Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 21 March 2022 – Friday 25 March 2022

Virtual Hearing

Name of registrant:	Adrian Raduta
NMC PIN:	14K0727C
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – (November 2014)
Area of registered address:	Romania
Type of case:	Misconduct
Panel members:	Deborah Jones (Chair, Lay member) Anne Witherow (Registrant member) Penelope Titterington (Lay member)
Legal Assessor:	Martin Goudie QC
Hearings Coordinator:	Jumu Ahmed
Nursing and Midwifery Council:	Represented by Peter Saville, Case Presenter
Mr Raduta:	Not present and not represented
Facts proved:	Charges 1, 2, 3, 4, 5, 6 and 7
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	**Suspension order (6 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 Mr Raduta was not in attendance and that the Notice of Hearing letter had been sent to Mr Raduta's registered email address on 7 February 2022.

Mr Saville, 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 the GoToMeeting link of the virtual hearing and, amongst other things, information about Mr Raduta'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 Raduta 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 Raduta

The panel next considered whether it should proceed in the absence of Mr Raduta. It had regard to Rule 21 and heard the submissions of Mr Saville who invited the panel to continue in the absence of Mr Raduta. He submitted that there were follow up emails on 10 March 2022 by the case officer to Mr Raduta to which there was no response. Mr Saville submitted that Mr Raduta's last contact with the NMC was an email on 4 February 2020 in which he stated:

'I'm Adrian Raduta I'm writing this because I'm not living any more in UK I gone to another country which is more friendly with immigrants regarding the accusations against me nothing is true' […] [sic]

Mr Saville submitted that there had been no engagement at all by Mr Raduta in the last two years with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor who referred to the cases of *R* v *Jones (Anthony William*) (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162.

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).*

The panel has decided to proceed in the absence of Mr Raduta. In reaching this decision, the panel has considered the submissions of Mr Saville, 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* 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 Raduta;
- Mr Raduta has not engaged with the NMC and has not responded to any of the emails sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Three witnesses have attended today to give live evidence, and others are due to attend tomorrow;

- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018;
- 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 Raduta in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he has made no response. 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 Raduta'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.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Saville, on behalf of the NMC, to amend the wording of charges 2, 3, 6 and 7.

The proposed amendments were to correct typographical errors. It was submitted by Mr Saville that the proposed amendments were provide clarity and more accurately reflect the evidence.

Original Charges

That you, a registered nurse:

2) Between 18 and 19 September 2018 refused to assist resident A to sit up or to provide resident A with a drinking cup suited to her disability.

3) Between 18 and 19 September 2018 refused to assist resident C to sit up.

…

6) Between 18 and 19 September 2018 informed Nurse A that resident B's blood sugar level was 5.4mmols when you had not taken resident B's blood sugar reading.

7) Your actions in charge 6 above were dishonest in that you knew you had not taken resident B's blood sugar level and intended to mislead Nurse A into believing that you had and that the most up to date reading was 5.4mmols.

Proposed Charge

2) Between 18 and 19 September 2018 refused to assist resident A to sit up ~~or to provide resident A with a drinking cup suited to her disability~~.

3) Between 18 and 19 September 2018 refused to assist resident C to sit up **or to provide resident C with a drinking cup suited to her disability.**

…

6) Between 18 and 19 September 2018 informed Nurse A that resident B's blood sugar level was ~~5.4~~ **4.5**mmols when you had not taken resident B's blood sugar reading.

7) Your actions in charge 6 above were dishonest in that you knew you had not taken resident B's blood sugar level and intended to mislead Nurse A into believing that you had and that the most up to date reading was ~~5.4~~ **4.5**mmols.

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

The panel was of the view that such an amendments, as applied for, were in the interests of justice. The panel was satisfied that there would be no prejudice to Mr Raduta and no injustice would be caused to either party by the proposed amendments being allowed. The panel found that the amendments were either more accurate reflections of the written statements sent to Mr Raduta or were minor corrections which did not alter the nature of the charge. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Details of charge

That you, a registered nurse;

1. Between 18 and 19 September 2018 at the Summerdyne Nursing Home, slept on duty when you were the only registered nurse on duty. **[PROVED]**

2. Between 18 and 19 September 2018 refused to assist resident A to sit up. **[PROVED]**

3. Between 18 and 19 September 2018 refused to assist resident C to sit up or to provide resident C with a drinking cup suited to her disability. **[PROVED]**

4. Between 18 and 19 September 2018, inappropriately administered medication to resident A in that you used an un-gloved hand and failed to provide resident A with a drink to assist the ingestion of the medication. **[PROVED]**

5. Between 18 and 19 September 2018, inappropriately administered medication to resident C in that you used an un-gloved hand and failed to provide resident C with a drink to assist the ingestion of the medication. **[PROVED]**

6. Between 18 and 19 September 2018 informed Nurse A that resident B's blood sugar level was 4.5mmols when you had not taken resident B's blood sugar reading. **[PROVED]**

7. Your actions in charge 6 above were dishonest in that you knew you had not taken resident B's blood sugar level and intended to mislead Nurse A into believing that you had and that the most up to date reading was 4.5mmols. **[PROVED]**

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

Background

The charges arose whilst Mr Raduta was employed as an agency registered nurse at the Summerdyne Nursing Home (the Home). Mr Raduta was the only registered nurse on duty at the Home on the night of the 18 to 19 September 2018, supported by two Healthcare Assistants (Ms 3 and Ms 4). There were 26 residents, some of whom had dementia.

Both healthcare assistants and the registered nurse on duty the next morning (Nurse A) raised concerns about Mr Raduta with the Deputy Manager, Ms 1. During the course of her investigation, Resident A also made complaints about the Mr Raduta's conduct.

These concerns were raised with Gem Healthcare Solutions (the Agency) for whom Mr Raduta worked. The Business Centre Office Manager, Ms 2, conducted an investigation and spoke to the registrant. He subsequently provided her with a written statement.

Decision and reasons on facts

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 Saville and the limited representations made by Mr Raduta during the internal investigation and in his email to the NMC of 4 February 2020.

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

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: Deputy Home Manager at the Home;
- Ms 2: Business Centre Office Manager for the Agency;
- Ms 3: Care Assistant at the Home;
- Nurse A: Registered Nurse at the Home;
- Nurse B: Registered Nurse at the Home.

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.

As Mr Raduta was an agency nurse who had worked a single shift in the Home, the panel accepted that staff members in the Home had not met Mr Raduta prior to or since 18 and 19 September 2018 and so did not have any previous professional working history. Therefore, the panel found that the staff members did not have any reason to be difficult or biased towards Mr Raduta, nor are there any historical or ongoing issues.

The panel had sight of hearsay evidence from Ms 4 and Resident A in Ms 3's evidence. The panel accepted that this hearsay evidence cannot be tested in the hearing, but nevertheless determined that this evidence can be given some weight as it was broadly in line with and corroborated by the live evidence provided by the witnesses called by the NMC. Further, the panel determined that the hearsay evidence was contemporaneous as Ms 4 and Resident A's statements were collected by Ms 3 the next morning.

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

Charge 1)

That you, a registered nurse;

1) Between 18 and 19 September 2018 at the Summerdyne Nursing Home, slept on duty when you were the only registered nurse on duty.

This charge is found proved.

In consideration of this charge, the panel had regard to Ms 3's oral evidence and written statement.

The panel took into account of Ms 3's written statement:

> *'The Registrant completed checks on the residents at 02:00 and then went to the lounge. I went into the lounge around 02:00, after the 02:00 checks had been*

completed by the Registrant and I saw him asleep in the lounge. I thought that he was asleep because his eyes were shut and he had the hood on jacket pulled up.

[…]

Following this, I left the lounge to go and do the laundry and I had to carry out a breathing check of all of the residents at 04:00. I also answered all of the call bells between 02:00 and 05:00 and did not see the Registrant until I went back into the lounge at around 05:00 and the Registrant was still in the same position, with his eyes shut and his hood up. This indicated to me that he had been sleeping the whole time. I did not attempt to wake the Registrant at any point during the shift.'

The panel also took into account Ms 3's evidence where she told the panel that Mr Raduta had been sitting in the lounge for a significant period of time, with his hood up and had his eyes closed. Ms 3 said that Mr Raduta's stance, with his eyes shut and sitting still, led her to believe that he was sleeping. Further, she told the panel that she had answered all the call bells between 2 – 5am and was unaware of Mr Raduta moving during this period or changing his position.

The panel accepted Ms 3's oral evidence and was of the view that this was consistent with her written statement. The panel noted that all staff are entitled to a one hour break in the Home, however the panel determined that for periods in excess of one hour, between 2 – 5am Mr Raduta was in the lounge room with his hood on, with his eyes closed and in a still position. The panel also accepted that after 5am, Mr Raduta had been sitting on a chair in the hallway near the fish tank and was again assessed as being asleep.

The panel therefore found that it is more likely than not Mr Raduta was asleep on duty.

Charge 2)

That you, a registered nurse;

1) Between 18 and 19 September 2018 refused to assist resident A to sit up.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence provided by Ms 1, Ms 3 and Nurse A. It also took into account Resident A's statement to Ms 1.

The panel had regard to Ms 3's written statement:

> *'Resident A asked the Registrant to sit her up in order for her to take the medication and he grunted and pointed at the bed control and told her to do it herself. Resident A had limited mobility. The bed control was hooked on the cot sides on the left hand side of the bed by the top of her head. The controller was out of her reach and out of her eyesight. When the Registrant pointed at the controller and told her to do itself, Resident A looked upset but I cannot recall whether she cried whilst he was in the room. If the Registrant had taken the controller and put it into her hands then maybe she would have been able to sit herself up. The Registrant did not sit her up. I cannot recall whether* Ms 4 *or I sat her up as a result of this.*
>
> *Within an hour of this incident I went back into Resident A's room to check how she was. Resident A told me that she was upset because the Registrant had told her to sit herself up in the bed […]'*

The panel had regard to Ms 1's written statement:

‘Ms 4, Ms 1 *and Resident A also informed me that Resident A asked the Registrant to sit her up during the night and he pointed at the controller and said words to the effect of ‘I am not pulling you up’ … I would have expected the Registrant to have been kind to her and to have sat her up using the bed control or if she wanted to be moved up the bed, he should have asked* Ms 5 *and* Ms 2 *to help him do this …’*

It is important to sit residents up in the bed when they are taking medication as it reduces their risk of choking on the medication.’

Further, the panel had regard to Resident A’s statement:

‘ […] I said would you be kind enough to sit me up and I pointed to the bed control as I wanted him to pass it to me

He replied I’m not pulling you up and went to go out of the door, for a moment he made to come back in the room but he went.
He didn’t give me any help’

The panel also had regard to Nurse A’s oral evidence where she told the panel that she had found Resident A upset the next morning and had to spend 20-30 minutes with her.

The panel was of the view that all the evidence was consistent in supporting the allegation that Mr Raduta had refused to assist Resident A to sit up. The panel considered Resident A’s report to Ms 3, though hearsay, as credible evidence as it is corroborated by all the oral and documentary evidence.

The panel found that it is more likely than not that Mr Raduta had refused to assist Resident A to sit up.

Charge 3)

That you, a registered nurse;

2) Between 18 and 19 September 2018 refused to assist resident C to sit up or to provide resident C with a drinking cup suited to her disability.

This charge is found proved.

In reaching this decision, the panel took into account Ms 3's oral evidence and written statements.

The panel took into account Ms 3's written statement, which states:

> *'Once the Registrant had put the medication into Resident C's mouth, he did not offer her a drink to take the tablets. Resident C asked him for a drink to take the tablets I cannot the Registrant's exact response to Resident C but I can recall thinking that he was short tempered and had no empathy. Resident C's facial expressions (a wincing expression) indicated that she was upset by the Registrant's behaviour. I believe that Resident C was provided with a drink after this however, I cannot recall whether it was the Registrant that gave it to her. Resident C was able to take her medication eventually. I cannot recall whether Resident C had her specific cup for this. I can recall that she was unable to take the tablets without water. I cannot recall how long it took for Resident C to be provided with a drink […]*
>
> *… Resident C's hands are disabled and she struggles to grip anything so she has a specific cup that she uses when she has a drink. The Registrant tried to give Resident C a beaker and she attempted to use the beaker but she could not grip it as her fingers are bent. Resident C asked the Registrant to give him her specific cup and he sighed and said that he was not going back downstairs to get her specific cup.'*

The panel was of the view that Ms 3's oral evidence was consistent with her written statement.

The panel found that it is more likely than not that Mr Raduta had not provided Resident C with a drinking cup suited to her disability.

The panel was of the view that there was no evidence on whether Mr Raduta had refused to assist Resident C to sit up and as such did not find that part of the charge proved.

Charge 4)

That you, a registered nurse;

3) Between 18 and 19 September 2018, inappropriately administered medication to resident A in that you used an un-gloved hand and failed to provide resident A with a drink to assist the ingestion of the medication.

This charge is found proved.

In reaching this decision, the panel took into account Ms 3's oral evidence and written statement.

In considering whether Mr Raduta had inappropriately administered medication to Resident A, the panel took into account Ms 3's written statement, which states:

> *'I also witnessed the registrant administer medication to Resident A. I went with the Registrant when he administered medication to Resident A because Resident A does not like strangers and as the Registrant was an agency nurse, I knew that she would not be comfortable with him being in her room […]*

When we arrived in the room the Registrant opened his hand and he has Resident A's medication loose in his hand and he used his other hand to pick the tablet up out of his other hand and put into Resident A's mouth. The Registrant was not wearing any gloves.

The panel also had regard to Resident A's statement:

'He came to me and had 2 tablets in his hand which he held over my head as if to drop them into my mouth.'

The panel also had regard to Ms 1's written statement, which states:

'Resident A also told me that the Registrant 'had 2 tablets in his hand which he held over my head as if to drop them into my mouth […]'

The panel was of the view that the hearsay evidence given by Resident A was contemporaneous as it was provided to Ms 1 the next morning and that it was consistent with the evidence provided by Ms 3. Therefore, the panel found that Resident A's evidence corroborated the clear direct evidence given by Ms 3.

In considering whether Mr Raduta had failed to provide Resident A with a drink to assist the ingestion of the medication, the panel had regard to Ms 3's written statement:

'The Registrant did not offer Resident A a drink when he put the medication into her mouth. Resident A asked for a drink however, I cannot recall whether the Registrant subsequently gave her one […]'

The panel also took into account Resident A's statement:

'I said would you be kind enough to give me a drink.'

The panel took into account Ms 3's oral evidence. She told the panel that Mr Raduta had not provided Resident A with a drink at the time of administering her medication.

The panel found that Resident A's evidence showed that she had had to ask for a drink to take the medication having not been provided with one. The panel was of the view that it is a basic duty of care and a normal nursing practice for nurses to provide patients with a drink at the time of administering medication.

The panel found that it is more likely than not that Mr Raduta had inappropriately administered medication to Resident A in that he used an un-gloved hand and failed to provide Resident A with a drink to assist the ingestion of the medication.

Charge 5)

That you, a registered nurse;

4) Between 18 and 19 September 2018, inappropriately administered medication to resident C in that you used an un-gloved hand and failed to provide resident C with a drink to assist the ingestion of the medication.

This charge is found proved.

In reaching this decision, the panel took into account Ms 3's oral evidence and written statement.

The panel took into account Ms 3's written statement, which states:

> *' … Some of Resident C's tablets were large tablets and she needed a drink to swallow them as they are a choking hazard […]*

The Registrant should not have touched the medication. Instead, tablets should be popped out of the blister pack and straight into the medication pot. When giving medication to the residents, the Registrant should have given the pot to the resident or if the resident is to able to the medication from the pot themselves then I would have expected him to have used a spoon to remove the medication from the pot and put it straight into the resident's mouth.

Once the Registrant had put the medication into Resident C's mouth, he did not offer her drink to take the tablets. Resident C asked him for a drink to take the tablets.'

The panel was of the view that Ms 3 had provided clear evidence as to what she saw. Further, her oral evidence was consistent with her written statement.

As with charge 5, the panel was also of the view that Mr Raduta had a duty of care towards Resident C in caring for her healthcare and physical requirements. It was also of the view that it is also normal nursing practice to a provide any patient with a drink at the time of administering medication. The panel was satisfied that Resident C was not provided with a drink at the time of her medication, as she had to ask for a drink.

The panel found it is more likely than not that Mr Raduta had inappropriately administered medication to Resident C in that he used an un-gloved hand and failed to provide Resident C with a drink to assist the ingestion of the medication.

Charge 6)

That you, a registered nurse;

5) Between 18 and 19 September 2018 informed Nurse A that resident B's blood sugar level was 4.5mmols when you had not taken resident B's blood sugar reading.

This charge is found proved.

In reaching this decision, the panel took into account Nurse A's oral evidence and written statement and Ms 2's and the Agency's internal investigation.

The panel had regard to Nurse A's oral evidence where she told the panel that Mr Raduta had told her that Resident B's blood sugar reading was 4.5mmols. She further told the panel that this was very low for Resident B, and therefore she went to check the reading on the glucometer. She told the panel that the glucometer shows a history of the past seven days' readings, and that she could see no evidence of any reading of a 4.5mmols nor any evidence of a reading being taken on the night of 18 to 19 September 2018. Further, she also checked Resident B's blood glucose monitoring chart but there was no record of the pre-supper blood glucose level on 18 September 2018. The panel has had sight of this chart as part of the exhibits.

The panel had regard to Nurse A's written statement:

> *'During the handover, I asked the Registrant what Resident B's blood sugar reading was and he told me it was* 4.5*mmols. I told him that that was a low reading for Resident B but he did not respond. I know that it was a low reading because Resident B reading is usually 12 or 13mmols during the night …*
>
> *I also looked at the handover boo and could see that Resident B's blood sugar reading was not recorded. I looked at Resident B's blood glucose form and the Registrant had not recorded the blood glucose reading there either.*
>
> *I decided to check the glucometer, which shows a history of all the blood glucose readings taken for the previous 7 days, and I could not see any blood glucose reading taken for Resident B during the Registrant's shift. This indicated to me that Registrant had not checked Resident B's blood glucose level […]*'

The panel took account of Ms 2's oral evidence in which she told the panel that Mr Raduta had admitted guessing the blood sugar reading. The panel also had regard to the Agency's internal investigation. In Ms 2's interview notes, she wrote that Mr Raduta *"admitted forgot to write down blood sugar as busy, took the blood sugar but forgot when it was took … took the number but forgot what the number was."*

The panel was of the view that Nurse A was consistent in her oral evidence with her written statement. It accepted that Mr Raduta had given her a reading of 4.5mmols in the handover. The panel found that Nurse A had taken action as a result of Mr Raduta's statement, as this was an abnormal blood sugar level for Resident B. She had tried to understand what had happened overnight by checking the blood glucose monitoring chart and the glucometer to confirm whether the reading was correct.

When all the evidence is considered, the panel found that it is more likely than not that Mr Raduta did inform Nurse A that Resident B's blood sugar level was 4.5mmols when he had not taken Resident B's blood sugar reading.

Charge 7)

That you, a registered nurse;

1) Your actions in charge 6 above were dishonest in that you knew you had not taken resident B's blood sugar level and intended to mislead Nurse A into believing that you had and that the most up to date reading was 4.5mmols.

This charge is found proved.

In reaching this decision, the panel took into account Nurse A's evidence.

Having found charge 6 proved, the panel determined that Mr Raduta was dishonest. Mr Raduta must have known that he had not taken Resident B's blood sugar level and in telling Nurse A that the reading was 4.5mmols, he must have intended to mislead her.

The panel was of the view that Mr Raduta must have known that the reading of 4.5mmols would be relied upon and that he should take and record all blood sugar readings as that allows other colleagues to keep up to date with the care of the patient and to protect patients from the risk of harm.

The panel was therefore satisfied that, on the balance of probabilities, Mr Raduta was dishonest by the standards of ordinary decent people.

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 Raduta'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 Raduta'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 Saville 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 Saville identified the relevant standards where Mr Raduta's actions amounted to misconduct. He referred the panel to the NMC's guidance on misconduct. He submitted that the facts found proved suggest that there is a deep-seated attitudinal issue.

Mr Saville submitted that both factors are relevant to the misconduct in this case. He submitted that Mr Raduta's misconduct was not a single negligent act but a manner of practice in which he consistently committed misconduct over his shift. He submitted that there was a striking similarity between the care and medication administration for Resident A and Resident C. Mr Saville submitted that this shows that this was not a single act, but a pattern of his nursing practice, and submitted that this fell significantly below the standards expected of a registered nurse.

Mr Saville submitted that there were a number of different ways in which Mr Raduta's practice fell below the standard expected. He submitted that Mr Raduta put patients at risk because of his poor hygiene, in using his hands to administer medication, rather than a contact free system. Further, he submitted that Mr Raduta was reluctant to support the medical care for Resident A by failing to sit her up and personal care for Resident C in failing to provide her with her special cup.

Mr Saville referred the panel to the Code and submitted that registrants are required to uphold the dignity and treat patients with kindness, respect and compassion and deliver treatments with care or assistance without undue delay which includes the fundamentals of care and specifically, the need for hydration and nutrition care. Further, he submitted that there is a requirement that registrants cater to the physical, social and psychological care of patients are responded to. He submitted that the failure to complete basic clinical tasks such as administering medication appropriately and to provide a drink when administrating medication to Resident A and Resident C fell below the standards of the Code.

Mr Saville submitted that Mr Raduta's blasé attitude by sleeping on shift made him incapacitated and unable to respond if an emergency was required. He submitted that he would be expected to maintain and treat patients effectively, and if Mr Raduta was asleep, he was not able to do that.

Mr Saville submitted that dishonesty is serious and amounts to misconduct. He submitted that Mr Raduta's dishonesty related to a clinical setting during the care of a vulnerable patient. He submitted that Mr Raduta was intentionally dishonest and did so, in a clinical setting.

Further, Mr Saville submitted that Ms 1 and Ms 3's reaction to Mr Raduta's actions was that they had never seen medication administered in that way; that it was a basic failing that any nurse who had received training would understand; and that it was beyond the standards expected of a registered nurse.

Mr Saville submitted that there was potential clinical risk to the residents in the Home. He submitted that Mr Raduta not monitoring Resident B's blood sugar levels using the glucometer had increased the risk of hypoglycaemia. The inappropriate medication administration to Resident A and Resident C had increased the risk of choking by not providing a drink. Mr Saville submitted that Mr Raduta's clinical practice and behaviour

had caused Resident A to be upset and had an effect on her. He submitted that Mr Raduta had failed to treat the residents with respect and dignity.

Submissions on impairment

Mr Saville 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 Saville submitted that Mr Raduta had not taken steps to strengthen his practise and therefore reduce the risk of repetition. He submitted that, because of Mr Raduta's blasé attitude, the risk of repetition is high, even though his misconduct could be said to be remediable.

Mr Saville referred the panel to the case of *CHRE v NMC and Grant*. He submitted the one of the factors that the panel must take into account is whether the registrant had acted in the past or is liable in the future to act so to put a patient at an unwarranted risk of harm. He submitted that Mr Raduta not taking Resident B's blood sugar reading could have had a potentially harmful impact on her. Further, Mr Raduta being asleep while on duty and his administering medication inappropriately without a drink had put residents at an unwarranted risk of harm.

Mr Saville informed the panel that the second factor that the panel must take into account is whether the registrant had acted dishonestly in the past or is liable to act dishonestly in the future. He submitted that the panel had found charge 7 proved.

Mr Saville submitted that a minor matter may become more serious because the registrant failed to demonstrate insight. He referred the panel to Mr Raduta's email on 4 February

2020 and submitted that Mr Raduta continued to deny the allegations and had moved to another country. He submitted that this highlighted Mr Raduta's blasé attitude as he had not confronted the concerns about his practice. Further, he submitted that Mr Raduta had lied to Ms 2 during the Agency's internal investigation by stating that he had taken a blood sugar reading for Resident B. He has continued to deny the allegations; has not engaged with the NMC and has not taken part in this substantive hearing. Mr Saville submitted that demonstrates that he has no insight into the concerns and that therefore, there is an inherent risk of the misconduct being repeated.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: These included: *Roylance v GMC*, *Cheatle v General Medical Council* [2009] EWHC 645), *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin) and *CHRE v NMC and Grant*.

Decision and reasons on misconduct

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

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

> ***'1 - Treat people as individuals and uphold their dignity***
> *To achieve this, you must:*
>
> *1.1 treat people with kindness, respect and compassion*
>
> *1.2 make sure you deliver the fundamentals of care effectively*

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

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

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

3 - Make sure that people's physical, social and psychological needs are assessed and responded to

8 - Work co-operatively

To achieve this, you must:

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

14 - Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

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

20 - Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times …

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, it determined that Mr Raduta's failings and dishonesty amounted to misconduct.

The panel considered that Mr Raduta's failings, which included dishonesty, demonstrated a significant departure from the standards expected of a registered nurse. The panel considered that nurses may make an error or forget to complete a task, but it is their duty to report that error, in order to protect the patient. The panel was of the view that Mr Raduta had known that he had not taken the blood sugar reading for Resident B and did not disclose this to Nurse A; rather he misled her by informing her that the blood sugar level was 4.5mmols. There was no actual harm caused to Resident B but there was a risk of harm.

The panel considered that Mr Raduta's actions in sleeping when on duty caused a risk of harm to patients as it meant that he unprepared to respond if there was an emergency. Further, Mr Raduta failed to respond to Resident A's and Resident C's physical and psychological needs when administering medication by failing to support Resident A to sit up to avoid the risk of choking or provide Resident C with her special cup that was suited to her disability. The panel considered that Mr Raduta's failings and omissions demonstrates serious attitudinal issues.

The panel determined that Mr Raduta's failings and dishonesty put vulnerable patients at real risk of significant harm. It also determined that his actions in Charges 1, 2, 3, 4, 5, 6, and 7 did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct. Further, it also determined that Mr Raduta's misconduct would undermine public confidence in the nursing profession.

Decision and reasons on impairment

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

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

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel determined that all four limbs of the Grant test were engaged in this case.

The panel has found that Resident A, Resident B and Resident C were at a real risk of harm as a result of Mr Raduta's misconduct. Further, having found multiple breaches of the Code and dishonesty, the panel determined that Mr Raduta's misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. All of these factors show why at the time of the charges Mr Raduta was impaired.

The panel had no evidence before it from Mr Raduta addressing the impact his actions could have had on the residents, his colleagues, the nursing profession and the wider public as a whole. The panel also noted that Mr Raduta has not engaged with the NMC since his email of 4 February 2020, in which he continued to deny the allegations against him, some two years after the incidents. The email did not properly address any of the concerns identified. Therefore, the panel was of the view that Mr Raduta has not demonstrated any insight into his misconduct or dishonesty. The panel could not be satisfied that Mr Raduta understands and appreciates the seriousness of his dishonesty and failure to act appropriately.

In considering whether Mr Raduta has remedied his nursing practice, the panel noted that it did not have any information before it of any steps taken by him to strengthen his

practice. The panel was of the view that Mr Raduta's misconduct is potentially remediable. However, it acknowledged that dishonesty and attitudinal issues are often more difficult to remediate than clinical concerns.

The panel therefore considered that there remains a risk of repetition of Mr Raduta's failings and dishonesty and, therefore, a risk of unwarranted harm to patients in his care, should adequate safeguards not be imposed on his nursing practice. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

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

While the panel noted that the charges occurred during one shift, it found the charges proved serious, showed a pattern of behaviour, illustrated a deep-seated attitudinal issue and included dishonesty. It was of the view that a fully informed member of the public would be concerned by its findings on facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that Mr Raduta's registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Saville informed the panel that in the Notice of Hearing, dated 7 February 2022, the NMC had advised Mr Raduta that it would seek the imposition of a suspension order for a period of six months with a review if it found Mr Raduta's fitness to practise currently impaired.

Mr Saville invited the panel to impose a six-month suspension order with a review. He submitted that this would be the only suitable sanction to address the regulatory and dishonesty concerns.

Mr Saville submitted that neither taking no further action nor a caution order would be appropriate in the particular circumstances of this case due to the seriousness of the misconduct.

Mr Saville also submitted that proportionate and workable conditions of practice could not be formulated to mitigate the risk to patient safety and address the public interest ground. He submitted that Mr Raduta's misconduct may have arisen from a shift, but that there are attitudinal issues and dishonesty involved and conditions would not address the concerns and would not reflect the seriousness of Mr Raduta's misconduct. Further, he submitted that in the absence of Mr Raduta's engagement with the NMC, a conditions of practice order would not be a sufficient or appropriate response. He submitted that a conditions of practice order is usually put in to place to address specific concerns and the conditions must be measurable, workable, and proportionate. He submitted that a conditions of practice order is not appropriate in cases where the concerns include lack of candour and dishonesty.

Mr Saville submitted that a six-month suspension order with a review would mark the seriousness of Mr Raduta's behaviour and misconduct and thus declare and uphold the standards of the profession, protecting the public's trust and confidence in the profession.

Mr Saville submitted that a striking-off order is likely to be appropriate when what the registrant has done is fundamentally incompatible with being a registered professional. He submitted that given that the incidents arose from single shift, the panel may consider that a striking-off order is disproportionate at this stage.

Decision and reasons on sanction

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

Having found Mr Raduta's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Lack of insight into failings;
- Multiple issues arising out of a single shift;
- Dishonesty maintained during the Agency's internal enquiry and in correspondence with the NMC; and
- Conduct which put patients at risk of suffering harm and caused a vulnerable patient distress.

The panel did not have evidence of any mitigating features.

The panel considered the NMC's guidance on dishonesty. In light of the circumstances, the panel determined that Mr Raduta's dishonest conduct in informing Nurse A that Resident B's blood sugar level was 4.5mmols when he had not taken Resident B's blood sugar reading was a deliberate breach of the professional duty of candour. Mr Raduta's misconduct and dishonesty also had a direct risk of harm to Resident B. The panel took into account that this was dishonesty relating to a single shift but that it was maintained for a period of time during the Agency's internal investigation with Ms 2 and in correspondence with the NMC. Further, the panel was also of the view that Mr Raduta's misconduct had also caused a vulnerable patient distress.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be 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 Raduta'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 Raduta'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 Mr Raduta's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable.

As Mr Raduta has not engaged with the NMC process, nor with this substantive hearing, the panel is of the view that there are no practical or workable conditions that could be

formulated at this stage, given the nature of the findings and all the circumstances in this case. The panel has had no information to suggest that Mr Raduta has insight into his misconduct; has remediated the concerns; or that he understands the impact his actions have had on the residents, colleagues, and the nursing profession. Further, Mr Raduta's misconduct included dishonest conduct which would be difficult to remediate. Therefore, the panel concluded that the placing of conditions on Mr Raduta's registration would not adequately address the seriousness of this case. A conditions of practice order would not protect the public, nor would it satisfy the public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- The seriousness of the misconduct requires a temporary removal from the NMC Register.
- A single instance of misconduct but where a lesser sanction is not sufficient.

The panel considered whether the seriousness of this case could be addressed by temporary removal from the register and whether a period of suspension would be sufficient to protect patients and satisfy the wider public interest concerns. When considering seriousness, the panel took into account the extent of the departure from the standards to be expected of a registered nurse and the risk of harm to the public interest caused by that departure.

In considering the sanctions guidance regarding a suspension order, the panel remained concerned that it had already identified attitudinal issues in this case. Further, Mr Raduta had demonstrated no insight into his failings. The panel did go on to seriously consider whether a striking-off order would be proportionate. The panel reminded itself that although Mr Raduta demonstrated attitudinal issues, the charges concerned a single shift and the most serious element, the dishonesty, arose from a single statement. The panel

therefore found that the misconduct was not fundamentally incompatible with remaining on the register. It was satisfied that a suspension order was proportionate and would adequately protect the public while it was in place. It considered that the public interest considerations can be satisfied by a less severe outcome than permanent removal from the NMC register. The panel did consider this to be a finely balanced decision, but it reminded itself that the purpose of a sanction is not to be punitive, and it decided that Mr Raduta should be afforded the opportunity to demonstrate insight, remorse, and remediation into his misconduct. Therefore, the panel concluded that a striking-off order was not necessary in Mr Raduta's case, at this stage.

Balancing all of these factors the panel has concluded that a six-month suspension order would be the appropriate and proportionate sanction and would mark the seriousness of the misconduct. 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 had no specific information before it relating to Mr Raduta's current employment status. It noted the hardship such an order may cause Mr Raduta. However, this is outweighed by the public interest in this case.

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:

- Mr Raduta's full engagement with the NMC in the future;
- Attendance at any future hearing;

- A detailed reflective piece to demonstrate Mr Raduta's insight into his misconduct and the impact it had on the residents, colleagues, the public confidence in the nursing profession and the public;
- Evidence of any up-to-date training, specifically addressing the concerns in this case; and
- Evidence of relevant testimonials from Mr Raduta's current employer, whether in paid or unpaid employment. This must have particular regard to his failings found proved.

This will be confirmed to Mr Raduta 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 Mr Raduta's own interest until the suspension 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 Saville. He submitted that interim order is necessary to protect the public and in the wider public interest until the suspension order comes into effect.

Mr Saville submitted that Mr Raduta's misconduct led to a risk of patient harm. He submitted that in the absence of any insight or remediation by Mr Raduta, there is an ongoing risk.

Mr Saville, therefore, invited the panel to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period and any period of appeal.

Decision and reasons on interim order

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

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 due to cover the 28-day appeal period and any period of appeal.

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

That concludes this determination.