

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

**Substantive Meeting
Monday 13 September - Tuesday 14 September 2021**

Virtual Meeting

Name of registrant: Joyce Ann Kirkham

NMC PIN: 82B0981E

Part(s) of the register: Nursing – Sub part 1
RN1: Registered Nurse (Level 1) – May 1985

Area of registered address: Cheshire

Type of case: Misconduct

Panel members: Anthony Griffin (Chair, Lay member)
Jacqueline Metcalfe (Registrant member)
Rachel Childs (Lay member)

Legal Assessor: Ian Ashford-Thom

Panel Secretary: Jasmin Sandhu

Facts proved: Charges 1, 2, 3, 4a(i), 4a(ii), 4a(iii), 4a(iv), 4a(v),
5a, 5b, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 7a, 7b, 8a, 8c,
and 9

Facts not proved: Charges 8b and 8d

Fitness to practise: Impaired

Sanction: **Striking off order**

Interim order: **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 Mrs Kirkham was not in attendance and that the Notice of Meeting had been sent to her registered email address by secure email on 9 August 2021.

The panel considered whether notice of this hearing had been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules'). It noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a Notice of Hearing may be sent to a registrant's registered address by recorded delivery and first-class post, or to a suitable email address on the register.

The panel took into account that the Notice of Meeting provided details of the allegations, the time of the meeting, and the 'on or after date' 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 Mrs Kirkham has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34.

Details of charge

That you, registered nurse, whilst acting as the Clinic Proprietor and Manager of Medi-slim between 2010 and 2015,

- 1. Operated one or more slimming clinics ('Medi-slim') without one or more of the required MHRA licences to assemble and/or wholesale distribute Schedule 3 controlled drugs.*
- 2. Operated Medi-slim without one or more of the required Home Office licenses to possess and supply Schedule 3 controlled drugs.*
- 3. Operated Medi-slim without any 'certificate of conformity' in place.*

4. *Acted outside the scope of your practice in that you, on one or more occasions:*
 - a) *prescribed Phentermine and/or Diethylpropion ('controlled drugs') to one or more unknown patients and at the time of so doing you:*
 - i. *were not a registered nurse prescriber;*
 - ii. *did not have a doctor and/or authorised second checker present at all times;*
 - iii. *did not prescribe the drugs using the correct FP10PCD ('private prescription form) form*
 - iv. *did not possess and/or document a CDPIN number ('controlled drugs prescriber ID number') on any prescription form*
 - v. *permitted a non-clinical receptionist to dispense CDs to patients*

5. *Your actions as set out in Charge 4(i) were dishonest in that you:*
 - a) *knew you were not a registered nurse prescriber;*
 - b) *knew that you did not have one or more required licenses to prescribe controlled drugs.*

6. *Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:*
 - a) *inappropriately ordered CDs in 'bulk' when it should only be ordered for a named patient;*
 - b) *ordered and/or permitted controlled drugs to be delivered to your home address;*
 - c) *had in your possession an unknown amount of controlled drugs;*
 - d) *assembled the bulk supply of the controlled drugs into individual unknown patient pots;*
 - e) *assembled controlled drugs outside of a clinical setting;*
 - f) *transported the controlled drugs from your home address to one or more of Medi-slim clinics;*
 - g) *inappropriately sold and/or supplied controlled drugs to one or more*

unknown patients.

7. *On one or more occasions between 2010/11 and 2015 in respect of Patient A:*
 - a) *prescribed Phentermine 17.5mg and/or 37.5mg drugs to Patient A and in so doing, acted outside the scope of your competence;*
 - b) *did not provide information on the risks of withdrawals.*

8. *On 21 September 2015, whilst under caution you provided an initial inaccurate account to Police Officer A and/or Person A in that you informed them that:*
 - a) *Doctor A kept the controlled drugs cabinet keys with her at all times;*
 - b) *the assembly of drugs was carried out by Doctor A and Doctor B at the clinic/s;*
 - c) *Doctor A supervised you assemble the controlled drugs into individual patient packs;*
 - d) *informed Police Officer A and/or Person A that you were fully compliant with the requisite policies/ legislation.*

9. *Your actions as set out in one or all of charge 8a-d were dishonest in that you attempted to mislead Police Officer A and/or Person A that Medi-slim was compliant with regulations when you knew it was not.*

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

Background

The Nursing and Midwifery Council (NMC) received a referral concerning Mrs Kirkham's fitness to practise on 23 November 2015. At the time of the concerns raised in the referral, Mrs Kirkham was the Clinic Proprietor and Manager of two private slimming clinics registered in the name of Medi-Slim ('The Clinic').

On 2 June 2015, NHS England received information regarding a patient admitted with uncontrolled hypertension after taking medication, unlicensed for use in the UK, sold to him by Medi-slim Clinic. It is said that as a result of this information, on 21 September 2015 a targeted inspection took place at the Clinic and was carried out by the police and NHS England. Allegedly, Mrs Kirkham was aware of the inspection as it had been pre-arranged.

During the course of the investigation the police seized all of the medication that was stored at the premises. It is alleged that Mrs Kirkham was also in possession of Schedule 3 controlled drugs. Following the investigation, it is also alleged that Mrs Kirkham did not have the appropriate licences from both the Home Office and the Medicines and Healthcare Products Regulatory Agency ('MHRA'). Allegedly, Mrs Kirkham had been in possession of and involved in the receiving, transportation, storage, assembly and supply of controlled drugs contrary to the relevant legislation.

At the inspection several concerns were identified including that Mrs Kirkham, whilst running the Clinic, allegedly prescribed Schedule 3 controlled drugs to patients despite not being a nurse prescriber and by doing so, was acting outside the scope of her competence.

As a result, it is said that Mrs Kirkham was interviewed under caution by the police and officers from NHS England. During the course of these investigatory interviews, it is alleged that Mrs Kirkham provided misleading information and during the course of a subsequent interview, changed her first account entirely.

Mrs Kirkham was subsequently charged with Possession of a Class C Controlled Drug with Intent and Possession of a Class C Drug but was acquitted of all charges on 28 January 2019.

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 provided by the NMC and 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 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:

- Mr 1: Detective Constable at Cheshire Police
- Mr 2: Clinical Adviser at NHS England
- Dr 1: Accountable Officer for Controlled Drugs at NHS England (Cheshire and Merseyside) North Region

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

Charge 1

That you, registered nurse, whilst acting as the Clinic Proprietor and Manager of Medi-slim between 2010 and 2015,

1. Operated one or more slimming clinics ('Medi-slim') without one or more of the required MHRA licences to assemble and/or wholesale distribute Schedule 3 controlled drugs.

This charge is found proved.

In reaching this decision, the panel first had regard to the written statement of Mr 2 who carried out the investigation of Medislim on 21 September 2015 and has confirmed that *'At the time of the visit neither the registrant nor Medi Slim clinic held MHRA licences (sic) to assemble controlled drugs.'* Mr 2 further states *'When I asked the registrant about the licenses she stated that she wasn't aware she required them.'*

The panel was of the view that as a Clinical Adviser employed by NHS England, Mr 2 would have been aware of the licenses which the clinic would have required in order to operate legally. It considered Mr 2 to be a very credible witness who has provided the panel with relevant evidence in both his written statement and his witness statement. The panel noted that Mr 2's accounts were consistent with one another, stating in his witness statement *'At the time of the visit neither Joyce Kirkham or either Medi Slim clinics held MHRA licences (sic) to assemble controlled drugs'.*

As well as the evidence from Mr 2, the panel took into account the written statement of Dr 1. Dr 1 is employed by NHS England (Cheshire and Merseyside) North Region as an Accountable Officer for Controlled Drugs. She is also a qualified pharmacist. Dr 1 explains which licenses were required and stated, *'Not having these licenses meant that the clinic, owned by the registrant, had been operating unlawfully and formed part of the Criminal Case against the registrant'.* Dr 1 further states in her summary of findings dated 20 July 2017 *'Mrs Kirkham did not possess the required MHRA licenses to manufacture CDs'.*

The panel also considered the reliability of Dr 1 as a witness and determined that she was a very credible witness. Dr 1 was consistent throughout her accounts, as well as with accounts with other witnesses. She was helpful in setting out what she would have expected from a registered professional and was helpful in explaining what licenses were required.

Taking into account all the information before it, together with its findings on the credibility of Mr 2 and Dr 1, the panel was satisfied that on the balance of probabilities, Mrs Kirkham did not have the necessary MHRA licenses, therefore finds this charge proved.

Charge 2)

That you, registered nurse, whilst acting as the Clinic Proprietor and Manager of Medi-slim between 2010 and 2015,

2. Operated Medi-slim without one or more of the required Home Office licenses to possess and supply Schedule 3 controlled drugs.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Dr 1 who states, *'Mrs Kirkham did not have the requisite Home Office license(s) and had no authority to hold the CD cabinet key/possess the CDs'*. In her witness statement, Dr 1 also states that the stocking of controlled drugs *'requires a Home Office License (sic) and Mrs Kirkham, as the owner, was operating her business outside the Misuse of Drugs legislation.*

Further, the panel noted that this was consistent with the written statement of Mr 2 who states, *'At the time of the visit neither the registrant nor Medi Slim clinic held Home Office licences (sic) to possess nor supply controlled drugs'* and that *'The onus to obtain these licenses lays entirely with the proprietor.'*

The panel had regard to its previous findings in relation to the reliability of both Mr 2 and Dr 1, together with the fact that they have both stated that Mrs Kirkham operated without the required Home Office licenses in their evidence. On this basis, the panel was satisfied that on the balance of probabilities this charge is found proved.

Charge 3)

That you, registered nurse, whilst acting as the Clinic Proprietor and Manager of Medi-slim between 2010 and 2015,

3. Operated Medi-slim without any 'certificate of conformity' in place.

This charge is found proved.

In reaching this decision, the panel had regard to Dr 1's written statement '*One of the measures in place in the UK to reduce the risk of substandard and counterfeit medicines, is the requirement for "certificates of conformity" for Specials. For instance, community pharmacies must obtain certificates of conformity from specials manufacturers, to be assured that the product they supply contains the active ingredient in the amount stated... At the inspection, there was no evidence that this clinic had systems in place to ensure the quality of the phentermine and diethylpropion specials they were selling*'.

In the absence of any contradictory evidence from Mrs Kirkham, together with its previous finding on the credibility of Dr 1, the panel was satisfied that on the balance of probabilities, there was no certificate of conformity in place, thus finds this charge proved.

Charge 4ai)

4. Acted outside the scope of your practice in that you, on one or more occasions

a. prescribed Phentermine and/or Diethylpropion ('controlled drugs') to one or more unknown patients and at the time of so doing you:

i. were not a registered nurse prescriber;

This charge is found proved.

In reaching this decision, the panel first took into account Dr 1's written statement. She states '*The only person who can authorise the supply of medicines at Medislim is the doctor. The registrant cannot give authority to supply. She is not a non-medical prescriber. The patients' records show the registrant's signature showing that she is authorising the supply*'.

Dr 1's account is consistent with her witness statement which states '*Authority to supply (i.e prescribing) was led by the nurse, Mrs Kirkham rather than by Doctor A and Doctor B. Mrs Kirkham did not have the training or qualifications to prescribe. Both Doctor A and Doctor B allowed this practice to continue.*'

The panel also noted that the police investigation confirmed that Mrs Kirkham was not registered with the NMC as a nurse prescriber.

Having regard to the consistency in both Dr 1's accounts and in the absence of any contradictory evidence provided, the panel concluded that on the balance of probabilities, this charge is found proved.

Charge 4a(ii)

4. Acted outside the scope of your practice in that you, on one or more occasions

a. prescribed Phentermine and/or Diethylpropion ('controlled drugs') to one or more unknown patients and at the time of so doing you:

ii. did not have a doctor and/or authorised second checker present at all times;

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Dr 1. In her written statement, Dr 1 explains why a second check is required for controlled drugs: *'It is standard (i.e. as a minimum) that a second person check two things when dispensing: accuracy and clinical safety... None of these processes were in place at Medislim.'*

Dr 1 goes on to state *'These drugs were being assembled at the registrant's home address. This meant they were not being assembled in a clinical setting and there were no second checks.'* The panel also had regard to Dr 1's witness statement *'Both doctors knew that the nurse was dispensing without a second check, and they did not check the contents of the containers handed to patients.'*

Taking into account the above, the panel was satisfied that there is sufficient evidence to suggest that there was no second checker in place, therefore finds this charge proved.

Charge 4a(iii)

- 4. Acted outside the scope of your practice in that you, on one or more occasions*
- a. prescribed Phentermine and/or Diethylpropion ('controlled drugs') to one or more unknown patients and at the time of so doing you:*
- iii. did not prescribe the drugs using the correct FP10PCD ('private prescription form) form*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Mr 2 who states 'The "prescriptions" themselves did not meet the legal requirements, thus invalidating the "prescription". The panel noted that this evidence was consistent with Dr 1's evidence who states, 'Even if the doctors had authorised supply, the record-keeping and prescription forms did not meet the legislation.'

Taking into account the consistency in the accounts from Dr 1 and Mr 2, the panel concluded that it was more likely than not that Mrs Kirkham did not use the correct FP10PCD form. The panel therefore finds this charge proved on the balance of probabilities.

Charge 4aiv)

- 4. Acted outside the scope of your practice in that you, on one or more occasions*
- a. prescribed Phentermine and/or Diethylpropion ('controlled drugs') to one or more unknown patients and at the time of so doing you:*
- iv. did not possess and/or document a CDPIN number ('controlled drugs prescriber ID number') on any prescription form*

This charge is found proved.

In reaching this decision, the panel first had regard to the evidence from Mr 1, who was the Detective Constable, employed by Cheshire Police who conducted the initial investigation into Medi-slim. Mr 1 states '...neither of the doctors had a private PIN number issued to

them but were supplying controlled drugs to patients'. The panel considered the reliability of Mr 1 as a witness as found him to be very credible. It noted that Mr 1 was detailed and thorough in his investigation and that his account was consistent with the accounts from other witnesses.

In her evidence, Dr 1 states '*... On top of that the prescribers themselves needed a Controlled Drugs Prescriber Identification Number (CDPIN) to prescribe the controlled drugs at the clinic (see below). This would have been obtained from my office at NHS England, and I can confirm they never applied for CDPINS.*' Dr 1 further states '*Even if the doctors had authorised supply, the record-keeping and prescription forms did not meet the legislation. The only records found on inspection were patient-records that looked like hospital records. The Misuse of Drugs Regulations 2001 and amendments requires controlled drugs prescriptions in non-NHS settings to be written on FP10PCD prescription forms with the prescriber's CDPIN.*

The panel noted the consistency in accounts in relation to this charge between Dr 1 and Mr 1 and concluded that on the balance of probabilities, this charge is found proved.

Charge 4av)

4. Acted outside the scope of your practice in that you, on one or more occasions

a. prescribed Phentermine and/or Diethylpropion ('controlled drugs') to one or more unknown patients and at the time of so doing you:

v. permitted a non-clinical receptionist to dispense CDs to patients

This charge is found proved.

In reaching this decision, the panel had regard to the witness statement of Patient A dated 14 July 2017, as contained in the evidence provided by Mr 1. Patient A states '*At no time did I see the doctor fill in any prescriptions and the doctor was never involved in deciding what medicines I needed to take as the nurse had already given me the drugs prior to me seeing the doctor.*' In that same statement, Patient A states '*As a result of this the receptionist would go and see the nurse and return with pots containing medicines. The*

patients then paid the receptionists for the medicines and left without seeing the doctor'. Patient A further states 'As I became a regular customer, if the reception area was busy, I would tell the receptionist that I could not wait. The receptionist would go through to the nurses room and come back with a fresh supply of drugs'.

The panel noted that the account of Patient A was consistent with the police report provided by Mr 1 which details the experience of another Medi-slim patient, who states *'...when she attended the clinic some weeks the waiting room would be very busy and the waiting time would be very long. As a result of this she would go to the receptionist and inform them that she was unable to wait. The receptionist then took the money from me (sic) and went through to the nurse's room returning a short time later with the medication she had paid for. She saw a number of other customers to the same things.'*

The panel took into account the witness statement from Patient A, together with the police report, containing the account of another patient's experience and concluded that it was more likely than not that a non-clinical receptionist was permitted to dispense CDs to patients. The panel therefore finds this charge proved.

Charge 5a)

- 5. Your actions as set out in Charge 4(i) were dishonest in that you:*
 - a. knew you were not a registered nurse prescriber;*

This charge is found proved.

In considering the charges relating to dishonesty, the panel accepted the advice of the legal assessor who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67.

The panel first took into account Mrs Kirkham's defence statement dated 31 January 2019 which states *'Mrs Kirkham at all material times believed that she was acting under the authority of Doctor B and that because of the presence of a doctor at the practice and because that doctor had the final word in prescribing for patients she would not have been committing any offence in having possession of the drugs and in supplying drugs to patients. So far as she was aware the regulations were being complied with.'* Whilst the

panel found this statement to be on its face, implausible, the panel was satisfied that it showed that Mrs Kirkham knew full well that she herself was not qualified to prescribe controlled drugs.

Taking into account all the evidence before it, the panel was satisfied that Mrs Kirkham knew that she was not authorised to prescribe controlled drugs and yet, as found proved in charge 4, had in fact prescribed these drugs to patients at Medi-slim. Therefore, applying the objective standards of ordinary decent people, the panel finds that Mrs Kirkham acted dishonestly and finds this charge proved.

Charge 5b)

*5. Your actions as set out in Charge 4(i) were dishonest in that you:
b. knew that you did not have one or more required licenses to prescribe controlled drugs.*

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Mr 1 who states, *'Mrs Kirkham said she didn't have any licenses to run the practice as she thought she didn't need any.'* This account is consistent with the police report provided by Mr 1 which states *'Joyce Kirkham stated that she did not have any licenses to run the practice as she thought she did not need one'.*

The panel considered that Mrs Kirkham's assertion that she was unaware of the requirement for licenses was not plausible. It agreed with Mr 1 who, in his written statement, said *'the onus to obtain these licenses lays entirely with the proprietor... when I asked the registrant about the licenses, she stated that she wasn't aware that she required them. In my professional opinion this is not an acceptable mitigation.'*

Taking into account the evidence above, the panel was satisfied that Mrs Kirkham did know that she did not have one or more required licenses to prescribe controlled drugs, despite which she prescribed them. The panel was satisfied that such conduct would be

regarded as dishonest by the objective standards of ordinary decent people. Therefore the panel finds this charge proved on the balance of probabilities.

Charge 6a)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

a. inappropriately ordered CDs in 'bulk' when it should only be ordered for a named patient;

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Dr 1 who states, '*... "specials" should be prescribed only on a 'named patient basis' where the licensed drug is not appropriate. The evidence that came to light was that the clinic was ordering the specials in bulk and prescribing them to all their patients.'*

Dr 1 further states '*The details on the SOP and their requisition to the wholesaler omits the following legal requirements: Purpose of the requisition (it states for individual patient use but this is not true as they were using the order for most or all patients For instance a bottle of 1000 tablets could supply 142 patients).'*

Having regard to the above and bearing its finding on the credibility of Dr 1, the panel concluded that it was more likely than not that Mrs Kirkham did order CDs in bulk, rather than for a named patient, therefore finding this charge proved.

Charge 6b)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

b. ordered and/or permitted controlled drugs to be delivered to your home address;

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Dr 1 who states, *'It was confirmed the registrant was accepting the delivery of the Schedule 3 Controlled Drugs (diethylpropion and phentermine) herself at her home address without the doctors present.'*

The panel also had regard to the police report provided in Mr 1's evidence *'drugs were always delivered to Kirkham's home address'*, as well as Mr 2's written statement *'After further questioning, the registrant and Doctor A confirmed that the registrant was in fact taking the deliveries personally at her Home Address.'*

The panel noted that all three witnesses' evidence were consistent with one another in relation to this charge. It therefore concluded that on the balance of probabilities, this charge is found proved.

Charge 6c)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

c. had in your possession an unknown amount of controlled drugs;

This charge is found proved.

In reaching this decision, the panel took into account Mr 1's written statement which states *'From the information we received it indicated that Mrs Kirkham was receiving the delivery of drugs herself, which is known as 'possession, this is unlawful possession contrary to section 5 of the Misuse of Drugs act 1971. Mrs Kirkham was then transporting the drugs between the clinics without the doctor's knowledge, again an unlawful possession contrary to section 5 of the Misuse of Drugs act 1971.'*

The panel also had regard to Mr 2's written statement which states, *'As above it was confirmed that the registrant was signing and accepting the delivery of the Controlled Drugs. The second the registrant handled these controlled drugs she is said to have*

'possession' of them. The registrant, as a nurse should never have had possession of the controlled drugs according to the relevant legislation.'

Taking into account all of the above, the panel was satisfied on the balance of probabilities that this charge is found proved. It considered that there was sufficient evidence to conclude that it was more likely than not that Mrs Kirkham had an unknown amount of controlled drugs in her possession.

Charge 6d)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

d. assembled the bulk supply of the controlled drugs into individual unknown patient pots;

This charge is found proved.

In reaching this decision, the panel took into account the police report which states, *'The drugs were always delivered to the clinic on a Saturday morning and that Dr [] would have been present at the point of delivery. She then stated that they would then both are (sic) responsible for putting drugs into individual patient packets'* and *'Once Kirkham had received the drugs she separated the bulk pots of drugs into small individual patient pots at the home address'*.

From the evidence before it, the panel took the view that although Mrs Kirkham initially said that she sorted drugs with the doctor, the police report from Mr 1 suggests that this was not the case and that she did this by herself at her home address. Taking into account its finding on the credibility of Mr 1, together with the fact that Mrs Kirkham has not provided any contradictory evidence, the panel determined that it was more likely than not that Mrs Kirkham assembled the bulk of the controlled drugs into individual patient pots. It therefore finds this charge proved on the balance of probabilities.

Charge 6e)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

e. assembled controlled drugs outside of a clinical setting;

This charge is found proved.

In reaching this decision, the panel considered the written statement of Mr 2 who states, *'These drugs were being assembled at the registrant's home address. This meant they were not being assembled in a clinical setting and there were no second checks.'* Mr 2 also states *'The visit confirmed that Joyce Kirkham had re-dispensed the purchased bulk stock of Schedule 3 controlled drugs (diethylpropion and phentermine) to prepare and label them in small patient packs at her home address without a doctor being present.'*

Taking into account the above, the panel was satisfied that Mrs Kirkham did assemble controlled drugs outside of a clinical setting, therefore finding this charge proved.

Charge 6f)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

f. transported the controlled drugs from your home address to one or more of Medi-slim clinics;

This charge is found proved.

In reaching this decision, the panel took into account the police report which states *'Once Kirkham had prepared the drugs into patient pots she would be responsible for delivering the drugs to the Clinics, where they were placed into CD cabinet, for the doctors to use.'*

The panel also took into account the written statement of Mr 2 which states, *'One of the main concerns that we had was that there were 2 clinics being operated and the drugs were being transported between them.'*

Having regard to the consistencies in the evidence above, the panel was satisfied that on the balance of probabilities, Mrs Kirkham did transport controlled drugs from her home address to one or more of the clinics. The panel therefore finds this charge proved.

Charge 6g)

6. Acted outside the scope of your practice in possessing, transporting, storing, assembling and supplying controlled drugs in that you:

g. inappropriately sold and/or supplied controlled drugs to one or more unknown patients;

This charge is found proved.

In reaching this decision, the panel took into account the statement of Patient A which states *'After this was recorded the nurse told me that she was going to start me on a drug called phentamine (sic). She stated that she would start me on a week's worth of tablets with a strength of 17.5mg. After the initial week the tablet strength was to increase from 17.5mg to a stronger dose which I think was 32.5mg. The nurse then produces two medicine bottles from a draw next to her desk and wrote my name on them.'* Patient A goes on to state *'At no time did I see the doctor fill in any prescriptions and the doctor was never involved in deciding what medicines I needed'*.

The panel noted that Patient A's statement was consistent with the police report which refers to another patient *'The nurse told [] that she was going to start her on a drug called phenetamine'*.

Taking into account that there is evidence suggesting that Mrs Kirkham supplied controlled drugs to more than one patient, the panel was satisfied that this charge is found proved.

Charge 7a)

7. On one or more occasions between 2010/11 and 2015 in respect of Patient

A:

a. prescribed Phentermine 17.5mg and/or 37.5mg drugs to Patient A and in so doing, acted outside the scope of your competence;

This charge is found proved.

In reaching this decision, the panel first had regard to the written statement of Dr 1. In her statement, Dr 1 states '*A man had been admitted to their Accident and Emergency Department with uncontrolled hypertension after taking medication sold to him by a slimming clinic called medi-slim clinic*'.

In addition, the panel took into account Mr 2's statement '*The report alleged that the patient had been taking phentermine as a 37.5mg tablet once daily as a slimming aid and that he obtained from the slimming clinic in question, "Medislim". Medislim is a non-NHS clinic which is privately owned by the registrant.*'

The panel also took into account Patient A's statement '*After this was recorded the nurse told me that she was going to start me on a drug called phenetamine. She stated that she would start me on a week's worth of tablets with a strength of 17.5mg. After the initial week the tablet strength was to increase from 17.5mg to a stronger dose which I think was 32.5mg. The nurse then produces two medicine bottles from a draw next to her desk and wrote my name on them.*'

Whilst the panel noted that there was a minor inconsistency between the drug dosage in the charge and in the evidence, the panel considered that this was not sufficient to undermine the remainder of the evidence. It determined that it was still more likely than not that Mrs Kirkham prescribed Phentermine to Patient A, therefore finds this charge proved.

Charge 7b)

7. On one or more occasions between 2010/11 and 2015 in respect of Patient

A:

b. did not provide information on the risks of withdrawals.

This charge is found proved.

In reaching this decision, the panel took into account the statement of Patient A *'I had never at any point been made aware by Medislim of the risks of stopping the tablets and that I would need to reduce the dose slowly in order to do this'*.

In the absence of any evidence from Mrs Kirkham to contradict this, the panel was satisfied that on the balance of probabilities Mrs Kirkham did not provide Patient A information on the risks of withdrawal. It therefore finds this charge proved.

Charge 8a)

8. On 21 September 2015, whilst under caution you provided an initial inaccurate account to Police Officer A and/or Person A in that you informed them that:

a. Doctor A kept the controlled drugs cabinet keys with her at all times;

This charge is found proved.

In reaching this decision, the panel took into account the police report and the written statement of Mr 1. The police report states *'she stated that Dr [] was responsible for the CD cabinet'*. In Mr 1's written statement, he states *'Mrs Kirkham initially said that Doctor A was responsible for the controlled drug cabinet and the requisition of the drugs. Mrs Kirkham later admitted that she did in fact have keys to the controlled drug cabinet'*.

Taking all the above into account and in the absence of any contradictory evidence from Mrs Kirkham, the panel finds this charge proved on the balance of probabilities.

Charge 8b)

8. On 21 September 2015, whilst under caution you provided an initial inaccurate account to Police Officer A and/or Person A in that you informed them that:

b. the assembly of drugs was carried out by Doctor A and Doctor B at the clinic/s;

This charge is found NOT proved.

The panel had regard to all the information before it and concluded that there was not sufficient evidence before it to find this charge proved on the balance of probabilities. There was no reference to the assembly of drugs by both Doctor A and Doctor B together contained within the record of questioning under caution on 21 September 2015. The panel therefore finds this charge not proved.

Charge 8c)

8. On 21 September 2015, whilst under caution you provided an initial inaccurate account to Police Officer A and/or Person A in that you informed them that:

c. Doctor A supervised you assemble the controlled drugs into individual patient packs;

This charge is found proved.

In reaching this decision, the panel took into account Mr 1's written statement which states '*Mrs Kirkham initially stated that she and Doctor A would together be responsible for putting the drugs into individual patient packs from the bulk delivery at the clinic*'. The panel also took into account the police report which states, '*She then stated that they would then both be responsible for putting the drugs into individual patient packs*'.

Taking into account the above, together with its findings in relation to charge 6e, the panel was satisfied that there was sufficient evidence before it to find this charge proved on the balance of probabilities.

Charge 8d)

8. On 21 September 2015, whilst under caution you provided an initial inaccurate account to Police Officer A and/or Person A in that you informed them that:

d. informed Police Officer A and/or Person A that you were fully compliant with the requisite policies/ legislation.

This charge is found NOT proved.

In reaching this decision, the panel acknowledged Mr 2's evidence where Mrs Kirkham states that '*she had all policies and procedures and that they were in accordance to what we might expect at the time of the inspection*'. However, due to the wording of the charge concerning only Mrs Kirkham's questioning whilst under caution on 21 September 2015, the panel was not able to find this charge proved on the balance of probabilities. There was no evidence before it to suggest that Mrs Kirkham made this statement whilst under caution.

Charge 9)

9. Your actions as set out in one or all of charge 8a-d were dishonest in that you attempted to mislead Police Officer A and/or Person A that Medi-slim was compliant with regulations when you knew it was not.

This charge is found proved in relation to charges 8a and 8c.

The panel was satisfied that Mrs Kirkham did act dishonestly in relation to charge 8a. The evidence as discussed in charge 8a indicates that Mrs Kirkham changed her account concerning who kept the cabinet keys. Mrs Kirkham has claimed that the doctor kept the key, then states that there was a duplicate key, before later admitting that she was in charge of the key.

The panel was also satisfied that Mrs Kirkham did act dishonestly in relation to charge 8c. The evidence as discussed in charge 8c indicates that during the interview, Mrs Kirkham maintains that she assembled drugs with the doctor. However, from the evidence contained in the police report, Dr [] admitted that '*the drugs were in fact delivered to the home address of Joy Kirkman and that it was Kirkman who put the drugs into patient packs. She stated that she was not present when this happened*'.

The panel was satisfied that by the standards of ordinary decent people, knowingly attempting to mislead Police Officer A and/or Person A that Medi-slim was compliant with regulations, as found proved in charges 8a and 8c, when Mrs Kirkham knew it was not would be regarded as dishonest.

The panel therefore finds this charge proved, insofar as Mrs Kirkman acted dishonestly with respect to charges 8a and 8c.

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

Representations on misconduct

In coming to its decision, the panel had regard 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.'

In their written submissions, the NMC refer 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. The NMC identify the specific, relevant provisions where they argue Mrs Kirkham's conduct fell significantly short of the standards of the Code.

The NMC submit that whilst not every breach of the Code will result in a finding of misconduct, Mrs Kirkham's actions constitute a '*serious departure from the professional standards and behaviour expected of a registered nurse*'. They submit that in failing to follow the correct process in relation to licences and continuing to operate Clinics and prescribe medication to patients without seeking the advice of a doctor, a patient in Mrs Kirkham's care suffered serious direct harm. Furthermore, in providing misleading and inaccurate accounts during the course of the investigation, Mrs Kirkham acted dishonestly and breached the duty of candour.

The NMC require 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.

Representations on impairment

The NMC invited the panel to find Mrs Kirkham's fitness to practise impaired on the grounds of public protection and is also otherwise in the public interest.

In their submissions, the NMC refer to Dame Janet Smith's 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)*. The NMC submits that all four limbs of the test are engaged in this case: By operating two Clinics without having the appropriate licence in place, Mrs Kirkham placed patients at an unwarranted risk of harm; Mrs Kirkham's actions as found proved have in the past brought or have been likely to bring the nursing profession into disrepute; By acting outside the scope of her competence and then not accepting responsibility for her actions, Mrs Kirkham breached fundamental tenets of the profession; and Mrs Kirkham appears to have misled investigators and deflected blame onto others, thus acting dishonestly.

It is further submitted that given the limited engagement during the course of the regulatory concerns, and in the absence of any evidence to demonstrate insight, remediation or remorse, a finding of current impairment is necessary on the grounds of public protection.

The NMC also submit that a reasonable and informed member of the public would expect a finding of impairment. Any other outcome would undermine confidence in the profession and the regulator, and therefore a finding of current impairment is also necessary on grounds of public interest.

Decision and reasons on misconduct

Before making a decision on misconduct, 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] 1 A.C. 311, Grant [2011] EWHC 927 (Admin), and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

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 Mrs Kirkham's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach 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

4 Act in the best interests of people at all times

13 Recognise and work within the limits of your competence

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.

18. Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must

18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs

18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines

18.4 take all steps to keep medicines stored securely

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

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

20.4 keep to the laws of the country in which you are practising

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.

While the panel appreciated that breaches of the Code do not automatically result in a finding of misconduct, it was of the view that Mrs Kirkham's actions in the charges found proved 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 the misconduct, Mrs Kirkham's 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 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* 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 concluded that all four limbs were engaged in this case. The panel found that patients were put at risk of direct harm as a result of Mrs Kirkham's misconduct. Further, Mrs Kirkham acted dishonestly, and the panel was of the view that her misconduct in this way breached the fundamental tenets of the nursing profession, therefore bringing 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.

The panel noted that it had not received any evidence to suggest that Mrs Kirkham has demonstrated an understanding of how her actions put patients at a risk of harm or how this impacted negatively on the reputation of the nursing profession. The panel therefore found that Mrs Kirkham has not developed any insight or demonstrated any remorse. In addition, the panel has borne in mind Mrs Kirkham's lack of engagement or steps to remediate her practice. The panel was therefore of the view that if Mrs Kirkham were allowed to practice without restriction, there would be a risk of repetition. It therefore considered 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. 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 Mrs Kirkham's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has decided to make a striking-off order. It directs the registrar to strike Mrs Kirkham off the register. The effect of this order is that the NMC register will show that Mrs Kirkham has been struck-off the register.

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. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel had regard to the NMC's written submissions on sanction.

The NMC identify the following aggravating factors:

- Conduct which put patients at the risk of harm
- No evidence of insight
- Dishonesty - serious concern which is more difficult to put right

The NMC identify the following mitigating factor:

- No previous referrals or regulatory findings

The NMC submit that taking no action or imposing a caution order would not be appropriate in view of the seriousness of the misconduct, the ongoing risk, and the need to declare and uphold proper standards of conduct.

Given that some of the concerns identified in this case are very serious and therefore more difficult to remediate, together with the apparent attitudinal concerns and apparent dishonesty during the course of the investigation, the NMC submit that there are no conditions that could be formulated to alleviate the concerns identified in this case. They refer to the following section of the SG:

'...because of the importance of honesty to a nurse or midwife's practice, dishonesty will always be serious...the forms of dishonesty which are most likely to call into question whether a nurse or midwife should be allowed to remain on the register will involve...misuse of power...direct risk to patients...Dishonest conduct will generally be less serious in cases of one-off incidents...opportunistic or spontaneous conduct...no direct personal gain'.

It is submitted that given the particular circumstances of this case and the lack of insight, remorse of remediation, a suspension order would not alleviate the concerns identified and the risk of harm to the public. The NMC therefore submit that the most proportionate and appropriate sanction in this case is a striking off order given that Mrs Kirkham's actions were so serious that they are fundamentally incompatible with ongoing registration.

Decision and reasons on sanction

Having found Mrs Kirkham'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:

- Mrs Kirkham's actions were motivated by personal financial gain
- Direct harm was caused to patients
- There has been no evidence of any remorse, insight, or remediation
- Events occurred over a long period of time
- Dishonesty is a serious concern which is difficult to remediate

The panel also took into account the following mitigating feature:

- No previous referrals or regulatory findings

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the ongoing public protection issues previously outlined.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Kirkham's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Mrs Kirkham's registration would be a sufficient and appropriate response. The panel was of the view that there were no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case involves dishonesty concerns which cannot be addressed by the imposition of conditions. In addition, the panel noted that there appear to be deep-seated attitudinal concerns, particularly given that events occurred over a long period of time, as well as Mrs Kirkham's limited engagement with the regulatory proceedings. Taking all the above into account, the panel concluded that the placing of conditions on Mrs Kirkham's 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 found that Mrs Kirkham's conduct was not in line with the above factors. It considered that the concerns in this case could not be reduced to a single instance of misconduct and there has been no evidence of insight by Mrs Kirkham. It also considered that Mrs Kirkham's dishonesty over a prolonged period of time, together with her lack of engagement with the regulatory proceedings suggested an inherent attitudinal problem. For these reasons, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

In considering a striking-off order, the panel noted 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?*

It was the view of the panel that Mrs Kirkham's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and that her actions are fundamentally incompatible with remaining on the register. The panel considered that the findings in this particular case demonstrate that Mrs Kirkham's actions were serious and to allow her 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 Mrs

Kirkham's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel had no information as to the likely impact of a striking-off order on Mrs Kirkham. Nonetheless, whatever adverse consequences, financial or otherwise, might result, the panel was satisfied that Mrs Kirkham's interests were outweighed by the need to protect the public and uphold the public interest. The panel was therefore satisfied that a striking-off order was appropriate and proportionate.

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 Mrs Kirkham 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 is in Mrs Kirkham's own interests until the striking-off sanction takes effect.

Representations on interim order

The panel took account of the written representations made by the NMC that an interim order is required to protect patients and is also in the public interest. The NMC submit that an interim suspension order for 18 months is necessary to cover any possible appeal period. An interim suspension order is appropriate as this would be consistent with the sanction imposed by the panel and would address public interest concerns already identified.

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, because of the length of time likely to be required for any appeal, if brought, to be determined or otherwise finally disposed of.

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

That concludes this determination.