her and he said because we'd all be in trouble if he said we didn't*'. Colleague B confirmed this again in her oral evidence and said that prior to returning to work she had intended to come in and tell the truth to her clinical lead. The panel noted its previous finding regarding the credibility of Colleague B and accepted these pieces of evidence.

On the basis of this evidence, the panel concluded that it was more likely than not that you told Colleague B that during the investigation you stated equipment had been used to lift Resident A. The panel therefore finds this charge proved.

Charge 6c

6) Between February & March 2019, on one or more occasion attempted to encourage/encouraged and/or coerce/coerced colleague B into providing a false account of the incident surrounding Resident A's fall, in that you;

c) On one or more occasion used words to the effect;

i) "Well everybody else has written a statement similar to mine, so you'll be getting everyone else in trouble if you don't do the same."

ii) "All of your hard work will be gone because you would lose your job"

iii) That colleagues should stick together

iv) That colleagues would get into trouble

This charge is found proved.

In reaching this decision, the panel took into account the written statement by Colleague B and the meeting minutes between Colleagues A and B.

In her written statement to the NMC, Colleague B stated, *'I disagreed and he said something along the lines of "well everybody else has written a statement similar to mine so you'll be getting everyone else in trouble if you don't do the same". He said as well that all of my hard work would be gone because I'd lose my job'*. She also stated *'I and others were worried; we knew we hadn't done the right thing. Eric was talking to us, telling us to stick together...'*

Contained in the minutes of a meeting between Colleague A and Colleague B dated 21 March 2019, Colleague B said that you told her *'...we would have to say we had used equipment or we would all be in trouble we all had to stick to the same story'*.

The panel noted that the minutes of the meeting and Colleague B's written statement were both consistent with one another, as well as with her oral evidence and local statement. It also had regard to its previous finding on Colleague B's credibility.

The panel determined that some aspects of this charge amount to encouragement, and some amount to coercion. The panel accepted the Oxford dictionary definition of coercion *'the action of making somebody do something that they do not want to do'* and found that your actions did amount to coercion. It considered Colleague B was fearful that she would lose her job *'...all of my hard work would be gone because I'd lose my job'* and she used words such as *'in fear'* and *'under pressure'* in her oral evidence.

Taking all the above into account, the panel concluded that it was more likely than not that this occurred, and this charge is found proved.

Charge 7a

7) Between February & March 2019, attempted to encourage/encouraged and/or coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;

a) On one or more occasion told colleague A that you/other colleagues had written statements indicating that a hoist/equipment had been used to lift Resident A.

This charge is found NOT proved.

In reaching this decision, the panel noted that Colleague C is referred to in the stem of charge 7, and Colleague A is referred to in the details of charge 7a. On this basis, the panel determined that the act outlined in this charge does not relate to an attempt at an encouragement or coercion of Colleague C. It considered that there was a disconnect between the wording of this charge and the stem of the charge.

The panel therefore concluded that this charge is found not proved.

Charge 7b

7) Between February & March 2019, attempted to encourage/encouraged and/or coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;

b) On one or more occasion told colleague A that during investigation interviews you had stated that a hoist/equipment had been used to lift Resident A.

This charge is found NOT proved.

For the same reasons as outlined above in charge 7a, the panel concluded that this charge is not proved. Again, the stem of the charge relates to Colleague C, but the wording of charge 7b relates to Colleague A.

Charge 7c

7) Between February & March 2019, attempted to encourage/encouraged and/or coerce/coerced colleague C into providing a false account of the incident surrounding Resident A's fall, in that you;

c) On one or more occasion used words to the effect;

i) "Stop being selfish and thinking of yourself"

ii) "We will all lose our jobs"

iii) "Southlands could close down"

This charge is found proved.

In reaching this decision, the panel took into account an email from Colleague C dated 26 March 2019, Colleague C's written statement, and Colleague C's oral evidence.

In an email written by Colleague C to Mr 2, she states '*Eric responded very quickly with the comment "stop being selfish and thinking of yourself. We will all lose our jobs including you and Southlands could close down".*' Colleague C confirmed these remarks in her oral

evidence and this combined with the panel's earlier finding regarding the credibility of Colleague C decided to accept that it was more likely than not that you said these words to her. Colleague C goes on to state *'I felt strongly that he was using his position of rank to cover up his mistakes by manipulating and dictating to staff of lower rank to do his bidding and put fear in us by saying we could all lose our jobs'*.

The panel considered that your actions did amount to an attempt to coerce Colleague C into providing a false statement. The evidence demonstrates the impact these events had on Colleague C. In her email to Mr 2, Colleague C states that *'fear did take over me' 'I need always to speak the truth, regardless of how unpopular or the consequences it would bring to myself or others and never allow fear, power or any person to coerce or manipulate and control me into any action contrary to the truth'*. In addition, in her written statement, Colleague C states *'This affected me emotionally and spiritually – the lying went against my faith but I didn't want to make anyone lose their job. I felt such pressure, I wanted to leave Southlands.'*

Taking this into account into account these pieces of evidence, together with the fact that it found Colleague C to be a credible witness, the panel applying the civil standard, found this charge proved.

Charge 8a

8) Between February & March 2019, attempted to encourage/encouraged and/or coerce/coerced colleague D into providing a false account of the incident surrounding Resident A's fall, in that you;

a) During a conversation with colleague C & D in the bathroom on the second floor, told Colleague D words to the effect that "she would lose her job if she told the truth."

This charge is found proved.

In reaching this decision, the panel took into account Colleague D's written statement and her oral evidence.

In her written statement to the NMC, Colleague D stated '*...I heard Eric saying to [Colleague C] that she would lose her job if she told the truth. He was sort of talking to me and [Colleague C]. This did upset me because it wasn't fair; I knew it wasn't right*'.

Colleague D reiterated this account in her oral evidence, stating that you told her that she would lose her job. Colleague D also confirmed this to be the case in her interview with Colleague A on 21 March 2019.

Given the consistency between these two pieces of evidence, together with its finding on Colleague D's credibility, the panel concluded that on the balance of probabilities, it was more likely than not that you did tell Colleague D that she would lose her job. The panel considered that this amounted to coercion given that the threat of losing her job would amount to causing her harm. For these reasons, the panel finds this charge proved.

Charge 9a

9) Between February & March 2019 attempted to encourage/encouraged and/or coerce/coerced colleague E into providing a false account of the incident surrounding Resident A's fall, in that you;

a) Asked colleague E to change parts of her statement, namely that Resident A was sat in her comfy armchair.

This charge is found proved.

In reaching this decision, the panel took into account Colleague E's written statement and oral evidence.

In her written statement to the NMC, Colleague E states '*He wanted me to say that the resident was sat in her comfy arm chair. I told him that I couldn't say that as that wasn't the case.*' This was then corroborated by her oral evidence where Colleague E was clear about you telling her to say that Resident A was sat in her '*comfy armchair*'. The panel could find no plausible reason for you request Colleague E to change her statement, however given the consistency in Colleague E's account of events, combined with the panel's finding on her credibility, it concluded that it was more likely than not that this took place and therefore the charge is found proved.

Furthermore, the panel considered that your actions here were encouragement rather than coercion given that this was an attempt to pressure Colleague E to give a false account, rather than a threat of harm.

Charge 9b

9) Between February & March 2019 attempted to encourage/encouraged and/or coerce/coerced colleague E into providing a false account of the incident surrounding Resident A's fall, in that you;

b) Prior to colleague E's safeguarding meeting told colleague E words to the effect "Stick to what we said we would say."

This charge is found proved.

In reaching this decision, the panel took into account Colleague E's written statement in which she states prior to the safeguarding meeting you took her to one side and said, '*stick to what we said we would say*'. This was also supported in Colleague E's oral evidence. The panel therefore concluded that it was more likely than not that these events occurred and found this charge proved.

Charge 10

10) Your actions at one or more of charges/sub-charges 6, 7, 8 & 9 were dishonest in that you sought to conceal from your employers/investigators that Resident A had been lifted manually.

This charge is found proved.

In considering this charge, the panel took into account its findings on facts related to charges 6, 7, 8, and 9. It also considered your local statement dated 2 February 2019, in which you stated you moved Resident A with a hoist. In a further meeting dated 21 March 2019 between you, Colleague A, and Mr 2 you said '*To be honest [Colleague A], we did not use a hoist to transfer [Resident A]. We used a ski pad...*'. You also said in this meeting that you asked the members of staff present to say when questioned, that they used a hoist to transfer Resident A when this was not the truth.

The panel found that when you made these statements, you were aware at the time that they were false. The panel also found that in its judgment, your motives for this were to protect your own interests and furthermore, were not in the interests of your colleagues.

Whilst the panel had regard to your seemingly otherwise good character and up until now, long unblemished career, it has made a finding with regard to these charges where it found the facts are proved and that your actions, applying the standard of ordinary decent people, were dishonest.

The panel therefore concluded that applying the civil standard, that this charge is found 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 your

fitness to practise is currently impaired. Whilst there is no statutory definition of fitness to practise, 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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (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 Stevenson referred the panel to a number of cases and submitted that the facts which have been found proved in this case do amount to misconduct. She directed the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ('the Code') in making its decision. Ms Stevenson outlined specific standards of the Code, which she submitted have been breached.

Ms Stevenson submitted that your actions and omissions as proven, fall far short of the standard that would be expected of a registered nurse. She stated that colleagues would expect to be able to rely on one another to work together as a team, communicate effectively, and deliver safe and effective care. Colleagues would not expect to be

encouraged and/or coerced into being dishonest about an incident involving a Resident. Ms Stevenson therefore invited the panel to find misconduct.

You did not make any submissions on misconduct.

Submissions on impairment

Ms Stevenson 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. She referred the panel to the Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin) and submitted that all four limbs are engaged.

It was submitted by Ms Stevenson that your actions put patients at unwarranted risk of harm. You failed to call an ambulance for a vulnerable elderly resident after she had fallen down some stairs and you instructed your colleagues to manually lift her after that fall. Whilst the way in which Resident A was moved was not an issue, Ms Stevenson submitted that for some two months following this incident, you were dishonest to your employer and the safeguarding investigation team about what happened. You then encouraged and/or coerced your colleagues to do the same. For these reasons, Ms Stevenson submitted that there are public safety concerns in this case.

Ms Stevenson also submitted that your behaviour, as found proven, brings the profession into disrepute. Your level of care towards Resident A and your communication to colleagues during the investigations were both unsatisfactory. Furthermore, in acting dishonestly, you breached a fundamental tenet of the nursing profession.

Ms Stevenson outlined the NMC guidance on remediation and insight. She submitted that the concerns in this case involve dishonesty, which is very difficult to remediate. Ms

Stevenson referred the panel to your reflective piece where you express remorse for your actions, *'I am aware of my responsibilities to be open and honest at all times. I have learnt my lesson. I am truly sorry for the circumstances surrounding Resident A's death and my actions following...the experience has been a stressful process filled with deep regret'*. Ms Stevenson also drew the panel's attention to a number of positive testimonials from your employer, where you have been working since July 2019 with no further regulatory concerns raised. Ms Stevenson submitted that you have fully engaged with the NMC process, including giving live oral evidence under affirmation.

Ms Stevenson stated that in spite of these steps taken, you did not accept all of the allegations against you and therefore, you have not shown acceptance or insight in respect of those charges. She submitted that the seriousness of the concerns, together with the difficulties in evidencing that the dishonesty concerns have been remediated outweigh your efforts outlined above. On this basis, Ms Stevenson invited the panel to find that your practice is currently impaired.

You submitted that your practice is not currently impaired. You said that you understand what you did wrong and how your actions may have been perceived. You are very remorseful for what happened. You submitted that you are not a risk to the public, and that you continue to strive to give good practice. You stated that although you continue to dispute the charges which you have not admitted to, you respect the panel's findings.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000], *Grant* [2011], and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Decision and reasons on misconduct

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 aside from 1b and 1d, all other charges found proved amount to breaches of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively.

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

8 Work co-operatively

To achieve this, you must:

8.1 make sure you deliver the fundamentals of care effectively.'

8.2 maintain effective communication with colleagues

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm.

14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices

16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

16.6 protect anyone you have management responsibility for from any harm, detriment, victimisation or unwarranted treatment after a concern is raised

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

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

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

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

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise'

While the panel appreciated that breaches of the Code do not automatically result in a finding of misconduct, it was of the view that your actions in the charges found proved, notwithstanding charges 1b and 1d, fell seriously short of the conduct and standards expected of a nurse and therefore do amount to misconduct.

Decision and reasons on impairment

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

The panel bore in mind that nurses occupy a position of privilege and trust in society and are expected at all times to behave professionally. 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* 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) 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 considered this test and found that all four limbs were engaged in this case. The panel found that patients were put at risk of harm as a result of your misconduct. It considered these matters are of grave concern, in that you failed to call an ambulance, you manually transferred the patient, you failed to tell the truth over a sustained period of time, and that you encouraged and/or coerced your colleagues to do the same. It was the view of the panel that this conduct on its own would merit a finding of impairment.

You acted dishonestly and the panel was of the view that your misconduct in this way breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel also determined that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that you have demonstrated some remorse for your actions '*the experience has been a stressful process filled with deep regret*'. However, it had regard to the fact that throughout the process, you have continued to dispute many of the charges, and that rather than explaining your actions, you implicated other colleagues and deflected some of the blame onto management. For these reasons, the panel considered that you showed limited insight into your actions.

The panel noted that the misconduct in this case relates to dishonesty, which cannot be addressed by training or supervision and is therefore difficult to remediate. It took into account the positive testimonials provided by your current employer and the fact that you have been practising without any further concerns raised since the events in this case. It also noted that you have engaged with the NMC process and have undertaken some training modules. However, the panel was of the view that the concerns which you continue to dispute are very serious and have not been fully remediated. It determined that in the absence of full remediation and insight, a risk of repetition remains. 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC Register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

Submissions on sanction

In her submissions, Ms Stevenson referred the panel to the SG and to the case of *Parkinson v NMC* [2010] EWHC 1898 (Admin). She stated that the aggravating factors in this case include:

- Events took place over a period of two months
- There are elements of calculated dishonesty
- You held a position of responsibility and seniority
- You abused your position of trust in coercing junior members of staff
- Your insight is partial
- You failed to provide adequate care to Resident A

Ms Stevenson then moved onto the mitigating factors in this case, which she submitted to be:

- You accepted some of the concerns
- There has been some remorse and remediation
- Evidence of further training and positive testimonials
- No previous referrals have been made and no further referrals have been made since the incident took place two years ago
- You have engaged with the NMC
- You have been working as a nurse for over 27 years

Ms Stevenson submitted that making no order or imposing a caution order would not be appropriate in this case given the dishonesty concerns. She further stated that whilst the clinical concern of moving Resident A can be mitigated by conditions, a conditions of practice order would not address the dishonesty concerns in this case, thus would not be sufficient.

Ms Stevenson submitted that the concerns in this case do warrant a removal from the register. Dishonesty is difficult to remediate, and the facts found proved are sufficiently serious to suspend your registration. Ms Stevenson submitted that your actions of encouraging and coercing colleagues raise fundamental questions about your professionalism and could be considered as incompatible with continued registration. In light of this, Ms Stevenson submitted that temporary removal from the register is not appropriate in this case, thus invited the panel to consider a striking-off order.

You told the panel that you are remorseful to Resident A and their family, stating that you are filled with *'deep regret and sadness'*. You now understand what the coercion of junior colleagues was and accept that this was wrong. You also understand how your actions have brought the profession into disrepute. You informed the panel that you were the only clinical person on duty at the time and were responsible for 71 residents. You submitted that you did not challenge the unsafe physical environment, in relation to the stairs access. You also stated that you were consistently working six days a week and that you have now learned to say no when feeling tired.

You submitted that you have upheld the Code and everything it represents for almost 28 years. Furthermore, since the incident you have continued to practice with full disclosure and are supported by your current employer. You told the panel that you can continue to practise safely with any sanction it may choose to impose and know that your current employer will support you.

The panel accepted the advice of the legal assessor, who referred it to the case of *Giele v GMC* [2005] EWHC 2143 (Admin), particularly paragraphs 20 and 29, as well as the case of *Fuyane v NMC* [2012] EWHC 229 (Admin).

Decision and reasons on sanction

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 regard to the SG, particularly in relation to the duty of candour which states *'Healthcare professionals must also be open and honest with their colleagues, employers and relevant organisations, and take part in reviews and investigations when requested. They must also be open and honest with their regulators, raising concerns where appropriate. They must support and encourage each other to be open and honest, and not stop someone from raising concerns.'*

In making its decision on sanction, the panel took into account the following aggravating features:

- Your clinical judgement put a resident at an unreasonable risk of harm and there was a failure to provide adequate care to Resident A
- Your dishonesty was calculated and sustained over a period of two months, involving a breach of the duty of candour
- You abused your position of trust and coerced junior colleagues
- Your insight is limited

The panel also took into account the following mitigating features:

- You have shown some insight and remorse
- Evidence of further training and positive testimonials
- You have worked as a nurse for almost 28 years with no previous referrals
- No further referrals have been made in the two years following this incident
- You have engaged with the NMC process

The panel first considered whether to take no action or make a caution order but concluded that this would be inappropriate in view of the severity of the charges found proved. The panel decided that it would be neither proportionate nor in the public interest to impose an order which does not restrict your practice.

The panel next considered whether placing conditions of practice on your 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 and concluded that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified only partially relates to your clinical competence and the panel's concern regarding your dishonesty cannot be addressed by conditions. The panel therefore concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *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 was satisfied that whilst the misconduct was serious, the public interest would not be best served by your removal from the register.

In reaching this decision, the panel noted the number of very positive written testimonials presented in your response bundle, as well as oral evidence given by witnesses at this hearing. The written testimonials are from professional colleagues, families of residents in your care, and your current managers. They all demonstrate that you are a good, competent nurse, and that you are caring and compassionate. The panel considered very carefully the testimonials submitted on your behalf and decided they weighed significantly against a striking-off order. The panel was of the view that there would be benefit to the profession and the wider public in returning an otherwise good nurse to practice in the future. It therefore concluded that a suspension order would mark the seriousness of the misconduct and give you the opportunity to develop further insight and to remediate your conduct. The panel recognises that dishonesty is difficult to remediate but concluded that a period of suspension will allow you to formulate strategies to enable you to move forward positively in this regard.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order. The panel noted that aside from this incident, you have a long unblemished nursing career, totalling to almost 28 years, and it would be in the public interest to allow you to return to nursing in the future. It also had regard to the fact that since this incident, you have been working as a registered nurse and no further concerns have been raised.

Furthermore, the panel was satisfied that a suspension order was sufficient 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.

Balancing all these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted the hardship such an order will inevitably cause you, however it considered that this is outweighed by the public interest in this case.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct. At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A reflective piece which demonstrates your understanding of how your dishonesty impacted Resident A and their family, your colleagues, and the profession. This should also include your professional responsibilities with regard to Duty of Candour with specific reference to NMC guidance
- A reflective piece which sets out how you would deal with a similar situation in the future in line with clinical best practice
- Evidence of training on clinical judgment, leadership, and teamworking

This will be confirmed to you in writing.

Interim order

As the suspension 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 your own interest until the suspension sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Stevenson who invited it to make an interim suspension order for a period of 18 months in order to cover the appeal period. She submitted that this order is necessary to protect the public and serve the public interest.

You did not wish to make any submissions.

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

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 to allow sufficient time for an appeal to be made if you wish to make one.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.