

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

**Substantive Hearing
Monday 22 – 25 August 2022**

Virtual Hearing
Nursing and Midwifery Council

Name of registrant: Bishum Shimadry

NMC PIN: 93C1538E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – April 1996

Relevant Location: Birmingham

Type of case: Misconduct

Panel members: Florence Mitchell (Chair, registrant member)
Sarah Fleming (Registrant member)
David Boyd (Lay member)

Legal Assessor: William Hoskins

Hearings Coordinator: Ruth Bass

Nursing and Midwifery Council: Represented by Megan Millar, Counsel instructed
by the NMC

Mr Shimadry: Not present and unrepresented

Facts proved: Charges 1a, 1b, 2a i) 2a ii), 2a iii), 2a iv), 2b, 3a,
3b, 3c, 4a in respect of charges 1a, 1b, 2a i) 2a
iii) 2a iv), 2b, 3a, 3b and 3c only, 4b in respect of
charges 1b only, and charge 5

Facts not proved:

4a in respect of charges 2a ii) only, and 4b in respect of charges 1a, 2a i) 2a ii), 2 a iii), 2a iv) and 2b only.

Fitness to practise:

Impaired

Sanction:

Striking off order

Interim order:

Interim suspension order - 18 months

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Shimadry was not in attendance and that the Notice of Hearing letter had been sent to his email address as recorded on the Nursing and Midwifery Council (NMC) Register, on 20 July 2022.

Ms Millar, on behalf of the NMC, submitted that it had complied with the requirements of service in accordance with the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates, virtual hearing link and, amongst other things, information about Mr Shimadry's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In light of all of the information available, the panel was satisfied that Mr Shimadry has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Shimadry

The panel next considered whether it should proceed in the absence of Mr Shimadry. It had regard to Rule 21 and heard the submissions of Ms Millar who invited the panel to proceed in Mr Shimadry's absence.

Ms Millar referred the panel to emails from Mr Shimadry, dated 12 July 2022 and 2 August 2022, which state respectively:

- *'I do not wish to engage with the hearing process...'*

- ‘...I therefore don't see any benefit for myself to participate in the hearing.’

Ms Millar reminded the panel that if it was satisfied that all reasonable efforts had been made to serve the notice on Mr Shimadry, or was satisfied that the notice had been served, it could decide to proceed in his absence.

Ms Millar submitted that Mr Shimadry was aware of the hearing and that his decision to absent himself was voluntary. She pointed out that Mr Shimadry had not requested an adjournment and submitted that there was no information to suggest an adjournment would secure his attendance at a later date. Ms Millar further submitted that an expeditious disposal of this matter was in the public interest.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised ‘*with the utmost care and caution*’ as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 (*Jones*).

The panel has decided to proceed in the absence of Mr Shimadry. In reaching this decision, the panel has considered the submissions of Ms Millar, the written representations from Mr Shimadry, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mr Shimadry has indicated on two occasion that he does not wish to participate in these proceedings;
- Mr Shimadry is aware of today's proceedings and has chosen to voluntarily absent himself;
- No application for an adjournment has been made by Mr Shimadry;

- Three witnesses will be attending to give live evidence during the course of the hearing and not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and 2019 and any further delay may have an adverse effect on the ability of witnesses to accurately recall events.

There is some disadvantage to Mr Shimadry in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Shimadry's decisions to absent himself from the hearing, waive his right to attend, and/or be represented, and to not make submissions on his own behalf.

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

Decision and reasons on application to amend the charges

The panel heard an application by Ms Millar, on behalf of the NMC, to amend the wording of charge 3a to remove the words '*without clinical justification*'. She submitted that these words were duplicitous to the charges as it was covered by charge 5.

Ms Millar also made an application to amend Schedule A section (i), so as to remove the word '*asked*'. She submitted that it was purely a typographical error.

The suggested amendments would read as follows:

“That you, a registered nurse:

3) In relation to Patient A, on or around 5 November 2020:

a) touched Patient A's feet on one, or more, occasions ~~without clinical justification~~;

Schedule A (i): Text, ~~asked~~ referred to Colleague A being “*broken/damaged*”

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

The panel was satisfied that the amendments were solely in relation to surplus words and that such an amendment, as applied for, was in the interest of justice. It was satisfied that there would be no prejudice to Mr Shimadry and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Details of charge as amended

That you, a registered nurse:

1) In relation to Colleague A:

a) On an unknown date in 2018, put Colleague A's handover sheet in her uniform pocket, and in doing so placed your entire hand in their pocket;

b) Sent one, or more, communications to Colleague A, as set out in 'Schedule A';

2) In relation to Colleague B:

a) On, or around, 11 February 2019:

i) put your hands on Colleague B's shoulders and/or squeezed them;

ii) said "you're always giving me work to do" or words to that effect;

iii) obtained Colleague B's telephone number without consent;

iv) sent Colleague B a text message which stated: *"Hey pretty lady! Sorry I couldn't resist txtng U. Hope the ned of yr shift was better than the start & I hope I was supportive enough. Your 1 & only stalker!"*;

b) On, or around, 12 February 2019 sent Colleague B a text message which stated *"Hey u ok? U gonna respond or do u think ignoring me would be better! I'm sure u know who I am... P.s was than an awkward look u gave me 1st thing this morning"*;

3) In relation to Patient A, on or around 5 November 2020:

a) touched Patient A's feet on one, or more, occasions;

b) said to Patient A that they add you to Facebook;

c) sent to Patient A, a message via Facebook;

4) Your conduct as set out at any and/or all of charges 1- 3 inclusive:

a) breached professional boundaries;

b) was sexually motivated and/or in pursuit of sexual gratification;

5) Your conduct as set out at any and/or all of charge 3 above was undertaken without clinical justification

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

SCHEDULE A		
	Date	Communication
a	On 21 June 2018	Email <i>"Hello pretty lady!... U might feel something I'm sending a special energy... it's a little naughty ...;) You can tell be abt when we meet next..."</i>
b	Unknown	Text referred to Colleague A as <i>"needing sexual healing"</i> or words to that effect
c	Unknown	Text, said you had sent energy to Colleague A's <i>"yonni"</i>
d	Unknown	Text referred to meeting Colleague A outside work, so that you could put your hands on her in an <i>"inappropriate way"</i> or words to the effect
e	Unknown	Text, asked Colleague A how many sexual partners they had
f	Unknown	Text, as Colleague A whether they played with themselves
g	Unknown	Text, asked Colleague A if they had orgasmed
h	Unknown	Text, asked Colleague A to send photos of themselves
i	One, or more, unknown dates	Text, referred to Colleague A being <i>"broken/damaged"</i>
j	One, or more, unknown dates	Text, told Colleague A to <i>"shut up and listen"</i>
k	Unknown in 2019	Sent Colleague A a Facebook request

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Millar on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mr Shimadry.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Patient A: A patient at Edgbaston Hospital in November 2020;
- Colleague A: A Band 5 Nurse at the Royal Orthopaedic Hospital.
- Colleague B: A Band 5 Nurse at the Royal Orthopaedic Hospital.

Background

The charges arose in respect of Colleague A and Colleague B whilst Mr Shimadry was employed as a registered nurse by the Royal Orthopaedic Hospital, and Patient A while he was employed at Edgbaston Hospital.

It is alleged that on an unknown date in 2018, Mr Shimadry began messaging Colleague A in relation to alternative therapies. It is alleged that Colleague A later became uncomfortable with the text messages and communication with Mr Shimadry. The content of the messages is set out in Schedule A of the charges.

Around the time the text messages are alleged to have been sent to Colleague A, it is also alleged that Mr Shimadry placed a handover sheet in her uniform pocket using his whole hand.

In 2019 it is alleged that Mr Shimadry approached Colleague B while she was in a treatment room and put his hands on her shoulders whilst saying “*you’re always giving me work to do*”. Colleague B was a newly qualified nurse at this time and Mr Shimadry was her senior. It is further alleged that Mr Shimadry obtained Colleague B’s telephone number without consent, subsequently sending her a number of unsolicited text messages.

In 2020, whilst working at the Edgbaston Hospital, it is alleged that Mr Shimadry touched Patients A’s feet on one or more occasion whilst she was a patient in his care. It is further alleged that Mr Shimadry asked Patient A to “*add him as a friend*” on Facebook, and later sent her a message via Facebook.

Decision and reasons on application for hearing to be held in private

During the oral evidence of Witness A, Ms Millar made an application for parts of hearing relating to Patient A’s health to be held in private in accordance with Rule 19 of the Rules.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to Patient A's health, the panel determined to hear such matters in private.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Mr Shimadry.

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

Charge 1 a

That you, a registered nurse:

1) In relation to Colleague A:

a) On an unknown date in 2018, put Colleague A's handover sheet in her uniform pocket, and in doing so placed your entire hand in their pocket;

This charge is found proved.

In reaching this decision, the panel noted that Mr Shimadry denied this charge in his response to the charges, and did not provide any information, or an account of how he says he returned the handover sheet to Colleague A.

The panel had regard to the witness statement of Colleague A which stated '*I was wearing my uniform...he put his whole hand in my pocket.*' The panel also had regard to Colleague

A's oral evidence that Mr Shimadry had placed the handover sheet in her uniform pocket using his whole hand. The panel also considered the email from Colleague A dated 6 September 2018 wherein Colleague A set out that she had '*... left [her] handover on a bedside table... and instead of handing it to [her] by hand he put it in [her] pocket*'

The panel was of the view that Colleague A had been consistent throughout her evidence. It found her to be a credible witness who was forthcoming when she did not remember something and did not attempt to embellish her account. It also noted from the email dated 6 September 2018 that Colleague A had been forthcoming with information that was potentially not in her favour, with regard to leaving the handover note on a bedside table. The panel was of the view that this went to the credibility of Colleague A.

Having found Colleague A's evidence to be consistent, and having found her to be a credible witness in relation to this charge, the panel found this charge proved on the balance of probabilities.

Charge 1b

b) Sent one, or more, communications to Colleague A, as set out in 'Schedule A';

This charge is found proved.

In considering this charge the panel had regard to Schedule A and noted that the alleged communications from Mr Shimadry consisted of an email, nine text messages and a Facebook request.

In considering the email communication, the panel had regard to the email sent to Colleague A from Mr Shimadry dated 21 June 2018 which set out the message as contained in section A of the schedule. The panel found this to be conclusive evidence that the said communication had been sent by Mr Shimadry.

With regard to the nine text messages, the panel noted that both Colleague A and Mr Shimadry had reported having deleted the text messages. The reasons given by Colleague A for the messages being deleted was that she wanted to forget them, and by Mr Shimadry was that he needed space for the memory on his phone. The panel therefore went on to consider the oral and witness statement evidence of Colleague A which set out the content of the alleged text messages as stated in Schedule A. It noted that Colleague A had stated that Mr Shimadry had asked her how many sexual partners she had and that there had been some discussion about “yonni” [a term for the vagina] by Mr Shimadry, which Colleague A had not understood at the time. The panel noted from the local Investigation Meeting notes on 4 September 2018 that Mr Shimadry had asked ‘*if she had had many sexual partners, and had mentioned “yonni” during the grounding advice*’ with Colleague A. The panel was of the view that the evidence of Colleague A and Mr Shimadry were broadly consistent with each other concerning topics which were exchanged between them.

The panel was of the view that Colleague A did not waver and had been balanced when giving evidence. It also found her evidence, in relation to the topics covered in the text, to be consistent with that of Mr Shimadry’s account given in interview to some extent. It therefore accepted the evidence of Colleague A and found this charge proved on the balance of probabilities.

Charge 2a)

2) In relation to Colleague B:

a) On, or around, 11 February 2019:

i) put your hands on Colleague B’s shoulders and/or squeezed them;

This charge is found proved.

In considering this charge, the panel noted that Mr Shimadry denied this charge stating '*don't remember doing that at all*' in the local interview meetings notes of 21 March 2019.

The panel had regard to the witness statement and oral evidence of Colleague B. The panel was of the view that Colleague B gave a clear account of the layout of the room in which the alleged incident occurred, where she was positioned in the room, what she was doing at the time of the alleged incident and how long the interaction had lasted. It found Colleague B's evidence in respect of this charge, to be clear and consistent. It was of the view that Colleague B gave a balanced account which it deemed credible. The panel therefore accepted the evidence of Colleague B and found this charge proved on the balance of probabilities.

Charge 2a ii)

2) In relation to Colleague B:

a) On, or around, 11 February 2019:

ii) said "you're always giving me work to do" or words to that effect;

This charge is found proved.

In considering this charge the panel had regard to Colleague B's statement provided at the local interview stage which records on Monday 11 February 2019 '*[Mr Shimadry] put his hands on my shoulders and said light-heartedly: 'You're always giving me work to do when I come onto this ward!'*' The panel also had regard to the Investigation Meeting notes on 21 March 2019 with Colleague B which states '*[Mr Shimadry] came into the IV room and put his hands on my shoulders and said you are always giving me work to do*'. The panel found Colleague B's evidence to be consistent throughout in this respect.

The panel also had regard to Mr Shimadry's response to the charges and noted that he had admitted this charge. It noted Mr Shimadry's response in the local Investigation Meeting notes on 21 March 2019, when asked to explain the comment "*you are always*

giving me work”, Mr Shimadry is recorded as stating ‘That was just again this banter of the first day, it was from my perspective it (sic) was all friendly banter.’

The panel was therefore satisfied from the evidence before it, that this charge is proved.

Charge 2 a iii)

2) In relation to Colleague B:

a) On, or around, 11 February 2019:

iii) obtained Colleague B’s telephone number without consent;

This charge is found proved.

In considering this charge the panel had regard to the evidence of Colleague B that Mr Shimadry had not asked for her number, and she did not know where he obtained it from.

The panel also had regard to the notes of the Investigation Meeting with Mr Shimadry on 21 March 2019. Mr Shimadry had stated that he had obtained Colleague B’s telephone number from the staff directory and had written it down. The panel was of the view that even if Colleague B’s telephone number was contained in the staff directory, there was no proper reason for him to have looked up or sought her telephone number in this way. The panel was therefore satisfied that this charge is proved.

Charge 2 a iv)

a) On, or around, 11 February 2019:

iv) sent Colleague B a text message which stated: “Hey pretty lady! Sorry I couldn’t resist txtng U. Hope the ned of yr shift was better than the start & I hope I was supportive enough. Your 1 & only stalker!”;

This charge is found proved.

In considering this charge the panel had regard to the screen shot of the text set out in the charge. It also had regard to the fact that Mr Shimadry had admitted this charge in his response to the charges and in the local Investigation Meeting on 21 March 2019. The panel therefore found this charge proved.

Charge 2 b

b) On, or around, 12 February 2019 sent Colleague B a text message which stated *“Hey u ok? U gonna respond or do u think ignoring me would be better! I’m sure u know who I am... P.s was than an awkward look u gave me 1st thing this morning”*;

This charge is found proved.

In considering this charge the panel had regard to the fact that Mr Shimadry both admitted and denied this charge in his response to the charges.

The panel considered the screen shot of the text message provided in evidence, which displayed the message as set out in the charge.

The panel next considered Mr Shimadry’s response contained in the local Investigation Meeting on 21 March 2019 which states *‘I sent a second text – hi, how is it going? What was that akward (sic) look all about this morning. Hope you have a more quiet day today – something along that line.’* It was clear to the panel that Mr Shimadry did recall at the time of the Investigation Meeting sending a text message to Colleague B which mentioned there being an *‘akward (sic) look’*.

The panel had regard to Colleague B’s evidence that she had shown the message to another colleague. The panel was of the view that this made her account credible as there

could have been a possibility that the other colleague could have given evidence in support of this.

The panel was therefore satisfied, based on the evidence before it, that this charge is proved on the balance of probabilities.

Charge 3 a

3) In relation to Patient A, on or around 5 November 2020:

a) touched Patient A's feet on one, or more, occasions;

This charge is found proved.

In considering this charge, the panel had regard to Mr Shimadry's undated reflection which states:

'I should have asked for consent for touching her feet to show her the "leg exercises" which I didn't as she was ok with me repositioning the cuffs of the Venaflo.'

It was clear to the panel that Mr Shimadry had admitted to touching Patient A's feet, although for a different purpose from Patient A's account.

Patient A gave evidence to the panel in her witness statement and oral testimony that Mr Shimadry touched her feet on a number of occasions. Patient A categorically denied that Mr Shimadry had touched her feet in an effort to show her 'leg exercises', and that him touching her made her feel uncomfortable.

The panel was satisfied based on the evidence before it that Mr Shimadry had touched Patient's A's feet on one or more occasions. It therefore found this charge proved.

Charge 3b

3) In relation to Patient A, on or around 5 November 2020:

b) said to Patient A that they add you to Facebook;

This charge is found proved.

In considering this charge the panel had regard to the witness statement and oral evidence of Patient A who stated that Mr Shimadry had said to ‘...*add him on Facebook*’. The panel was of the view that Patient A was clear in her evidence that this is what Mr Shimadry had said, noting at the time that she thought ‘... “*no I’m not doing that because that’d be a bit awkward (sic)*” and thinking ‘*this was a bit weird*’. The panel found Patient A’s evidence in this regard, was compelling.

The panel also had regard to the fact that this charge was denied by Mr Shimadry in his response to the charges. However, it noted in a response from Mr Shimadry dated 14 December 2020 that Mr Shimadry had stated the following:

‘I sent her a message on Facebook as we had previously talked about social media on the Thursday night. I just wanted to make sure that she was ok and that her pain had settled.’

The panel was of the view that Mr Shimadry, by his own account had admitted to discussing social media with Patient A and, in light of Patient A’s compelling evidence, was satisfied that this charge was proved on the balance of probabilities.

Charge 3c

3) In relation to Patient A, on or around 5 November 2020:

c) sent to Patient A, a message via Facebook;

This charge is found proved.

In considering this charge the panel had regard to Patient A's witness statement and oral testimony that Mr Shimadry had sent her a message via Facebook.

The panel also had regard to Mr Shimadry's response to the charges and noted that he had admitted this charge. It also noted Mr Shimadry's response dated 14 December 2020 confirming that he had '*...sent her a message on Facebook...*' and '*realised that sending a message on social media is not acceptable and unprofessional. I made a mistake which I very much regret. I am truly sorry and I apologise...and will ensure in future that I never ever contact patient using any form of social media.*'

The panel was satisfied on the basis of the evidence before it that this charge is proved.

Charge 4a

4) Your conduct as set out at any and/or all of charges 1- 3 inclusive:

a) breached professional boundaries;

This charge is found proved in respect of charges 1a, 1b, 2 a i) 2a iii) 2a iv), 2b, 3a, 3b and 3c

In considering this charge the panel had regard to the witness evidence of Colleague A, Colleague B and Patient A who all gave evidence that they felt that professional boundaries had been breached by Mr Shimadry's actions. Mr Shimadry also admitted this charge.

With regard to charge 1a, the placing of the handover sheet in Colleague A's uniform pocket with Mr Shimadry's whole hand, the panel was of the view that this was

unprofessional conduct by a male senior nurse towards a young female newly qualified nurse that did amount to a breach of professional boundaries.

With regard to charge 1b, the panel was of the view that the communications sent to Colleague A, as set out in Schedule A were a breach of professional boundaries by virtue of the nature of the communications.

With regard to Mr Shimadry's actions in placing his hands on Colleague B's shoulders, in relation to charge 2a i), the panel deemed this to be an inappropriate action which did breach professional boundaries. It was of the view that there was no such relationship between Mr Shimadry and Colleague B to warrant this level of familiarity. It further considered the power imbalance, due to his seniority, and the fact that they were alone together in a small room and of different sexes increased the vulnerability for Colleague B.

The panel did not find Mr Shimadry's action in relation to charge 2a ii) in stating "*you're always giving me work to do*" was a breach of professional boundaries. It was of the view that although the comment was somewhat overfamiliar, it did not cross professional boundaries.

In relation to charge 2a iii), the panel found Mr Shimadry's actions in obtaining Colleague B's number without her consent was a clear breach of professional boundaries as there was no proper reason for doing so.

In relation to charge 2a iv) and 2b, the panel was of the view that the text messages sent to Colleague B crossed professional boundaries. The tone of the messages and the words used were inappropriate in a professional context and were not justified by any clinical reason.

In considering charge 3a the panel had regard to Patient A's evidence in relation to Mr Shimadry touching her feet, causing her to shuffle her feet away from him. There was no evidence before the panel that Mr Shimadry had asked for Patient A's consent to touch

her feet in any event, and as such the panel deemed his action to have breached professional boundaries.

In considering charges 3b and 3c the panel had regard to Mr Shimadry's actions in asking Patient A to add him on Facebook and sending a message to her via Facebook. The panel was of the view that these actions did breach professional boundaries as this was not an appropriate way for a nurse to communicate with a patient.

Charge 4b

4) Your conduct as set out at any and/or all of charges 1- 3 inclusive:

b) was sexually motivated and/or in pursuit of sexual gratification;

This charge is found proved in respect of charge 1b

With regard to charge 1a, the placing of the handover sheet in Colleague A's uniform pocket with Mr Shimadry's whole hand, the panel noted that this allegation did not feature in the initial trust investigation of Mr Shimadry's conduct. It was first made in an email which Colleague A had written on 6 September 2018. The panel also had regard to the fact that a handover sheet was a document containing confidential information which should not be left lying around. There was therefore a reason for Mr Shimadry to return the document to the personal possession of Colleague A. Although the panel took into account Colleague A's evidence as to her perception of what had happened and had regard to its findings at 1b, the panel did not consider that there was sufficient evidence to find that Mr Shimadry's actions on this occasion were sexually motivated and/or in pursuit of sexual gratification. The panel considered that there was room for Colleague A to have misunderstood Mr Shimadry's actions on this occasion. It did not consider that it was appropriate to draw an inference of sexual motivation or gratification on the basis of the evidence it had heard.

With regard to charge 1b, the panel was of the view that the nature, style and tone of the communications sent to Colleague A, as set out in Schedule A, were sexual and was sexually motivated or sent in pursuit of sexual gratification.

With regard to charges 2a i) and 2a ii), namely Mr Shimadry's actions in placing his hands on Colleague B's shoulders and stating "*you're always giving me work to do*", the panel was of the view that although these were actions that should not have happened, it did not meet the bar for sexual motivation. In making this decision the panel also took into account Colleague B's oral and witness evidence that she did not feel his actions were sexually motivated in this regard.

In relation to charges 2 a iii), 2a iv) and 2b, the panel did not find Mr Shimadry's actions in obtaining Colleague B's number without her consent and the content of messages to have been sexually motivated. The panel did not have the benefit of Mr Shimadry's attendance to explore his reasons for reaching out to Colleague B and deemed the content of the messages to be friendly in nature, although the language was not appropriate. On the basis of the content of the texts alone, the panel could not find, on the balance of probabilities, that Mr Shimadry's actions in relation to these charges were sexually motivated or in pursuit of sexual gratification.

In relation to charges 3a, 3b, and 3c, the panel did not find Mr Shimadry's actions were sexually motivated or in pursuit of sexual gratification. Although it considered the actions in respect of these charges to have breached professional boundaries, it was of the view that no clear evidence of these actions being sexually motivated had been presented to the panel. Patient A had stated she had been made to feel uncomfortable but did not go as far to say she believed it was of sexual nature. Furthermore, when Mr Shimadry did reach out to Patient A on Facebook, his communication solely related to her health. The panel therefore did not find this charge proved in relation to charges 3a, 3b, and 3c on the balance of probabilities.

Charge 5

5) Your conduct as set out at any and/or all of charge 3 above was undertaken without clinical justification

This charge is found proved.

The panel first considered charge 3a. It noted that there were two equally plausible accounts for the touching of the feet given by both Mr Shimadry and Patient A. Mr Shimadry had stated that he touched Patient A's feet for the purposes of showing her some leg exercises following her surgery. Patient A gave evidence that Mr Shimadry did not touch her feet in an effort to show her leg exercises, and that there was no clinical reason why he had touched her feet.

Due to Mr Shimadry's non-attendance at the hearing, the panel was not able to test his evidence by way of questioning. It did however have an opportunity to test Patient A's evidence in this regard and found her evidence to be unwavering and compelling. The panel therefore accepted the evidence of Patient A and determined that the conduct as set out in charge 3a was undertaken without clinical justification.

The panel next considered charge 3b, namely that Mr Shimadry said to Patient A that they add him to Facebook. Having found charge 3b proved on the basis that Mr Shimadry had stated in his response dated 14 December 2020 that he had reached out to Patient A having '*previously talked about social media on the Thursday night*' with her, the panel was satisfied that Mr Shimadry had asked Patient A to contact him without clinical justification. It therefore found this charge proved in relation to charge 3b.

The panel next considered this charge in relation to charge 3c. It had regard to the Facebook message sent to Patient A by Mr Shimadry which states:

'Hi, sorry to use this method of communication, but I didn't get around calling you back this afternoon to find out if your pain improved. You feeling any better?'

The panel also had regard to Mr Shimadry's written undated reflection which states:

'...I would like to re-iterate that [Patient a] was in a lot of pain during that phone call and I'm not sure if she fully heard and understood everything that I said specially the part about I will contact the consultant and get back to her; which we usually do in these cases. I would also point out that the bleep holder was the only person who had access to the computer system and that she was unavailable at the point I was sending the Facebook message.'

The panel was of the view that the mode of contact used by Mr Shimadry was wholly inappropriate and unprofessional. The panel therefore found this charge proved in relation to charge 3c.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Shimadry's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Mr Shimadry's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In her submissions, Ms Millar referred the panel to the case of *Roylance v General Medical Council (no. 2) [2000] 1 AC 311 (Roylance)* 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. She submitted that Mr Shimadry's actions had fallen short of conduct what is expected of a registered nurse and invited the panel to take the view that the facts found proved amount to misconduct.

Ms Millar submitted that Mr Shimadry's actions in respect of the charges found proved amounted to a breach of The Code: Professional standards of practice and behaviour for nurses and midwives 2015 (the Code). Ms Millar identified specific standards set out in the Code which she submitted Mr Shimadry had breached.

Ms Millar further submitted that Mr Shimadry had breached professional boundaries towards a patient and two colleagues. She reminded the panel that charge 1b was sexually motivated or in pursuit of sexual gratification, and that there were two incidents of Mr Shimadry acting without clinical justification.

She submitted that Mr Shimadry's conduct did fall significantly short of what is expected of a nurse and what would be proper in the circumstances.

Submissions on impairment

Ms Millar 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. This included reference to the case of *Council for*

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

Ms Millar stated that Mr Shimadry had stopped engaging with the NMC and was not present to provide any update as to any actions he had taken to remedy his conduct. She referred the panel to Mr Shimadry's two reflective pieces and submitted that he had not provided any reflection in respect of his conduct towards Colleague A or Colleague B.

Ms Millar referred the panel to the testimonials provided by Mr Shimadry and submitted that not much weight should be placed on them as they were somewhat dated, and some of the testimonials were from people who had no real knowledge of the charges.

Ms Millar reminded the panel of the impact Mr Shimadry's actions had on the three women and invited the panel to add weight to the seriousness of the misconduct as a result. [PRIVATE] She submitted that Mr Shimadry's conduct was serious and of a nature that is difficult to remedy. She further submitted that there was no evidence from Mr Shimadry that evidenced any meaningful reflection and invited the panel to return a finding of current impairment.

The panel accepted the advice of the legal assessor which included reference to the case of *Grant*.

Decision and reasons on misconduct

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

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

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, it had regard to the charges found proved and determined that the following in respect of the charges found proved.

With regard to charge 1a, the panel was of the view that although the placing of Mr Shimadry's whole hand in Colleague A's pocket did depart from the standards expected of

a nurse, it was not a sufficiently serious incident as to amount misconduct, taking into account that no sexual motivation had been found by the panel and that Mr Shimadry was returning a document to Colleague A, albeit in an unacceptable manner.

With regard to charge 1b [PRIVATE]. The panel was of the view that the nature and content of the communications described in Schedule A, which were sexually motivated, was a serious departure from the standards expected of a nurse and amounted to misconduct.

With regard to charge 2a i) the panel was of the view that Mr Shimadry's actions in placing his hands on Colleague B's shoulders was a departure from the standards expected of a nurse, but was not so serious so as to amount to misconduct.

With regard to charge 2a ii) the panel again found that although the phrase "*you're always giving me work to do*" or words to that effect was an unprofessional phrase to use, it was not so serious so as to amount to misconduct.

Regarding charges 2 a iii), 2 a iv) and 2b, the panel noted that the obtaining of Colleagues B's telephone number without consent and the sending of the two text messages centred around the same events. The panel was of the view that these actions all breached professional boundaries and was compounded by the fact that Colleague B was a newly qualified nurse and Mr Shimadry was a Band 6 nurse who had no appropriate reason for obtaining Colleagues B's telephone number or sending the messages that he did. The panel therefore found that his actions in relation to these charges did fall significantly short of the standards expected of a registered nurse and did amount to misconduct.

The panel next went on to consider charges 3a, 3b and 3c. It had regard to Mr Shimadry's conduct in touching a patient without clinical justification and without their consent which it considered was serious. It also considered the impact of Mr Shimadry's actions on Patient A and noted the following from her witness statement:

'After he had messaged me on Facebook was when I started to think it was all a bit weird in hindsight – obviously he had checked my dressings [PRIVATE].

Afterwards, I also remember that he would be at the end of the bed talking and then kept touching my feet over the sheet. I didn't feel like I could ask him not to but I didn't like it.'

[PRIVATE] The panel was of the view that Mr Shimadry's actions in relation to these charges did fall significantly short of the standards expected of a nurse and amounted collectively to misconduct.

The panel has found, for the reasons set out above, that a number of Mr Shimadry's actions amounted to misconduct. The panel was of the view that Mr Shimadry's actions in relation to these charges did fall significantly short of the standards expected of a nurse and amounted collectively to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the 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, 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) ...'*

The panel found that Patient A was put at risk of harm as a result of Mr Shimadry's misconduct. The actions of Mr Shimadry had blurred the lines of communication with a patient who may have felt unable to discuss her care needs with Mr Shimadry as a result of his actions.

The panel found that Mr Shimadry's misconduct had breached fundamental tenets of the nursing profession, namely in breaching professional boundaries with a patient and colleagues, and therefore had brought its reputation into disrepute. Also Mr Shimadry's actions in relation Patient A, Colleague A and Colleague B could have caused emotional harm in having unwanted communication, and in the case of Patient A being touched without consent.

The panel was of the view that the misconduct identified in this case, although capable of remediation, was difficult to address without having a good level of insight. The panel had regard to Mr Shimadry's comments in the Investigation Meeting notes dated 21 March 2019, which in response to being asked what he had learnt from this in respect of Colleague B, stated:

'I think definitely it is about drawing a line with my friendliness or the perception of friendliness between people that are already used to you and then people that are new to you that you don't know anything about... Maybe I come across as being overly friendly and I need to stop doing that, It is about perception, my perception about what my behaviour is in that moment might be completely different to the other person. That is what I have learnt from this situation. That exact same behaviour to other people that already know me they wouldn't have seen it this way at all they would have seen it in a completely different way.'

The panel found Mr Shimadry's comments minimalised his actions to being overfriendly, and failed to demonstrate any meaningful understanding of how his actions impacted his colleagues. It noted in particular his comment *'I wasn't really aware I was overstepping the line at any point...'* in this regard.

The panel also had regard to Mr Shimadry's two reflective pieces. It noted that the reflections were only in respect of his actions towards Patient A. The panel was of the view that Mr Shimadry had attempted to justify his actions with the exception of contacting Patient A on Facebook. The panel therefore found Mr Shimadry's insight to be limited.

Mr Shimadry's misconduct involved inappropriate behaviour towards two separate colleagues in 2018 and 2019. In 2020 he also behaved inappropriately towards a patient under his care. Mr Shimadry's misconduct therefore occurred over a number of years and involved different individuals.

There was limited evidence of any remediation before the panel to show any steps that Mr Shimadry may have undertaken to remediate his misconduct. The panel received a number of certificates and testimonials from nurses that Mr Shimadry had worked with. It noted that the testimonials were all dated towards the latter end of 2019 and collectively referred to the period from 2016 to 2019. These testimonials were supportive of Mr Shimadry's practice but were at variance with the matters that the panel had to consider in this case. It also had regard to the certificates provided and was of the view that the certificates related to a similar time and had limited relevance to misconduct concerning Patient A. The panel noted that it had no evidence before it from Mr Shimadry to demonstrate how these courses may have strengthened his practice.

Considering all of the above, the panel considered that the risk of repetition was high. It therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel was of the view that members of the public, aware of Mr Shimadry's misconduct, would be concerned if Mr Shimadry were able to practice unrestricted and concluded that public confidence in the profession would be undermined if a finding of

impairment were not made in this case. It therefore also found Mr Shimadry's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Shimadry's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Shimadry off the Register. The effect of this order is that the NMC Register will show that Mr Shimadry 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.

Submissions on sanction

Ms Millar informed the panel that in the Notice of Hearing sent to Mr Shimadry, the NMC had advised him that it would seek the imposition of a striking off order if it found his fitness to practise currently impaired.

The panel also bore in mind Ms Millar's submissions on aggravating and mitigating features in the case. Ms Millar referred the panel to the SG, and the NMC guidance for serious cases involving sexual misconduct. She submitted that the NMC's view was that Mr Shimadry's misconduct is incompatible with him remaining on the Register.

Decision and reasons on sanction

Having found Mr Shimadry'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:

- Abuse of a position of trust
- A pattern of misconduct over a period of three years
- Conduct which put patients at risk of suffering harm
- Limited insight and evidence of remediation

The panel also took into account the following mitigating features:

- Early admissions to some of the misconduct at the local interview stage and to the NMC charges.
- Some positive testimonials were before the panel and certificates with regard to training undertaken.

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 risk of harm identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Shimadry's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour*

was unacceptable and must not happen again.' The panel considered that Mr Shimadry's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing a conditions of practice order on Mr Shimadry's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. It was of the view that given the nature of the misconduct related to breaching of professional boundaries, and sexual misconduct in respect of Colleague A, there were no practical or workable conditions that could be formulated. Given the limited insight and lack of engagement in the fitness to practise process demonstrated by Mr Shimadry, the panel could not be sure that he would engage with any conditions placed on his practice. Furthermore, the panel concluded that the placing of conditions on Mr Shimadry's registration would not adequately address the seriousness of this case and would not protect the public or satisfy the public interest in such cases.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 had regard to the fact this was not a single instance of misconduct, but a number of incidents in respect of three individuals, and on which Mr Shimadry had been challenged about his conduct and breaching of professional boundaries previously. The

panel was of the view that, Mr Shimadry's repeated breaching of professional boundaries to three young women did suggest a deep-seated personality or attitudinal issue.

[PRIVATE] It was satisfied that in this case the misconduct was fundamentally incompatible with Mr Shimadry remaining on the register and determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

The panel decided that these considerations applied in this case. Mr Shimadry's misconduct was fundamentally incompatible with him remaining on the Register and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel therefore determined that the appropriate and proportionate sanction is that of a striking-off order. The panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Shimadry in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Millar. She submitted that an interim suspension order was necessary on the grounds of public protection and in the public interest. Ms Millar requested that an interim order be imposed for a period of 18 months.

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 misconduct and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

That concludes this determination.