

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

**Substantive Hearing  
Wednesday, 1 September 2021 – Thursday, 2 September 2021**

Virtual Hearing

<b>Name of registrant:</b>	<b>Lazarous Mwanza</b>	
<b>NMC PIN:</b>	03J07850	
<b>Part(s) of the register:</b>	Registered Nurse Adult Nursing (20 October 2003)	
<b>Area of registered address:</b>	Edinburgh	
<b>Type of case:</b>	Misconduct	
<b>Panel members:</b>	Anthony Griffin Susan Jones Suzanna Jacoby	(Chair, Lay member) (Registrant member) (Lay member)
<b>Legal Assessor:</b>	Peter Jennings	
<b>Panel Secretary:</b>	Philip Austin	
<b>Nursing and Midwifery Council:</b>	Represented by Dulcie Piff, Case Presenter	
<b>Mr Mwanza:</b>	Present and represented by Catherine Stock, of Kings View Chambers	
<b>Facts proved by way of admission:</b>	All charges	
<b>Facts not proved:</b>	None	
<b>Fitness to practise:</b>	Currently impaired	
<b>Sanction:</b>	<b>Caution order – 2 years</b>	
<b>Interim order:</b>	<b>None</b>	

## **Details of charge**

That you, a registered nurse:

1. On 21 July 2017 in respect of Resident A failed to follow the correct procedure for administering Oramorph in that you did not have a second member of staff present when signing the controlled drug register, at;
  - a) 9:30 hours, and
  - b) 15:00 hours
  
2. On 21 July 2017 in respect of Resident A signed the controlled drug register twice for the administration of Oramorph, at;
  - a) 9:30 hours, and
  - b) 15:00 hours
  
3. Your action(s) at 2a) and/or 2b) was/were dishonest in that you sought to mislead any reader of the controlled drugs register that you did have a second signatory.
  
4. On 21 July 2017 in respect of Resident B applied a 12mcg/hour dose Fentanyl patch instead of the prescribed 25mcg/hour dose Fentanyl patch.

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

## **Admissions to charges**

At the outset of the hearing, Ms Stock, on your behalf, admitted charges 1, 2, 3 and 4.

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

Therefore, the panel found all of the charges against you proved by way of your admissions.

### **NMC Opening**

The NMC received a referral from Renaissance Care in relation to you on 9 November 2017. At the material time of the events, you were employed by Renaissance Care as the Deputy Manager of Levenhall Care Home (“the Home”), supporting the Home Manager who was not clinically qualified.

On 21 July 2017, you failed to follow the correct procedure when administering Oramorph to Resident A, in that you did not have a second member of staff present to sign the controlled drug register as a witness at 09:30 hours and 15:00 hours. You then signed the controlled drug register as the second signatory, in an attempt to mislead readers of the controlled drug register into believing that another member of staff had witnessed the administration of Oramorph to Resident A, when they had not.

Furthermore, on 21 July 2017, in respect of Resident B, you applied a 12mcg/hour dose Fentanyl patch instead of the prescribed 25mcg/hour dose Fentanyl patch.

### **Fitness to practise**

Having found all of the facts proved by way of admission, the panel moved on to consider whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise.

However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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 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 her submissions, Ms Piff, on behalf of the Nursing and Midwifery Council ("NMC"), referred the panel 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 Piff invited the panel to take the view that your conduct amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). She then directed the panel to specific paragraphs and identified where, in the NMC's view, your actions amounted to misconduct.

Ms Piff submitted that you administered Oramorph to Resident A and recorded that this had been witnessed by a second checker when it had not been. She submitted that in this regard, your conduct fell seriously short of the standards expected of a registered nurse and had the potential to put Resident A at a risk of unwarranted harm. Ms Piff submitted that your behaviour relates to basic and fundamental aspects of safe and effective nursing practice and, by indicating that there had been a second checker of the medicine

administered, you breached the trust placed in you by the residents and the Home Manager.

Ms Piff submitted that registered nurses occupy a privileged position in society and they must demonstrate honesty and integrity at all times. She submitted that by being dishonest, you breached a fundamental tenet which goes '*right to the heart*' of the profession, and erodes the special bond registered nurses share with their residents.

Ms Piff submitted that you did not follow the guidelines in place to ensure that you administered medication safely, and you attempted to mislead readers of the controlled drug register by presenting a false picture as to the care delivered to Resident A.

Ms Stock, on your behalf, submitted that you accept that your actions amount to misconduct.

### **Submissions on impairment**

Ms Piff 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)* and submitted that your dishonesty is exacerbated by the fact that it is linked to your clinical nursing practice.

Ms Piff also referred the panel to the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, and invited it to consider whether your misconduct is capable of remediation, whether it has been remediated, and whether it is highly unlikely to be repeated again in future.

Ms Piff submitted that dishonesty is often more difficult to remediate than clinical deficiencies, and it is aggravated in this case by having occurred in the workplace. She submitted that your conduct was very serious although it occurred during the course of a single shift.

Ms Piff submitted that there is evidence to suggest that you have learnt from your dishonest conduct. You admitted the misconduct at an early stage during the investigation and you have completed training relating to ethics and medication awareness. Ms Piff submitted that you were able to explain in your reflective statement how you would act differently in the future if you were faced with a similar set of circumstances, as you now recognise how dangerous your actions were, and how you exposed residents in your care to a risk of unwarranted harm. She submitted that you have demonstrated a high degree of insight into how your actions impacted upon public confidence in the nursing profession, and have shown remorse and regret for your behaviour. Ms Piff submitted that you had been self-critical of your attempts to minimise your conduct previously, but now have a greater appreciation of the need to act in an open, honest and trustworthy manner, along with the challenges of remediating your practice.

In taking account of all the above, Ms Piff submitted that whether there is a risk of repetition is a matter for the panel.

Ms Piff submitted that positive references have been provided on your behalf. She drew the panel's attention in particular to the reference from your current employer, who has no concerns regarding your medication administration and believes you to have been honest and reliable in your two years of employment there.

Ms Piff submitted that the panel has not had the benefit of hearing from you directly at this hearing, and so it will need to assess the evidence carefully in considering whether there are any public protection and public interest concerns. She submitted that whilst you have a previously unblemished record with no regulatory findings against you, the public

interest elements of this case require a finding of current impairment to be made due to the severity of your conduct.

Ms Piff invited the panel to find that your fitness to practise as a registered nurse is currently impaired.

Ms Stock submitted that current impairment is conceptually forward thinking, so the question for the panel to consider is whether your fitness to practise is impaired as of today's date, in accordance with *Zygmunt v General Medical Council [2008] EWHC 2643 (Admin)*.

Ms Stock submitted that it is also important to consider the context within which your behaviour occurred. She submitted that there are a number of mitigating factors present in this case, in that you describe the Home as having a bad reputation and a hostile environment. Ms Stock submitted that you had raised your concerns about going to the Home on four separate occasions to Renaissance Care, but they still placed you at the Home.

Ms Stock submitted that what started off as you wanting to deliver the best care for your patients turned into a disaster. You panicked at what had happened.

However, Ms Stock submitted that your actions occurred over the course of one shift, and that you have an unblemished nursing career spanning just under 40 years.

Ms Stock also submitted that you have recognised the impact your actions had on patients, colleagues and the wider public. She submitted that you have provided an honest reflective piece, having fully reflected on your behaviour. You acknowledged that it took some time for you to stop blaming other people and accept responsibility for what you had done as your ego got in the way of you developing your insight.

Ms Stock referred the panel to the positive references and reminded the panel that your current employer has no concerns in respect of your nursing practice. She also informed the panel that you have continued to work since the incident, including during the Covid-19 pandemic.

Ms Stock invited the panel to consider whether an ordinary and reasonable member of the public would remain concerned by your behaviour, having regard to the efforts you have made in remediating your conduct. She submitted that you now fully recognise the issues involved in this case and have looked to address them. Therefore, Ms Stock invited the panel to find that your fitness to practise as a registered nurse is not currently impaired.

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

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

The panel noted that at the outset of the hearing, you accepted through your representative that your actions amounted to misconduct. Nonetheless, the panel noted that this is a matter for its own independent judgment.

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

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

*“10.3 complete records accurately and without any falsification...*

*18.2 keep to appropriate guidelines when...recording the prescribing, supply, dispensing or administration of controlled drugs.*

*19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

*19.2 take account of current evidence, knowledge and developments in reducing mistakes and the effect of them and the impact of human factors and system failures.*

*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...”.*

The panel recognised that breaches of the Code do not automatically result in a finding of misconduct. It went on to consider whether your acts and omissions were sufficiently serious so as to amount to misconduct.

The panel considered your actions in charges 1, 2 and 3 to be serious, and noted that you had embarked on a dishonest course of conduct. It was of the view that the dishonesty involved related directly to patient care, as you administered Oramorph, a controlled drug at the time, to Resident A without a witness present. You signed the controlled drug register as both the first and the second signatory, but writing your signature in two different ways with the result that the second signature appeared to be from a different person.

The panel was of the view that controlled drugs have to be signed for by two people for a reason. These drugs can have a serious effect on the receiver, and the added security is necessary to ensure residents are administered the correct amount. You did not follow the correct procedures in place which meant that, had a mistake been made, there could have been serious consequences for Resident A.

The panel considered you to have been aware that you were not permitted to administer Oramorph without a witness present. Additionally, you also knew that you would not be permitted to sign the controlled drug register on behalf of someone else who had not witnessed you administer this medication. You had attempted to mislead any reader of the controlled drug register into believing that you had been witnessed administering Oramorph to Resident A.

In taking account of the above, the panel found that you had abused your position of trust in signing the controlled drug register to indicate that you had been witnessed administering Oramorph, knowing that you had not.

Therefore, the panel considered your actions in charges 1, 2 and 3 to be serious enough to amount to misconduct.

However, in respect of charge 4, the panel was not satisfied that the clinical concerns identified were sufficiently serious for your actions to amount to misconduct. It considered your actions in applying a 12mcg/hr dose Fentanyl patch instead of the prescribed 25mcg/hr dose Fentanyl patch to have been a mistake. It noted that the administration was observed by another member of staff, who did not herself notice the mistake. This was a single, one-off incident. Whilst it caused Resident B to receive less pain relief than was prescribed, the panel noted that it had not been presented with any evidence that Resident B suffered any actual harm as a result. The panel was of the view that members of the nursing profession would not consider your actions in making this mistake to be deplorable. Therefore, the panel determined that your actions in charge 4 did not amount to misconduct, in and of itself.

In conclusion, the panel was of the view that other registered nurses would consider your actions in charges 1, 2 and 3 to be deplorable in the particular circumstances of this case. It found your conduct within these charges to fall seriously short of the conduct and standards expected of a registered nurse and determined that these amounted to misconduct. It did not find misconduct in respect of charge 4.

## Decision and reasons on impairment

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

Registered 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 registered nurses with their lives and the lives of their loved ones. To justify that trust, registered 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 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, ... 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 all of the above limbs to be engaged by charges 1, 2 and 3.

The panel agreed with the submissions of Ms Piff, that you had exposed Resident A to an unwarranted risk of harm, had acted in a way that would have brought the nursing profession into disrepute, and had breached a fundamental tenet of the nursing profession in being dishonest. The panel had no evidence to suggest that Resident A suffered any actual harm as a result of you administering Oramorph without a second checker present.

In assessing your level of insight, the panel had regard to the reflective piece provided by you in anticipation of this hearing. It noted that you did not provide oral evidence to it at the hearing itself. Nonetheless, the panel considered that in your reflective piece, you have demonstrated, in depth, a high level of insight, specifically relating to your dishonest conduct. You had stated that:

*"In respect of my dishonesty in signing for the 2 doses of oromorph, I am embarrassed and ashamed. For the 8am dose, I gave this as the resident was in pain. I did look for a checker but only briefly and I was in a rush. By the time of the second dose, I simply gave the drug as I knew I had been wrong that morning and could not face the care staff and knew they would question the fact that there had been no checker for the morning dose. I stupidly signed as first and second checker, altering the second signature in an attempt to cover up my dishonest actions.*

*When I look back, what happened could and should have been avoided. I should have reported the difficulties I was having with the carers to the manager, even if I felt at the time that nothing would have been done. I should have given myself enough time to undertake the medication round rather than be rushed. I should have taken time to find a checker for the morning dose. I should have gone out of my way to find a checker for the afternoon dose. I clearly should not have administered any controlled drug myself and I should not have been dishonest and tried to deceive anyone with changing my signature.*

*...I should not have behaved as I did. It was stupid and immature and dangerous. I let the whole situation get to me and did not deal with the issues as I should have done...*

*Here I fundamentally failed and did not follow National Policy, or the policy put in place by the company. Policies are put in place for a reason, and they protect both the resident and the nurse...*

*I allowed myself to be convinced that as the patient was in pain, I was not doing any harm, in fact the opposite. This was entirely wrong. As well as breaching policy, which was bad enough, I was also dishonest. I panicked at the time as I knew I was in the wrong. I also tried to minimise my actions at the disciplinary investigation and hearing by deflecting blame and refusing to accept that I tried to mislead by using a different signature. I am so sorry. I was desperate to keep my job as I needed to look after my family, but I should have been honest from the start. I simply made things worse.*

*What I should have done at the time was to firstly give myself time by carefully planning and making priorities for the residents. I should have made sure I had someone to check with me. Even after giving the drug by myself, I could and should*

*have come clean to the manager and sorted it out, rather than trying to cover things up.*

*It has taken me some time to reflect to fully understand my misconduct and stop blaming everyone else.*

*Firstly, I would like to apologise to Residents A and B for the substandard care they received from me on 21 July 2017. I always try to give the best care I can and I am sorry to have let these residents down.*

*I would also like to apologise to the staff at the home as my actions could have resulted in them getting into trouble...*

*I have undertaken a number of updates on medication administration since 2017 and thankfully have made no other errors.*

*In respect of my dishonest conduct, on reflection I understand how and why it occurred but there are no excuses. I allowed my situation and ego to persuade me it was all ok. It clearly was not.*

*The NMC expect, rightly, that nurses act with honesty and integrity every day at work and out of work. Being a nurse is not just about having good clinical skills and knowledge, it is about being honest and trustworthy.*

*Nurses look after patients, in my practise vulnerable elderly residents, who rely on me for their every need. The resident's families trust me to look after their loved ones and on 21 July 2017 I let them all down.*

*My dishonest conduct could have negatively impacted on the profession and in turn also have negatively affected the public's trust and confidence in nurses and for that I am very sorry.*

*I have reflected at length and cemented this knowledge with further reading and in attending the Professional Probity and Ethics Course.*

*I now further appreciate the role of the NMC in protecting the patient, the public and the profession.*

*The events of the last four years have taught me the importance of being trustworthy in all of my practice particularly in putting patients first and working collaboratively with colleagues. I also fully appreciate the importance of adhering to national and local policies and guidelines.*

*As a nurse I am a custodian of the profession and must always act to protect and guard its' reputation.*

*As outlined above, I apologise to those involved for letting them down and for any stress this had caused them.*

*I can assure all that I have learned a very difficult lesson and that since that time and for as long as I continue to be a nurse, I will act with honesty and integrity and give the best care I can to those under my care...'[sic].*

From this, the panel was convinced that your dishonest conduct was highly unlikely to be repeated. It was satisfied that these proceedings have acted as a salutary lesson for you.

You apologised repeatedly for your behaviour and expressed an understanding of how your actions could have seriously impacted upon the health and wellbeing of Resident A had you administered Oramorph incorrectly. Furthermore, you recognised how your actions could have adversely affected the public's perception of registered nurses, and reflected on what you would do differently if faced with a similar set of circumstances in

the future. It found you to have been open, honest and transparent in your reflective piece, and it came to the conclusion that you now had full insight into the concerns identified.

In considering whether you have remediated your nursing practice, the panel considered the factors set out in Cohen. It noted that dishonesty is often more difficult to remediate than clinical concerns, as it could be suggestive of a deep-seated attitudinal concern. However, it is not impossible to remediate dishonest conduct and, in having regard to the totality of the evidence presented by you throughout these proceedings, the panel did not consider there to be evidence of you having a deep-seated attitudinal issue.

In deciding this, the panel took account of the positive references provided by members of the healthcare profession you have worked alongside, all of whom attest positively to your high level of professionalism, character and clinical nursing skills. Indeed, the Home Manager at Drummohr Care Home, where you are currently employed, confirms that they were aware of the regulatory concerns involved in this case, and that they were still willing to offer you employment. You are regarded as an honest and reliable member of staff, and have taken the opportunity to complete all medication competencies and have been subject to medication supervisions with no concerns being raised in respect of your medication administration.

Furthermore, you have undertaken a training course on Probity and Ethics, and you have written a detailed and in-depth reflective piece commenting on how this has helped you progress in understanding what went wrong. You have also completed a Medication Awareness course to alleviate any suggestion of outstanding clinical concerns.

The panel noted that your dishonesty took place in what appears to be an isolated episode in a lengthy career. The panel had evidence before it to suggest that you have provided good nursing services in the lengthy intervening period since this incident occurred in 2017, and there has been no question raised about your honesty. The panel was of the view that there was not much more you could have done to remediate your nursing

practice, in attempting to prove that you are now a safe and effective nursing practitioner. It considered your dishonest conduct to be out of character.

The panel was of the view that from the evidence presented, it could not be said that there is a real risk of repetition of your misconduct and, as such, determined that the risk of repetition in this case was now low.

In taking account of all the above, the panel decided that a finding of impairment is not necessary on the grounds of public protection. It decided that although your fitness to practise would have been impaired on the grounds of public protection at the time of the incidents, given all of the above, your fitness to practise is not currently impaired on the grounds of public protection.

However, the panel bore in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety and well-being of the public and patients, but also to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

The panel was of the view that a fully informed member of the public would be concerned by the panel's findings on facts and misconduct, with particular regard to your dishonest actions. Whilst the panel acknowledged that you have fully reflected on your past behaviour and have been shown to be a valuable member of staff to your current employer, the panel was satisfied that your misconduct needed to be marked to demonstrate that your dishonest actions would not be tolerated. You were aware that what you were doing was wrong, yet this did not deter you at the time.

In having regard to the above, the panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Accordingly, the panel determined that a finding of impairment on public interest grounds was required.

The panel was therefore satisfied that your fitness to practise as a registered nurse is currently impaired, but on the grounds of public interest alone.

## **Sanction**

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

## **Submissions on sanction**

Ms Piff informed the panel that prior to this substantive hearing, you had been informed that the NMC sanction bid was a suspension order for four months, subject to a review before expiry. However, she submitted that this is in no way meant to usurp the function of the panel. Ms Piff submitted that, having regard to the panel's decision that there is current impairment on the sole ground of public interest, the panel may decide that a review of the order is not necessary in the particular circumstances of this case.

Ms Piff invited the panel to have regard to the aggravating factors which, in the NMC's view, were present in this case. She also invited the panel to take account of any contextual factors which may have given rise to mitigation.

Ms Piff took the panel through the sanctions available to it. She referred it to the NMC Sanctions Guidance ("SG").

Ms Piff submitted that a conditions of practice order is not an appropriate sanction to impose as you have remediated any clinical concerns identified. She also submitted that a

striking-off order may be disproportionate in the particular circumstances of this case, considering this was a one-off incident involving dishonesty. She submitted that you have subsequently demonstrated a high level of insight into your behaviour, along with sincere remorse. In light of this, Ms Piff submitted that the panel may determine that your behaviour is not fundamentally incompatible with ongoing NMC registration.

Ms Piff invited the panel to give serious consideration to whether a caution order or a suspension order is the appropriate sanction to impose at this hearing. She submitted that a caution order is only appropriate if the conduct is considered to be at the lower end of the spectrum of impaired fitness to practise. Ms Piff submitted that as you have acted dishonestly, it cannot be said that your conduct was at the lower end of the spectrum; although she acknowledged the significant steps taken in demonstrating insight, remorse and remediation since then.

Ms Piff submitted that the panel may feel that a caution order for five years would provide greater regulatory scrutiny of your nursing practice, as opposed to a suspension order which can only be imposed for a maximum of one year. She submitted that a caution order is published on the NMC's website, and you are required to disclose this to anyone inquiring about your nursing registration.

Furthermore, Ms Piff reminded the panel that you are currently employed at Drummohr Care Home in the capacity of a registered nurse, and you are working well in this role according to the Home Manager. She submitted that if the panel were minded to impose a suspension order for a period of time, this may mean that you could lose your job. Ms Piff submitted that it may also be in the public interest to allow a registered nurse to continue providing good nursing services.

Ms Stock also took the panel through all of the sanctions available to it, and she addressed them in turn. She submitted that the panel should stop at the sanction that meets the overarching objective, which includes satisfying the public interest elements of this case.

Ms Stock referred the panel to a number of its previous findings at the misconduct and impairment stage in support of her submissions. She reminded the panel that you have full insight into the misconduct, you were open and honest in your reflection, and a salutary lesson had been learned to the point that it could be said that your actions were highly unlikely to be repeated.

Ms Stock submitted that you have continued to provide good nursing services since the incident, and there have been no further concerns raised in respect of your honesty and integrity. Indeed, the panel had found that there was not much more that you could have done in remediating the concerns identified.

Ms Stock submitted that usually in dishonesty cases, the panel has a binary choice between a period of suspension and a striking-off order. However, she invited the panel to consider whether these sanctions are truly necessary to satisfy the overarching objective.

Ms Stock submitted that, having found your fitness to practise as a registered nurse to be currently impaired, the panel may feel that this finding alone is sufficient in the particular circumstances of this case. However, she submitted that if the panel were not minded to agree with this and wanted to mark your behaviour as unacceptable, it should consider whether a caution order is the appropriate sanction.

Ms Stock submitted that a caution order would not affect your right to practise as a registered nurse and it would not be a punitive outcome. Nonetheless, she submitted that a lengthy caution order would be inappropriate, noting that your conduct was towards the lower end of a spectrum of dishonesty and the good progress you have made in addressing the concerns.

Ms Stock submitted that a conditions of practice order would not be appropriate or workable for this type of case.

Ms Stock submitted that a suspension order can be appropriate in circumstances where there is a single instance of misconduct, no deep-seated attitudinal concerns, and no repetition or risk of repetition of the behaviour identified. Therefore, if the panel decided that a suspension order was the appropriate sanction to impose, she submitted that this should be for as short a length of time as possible. She informed the panel that Drummorh Care Home itself wants to retain your nursing services, but it is not known whether your employer will permit you to keep your job, should the panel remove you from the NMC register on a temporary basis. Ms Stock sought a suspension order for a period of one month if the panel deemed this outcome to be appropriate.

Ms Stock submitted that a striking-off order would be disproportionate and wholly punitive in the particular circumstances of this case. She reminded the panel that your dishonesty was opportunistic, and you were not motivated by personal gain. Ms Stock submitted that you are clearly a dedicated registered nurse and your services are invaluable to the residents you serve. She concluded by saying that you are an asset to the nursing profession.

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

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

Having found your 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.

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

- You exposed a patient in your care to a risk of unwarranted harm.
- Your dishonesty occurred in a clinical setting.
- You breached your position of trust.

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

- You admitted all of the charges at this hearing and accepted that your actions amounted to misconduct.
- Your dishonesty was spontaneous and you were not motivated by personal gain.
- You have fully remediated your misconduct, and have demonstrated remorse and meaningful insight.
- The panel accepted that you thought that members of staff at the Home had created a difficult environment for you to work in, and it considered that there was some evidence supporting that view.
- You have worked since the incident without any further concerns being raised in respect of your honesty and integrity.

The panel noted that you have attended this hearing and have engaged throughout these proceedings. It also noted that you have no previous regulatory findings against you.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be inconsistent with the panel's earlier findings at the impairment stage of these proceedings to take no action. It determined that this would not be appropriate or proportionate, having regard to the public interest.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took account of the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

Whilst the panel noted that dishonesty concerns are always serious, the panel was of the view the dishonest conduct must also be seen in context and put into perspective. The panel agreed with Ms Stock's submission that your dishonesty was spontaneous, occurred during one shift, and was not made for personal gain. Your motivation was to provide pain relief to Resident A, and you accept that you did not follow the correct procedure for administering controlled medication.

The panel noted that it had found you to have demonstrated a high level of insight into your misconduct. You admitted the charges and accepted that your actions amounted to misconduct. You demonstrated a deep awareness of how a registered nurse should conduct themselves in your reflective piece, and explained how you would act to ensure that your nursing practice does not fall below the expected standards in the future. You have undertaken a training course in probity and ethics, and provided the panel with a number of positive testimonials commenting on your character, work ethic and clinical nursing practice. You had made significant progress in addressing the concerns and the panel had found that there was not much more you could have done in alleviating any concerns. This resulted in the panel determining that there are no outstanding public protection concerns. It was satisfied that there was a low risk of repetition and, if faced with a similar set of circumstances, you would act appropriately in the future.

You have continued to work as a registered nurse since the incidents on 21 July 2017, and your current employer has no concerns in respect of your honesty and trustworthiness. You continue to receive positive feedback from managers for the manner in which you conduct yourself at work.

However, the panel had determined that the public interest did require your conduct to be marked to declare to the nursing profession and the public that your actions fell below the standards expected of a registered nurse. Whilst the panel considered your behaviour to be serious, taking account of all the above, it was satisfied that your misconduct would be appropriately addressed, and the public interest elements served, by the imposition of a caution order.

Having considered the general principles, and looking at the totality of the findings, the panel has determined to impose a caution order for a period of **two years**. It determined that this would be the appropriate and proportionate response to the misconduct identified in this case. This outcome would not only mark the importance of maintaining public confidence in the nursing profession and the adequacy of its regulation, but would also clearly declare to the public and the nursing profession, the standards required of registered nurses. For the next two years, any prospective employer will be on notice that your fitness to practise has been found to be impaired and that your nursing practice is subject to a caution order.

The panel considered whether placing a conditions of practice order on your registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel was of the view that a conditions of practice order would not be an appropriate or measurable response in this case as there are no outstanding issues around patient safety, and no identifiable areas of clinical nursing practice in need of re-training. The panel had found that there was no deep-seated attitudinal concern present in this case, and that these proceedings had been a salutary lesson for you.

The panel considered the imposition of a suspension order, but determined that this outcome would be disproportionate in the particular circumstances of this case. It was satisfied from your meaningful insight, remorse and remediation that your misconduct was highly unlikely to be repeated. The panel determined that it would be in the public interest to retain your nursing services, and came to the conclusion that restricting your nursing practice any further would be unduly punitive and would not serve the interests of the public.

The panel has accordingly decided that a caution order will adequately serve the public interest elements of this case.

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

This decision will be confirmed to you in writing.

That concludes this determination.