

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

**Substantive Hearing
Monday 5 December – Friday 9 December 2022**

Virtual Hearing

Name of registrant: Ajith Ramanayake Ramanayakalage

NMC PIN: 01113220

Part(s) of the register: Registered Nurse, sub part 1
RN1: adult nurse, level 1 (10 September 2001)

Relevant Location: Frimley

Type of case: Misconduct

Panel members: Gregory Hammond (Chair, lay member)
Jim Blair (Registrant member)
Robert Cawley (Lay member)

Legal Assessor: Mark Ruffell

Hearings Coordinator: Opeyemi Lawal

Nursing and Midwifery Council: Represented by Dominic Bardill, Case Presenter

Mr Ramanayakalage: Not present and unrepresented

Facts proved: Charges 1a, 1b, 1c, 1d, 1e, 1f, 2, 3, 4, 5

Facts not proved: N/A

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 Ramanayakalage was not in attendance and that the Notice of Hearing letter had been sent to Mr Ramanayakalage's registered email address on 1 November 2022.

Mr Bardill, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of 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 allegation, the time, dates and joining details for the hearing and, amongst other things, information about Mr Ramanayakalage's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Ramanayakalage 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 Ramanayakalage

The panel next considered whether it should proceed in the absence of Mr Ramanayakalage. It had regard to Rule 21 and heard the submissions of Mr Bardill who invited the panel to continue in the absence of Mr Ramanayakalage.

Mr Bardill submitted that Mr Ramanayakalage has shown limited engagement and his communication is sparse. However, Mr Ramanayakalage has provided a registrant bundle which addresses the charges, so he is aware of the proceedings.

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.

The panel has decided to proceed in the absence of Mr Ramanayakalage. In reaching this decision, the panel has considered the submissions of Mr Bardill, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v 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:

- No application for an adjournment has been made by Mr Ramanayakalage;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses are attending today to give live evidence, and others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Ramanayakalage in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, 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 Ramanayakalage's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf. The panel will also be able to take account of the evidence and submission provided earlier by Mr Ramanayakalage or his former representative.

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

Details of charge

That you, a Registered Nurse:

1. Failed to maintain professional boundaries in that:
 - a) You visited Patient A on more than one occasion when she transferred to Ward F8 without clinical justification or invitation.
 - b) On an unknown date, between 21 January 2020 and 27 January 2020, wrote your phone number on a post-it note and stuck it to Patient A's bedside table, without being asked.
 - c) You obtained Patient A's phone number from the Trust's computer system without consent and/or justification.
 - d) On 27 January 2020 you sent Patient A a text message which read 'I hope you're feeling better' or words to that effect.

- e) On 28 January 2020 you sent Patient A a text message which read 'so sorry didn't get chance to come and see you today morning. Gave a good day see you to night TC'.
 - f) On 30 January 2020 you left Patient A a voicemail saying 'night night, night night' or 'good night, good night' or words to that effect.
2. Your actions at Charge 1c breached the patient's right to confidentiality.
 3. On 25 January 2021 sent inappropriate messages via Whatsapp to Colleague A.
 4. Your conduct at Charge 3 was sexually motivated in that you were:
 - a) In pursuit of sexual gratification; and/or
 - b) In pursuit of a future sexual relationship.
 5. Your conduct at Charge 3 amounts to harassment of Colleague A in that:
 - a) You engaged in unwanted conduct of a sexual nature, and
 - b) The conduct has the purpose or effect of violating Colleague A's dignity, or
 - c) Created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

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

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

At the outset of the hearing, Mr Bardill made a request that this case be held partly in private on the basis that Mr Ramanayakalage's case involves reference to Patient A's health condition. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (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.

The panel determined to go into private session as and when Patient A's health condition is raised.

Background

The charges arose whilst Mr Ramanayakalage was employed as a registered nurse by Frimley Park Hospital.

The alleged facts are as follows:

At the time of the allegations Mr Ramanayakalage was working as a Band 6 Charge Nurse, on Ward F7, at the Hospital.

On 16 January 2020, Patient A was admitted to Ward F7 at the Hospital. At this time Patient A was under Mr Ramanayakalage's care. On 21 January 2020, Patient A was transferred to Ward F8, and was no longer under his care.

On 31 January 2020, Patient A confided in another nurse looking after them, that he had visited them several times after Patient A had been moved to Ward F8. There appeared to be no medical reason for Mr Ramanayakalage's visits. Patient A said that Mr Ramanayakalage's had sent text messages and a voicemail to them, and this was making them feel "quite scared and vulnerable". Patient A had not given him their telephone number.

On 1 February 2020, Ms 1 met Patient A, who confirmed the account they had given to the other nurse and showed Ms 1 the second text message, the first one having been deleted. Ms 1 also listened to the voicemail and believed she recognised Mr Ramanayakalage's voice. Ms 1 took a photograph of the surviving text message for evidential purposes.

Ms 1 met with Mr Ramanayakalage initially on 1 February 2020, and he made some admissions. An investigation was commenced and on 6 February 2020 Mr Ramanayakalage was formally interviewed by Ms 1. Mr Ramanayakalage admitted giving Patient A his personal telephone number, and that he had accessed the Hospital computer system to obtain the telephone number of Patient A. Mr Ramanayakalage

admitted sending only one text message and ringing Patient A. Mr Ramanayakalage denied sending more than one message and denied leaving a voicemail. Mr Ramanayakalage admitted visiting Patient A several times after she had left his ward.

A local disciplinary hearing was held on 26 June 2020, and the all the allegations were upheld. Mr Ramanayakalage was issued with a final written warning for 12 months starting on 1 July 2020. Mr Ramanayakalage was also asked to complete a developmental action plan, which included understanding of and adherence to the professional code of conduct, particularly in respect of professional boundaries. The development plan also covered other unrelated matters.

On 25 January 2021, Mr Ramanayakalage rang Colleague A while she on leave and he were off duty. Colleague A did not answer his call. Mr Ramanayakalage then sent her an inappropriate and offensive text message. The message said “Tell me Cani (sic) possibibly (sic) fuck you” followed by “My darling”.

Colleague A sent Mr Ramanayakalage the message “Have you gone mad?” to which he replied with three messages “Yes” “Sweet my darling” and “Take a vedeo (sic) call”. On 1 February 2021, Colleague A, approached her manager regarding the inappropriate contact from Mr Ramanayakalage. Colleague A was upset and no longer wanted to work with him. Following the report by Colleague A, Mr Ramanayakalage was spoken to by Ms 1 and he said, referring to the message, “it was just a joke”. Mr Ramanayakalage said he had been drinking alcohol when he sent the message. Mr Ramanayakalage went on sick leave on 2 February 2021.

On 26 February 2021, Mr Ramanayakalage attended an online disciplinary interview for the allegation by Colleague A. Mr Ramanayakalage admitted sending the message and said again that the message was sent as a joke. Mr Ramanayakalage also admitted to being under the influence of alcohol at the time.

A local disciplinary hearing was held on 20 April 2021, which Mr Ramanayakalage chose not to attend. However, Mr Ramanayakalage submitted a written statement through his representative. The allegations against Mr Ramanayakalage were upheld and he was summarily dismissed.

Decision and reasons on facts

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 Ramanayakalage's former representative.

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

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

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:

- Ms 1: Matron of Surgery at Frimley Health
NHS Foundation Trust

- Patient A: Referred to Surgical Assessment
Unit in Frimley Health NHS
Foundation Trust

- Ms 2: Senior Sister on F7 Surgery Ward at
Frimley Health NHS Foundation
Trust

Charge 1a

You visited Patient A on more than one occasion when she transferred to Ward F8 without clinical justification or invitation.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Patient A's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

The panel heard evidence from Patient A who stated that Mr Ramanayakalage was around when doctors came to visit her in ward F8, even though he was not directly caring for her whilst she was on that ward.

In Patient A's witness statement, she stated:

'The next morning Ajith came to see me again, but the doctors were already with me. It was awkward because the doctors were looking at him as if to say, 'why are you here?'. He had no involvement with my care nor was he part of F8, so there was no reason for him to be there.'

The panel also read the RCN's submissions, which stated that:

'The Registrant will say that he accepts that he has breached professional boundaries in respect of both Patient A and Colleague A'

...

'From the outset of the local disciplinary proceedings, the Registrant accepted that he had failed to adhere to professional boundaries'.

Based on the evidence before it, the panel determined that Mr Ramanayakalage did fail to maintain professional boundaries by constantly visiting Patient A, without a clinical justification. Therefore, the panel found this charge proved.

Charge 1b

On an unknown date, between 21 January 2020 and 27 January 2020, wrote your phone number on a post-it note and stuck it to Patient A's bedside table, without being asked.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Patient A's oral evidence.

The panel heard from Patient A, who stated that that she did not give Mr Ramanayakalage her number, but she did find his number on a note within a 'get well' card that had been taken to her home from the hospital.

The panel noted Patient A's witness statement which said:

'To start with, I thought it was nice because he would also speak about the lady in F7 and tell me how she was doing. But then he said something along the lines of 'I gave you my phone number and you haven't contacted me'. I was taken back by this and I said 'oh sorry, I haven't got it', to which he responded 'I wrote it down again on a post-it note'. He wrote it down again on a post-it note and stuck it on my bedside table as he was leaving. I

didn't know what to say and thought it was a bit weird. I thought if I ignored it maybe it, that would be the end of it.'

Based on the evidence before it, the panel determined that Mr Ramanayakalage did write his phone number, without being asked. Therefore, the panel found this charge proved.

Charge 1c

You obtained Patient A's phone number from the Trust's computer system without consent and/or justification.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

The panel had sight of the record of the investigatory meeting with Ms 1. In the meeting, Ms 1 asked *'How did you get her number?'* and Mr Ramanayakalage responded, *'I got it from the system, patient centre'*. Ms 1 then asked you *'why?'* and he responded *'I didn't need her number, I just wanted to see how she was'*. Ms 1 asked *'Did you ask her permission?'* and he said *'no. I said I got the number from the system'*.

The panel noted Patient A's witness statement which said:

'At no point did I consent to Ajith taking my number from the computer system nor did I give it to him directly.'

The panel also read the RCN's submissions, which stated that:

'The Registrant will say that he had noted Patient A's mobile phone number from records.'

Based on the evidence before it, the panel determined that Mr Ramanayakalage did obtain Patient A's phone number from the Hospital's system without consent or justification. Therefore, the panel found this charge proved.

Charge 1d

On 27 January 2020 you sent Patient A a text message which read 'I hope you're feeling better' or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Patient A and Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

The panel had sight of Ms 1's witness statement, which stated, that *'Patient A said that she received two text messages from Ajith; one sent on 27 January 2020 saying 'hope you're feeling better' Patient A said Ajith did not sign this and she deleted the message therefore she not have a copy of this'. Patient A explained that she deleted the message because she thought it was from an insurance company who knew she was in hospital. I can confirm that I did not see a copy of this'*.

Patient A confirmed this explanation in her oral evidence.

The panel also read the RCN's submissions, which stated that:

'The Registrant accepts that he sent Patient A two text messages on Monday 27 January 2020 and Tuesday 28 January 2020. He will say that he did not identify himself within the

text messages, but he assumed that in light of his conversation with Patient A earlier that day, that she would know it was the Registrant who had texted her.'

Based on the evidence before it, the panel determined that Mr Ramanayakalage sent Patient A, the stated text on 27 January 2020. Therefore, the panel found this charge proved.

Charge 1e

On 28 January 2020 you sent Patient A a text message which read 'so sorry didn't get chance to come and see you today morning. Gave a good day see you to night TC'.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Patient A and Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

The panel had sight of the text message sent to Patient A via photographic evidence exhibited by Ms 1. Also in Ms 1's witness statement she stated:

'The second text message was sent on Tuesday 28 January 2020, which said 'so sorry didn't get chance to come and see you today morning. Gave a good day see you tonight TC.' This message was also not signed but it was Ajith's number at the top of the message.'

The panel also read the RCN's submissions, which stated that:

'The Registrant accepts that he sent Patient A two text messages on Monday 27 January 2020 and Tuesday 28 January 2020. He will say that he did not identify himself within the

text messages, but he assumed that in light of his conversation with Patient A earlier that day, that she would know it was the Registrant who had texted her.'

Based on the evidence before it, the panel determined that Mr Ramanayakalage sent Patient A this message as it is clear in the evidence provided. Therefore, the panel found this charge proved.

Charge 1f

On 30 January 2020 you left Patient A a voicemail saying 'night night, night night' or 'good night, good night' or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Patient A and Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

Patient A stated that the message left on the voicemail was delivered in a slow and softly spoken tone, which made her feel uncomfortable. She also described it as 'sinister' and 'creepy' and that it scared her.

Ms 1 stated that she listened to the voicemail and that she was "100% sure" that it was Mr Ramanayakalage because he has a distinctive voice.

The panel also read the RCN's submissions, which stated that:

'The Registrant will say that he did not initially recall leaving the voicemail message left on Patient A's mobile phone on Thursday 30 January 2020. But during the local investigation, he accepted that he had left this message.'

Based on the evidence before it, the panel determined that Mr Ramanayakalage left Patient A the voicemail message on 30 January 2020. Therefore, the panel found this charge proved.

Charge 2

Your actions at Charge 1c breached the patient's right to confidentiality.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

The panel had sight of the record of the investigatory meeting with Ms 1. In the meeting, Ms 1 asked *'How did you get her number?'* and Mr Ramanayakalage responded, *'I got it from the system, patient centre'*. Ms 1 then asked you *'why?'* and he responded *'I didn't need her number, I just wanted to see how she was'*. Ms 1 asked *'Did you ask her permission?'* and he said *'no. I said I got the number from the system'*.

The panel noted Patient A's witness statement which said:

'At no point did I consent to Ajith taking my number from the computer system nor did I give it to him directly.'

The panel also read the RCN's submissions, which stated that:

'The Registrant will say that he had noted Patient A's mobile phone number from records.'

The panel had sight of the Trust's Information Governance Policy, and considered that Mr Ramanayakalage is in breach of this policy in particular the following:

‘Legal and NHS Compliance

5.5.1 The Trust regards all identifiable personal information relating to patients as confidential and the Trust will establish and maintain policies to ensure compliance with common law of confidentiality.’

The panel found that Mr Ramanayakalage had not gone through any system of consent and there was no clinical reason that justifies taking Patient A’s number.

Based on the evidence before it, the panel determined that Mr Ramanayakalage’s actions were in breach of Patient A’s confidentiality. Therefore, the panel found this charge proved.

Charge 3

On 25 January 2021 sent inappropriate messages via Whatsapp to Colleague A.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Mr Ramanayakalage’s responses to the allegation via his former representative at the RCN.

The panel read the RCN’s submissions, which stated that:

‘In respect of Colleague A, it is alleged that on 1 February 2021, the Registrant sent text messages to Colleague A that read:

“Tell me Cani (sic) possibly (sic) fuck you....my darling”

“Sweet my darling”

“Take a video call”

The Registrant will say that he accepts that he sent these messages to Colleague A and concedes that the language was deeply offensive and wholly inappropriate. Whilst the Registrant accepts that his conduct was inappropriate, he denies that his actions were sexually motivated.

The panel saw screenshots of the messages exhibited by Ms 1.

Based on the evidence before it, the panel determined that Mr Ramanayakalage sent Colleague A the messages and it agreed that they were inappropriate. Therefore, the panel found this charge proved.

Charge 4

Your conduct at Charge 3 was sexually motivated in that you were:

- a) In pursuit of sexual gratification; and/or
- b) In pursuit of a future sexual relationship.

This charge is found proved on the basis that the conduct was sexually motivated.

In reaching this decision, the panel took into account documentary and live evidence, including Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

The panel heard from Ms 1, who stated that your conduct was not acceptable.

The panel read the RCN's submissions, which stated that:

'Whilst the Registrant accepts that his conduct was inappropriate, he denies that his actions were sexually motivated.'

By way of explanation, the Registrant will say that this incident occurred shortly after his birthday and that the Registrant recalls that on the day in question he had been drinking alcohol to the extent that he was intoxicated. Earlier on that date the Registrant received a video message from the ward staff including Colleague A wishing him a happy birthday and that he had seen that he had two missed calls from Colleague A on his mobile phone.

The Registrant will say that he responded to these missed calls but does not recall speaking with Colleague A. The Registrant will say that he then sent the messages referred to above as part of what he believed to be a joke. The Registrant will say that he believes that his intoxication at the time impaired his judgment, and that he accepts that regardless of his intentions, it was wholly unacceptable for him to send such messages to Colleague A.

Whilst intoxication can never be an excuse for such behaviour, the Registrant would like the panel to be aware that at the time of his actions in respect of Colleague A, he had been consuming alcohol to excess on a regular basis.'

The Panel considered that the language used was sexual. Given the professional nature of the relationship between Colleague A and Mr Ramanayakalage, neither the wording nor its context could make it appear to have been written as a joke. The panel considered Mr Ramanayakalage's submissions in which he said he was intoxicated, but concluded that intoxication does not negate his intention.

The Panel was satisfied on the balance of probabilities that the only plausible explanation for the use of the language was that Mr Ramanayakalage intended for it to convey some sexual connotation regarding him towards Colleague A and, as such, it was sexually motivated. Whether that sexual motivation was because Mr Ramanayakalage gained sexual gratification from sending such words to Colleague A or the words were used in pursuit of a future sexual relationship with Colleague A, the Panel could not determine, but the Panel was satisfied on the balance of probabilities that either or both were plausible

reasons for Mr Ramanayakalage writing the words. Accordingly, the Panel was satisfied on the stem of Charge 4 that Mr Ramanayakalage's actions were sexually motivated, but could not make a determination on the possible motivations at limbs (a) and/or (b).

Charge 5

Your conduct at Charge 3 amounts to harassment of Colleague A in that:

- a) You engaged in unwanted conduct of a sexual nature, and
- b) The conduct has the purpose or effect of violating Colleague A's dignity, or
- c) Created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

This charge is found proved.

In reaching this decision, the panel took into account documentary and live evidence, including Ms 1's oral evidence and Mr Ramanayakalage's responses to the allegation via his former representative at the RCN.

Ms 1 stated during her oral evidence that as far as she is aware the relationship is only that of a professional one between the two.

Also, in Ms 1's witness statement she stated that:

'Colleague A did not make a formal complaint about the message. She is a very mild mannered and gentle person and she felt very uncomfortable for having spoken out in the first place. She had worked with Ajith for a long time, and I think that made her feel very vulnerable and conflicted.'

The panel read the RCN's submissions, which stated that:

'...he accepts that regardless of his intentions, it was wholly unacceptable for him to send such messages to Colleague A.'

The panel found that the messages continued even after the initial rejection. The evidence before it indicated that their relationship was solely professional, and therefore Mr Ramanayakalage's behaviour was unethical and unprofessional. The panel decided that it was unwanted conduct of a sexual nature as found in charge 4; it violated Colleague A's dignity; and it created an intimidating, hostile, degrading, humiliating and offensive environment for Colleague A.

The panel determined that Mr Ramanayakalage's conduct did amount to harassment. Therefore, the panel found this charge proved including all of its limbs.

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 Ramanayakalage'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 Ramanayakalage's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Bardill invited the panel to take the view that the facts found proved amount to misconduct. He also drew the panel's attention to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) and identified the standards where Mr Ramanayakalage's actions amounted to misconduct.

Mr Bardill submitted that the course of conduct in the round can be summarised as a breach of confidentiality, harassment and sexual misconduct. He submitted that Mr Ramanayakalage's actions and omissions were in breach of the Code and that those breaches amount to misconduct because they fell short of what was proper in the circumstances.

Mr Bardill submitted that this misconduct is sufficiently serious, according to the case law and NMC guidance on seriousness. He further submitted that it is a matter for the panel as to whether there remains a risk of repetition, and of harm to patients or public safety, or whether there is a public interest basis for finding impairment. Mr Bardill highlighted that a patient and colleague have come to harm and that, by his lack of insight, the nature of his misconduct and his lack of addressing that behaviour, the risk of repetition remains. The consequence of that risk of repetition is that there remains a risk of harm to patients and public safety.

Mr Bardill submitted that there are also strong public interest grounds for finding impairment in the present case.

He invited the panel to find misconduct and that Mr Ramanayakalage is currently impaired by reason of that misconduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel determined that Mr Ramanayakalage's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Ramanayakalage's actions amounted to a breach of the Code, specifically the following:

1. *Treat people as individuals and uphold their dignity*
 - 1.1. *treat people with kindness, respect and compassion*

4. *Act in the best interests of people at all times.*
 - 4.2. *make sure that you get properly informed consent and document it before carrying out any action*

5. *Respect people's right to privacy and confidentiality*
 - 5.1. *respect a person's right to privacy in all aspects of their care*
 - 5.2. *make sure that people are informed about how and why information is used and shared by those who will be providing care*

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

20. Uphold the reputation of your profession at all times

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

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...

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, the panel decided that the actions of Mr Ramanayakalage in respect of both Patient A and Colleague A did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, Mr Ramanayakalage'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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *...'*

The panel finds that Mr Ramanayakalage put Patient A and Colleague A at risk and caused them emotional harm as a result of his misconduct. Mr Ramanayakalage's misconduct was a breach of the fundamental tenets of the nursing profession and, therefore, he brought its reputation into disrepute.

Regarding insight, the panel considered that Mr Ramanayakalage has not provided sufficient evidence to demonstrate his learning, remediation or the understanding of the impact of his actions. The panel noted that he had completed a development plan that included professional boundaries after the incidents involving Patient A. However, despite this, he again breached professional boundaries with Colleague A. The panel noted that Mr Ramanayakalage acknowledged that he breached Patient A's boundaries in the local investigatory interview and also noted his reflective piece dated 26 February 2021 in which he expressed some remorse for his actions in respect of Colleague A as follows:

'First of all I extremely appologise to her (Colleague A) For inconvenience, distress and embarrasment made out of it(sic).'

The panel considered that the misconduct in this case was attitudinal and behavioural in nature and therefore difficult to address. The panel took into account the reflective piece

written by Mr Ramanayakalage but determined that it does not show any evidence of having strengthened his practice and only limited insight.

The panel determined that there is a risk that he would repeat his behaviour towards future colleagues and/or patients. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC to protect, promote and maintain the health, safety, and wellbeing 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 determined that a finding of impairment on public interest grounds is also required.

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

Sanction

The panel has carefully considered this case and has decided to make a striking-off order. It directs the registrar to strike Mr Ramanayakalage off the register. The effect of this order is that the NMC register will show that Mr Ramanayakalage 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 also had careful regard to the NMC guidance on 'Considering Sanctions for serious cases: Cases involving Sexual Misconduct.' The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Bardill informed the panel that in the Notice of Hearing, dated 1 November 2022, the NMC had advised Mr Ramanayakalage that it would seek the imposition of a striking-off order if it found Mr Ramanayakalage's fitness to practise currently impaired.

Mr Bardill submitted that the panel had found proved that Mr Ramanayakalage had harassed Patient A with his inappropriate conduct, committed sexually motivated impropriety against Colleague A, and breached trust and confidence by misusing personal information.

Mr Bardill highlighted that the panel have found that Mr Ramanayakalage brought the profession into disrepute and breached professional boundaries. Based on the panel's findings there is a risk of Mr Ramanayakalage repeating his misconduct in the future towards patients and colleagues. He submitted that Mr Ramanayakalage's conduct is incompatible with continued registration. Mr Ramanayakalage's actions undermined the profession's integrity, engaging significant current public protection and public interest concerns because his continued registration would place colleagues and patients in harm's way.

Mr Bardill submitted that, owing to the nature and reasons for the misconduct, the aggravating features, and the lack of remediation or insight into what is ultimately an attitudinal issue, a striking-off order is the only appropriate sanction to protect the public and to uphold public confidence in the reputation of the profession and NMC as a regulator.

Mr Bardill further submitted that a striking-off order should be made on the following grounds which are commensurate with the findings of the panel:

- I. There is a real risk to public and patient safety, or serious harm, which is ongoing and current.
- II. That risk has not been mitigated or remediated, nor has sufficient insight been demonstrated.
- III. There would need to be more information about Mr Ramanayakalage's potential next steps or future plans to know what risks may be specifically involved. This lack of information limits the options, in Mr Bardill's submission.
- IV. Mr Ramanayakalage has acted in a way that creates a strong public interest ground for imposing a striking-off order as a deterrent to others and to uphold the reputation of the regulator, and the confidence and trust that the public place in the profession.

Mr Bardill invited the panel to make a striking-off order.

Decision and reasons on sanction

Having found Mr Ramanayakalage'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 that, although not intended to be punitive in its effect, it may have such a consequence. 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:

- Limited insight.
- Not applying the learning from the development plan put in place by the Trust after the first incident with Patient A.
- Pattern of conduct over a period of time.
- Caused emotional harm to Patient A and Colleague A

- Abuse of position of trust, in regards to his treatment towards Colleague A, who was a junior healthcare assistant and Patient A, who was a vulnerable patient in his care.
- The way he obtained the phone number of Patient A and misused a colleague's phone number, which both amounted to an abuse of trust.
- Sexually motivated misconduct is always serious, although the panel found that Mr Ramanayakalage's actions were not at the upper end of the spectrum of seriousness.

The panel also took into account the following mitigating features:

- 20+ years previously unblemished career.
- Witnesses attested to him being an effective clinical practitioner.
- Made admissions to some of the areas of concern at an early stage in investigation.
- His written apology to Colleague A in his reflective piece.

The panel acknowledged the RCN's submission which indicated Mr Ramanayakalage's personal mitigation, relating to his health at the time of the misconduct. However, the panel attached little weight to this as there is nothing before it to corroborate the submission, and personal mitigation carries less weight than other factors in regulatory tribunals.

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 need to protect the public. 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 Ramanayakalage'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 Ramanayakalage's misconduct was not at the lower end of the spectrum of impaired fitness to practice and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Ramanayakalage's registration would be a sufficient and appropriate response. The panel determined that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Ramanayakalage's registration would not adequately address the seriousness of this case and would not protect the public. The misconduct indicated attitudinal issues which are not easily addressed by training. The panel also noted that Mr Ramanayakalage failed to apply learning from the development plan completed with his supervisor after the incidents with Patient A, as demonstrated by his misconduct involving Colleague A.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The misconduct was a significant departure from the standards expected of a registered nurse. This is further compounded by the fact it was two unrelated instances within a year, the second of which followed the apparently successful completion of a development plan partially designed to address professional boundaries and conduct following the incidents with Patient A. Mr Ramanayakalage showed only limited insight and the concerns are attitudinal in nature. The panel considered that the serious breaches of the fundamental tenets of the profession evidenced by Mr Ramanayakalage's actions are fundamentally incompatible with Mr Ramanayakalage remaining on the register.

Therefore, the panel 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?*

Mr Ramanayakalage's misconduct was a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with his remaining on the register. The panel considered that the findings in this particular case demonstrate that Mr Ramanayakalage's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel determined that the conduct displayed by Mr Ramanayakalage is likely to be repeated, as there is an evidential lack of learning and the reflective piece provided by him does not sufficiently demonstrate insight, remorse or remediation.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Ramanayakalage's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel decided 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 Ramanayakalage 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 Ramanayakalage'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 Mr Bardill. He applied for an 18 month interim suspension order to cover the 28 day appeal period and to allow time for any appeal to be heard.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

That concludes this determination.