Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Wednesday 2 March 2022 – Tuesday 8 March 2022

Virtual Hearing

Name of registrant:	**Carol Ruth Picton**
NMC PIN:	84E0327S
Part(s) of the register:	RN1, Registered Nurse – Adult October 1999
Area of registered address:	Flintshire
Type of case:	Misconduct
Panel members:	Melissa D'Mello (Chair, Lay member) Lucy Watson (Registrant member) James Kellock (Lay member)
Legal Assessor:	Chris McKay
Panel Secretary:	Teige Gardner
Nursing and Midwifery Council:	Represented by Samuel March, Case Presenter
Miss Picton:	Not present and unrepresented
Facts proved:	**Charges 1, 2, 3, 4, 5a, 5b, 5c, 5d, 5e**
Fitness to practise:	**Impaired**
Sanction:	**Suspension Order (12 months)**
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 Miss Picton was not in attendance and that the Notice of Hearing letter had been sent to Miss Picton's registered email address on 13 January 2022.

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

Mr March, 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.

In the light of all of the information available, the panel was satisfied that Miss Picton 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 Miss Picton

The panel next considered whether it should proceed in the absence of Miss Picton. It had regard to Rule 21 and heard the submissions of Mr March who invited the panel to continue in the absence of Miss Picton. He submitted that Miss Picton had voluntarily absented herself. He referred the panel to email correspondence between the NMC and Miss Picton from September 2021. He informed the panel that the NMC, in an email dated 11 September 2021, asked whether Miss Picton would be available to attend a hearing. On 13 September 2021, Miss Picton responded saying:

"[PRIVATE]"

Mr March submitted that Miss Picton's response highlights her intention not to attend. He informed the panel that there has been no independent evidence to support the contention that Miss Picton is unable to attend [PRIVATE]. Further, he informed the panel that the NMC have made all reasonable efforts to make Miss Picton aware of the proceedings today. Therefore, he submitted that there would be no unfairness to the registrant if the panel decided to proceed in the absence of Miss Picton.

In addition, Mr March submitted that, if the panel decide not to proceed in the absence of Miss Picton, it would be unfair to the witness who has made arrangements to attend these proceedings today. Mr March referred the panel to the authority of the *GMC v Hayat [2018] EWHC Civ 2796*.

Mr March submitted that it is plainly appropriate to proceed in the absence of Miss Picton, and an adjournment would not ensure her attendance at a future date. He submitted that there is a strong public interest in the expeditious disposal of this case. Therefore, Mr March submitted that the panel should proceed in the absence of Miss Picton.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Picton. In reaching this decision, the panel has considered the submissions of Mr March, email correspondence between the NMC and Miss Picton (in particular those dated 13 September 2021 and 17 January 2022) and the advice of the legal assessor.

The panel noted that, in her email of 13 January 2022, the NMC case coordinator had invited Miss Picton to participate in a case conference meeting:

> *'… I understand you have expressed that you will not be able to attend a hearing due to [PRIVATE]. However, I do need to ask if you would want to participate in a* ***case conference meeting****?*

*The **case conference meetings** cover information about the hearing bundles, witnesses, issues in dispute and some information about the hearing itself and this is all done over the telephone.*
Please do let me know if this is something you may be interested in…'

In the email dated 17 January 2022, Miss Picton stated:

"Thank you for your email
I am not fit to practice and have asked in each communication that my name be removed from the NMC register . I will not be able to attend the hearing [PRIVATE].
I cannot get representation so there will not be anyone there in my behalf .
I appreciate that you have to keep me informed but it is [PRIVATE].
Please remove me from the register…"

It has had particular regard to the factors set out in the decisions 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 Miss Picton;
- Miss Picton has informed the NMC that she has received the Notice of Hearing and has stated she would not attend the proceedings.
- Miss Picton has not provided the NMC with any independent evidence regarding any health matters.
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- One witness is due to attend today to give live evidence;
- Not proceeding may inconvenience the witness, his employer and, for those involved in clinical practice, the patients who need their professional services;
- Further delay may have an adverse effect on the ability of the witness to accurately recall events, as the allegations occurred several years ago; and

- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Picton in proceeding in her absence. Although the evidence upon which the NMC relies was sent to her at her registered email address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her 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, may explore any inconsistencies in the evidence which it may identify. Furthermore, this disadvantage is the consequence of Miss Picton's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

That you, a registered nurse:

1. On 15 November 2017 at around 23:00 on one or two occasions you forcefully dragged Patient A by her arm into her room.

2. Sometime between 23:00 on 15 November 2017 and midnight forcefully attempted the administration of Haloperidol on one or two occasions.

3. The administration of Haloperidol at '2' above was an incorrect dose of 2ml (4mg) instead of a correct dose of between 0.75mg – 1.5mg.

4. Tilted Patient A's bed to prevent Patient A from leaving the bed.

5. On 15/16 November 2017 did not document:

a) The failed administration of Haloperidol at ‘2’ above.
b) The dose of Haloperidol at ‘3’ above.
c) The reason for tilting Patient A’s bed at ‘4’ above.
d) Patient A’s behavioural patterns and/or physical condition.
e) Patient A’s swollen legs.

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 March made a request that this case be partly held in private on the basis that proper exploration of Witness 2’s reasons for not attending the hearing today involve reference to her [PRIVATE]. The application was made pursuant to Rule 19 of ‘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 there is reference to Witness 2’s [PRIVATE] and Miss Picton’s health.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr March under Rule 31 to allow the written statement of Witness 2, dated 4 October 2019, into evidence. Witness 2 was not present at this hearing and, whilst the NMC had made sufficient efforts to try and ensure that this witness was present, she was unable to attend today due to [PRIVATE]. In an email, dated 14 February 2022, Witness 2 provided documentary evidence that showed

that [PRIVATE]. Mr March submitted that this is a reasonable explanation as to why Witness 2 is unable to attend the hearing today.

Mr March referred the panel to the case of *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)* which sets out four principles when considering admission of hearsay statements in evidence. Mr March submitted that these four tests are met in this case.

Mr March submitted that the panel should consider admitting the written statement and the attached exhibits of Witness 2 into evidence. Mr March submitted that the evidence is highly relevant and was produced during the Western General Hospital's (the Hospital) internal investigation of Miss Picton, and therefore provides insight into the charges. The evidence submitted is not the sole and decisive evidence for the charges and a good and cogent reason for the non-attendance of the witness has been provided. It is a matter for the panel to consider the weight to be given to the hearsay evidence.

In the preparation for this hearing, the NMC had indicated to Miss Picton that it was the NMC's intention for Witness 2 to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Witness 2, Miss Picton made the decision not to attend this hearing. On this basis, Mr March advanced the argument that there was no lack of fairness to Miss Picton in allowing Witness 2's written statement and exhibits into evidence.

Mr March asked the panel to disregard the supplementary witness statement prepared by Witness 2, as this was not relevant and had not been signed or dated.

The panel accepted the advice of the legal assessor, who made reference to the case of *Ward v NMC [2014] EWHC 1158 (Admin)*. He informed the panel that, in *Ward v NMC,* an application by the NMC to admit hearsay evidence was allowed. The test was whether the evidence was relevant and whether it was fair to both parties to admit it. In *Ward*, the registrant had been provided with copy statements and they did not form the only or decisive evidence. He informed the panel that the registrant could have provided a written response to said evidence. Since the registrant failed to attend the final

hearing, she was not deprived of the opportunity to cross-examine the witness by their absence but by her own absence. The Committee noted that the issue of what weight to give to the hearsay evidence was to be carefully assessed at the close of all the evidence. The High Court found that the hearsay evidence was rightly admitted given all the above circumstances.

The panel gave the application, in regard to Witness 2's evidence, careful consideration and took into account the test as shown in *Ward v NMC*. The panel noted that Witness 2's statement, and the accompanying exhibits, have been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement … is true to the best of my information, knowledge and belief' and that each page of the statement had been signed and dated by her.

The panel considered whether Miss Picton would be disadvantaged by the change in the NMC's position of moving from reliance upon the oral and written testimony of Witness 2 to that of a written statement and exhibits. The panel noted that, as Miss Picton had been provided with a copy of Witness 2's statement and, as the panel had already determined that Miss Picton had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case. Miss Picton, having had sight of Witness 2's evidence, had not indicated that she did not want this to be admitted into evidence. The panel also noted that Miss Picton had been informed by email on 21 February 2022 that Witness 2 was unable to attend the hearing on the scheduled dates and that the NMC intended to make a hearsay application. The panel was of the view that Miss Picton has had sufficient time to provide a written response to this evidence, and had failed to do so. In addition, the panel also noted that Witness 2 was a Clinical Nurse Manager at the Hospital, that she had no prior working or personal relationship with Miss Picton and she had not witnessed any of the alleged events as set out in the charges on 15/16 November 2017. The panel was of the view that, because of this, Witness 2's evidence was to an extent independent. Therefore, the panel determined that admitting Witness 2's hearsay evidence would not be unfair to Miss Picton.

The panel noted that Witness 2's evidence speaks directly to the charges relating to poor record keeping (such as nursing care and medication records) and indirectly to other charges. The panel also noted that Witness 2 had been appointed as the investigator in the Hospital's local investigation and she exhibited contemporaneous documentary evidence from this process. While this may not be the sole and decisive evidence, it was certainly highly relevant to the charges. The panel was of the view that the NMC have made all reasonable efforts to ensure Witness 2 was at the hearing today, and determined that Witness 2 had a valid reason for not attending. There was also the public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Witness 2 and the attached exhibits. Further, once the panel had heard all the evidence, it could decide what weight to attach to Witness 2's evidence.

Decision and reasons on facts

At the outset of the hearing, Mr March informed the panel that Miss Picton did not admit any of the charges.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr March.

The panel has drawn no adverse inference from the non-attendance of Miss Picton.

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 witness called on behalf of the NMC:

- Witness 1: Clinical Support Worker at the Hospital

Background

On 21 September 2018, the NMC received a referral from the Nurse Director of Acute Services at NHS Lothian regarding Miss Picton. At the time of the alleged incidents, Miss Picton was employed as a nurse on Ward 50, Stroke Unit (the Ward), the Hospital, Lothian.

The referral relates to incidents that took place at the Hospital on the night of the 15-16 November 2017. A number of incidents were reported relating to Miss Picton's care of Patient A, who had dementia. It is alleged that during the course of the shift, Miss Picton roughly handled Patient A, by dragging her by her arm into her room, and tilted Patient A's bed to prevent her from leaving her room.

It is also alleged that Miss Picton forcefully administered Haloperidol to Patient A orally using a 2ml injection syringe rather than an oral syringe. It is alleged Patient A spat out this medication administered by Miss Picton. Following on from this, Miss Picton is alleged to have forcefully administered a further dose of Haloperidol, despite being unsure how much of the previous dose had been spat out.

Following these alleged incidents, an internal investigation was carried out by the Hospital. The investigation found that Miss Picton allegedly failed to document a "failed administration" of a dose of Haloperidol on the drug chart and in the clinical notes. Miss Picton is also alleged to have failed to keep accurate documentation of Patient A's patient care. Miss Picton alleged that Patient A had a pattern of fluctuating degrees of confusion throughout the shift, had varying preferences of who delivered care to her and complained of having sore legs. All of which were allegedly not recorded by Miss Picton in Patient A's care notes.

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 the NMC.

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

Charge 1

"That you, a registered nurse:

On 15 November 2017 at around 23:00 on one or two occasions you forcefully dragged Patient A by her arm into her room."

This charge is found proved.

In reaching this decision, the panel took into account the written and oral evidence from Witness 1 and the documentary evidence from Witness 2. The documentary evidence included an affirmed NMC Witness statement, the Hospital's local level investigation interviews and Witness 1's contemporaneous hand written statement, dated 16 November 2017 (the day after the alleged incidents in question). The panel was of the view that the oral and written information provided by Witness 1 was consistent and reliable throughout. It was of the view that Witness 1, in giving their live evidence, was succinct in his answers and clear when he was unable to answer a question. When the witness confirmed a suggestion by Mr March was true, he gave explanations to support his assertion. The panel found Witness 1's account to be cogent and compelling. The panel noted that, at the time of the incidents, Witness 1 had been working as a Bank Clinical Support Worker at the Hospital since 2014, and was therefore experienced in this role and would have known how to appropriately handle a patient with similar needs to Patient A [PRIVATE]. Further, the panel noted that Witness 1 had no prior personal or professional relationship with Miss Picton. On the night of the incidents, Witness 1 raised his concerns to the nurse in charge of the Ward, and he again raised these concerns with the Clinical Site Coordinator the next day when asked why he did not want to work again on the Ward. The panel was satisfied that Witness 1 was not biased against Miss Picton and he had no reason to make up what he was saying. In light of the above, the panel determined that Witness 1 was a credible and reliable witness.

The panel noted that Patient A was a patient with dementia and confusion who was wandering on the Ward and going into other patients' rooms. The panel noted that, in Witness 1's written NMC statement, he stated:

> *'…The registrant appeared annoyed that Patient A had wandered out of her room as such she approached Patient A and forcefully dragged her by her arm into her room (Room 2). At this stage, I thought the registrant's actions towards Patient A was inappropriate and I thought the registrant showed no dignity and respect in that the registrant should have guided Patient A back into her room and not forcefully drag her.*
>
> *Patient A once again wandered out of her room and as such the registrant grabbed her by her arm yet again and forcefully dragged her back into her room…'*

In addition, the panel noted that Witness 1's written statement was consistent with his oral evidence and both his local statements (dated 16 November 2017 and 10 January 2018). Witness 1 was able to describe Miss Picton forcefully dragging Patient A by her arm into her room on at least one occasion. The panel took into consideration Miss Picton's explanation of this incident, as seen in the local Note of Investigation meeting dated 5 April 2018. It noted that Miss Picton explained she was not forceful with Patient A, rather she put her hand out and held Patient A's hand and went into her room with no effort, and at one point she had placed her hand around Patient A's waist to stop her falling. This evidence carried little weight as it was hearsay, and was not included in a signed and sworn statement. However, the panel noted that Witness 1 explained that he had only been a few meters away with a direct view and had seen the incident clearly. He clearly said Miss Picton did not handle Patient A in the manner she described, and had forcefully dragged Patient A into her room. Witness 1 said that guiding and directing a patient is done slowly and with patience and that this was not the approach he witnessed in this incident. The panel noted that the nursing care plan for Patient A stated that she '*could mobilise independently*' and that she '*was unsteady on her feet and to supervise when mobilising*'. The panel was more persuaded by Witness 1's

explanation of events and his concerns about the lack of dignity and respect in the treatment of Patient A by Miss Picton and accepted his evidence.

In light of the above, on the balance of probabilities, the panel finds this charge proved. Albeit, the panel was unable to determine from the evidence before it whether Miss Picton forcefully dragged Patient A back to her room on two separate occasions or more than once in a prolonged intervention.

Charge 2)

> *"Sometime between 23:00 on 15 November 2017 and midnight forcefully attempted the administration of Haloperidol on one or two occasions."*

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence provided by Witness 1. For the reasons given in charge 1 above, the panel determined that Witness 1's evidence was consistent, credible and reliable. It noted that, in Witness 1's NMC statement, he stated that:

> *"…Patient A then once again tried to leave her bed and at this point, the registrant opened the drugs cabinet, took out a bottle of liquid haloperidol (this medication is used to reduce excitement in the brain), she opened a 2ml syringe and drew up the medication to the maximum volume/level of the syringe. The light in Patient A's room was still off at this stage.*
>
> *The registrant asked me to hold Patient A's hands firmly which I did, she then administered the medication to Patient A orally whilst firmly holding her face. Patient A screamed and spat out the medication immediately. The registrant drew up the medication again despite being unable to clarify how much of the previous dose had been spat out by Patient A, the registrant held Patient A's face and forcefully re-administered the medication to Patient A and she spat it out again. I left Patient A's room without questioning the registrant regarding her*

actions as I was shocked at what I had witnessed. This occurred between 11:00pm and 12am..."

The panel noted that Witness 1's written statements were consistent with his oral evidence. The panel considered Witness 1's oral evidence regarding this charge to be very detailed. Witness 1 recalled that Miss Picton did not provide any explanation to Patient A about the medication to be administered and did not ask for Patient A's consent; and Miss Picton asked that he hold Patient A's hands down. He said Miss Picton had lowered the bed guard rail and placed her left hand under Patient A's jaw so she could not move her head and administered the medication with her right hand. Furthermore, Witness 1 was able to clearly recall Miss Picton drawing the medication on two occasions, once before Patient A spat it out and once after, without checking the amount she drew.

The panel did note Miss Picton's explanation of events, as seen in her local statement. Miss Picton stated:

> *"…I asked .. to hold Patient A hands and I supported her face, as I put the medication into her mouth Patient A spat it out so I drew up the dose again and re administered it followed by the syringe of juice to take the taste away and this time Patient A swallowed it…"*

This evidence carried little weight as it was hearsay, and was not included in a signed and sworn statement. The panel was more persuaded by Witness 1's explanation of events. Witness 1 told the panel that there was no orange juice in sight and that the liquid in the syringe was not orange in colour. Further, he said that to administer juice through a syringe would be very unusual and it would be more usual to give Patient A drinks using a beaker.

The panel found that, on the balance of probabilities, this charge is proved. It determined that Miss Picton forcefully administered haloperidol to Patient A on two separate occasions.

Charge 3)

> *"The administration of Haloperidol at '2' above was an incorrect dose of 2ml (4mg) instead of a correct dose of between 0.75mg – 1.5mg."*

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Witness 1 and Witness 2's written evidence. For the reasons given at charge 1 above, the panel found Witness 1 to be credible and reliable. The panel noted that, in Witness 1's NMC statement (in addition to the paragraphs quoted above in charge 2) he stated that:

> *"…I reported what I had witnessed to the nurse in charge of the shift (name unknown) and she asked me for the type of syringe the registrant used to forcefully administer medication to Patient A, I went back to Patient A's room to check the syringe the registrant used and confirmed that it was a 2ml syringe, I then informed the nurse in charge..."*

The panel noted that Witness 1's oral evidence was consistent with his written statements especially in regard to Miss Picton filling the syringe on two separate occasions. It noted that Witness 1 was able to clarify that there are different coloured syringes used in the Hospital, those with a skin coloured rubber plunger being 1ml and those with green rubber plungers being 2ml. Witness 1 stated that he saw Miss Picton used the green syringe to draw up and administer Haloperidol to Patient A. Miss Picton said that she used a 1ml syringe in her local investigation statement. This evidence carried little weight as it was hearsay, and was not included in a signed and sworn statement. When questioned about the quality of light in the room potentially hindering his vision, Witness 1 told the panel that Patient A's bedside light was on, but dimmed. However he was able to clearly see that Miss Picton had used a syringe with a green plunger, that she had filled the syringe to its maximum and that she did not check the amount of medication she drew up on both occasions. The panel accepted Witness 1's evidence, in that he had sufficient light to see what coloured syringe Miss Picton used

and how much medication she drew up. The panel noted that, in the local investigation notes, Witness 1 had explained that he had later gone to the treatment room to look at the syringes, as he had never seen a green one before.

Witness 1 explained that to check the amount of medication drawn up in the syringe, Miss Picton would have needed to hold the syringe up to eye level in front of her face. Witness 1 said that Miss Picton did not do this. Witness 1 told the panel that Miss Picton did not check the medication to be given, the amount to be given, the frequency or the route against the medication administration chart, and Miss Picton did not check Patient A's identity against her wrist label and the medication administration chart. The panel determined that Miss Picton had used a full 2ml syringe to administer the medication to Patient A.

In considering this charge, the panel also took account of Witness 2's statement. In this, she produced a copy of page 369 of the British National Formulary (BNF) guidelines (Number 74 September 2017 – March 2018), which states:

> *"…Agitation and restlessness in the elderly*
> *BY MOUTH*
> *Elderly: initially 0.75-1.5mg 2-3 times a day, adjusted according to response, if necessary…"*

In the statement of Witness 2 she stated that the proportion of Haloperidol was 10mg in 5ml. A 1ml dose would be 2mg and a 2ml dose would be 4mg. The panel accepted Witness 2's evidence on this point. The panel noted that, regardless of whether Miss Picton used a 1ml or 2ml syringe, as it accepted the medication was drawn up to the top of the syringe then the dose provided to Patient A would have been incorrect.

In light of the above, the panel was satisfied that, on the balance of probabilities, Miss Picton attempted to give Patient A an incorrect dose of medication on two occasions. The panel also determined that Miss Picton did not know how much medication she administered to Patient A.

Charge 4)

"Tilted Patient A's bed to prevent Patient A from leaving the bed"

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence from Witness 1. For the reasons given at charge 1 above, the panel considered Witness 1 to be a credible and reliable witness. It noted that, in his NMC statement, he stated:

> *"…The ward telephone started ringing and it was a call for the registrant and as such the registrant left Patient A's room to receive her telephone call. At this point, I went into Patient A's room and noticed that her bed had been tilted down to the minimum level. I knew this would be uncomfortable, unsafe and a form of restraint for Patient A as her bed should be positioned to the normal height and level so I positioned Patient A's bed to the normal height. Unfortunately, I am unable to describe what the normal height should be.*
>
> *When the registrant returned to Patient A's room, she was annoyed that I had repositioned Patient A's bed to the normal height. I then asked the registrant why she tilted Patient A's bed to the minimum level and she answered by saying she did that to stop Patient A from leaving her room and also to stop her from wandering around the ward..."*

The panel was of the view that Witness 1's oral evidence was consistent with his written statements. The panel noted that, in the internal investigation, Miss Picton claimed that she had tilted the bed in this position as Patient A had complained about leg pain and swollen legs. Witness 1 told the panel that he had no knowledge of Patient A having leg pain on the shift in question. Further, he told the panel that the position the bed was tilted in was wholly inappropriate regardless of swollen legs. The panel was assisted by the clear diagrams of the bed positions Witness 1 made for them in answer to questions whilst giving oral evidence (Exhibit 5). Witness 1 made four diagrams to illustrate the bed in a flat position (diagram one), a position with the knees raised (diagram two), a position for the patient to be sat as if in a chair (diagram three) and a fourth position

which was the position in which he found Patient A (diagram four). This position was with the head of the bed in a diagonal line to the knees and below the height of the knees. Witness 1 said he had never seen a bed placed in this position before. Witness 1 told the panel that the only reason he could think of for the bed being placed in this position would be to prevent Patient A from leaving the bed. The panel gave no weight to the *'rough sketch'* of the bed position made by Witness 2, as it noted that, whilst she was trying to assist the hearing, her '*rough sketch'* was her interpretation of how the bed position had been described to her. When shown this rough sketch, Witness 1 said this was not the position of the bed that he had seen.

In addition, Witness 1 informed the panel that the bed's guard rails were up, which could only be operated from the outside of the bed. The panel accepted this evidence, and was of the view that Miss Picton did this as she did not want Patient A to leave the bed. Witness 1 further stated that, when he questioned Miss Picton about the tilting of the bed and the guard rails being put up, she said she "*did that to stop Patient A from leaving her room and also to stop her from wandering around the ward."*

Therefore, in light of the above, the panel found this charge to be proved on the balance of probabilities.

Charge 5a)

"On 15/16 November 2017 did not document:

The failed administration of Haloperidol at '2' above."

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Witness 1 and the exhibits provided by Witness 2. For the reasons given at charge 1 above, the panel accepted Witness 1's evidence as reliable and credible. The panel decided to place significant weight on the exhibits provided by Witness 2, especially when they relate to medical and nursing records for Patient A.

The panel noted that Witness 1 said he had checked Patient A's medication administration record prior to leaving the Ward at 01:20, and did not see anything documented about the two attempts to administer medication to Patient A by Miss Picton between 23:00 and 00:00. Further, the panel noted that this incident was not recorded in Patient A's nursing care record on the night of the incident. The nursing care record was written by another registered nurse on duty that night and only stated that two doses of PRN Haloperidol were given.

The panel noted that there were only two entries in Patient A's medication administration record on 15 November 2017 relating to the administration of Haloperidol. The first was at 20:25 and the second at 23:10. There is no entry documenting a failed administration of Haloperidol. The panel referred to the exhibited codes for non-administration of prescribed medicines, which clearly state that if a patient refuses medication, it needs to be recorded in the medication administration chart.

In addition, the panel noted that, in the outcome of the internal investigation, Miss Picton admitted to *"administering Failing to document 'failed' administration of a dose of Haloperidol on the drug chart and in the medical notes"[sic].* The panel decided to give some weight to Miss Picton's admissions in the internal investigation, as they were admissions against interest. The panel also noted that Miss Picton was accompanied by her UNISON representative at the investigation meeting.

The panel therefore found this charge proved on the balance of probabilities.

Charge 5b)

"On 15/16 November 2017 did not document:

The dose of Haloperidol at '3' above."

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence provided by Witness 1 and the exhibits from Witness 2. The panel determined that, as charge 3 has been found proved, Miss Picton attempted to administer two separate incorrect doses of Haloperidol to Patient A. The panel noted that one 0.5mg administration of Haloperidol had been recorded at 23:10 (it is not clear by whom); however both attempts to administer 4mg of Haloperidol between 23:00 and 00:00 were not recorded in the medication administration chart. Further, Miss Picton made no entry in the nursing care records for Patient A during this shift.

Therefore, on the balance of probabilities, the panel finds this charge proved.

Charge 5c)

"On 15/16 November 2017 did not document:

The reason for tilting Patient A's bed at '4' above."

This charge is found proved.

In reaching this decision, the panel took into account the exhibits provided by Witness 2. The panel determined that, as it had found charge 4 proved, Miss Picton did tilt the bed of Patient A to prevent her from leaving the bed. There is no entry in the patient notes relating to this overnight shift to indicate that Miss Picton tilted the bed nor any reason for tilting the bed. Indeed, Miss Picton has not made any notes in Patient A's nursing record for this shift.

In light of this, on the balance of probabilities, the panel determined that this charge is found proved.

Charge 5d)

"On 15/16 November 2017 did not document:

Patient A's behavioural patterns and/or physical condition."

This charge is found proved.

In reaching this decision, the panel took into account the exhibits and signed and dated NMC statement provided by Witness 2. The panel noted that, in the internal investigation, Miss Picton admitted to

> *"… failing to keep accurate documentation with regard to the patients case (the patient having a pattern of fluctuating degrees of confusion, the patient having various preferences of who delivered care and the patient complaining of sore legs…"*

This is further corroborated by Witness 2's written statement, which states that:

> *"… the registrant allegedly failed to document information about fluctuating behavioural patterns or other physical condition of the patient, she claimed that she had been looking after Patient A because Patient A did not like Witness 1 [sic] however this was not documented… The registrant made no documentation in the clinical notes for the shift…"*

The panel decided to give weight to Miss Picton's admissions in the internal investigation, as they were admissions against interest. It also gave weight to Witness 2's written NMC statement, as there is no reason to doubt the medical and nursing records that she exhibited. The panel determined that Miss Picton had made no entry in Patient A's care notes during this shift and that there is no mention of Patient A's behavioural patterns and/or physical condition in Patient A's care notes. In light of the above, on the balance of probabilities, the panel finds this charge proved.

Charge 5e)

> *"On 15/16 November 2017 did not document:*

Patient A's swollen legs."

This charge is found proved.

In reaching this decision, the panel took into account the exhibits and written NMC statement from Witness 2. The panel noted that, in the internal investigation, Miss Picton admitted to:

> *"…failing to keep accurate documentation with regard to the patients case… and the patient complaining of sore legs which she said necessitated her action of tilting the bed"*

The panel decided to give weight to Miss Picton's admissions in the internal investigation, as they were admissions against interest.

Further, it noted that in her written NMC statement, Witness 2 stated that:

> *"…The registrant made no documentation in the clinical notes for the shift. She also claimed that Patient A had been complaining of sore, swollen legs which necessitated her action of tilting her bed, however this was not documented in the clinical notes..."*

The panel accepted this evidence from Witness 2, as there is no reason to doubt the medical and nursing records that she exhibited. The panel determined that Miss Picton had made no entry in Patient A's nursing care notes during this shift and that there were no clinical notes made regarding Patient A complaining of sore, swollen legs. In light of this, on the balance of probabilities, the panel found this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Picton'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, Miss Picton's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Mr March invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015 the Code) in making its decision.

Mr March identified the specific, relevant standards he submitted Miss Picton's actions breached. He submitted that the charges proved amount to misconduct as Miss Picton's actions were serious and fell far below what is expected of a reasonable and competent nurse. He submitted that Miss Picton's actions demonstrate departure from the professional standards required of a registered nurse in that she roughly handled a

vulnerable patient, forcefully attempted to administer an excessive dose of a sedative, and failed to keep proper records of medication and treatment.

In Mr March's written submissions, he submitted that:

> *'Charges 1, 2 and 4 raise concerns about treating Patient A as an individual and upholding her dignity. Each of these charges involve the use of force and/or restraint on a vulnerable patient. What stuck with [Witness 1] after witnessing these events was the lack of "dignity and respect" shown to Patient A. These charges also raise concerns about failing to respond compassionately and politely to a person in distress. The use of unlawful force on a vulnerable patient inevitably also engages the reputation of the profession. The treatment of Patient A was unfair, it was bordering on bullying behavior, it amounts to an unlawful use of force and/or restraint and caused upset or distress to a vulnerable person.*
>
> *Charge 2 and 3 raise concerns about the proper administration of medicines. The correct dose of haloperidol in this case would have been a dose of 0.75mg [-] 1.5mg can be given up to 2 or 3 times per day adjusted to response if necessary [Witness Statement of [Witness 2] paragraph 14]. The proportion of haloperidol was 10mg in 5ml [Witness Statement of [Witness 2] paragraph 14].*
>
> *The panel determined that Miss Picton had used a full 2ml syringe to administer the medication to Patient A. This means that she administered 4mg, an unknown amount of which was spat out, and then a further 4mg, for a total of 8mg, significantly in excess of the correct dose. The panel also noted that, even if Miss Picton had (as she alleged during the local investigation) used a 1ml syringe, then the dose provided to Patient A would have been incorrect. As such, the Registrant forcefully administered a concerning and excessive quantity of a sedative, in breach of her training and guidance. This could have had very serious consequences for the patient, as [Witness 2] explains at paragraph 15 of her witness statement*
>
> > *"Although there was no harm in relation to the registrant's alleged actions, in my view, the actions of the registrant are clinically unacceptable, the*

registrant allegedly administered medication more often than prescribed which could have led to a misinformed treatment plan and over sedation which can in extreme cases lead to death"

[Witness 1] also stressed the possible danger at paragraph 11 of his witness statement

"The registrant gave Patient A too much of the medication within a short period of time and this could have led to over sedation which can in extreme cases lead to death."

Charge 5 raises concerns about poor recordkeeping, for reasons that are self-explanatory. Failures to accurately document dosage or failed administration could lead to a risk of overdosing. Failure to document alleged changes in a patient's conditions can lead to a patient getting improper treatment, this is particularly important in the case of a patient who has a limited and/or varying ability to express her own needs or remember what treatment she has received.'

Submissions on impairment

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

Mr March provided the panel with written submissions, in which he submitted:

'The panel should also consider paragraph 71 and 74 of the above case:

[71] – "However it is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations .... namely the need to protect the public and the need to declare and

uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession."

[74] – "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."

Dealing in turn each of the four questions in the Shipman Report, the actions by the Registrant. The NMC submits

a. *Firstly, that inappropriate use of force and restraint, inappropriate dosage of sedatives and poor record keeping clearly put Patient A at an unwarranted risk of harm;*

b. *Secondly, this behavior is liable to bring the profession into disrepute and this has been a largely public hearing so the public will be entitled to hear of her behavior;*

c. *Thirdly, for the reasons set out at paragraphs 7-13 above, the behavior breaches several fundamental tenets of the profession; and*

d. *Fourthly, although dishonesty has not been an express allegation in this case, it may follow that the registrant was dishonest in denying allegations in the local investigation which the panel has now found proved.*

Further, the NMC submit that the panel should consider the need to uphold proper standards and public confidence, and whether these will be undermined if impairment were not found. The NMC submits that these would be undermined if impairment was not be found in the case of a registered

nurse who has been found to have roughly handled and inappropriately restrained a vulnerable patient, forcefully administered excessive doses of a sedative, and failed to keep adequate records.

The NMC submits that the Registrant's actions involved a serious departure from professional standards, likely to cause risk to patients in the future if they are not addressed. There has been limited engagement with the Nursing and Midwifery Council from the Registrant and she has failed to demonstrate full insight into her failings or remediate those failings. The Registrant in her email of 17 January 2022 [Proof in absence bundle p3] simply says

> *"I am not fit to practice and have asked in each communication that my name be removed from the NMC register"*

As such, we consider that the risk of repetition remains a valid concern if she were to return to practice. '

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Rylands v General Medical Council [1991] Lloyds Rep Med 139 and Cohen v GMC [2007] EWHC 581 (Admin).*

Decision and reasons on misconduct

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

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

1. Treat people as individuals and uphold their dignity

1.1 treat people with kindness, respect and compassion

2. Listen to people and respond to their preferences and concerns

2.5 respect, support and document a person's right to accept or refuse care and treatment

2.6 recognise when people are anxious or in distress and respond compassionately and politely

4 Act in the best interests of people at all times

4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment

4.2 make sure that you get properly informed consent and document it before carrying out any action

4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process

10. Keep clear and accurate records relevant to your practice

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

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

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

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

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

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

20.2 … treating people fairly… without … bullying or harassment

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that, in regard to charge 1, Miss Picton's actions did fall seriously short of the standards expected of a registered nurse. It noted that this charge relates to Miss Picton forcefully dragging a vulnerable patient into their room. The panel determined that this action is highly inappropriate, and showed Miss Picton treating Patient A without any dignity or respect. Therefore, the panel found that this charge amounts to misconduct.

In regard to charge 2, the panel was of the view that Miss Picton's actions fell seriously short of the standards expected of a registered nurse. It noted that this charge relates to forcefully administering medication to a vulnerable Patient A on two occasions. The panel determined that this action again highlights Miss Picton not treating Patient A with dignity and respect, as she did not explain to Patient A what medication she was giving to her, she did not ask for Patient A's consent and did not respect Patient A's choice to refuse the medication. She did not respond with kindness or compassion to the distress this caused Patient A. Further, the panel noted that Miss Picton's action in this charge raised serious concerns regarding her understanding of how to correctly and safely administer medication as she did not undertake the standard, required checks before administration. The panel considered that Miss Picton demonstrated a deliberate unwillingness to follow the necessary protocols for safe practice. The panel therefore found that this charge amounts to misconduct.

In regard to charge 3, the panel found that this action fell seriously short of the standards expected of a registered nurse. It was of the view that Miss Picton's action in

this charge was deplorable. It noted that there was no evidence to suggest Miss Picton had checked the drug chart and she attempted to administer an excessive dose of a sedative with potential risks to Patient A. The panel noted that Patient A was prescribed 0.5mg orally up to twice a day, as required. The panel considered this to be a reckless disregard of safe administration of medication. In light of this, the panel found that this charge amounts to misconduct.

In regard to charge 4, the panel considered that Miss Picton tilting Patient A's bed to prevent her from leaving her room indicates a pattern of behaviour, in that Miss Picton took forceful measures to prevent Patient A from leaving her room. Further, the panel noted that Miss Picton's action in this charge again highlights Miss Picton not treating Patient A with dignity and respect, and her failure to treat Patient A with compassion. The panel determined that Miss Picton's actions in charges 1, 2 and 4 amount to harassment and abuse of a vulnerable, elderly patient and that they might be indicative of a bullying attitude. Miss Picton used an unwarranted level of force to restrain Patient A by tilting her bed in order to ensure that Patient A was not wandering around the Ward. The panel was of the view that Miss Picton's actions fell seriously short of the standards expected of a registered nurse, and found that this charge amounts to misconduct.

In regard to charges 5a and b, the panel was of the view that Miss Picton fell seriously short of the standards expected of a registered nurse. The panel was of the view that Miss Picton had a responsibility to record in Patient A's medication chart that she had administered prescription-only medication, Haloperidol, on two occasions, and that Patient A had spat out the medication. Miss Picton had a responsibility to record the correct dosage to inform ongoing safe treatment and care. The panel therefore found that this charge amounts to misconduct.

In regard to charges 5c, 5d and 5e, the panel noted that Miss Picton did have a responsibility to record changes in Patient A's behavioural patterns and/or physical condition, Patient A's swollen/sore legs and that she had tilted Patient A's bed. On their own, charges 5c, 5d and 5e do not individually amount to misconduct. However, the panel was of the view that charges 5c, 5d and 5e collectively, taken together with the

other charges, indicate a lack of record keeping that could have had an impact on the ongoing safe treatment and care of Patient A. This was particularly so as Patient A had dementia and may not have been able to describe her symptoms. Therefore, the panel found charges 5c, 5d and 5e taken collectively amount to misconduct.

The panel found that Miss Picton's actions 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, Miss Picton'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. 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;'

The panel found that limbs a, b and c are engaged both in terms of Miss Picton's past, and potential future, conduct. However, limb d was not engaged in this case in the panel's judgement.

The panel found that Patient A was put at unwarranted risk of physical harm and likely caused emotional harm as a result of Miss Picton's misconduct. In particular, the panel noted that Witness 1, in his evidence, told the panel that he heard Patient A screaming when she was alone in the room with Miss Picton. This happened after she had dragged Patient A back into her room and before Witness 1 discovered that Patient A's bed had been tilted, so as to lower her head beneath her bent knees with the bed guard rails up. Witness 1 also told the panel that Patient A was visibly distressed by the forced administration of Haloperidol. In addition, the panel determined that Miss Picton's actions, in forcefully dragging Patient A [PRIVATE] back to her room, tilting her bed to prevent Patient A from leaving it and forcefully administering medication to Patient A, would have caused Patient A significant distress and likely emotional harm. Miss Picton's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Picton has shown no insight into her actions. It noted that, after initially denying Witness 1's local allegations and presenting an alternative view of the events in question, in the local investigation interviews, Miss Picton then made partial admissions to some of the local allegations but she denied any allegations of forceful mistreatment. However, the panel did not have sight of a reflective piece nor did it have sight of any evidence that Miss Picton has apologised, is remorseful for her actions, nor that she has shown any insight into her misconduct or its impact upon Patient A and her family, the Hospital, the nursing profession and the public.

The panel considers that, in principle, the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Picton has remedied her practice. However, it noted that Miss Picton had not provided any evidence that, since the time of the incidents, she had remediated her practice. In addition, the panel noted that Miss Picton's lack of meaningful engagement or any insight or remediation highlights that she could have an attitudinal problem. In light of this, although Miss Picton's misconduct may be remediable, the panel was of the view that she has not remedied her misconduct. The panel therefore determined that there is a high risk of repetition in this case. 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 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 determined that a finding of impairment on public interest grounds is required because a well-informed member of the public would be dismayed to learn that, in the light of the foregoing, the panel did not find Miss Picton's fitness to practice currently impaired. In addition, the panel concluded that public confidence in the profession would

be undermined if a finding of impairment were not made in this case and therefore also finds Miss Picton's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months, with a review before the expiry of the order. The effect of this order is that the NMC register will show that Miss Picton's registration has been suspended.

Submissions on sanction

Mr March informed the panel that in the Notice of Hearing, dated 13 January 2022, the NMC had advised Miss Picton that it would seek the imposition of a suspension order of 12 months with a review if the panel found Miss Picton's fitness to practise currently impaired. Mr March submitted that Miss Picton's misconduct is serious as the NMC has proved that she roughly handled a vulnerable Patient A, tilted Patient A's bed to restrain her, forcefully administered an excessive dose of a sedative on two occasions, and failed to keep proper documentation of Patient A's medication and care.

Mr March submitted that, fortunately, no harm was caused, however these remain serious charges because Miss Picton treated vulnerable Patient A forcefully and with a lack of compassion and dignity and put her at risk of harm through inappropriate medication and poor record keeping. He submitted that the charges found proved indicate that Miss Picton used unnecessary force against Patient A to prevent her from wandering around the Ward. Therefore, Mr March submitted that the most appropriate, necessary and proportionate sanction in this case is a suspension order for a period of 12 months, with a review.

Mr March submitted that a striking off order is not necessary at the current time, as, Miss Picton's misconduct occurred over a single shift, in the context of a long career as a registered nurse and because Miss Picton was not charged with assault or dishonesty. Mr March submitted that, whilst serious, the charges are not so serious as to impose a striking off order. However, he submitted that this is for the panel to decide.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Miss Picton'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 NMC's Sanctions Guidance (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
- Lack of insight into failings
- Lack of meaningful engagement with the NMC proceedings
- Pattern of misconduct on the night of the incidents, which put Patient A at an unwarranted risk of harm
- The unkindness of Miss Picton in the use of force and restraint on Patient A, being a feature of the case as a whole

The panel was of the view that there are no mitigating features in this case.

The panel noted that the charges found proved related to one patient, Patient A, on one shift. Notwithstanding, Witness 1 painted a clear pattern of what happened that evening.

The panel first considered whether to take no action but concluded that this would be inappropriate as this would not protect the public nor address the public interest

considerations in this case. 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 public protection and public interest issues identified, an order that does not restrict Miss Picton'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 Miss Picton'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 conditions of practice on Miss Picton's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Although Miss Picton's misconduct could be remediable, the panel was of the view that due to her lack of insight, remorse and remediation, her misconduct has not been remedied. The panel noted that Miss Picton's misconduct also could suggest that she has an attitudinal problem. Further, given Miss Picton's lack of engagement and no information before the panel about her current employment, the panel is of the view that there are no practical or workable conditions that could be formulated. Furthermore, the panel concluded that the placing of conditions on Miss Picton's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel took into consideration Witness 1's evidence, about the pattern of events on the night of the incidents as a result of Miss Picton's annoyance at Patient A who had been wandering around the Ward and into other patients' rooms. The first instance being Miss Picton forcefully dragging Patient A back into her room; the second instance being Miss Picton tilting Patient A's bed so that she was unable to leave it and, after spending an hour alone with Patient A in her room with the lights off

(when Witness 1 heard Patient A screaming in distress), finally forcibly attempting to administer Haloperidol to Patient A twice.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register, as this misconduct occurred over the course of one shift in the context of a long career in nursing. However, the panel deemed Miss Picton's misconduct serious enough to warrant a suspension order.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. The panel noted that Miss Picton's misconduct occurred over a single shift, in the context of a long career in nursing without any previous regulatory findings made against her. Further, Miss Picton was not charged with assault. The panel also noted that, whilst serious, the charges are not so serious so as to necessitate the imposition of a striking off order. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Picton's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order for 12 months, with a review, would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Miss Picton. However this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 12 months, with a review, was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of a reflective piece, written using a recognised model of reflective practice. This reflective piece may include:
    - Full recognition of what you did wrong and why;
    - How your actions have affected Patient A, Patient A's family, the Hospital, your colleagues, the nursing profession and the public;
    - What steps you have taken to ensure that your misconduct will not be repeated in the future and what you have learned from the regulatory proceedings.
- Certificates of any continuing professional development, specifically relating to the misconduct in the charges found proved.
- If you are working in a clinical environment (in a non-nursing capacity), whether paid or unpaid, provide signed and dated testimonials from your managers attesting to your safe, effective, compassionate and kind care to vulnerable patients.

This will be confirmed to Miss Picton in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Picton's own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor, who advised the panel that it could make an interim order of its own volition, under Article 31(1 and 2) of the Nursing and Midwifery Order (2001).

Submissions on interim order

The panel noted that Mr March informed them that he had not been given specific instructions on whether or not the NMC wished to make an application for an interim order at this stage. However he did not object to an interim order being imposed.

Decision and reasons on interim order

The panel was satisfied, of its own volition, that an interim order was 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, the public protection and public interest issues it identified 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. Therefore, the panel decided to impose an interim suspension order for a period of 18 months to allow for an appeal process to be completed.

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

That concludes this determination.