Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday 1 – Friday 11 March 2022

Virtual Hearing

Name of registrant:	David Speers
NMC PIN:	95J0266N
Part(s) of the register:	Registered Nurse – Sub Part 1: RNA: Adult Nurse, Level 1 (28 September 1998)
Area of registered address:	Belfast
Type of case:	Misconduct
Panel members:	Louise Fox (Chair, lay member) Michael Murphy (Registrant member) Ian Dawes (Lay member)
Legal Assessor:	Alain Gogarty
Hearings Coordinator:	Catherine Acevedo
Nursing and Midwifery Council:	Represented by Sophia Kerridge, Case Presenter
Mr Speers:	Not present or unrepresented
Facts proved:	Charges 1, 2b, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16
Facts not proved:	Charges 2a, 3a, 3b, 7, 11a, 11b, 11c,
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 Mr Speers was not in attendance and that the Notice of Hearing letter had been sent to Mr Speers registered email address on 20 January 2022.

Ms Kerridge 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 venue of the hearing and, amongst other things, information about Mr Speers' 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 Speers 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 Speers

The panel next considered whether it should proceed in the absence of Mr Speers. It had regard to Rule 21 and heard the submissions of Ms Kerridge who invited the panel to proceed in the absence of Mr Speers. She submitted that Mr Speers had voluntarily absented himself.

Ms Kerridge referred the panel to a telephone note written by an NMC case officer from 22 February 2022 which stated

“I contacted Mrs Speers (Representative) and she informed me that both her or the Registrant will not be participating at the hearing when it starts on 1 March 2022.

The Registrant's [PRIVATE] an does not feel able to participate (sic)and Mrs Speers informed me that she now does not feel able to Represent her husband at the hearing.

I asked if the Registrant was happy for the hearing to proceed in his absence, and she confirmed yes, both her and the Registrant are happy for the hearing to proceed in absence on 1 March 2022. Mrs Speers (Representative) confirmed that the Registrant will provide a statement to be presented to the panel as his response.”

On the first day of the hearing neither Mr Speers nor his representative Mrs Speers were in attendance. As they had previously indicated they would be attending the hearing, to be clear of their current intentions, Ms Kerridge made further enquiries which resulted in the NMC case officer contacting Mr Speers by telephone as set out in the telephone note from 1 March 2022 which stated:

“I called Registrant this morning to ask for his confirmation that he is happy for the hearing to proceed in his absence and whether he would confirm in an email. Registrant confirmed to me that he does not wish to participate at the hearing and is happy for the hearing to go ahead in his absence, but was not willing to respond by email”.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Speers. In reaching this decision, the panel has considered the submissions of Ms Kerridge and the advice of the legal

assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Speers;
- Mr Speers has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- 7 witnesses have been warned to give live evidence;
- 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 2016-2018;
- 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 Speers in proceeding in his absence. 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 and weaknesses in the evidence which it identifies. The panel also has Mr Speers' written responses from March 2021 and February 2022.

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

Details of charge (as amended)

That you, a registered nurse:

1) On 8 or 13 September 2016 removed a quantity of Amitriptyline 25mg from the drugs of misuse cupboard without recording the administration or purpose of removal of the drugs.

2) On 23 September 2016;
   a) Failed to record the discontinuation of Clarithromycin on Patient J's Medication Administration Record;
   b) Failed to remove and dispose of the discontinued Clarithromycin.

3) On 28 September 2016;
   a) Failed to administer prescribed antibiotics to Patient K;
   b) Failed to record any reasons for the non-administration of the antibiotics to Patient K.

4) On 27 September 2016 administered 3 Tramadol tablets to Patient C which had not been prescribed to Patient C.

5) On 9 December 2016 falsely recorded on the Medication Administration Record of Patient I that you had administered Patient I with Gabapentin Oral Solution as a 'supervised swallow' between 12 – 14.30pm and between 4 – 6pm.

6) Your actions in charge 5 above were dishonest in that Patient I had been discharged from the prison at 09:08 on 9 December 2016 therefore you knew that you had not administered the Gabapentin Oral Solution to Patient I at the times stated in charge 5 above.

7) On 29 December 2016 administered Carbamazepine to Patient B as ‘in possession’ medication when Patient B had been risk assessed as unsuitable for ‘in possession’ medication administration.

8) On 10 January 2017 administered a quantity of Vensir and Propanolol to Patient H when Patient H had not been prescribed Vensir or Propanolol.

9) On 10 January 2017 destroyed Patient H’s Medication Administration Record chart on which you had recorded the previous day’s administration of Vensir and Propanolol in charge 8 above, replacing it with a new chart.

10) Your actions in charge 9 above breached the duty of candour in that you knew by destroying the Medication Administration Record chart and replacing it with a new chart you would be concealing the medication administration error detailed in charge 8 above.

11) On 10 January 2017 administered a quantity of Diazepam to Patient C and;
    a) Patient C did not have a current prescription for Diazepam.
    b) You administered the Diazepam to Patient C as ‘in possession’ medication notwithstanding that Diazepam must only be administered as a ‘supervised swallow’ medication within the prison healthcare setting.
    c) You failed to record the administration of Diazepam to Patient C.

12) On 23 April 2017 failed to raise a discrepancy when recording the number of remaining Concerta drugs during an audit of controlled drugs.

13) On 12 May 2017 had possession of the medicine keys when you were expressly forbidden to have possession of them.

14) On 12 May 2017 completed various patient's Medication Administration Record charts confirming the administration of medication which had not yet been administered.

15) On 1 February 2018 failed to disclose, when asked at interview, that you were subject to an NMC investigation.

16) Your actions in charge 15 above were dishonest in that you knew you were subject to an NMC investigation.

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, Ms Kerridge made a request that parts of this case be held in private on the basis that exploration of Mr Speers' case may involve reference to his health at some point. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

Having heard that there may be reference to Mr Speers' health, the panel determined to hold those parts of the hearing in private.

Decision and reasons on application to allow telephone evidence of Mr 3

The panel heard an application made by Ms Kerridge under Rule 31 to allow Mr 3 to give evidence by telephone instead of video call. Mr 3 was unable to access the hearing via video link from his place of work in the prison system because of security reasons. Mr 3 was available to give evidence by telephone.

In the preparation of this hearing, the NMC had indicated to Mr Speers in the Case Management Form (CMF) dated 1 March 2021, that it was the NMC's intention for Mr 3 to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Mr 3, Mr Speers made the decision not to attend this hearing. On this basis Ms Kerridge advanced the argument that there was no lack of fairness to Mr Speers in allowing Mr 3 to give evidence over the telephone instead of by video link.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. He referred the panel to Rule 2ZA which stated that meetings and hearings arranged under these Rules may be conducted using audio or video conferencing facilities.

The panel gave the application in regard to Mr 3 serious consideration. The panel noted that Mr 3's statement had 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 signed by her/him.

The panel considered whether Mr Speers would be disadvantaged by the change in the NMC's position of moving M 3's evidence from video link to that of a telephone call. The panel considered that Mr Speers had been provided with a copy of Mr 3's statement and he would still be giving live evidence via telephone. The panel had already determined that Mr Speers had chosen voluntarily to absent himself from these proceedings and he would not be in a position to cross-examine this witness in any case. The panel considered there was also a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel concluded that it would be fair and relevant to allow Mr 3 to give evidence over the telephone, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Kerridge on behalf of the NMC, to amend the wording of charges 1, 4, 5 and 8.

It was submitted by Ms Kerridge that the proposed amendments to charges 1, 4, 5 and 8 would provide clarity and more accurately reflect the evidence that has come out so far.

Charge 1

On **8 or** 13 September 2016 removed a quantity of Amitriptyline 25mg from the drugs of misuse cupboard without recording the administration or purpose of removal of the drugs.

Charge 4

On ~~30~~ **27** September 2016 administered 3 Tramadol tablets to Patient C which had not been prescribed to Patient C.

Charge 5

On 9 December 2016 falsely recorded on the Medication Administration Record of Patient I that you had administered Patient I with Gabapentin Oral Solution as a 'supervised swallow' between 12 – ~~12.30~~ 14:30pm and between 4 – 6pm.

Charge 8

On ~~9~~ **10** January 2017 administered a quantity of Vensir and Propanolol to Patient H when Patient H had not been prescribed Vensir or Propanolol.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that the amendments to charges 1, 4, 5 and 8, as applied for, were in the interest of justice. The panel decided that the proposed amendments did not change the nature or scope of the allegation but would ensure clarity and accuracy and better reflect the evidence. The panel was satisfied therefore that there would be no prejudice to Mr Speers and no injustice would be caused to either party by the proposed amendments being allowed.

Background

Mr Speers has been a registered adult nurse since 1998. Mr Speers started employment at the South Eastern Health & Social Care Trust ("the Trust") in 1999 as a Staff Nurse. A referral was made to the NMC about Mr Speers on 25 October 2017 and he was informed of this by letter on 3 November 2017.

The charges arose when Mr Speers worked as a Staff Nurse in Prison Healthcare based in HMP Hydebank Wood College. Mr Speers started work here on 5 July 2016. When Mr Speers started at the Trust, he was supernumerary for four to six weeks during which time he would have worked alongside and been supervised by nursing staff to familiarise himself with the systems, policies and procedures around the administration and recording of medication in the prison environment. In addition, Mr Speers was subject to an induction process that would be reviewed at three, six and twelve months.

There was a meeting with Mr Speers on 1 November 2016 during which a number of incidents were raised with him and an action plan was put in place. Mr Speers was transferred to HMP Maghaberry on restricted duties starting 17 April 2017. On 13 June 2017, Mr Speers had a formal disciplinary meeting. By this stage, Mr Speers was restricted to administrative work only. Mr Speers resigned from the Trust on 15 September 2017.

Decision and reasons on facts

The panel had Mr Speers' written responses to the charges dated 1 March 2021 and 28 February 2022. The panel noted that Mr Speers appeared to make admissions to some of the charges in these responses but this was not always consistent between the two documents and in the panels view were equivocal. Therefore, the panel decided that it would not find any of the charges proved by Mr Speers' admissions alone and it would make its own decision on each of the charges after it heard all the evidence.

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

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: Nursing Team Lead at Hydebank Wood College (the Prison) at the time of the allegations

- Ms 2: Senior Nurse at HMP Maghaberry, South Eastern Health and Social Care Trust;

- Mr 3: Senior Nurse at HMP Maghaberry, South Eastern Health and Social Care Trust;

- Ms 4: Agency Nurse working Hydebank Wood College

- Mr 5: Staff Nurse;

- Ms 6: Nurse Manager at Somme Nursing Home;

- Ms 7: Staff Nurse;

The witness statement of Ms 8 was admitted into evidence by agreement of the parties without the necessity of formal proof.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

> *On 8 or 13 September 2016 removed a quantity of Amitriptyline 25mg from the drugs of misuse cupboard without recording the administration or purpose of removal of the drugs.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1 and Mr Speers' responses.

A patient was committed to the prison on 8 September 2016 and Mr Speers carried out the committal assessment. This was recorded on EMIS which is the prison electronic heath record system. This patient was not prescribed Amitriptyline. There was no record on EMIS of the patient bringing Amitriptyline 25mg tablets with him into the prison.

The panel heard evidence from Ms 1 that the 'drugs of misuse cupboard' is used to store securely drugs that are commonly misused and can be used as currency in prison.

The panel had sight of the patient's Medication Administration Record (MAR) and there was no record of them receiving Amitriptyline on either the 8 or 13 September 2016. The panel also had sight of the 'Drugs of Misuse Cupboard Recording Book' and took into account Mr Speers had recorded that he had removed a quantity of Amitriptyline 25mg tablets on 13 September 2016 for that patient.

The panel noted that Mr Speers had been inconsistent in his various responses to this allegation. The panel took into account that Mr Speers did not dispute removing a quantity of Amitriptyline 25mg tablets from the cupboard and failing to record the administration or purpose of their removal. When interviewed by Ms 1 as part of her investigation, Mr Speers could not explain why he took them. He later said that he destroyed the tablets but he did not record this. Having considered all the evidence, the panel found charge 1 proved.

Charge 2a

On 23 September 2016;

a) Failed to record the discontinuation of Clarithromycin on Patient J's Medication Administration Record;

This charge is found not proved.

In reaching this decision, the panel took into account the evidence of Ms 1, Mr 5, Ms 7 and Mr Speers' responses.

As this charge alleges a 'failure' to perform an act for it to be proved the NMC must first establish that Mr Speers was under a duty to do that which is he is alleged to have failed to do, and that he did in fact fail in that duty.

Patient J was prescribed Clarithromycin on 22 September 2019. On 23 September at 09:03, Mr Speers noted on EMIS that *"Problem: antibiotic can react with carbamazepine. Result: pharmacy will speak with gp and switch antibiotic".* At 11:32 on the same day the GP changed the prescription to Phenoxymethylpenicillin, 56 tablets, two to be taken four times a day.

On 24 September 2016 Ms 7 and Mr 5 were administering 'supervised swallow' medication (medication that a nurse had to witness being swallowed before signing that it had been administered) at Beech House when they came across the Clarithromycin tablets in the in-possession cupboard (in-possession medication is medication that is given out weekly to patients for them to administer themselves).

Ms 7 and Mr 5 both confirmed in their written and oral evidence that there was no information written on the label to say the medication should not be administered nor was there anything written on Patient J's MAR regarding the Clarithromycin.

Mr 5 stated in oral evidence that there was no need to record the discontinuation of Clarithromycin on the MAR chart as Clarithromycin was not a live medication and the medication had not been started. The panel also took into account the evidence of Ms 1 and Ms 7 who both confirmed that Clarithromycin was not a live medication. The panel heard from all three witnesses that the medication should have been disposed of, or

returned to the pharmacy to prevent it being administered to the patient in error and not left in the medication cupboard.

The panel determined that as Clarithromycin was no longer prescribed, there was no obligation on Mr Speers to record the discontinuation on the MAR chart. Therefore, the panel considered that the NMC had not made out there was a duty on Mr Speers and therefore found charge 2a not proved.

Charge 2b

On 23 September 2016;

b) Failed to remove and dispose of the discontinued Clarithromycin.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1, Mr 5 and Ms 7 and Mr Speers responses.

The evidence of Ms 1 was that where Mr Speers was in possession of medication that was not to be given to the patient, he would have been under the obligation to dispose of the medication so there would be no risk of it being given to the patient in error.

Mr Speers' response to the charge was that he had handed over to the night staff and written extensive notes about the Clarithromycin being discontinued. However, neither Mr 5 nor Ms 7 could remember seeing any notes or being told verbally about Clarithromycin during the handover process. During Mr Speers' interview on 1 November 2016, Mr Speers said he did not dispose of the tablets because he did not think he should but he acknowledged the risk caused by having left them in the cupboard.

The panel considered that the duty was proved. Mr Speers should have disposed of this medication and any nurse would know that that is what they should do if medication was not needed. The panel was satisfied by the witnesses' evidence that Mr Speers had a duty to remove and dispose of the medication and failed to do so and therefore found charge 2b proved.

Charge 3a

On 28 September 2016;

a) Failed to administer prescribed antibiotics to Patient K;

This charge is found not proved.

In reaching this decision, the panel took into account the evidence of Ms 8 and Mr Speers' responses.

Patient K was prescribed antibiotic medication for acne (Lymecycline) on 28 September 2016 to be taken each morning. The nurse on duty that day would have been responsible for administering the antibiotics to Patient K that day.

Ms 8 in her written statement said she found this medication in the in-possession cupboard for weekly medication and realised that it had not been given the previous day when the medication was delivered from the pharmacy. She checked and there was no evidence of administration in the MAR.

Ms 8's evidence is that it is the nurse's responsibility who receives the medication to ensure it is administered in line with the prescription/MAR and to store it appropriately. Where medication is not administered or issued, it should be put it in the medicine trolley and documented with the reason set out in the handover book, MAR and EMIS.

The panel took into account that there were inconsistencies with the dates relating to this charge. Ms 8 said in her witness statement regarding the incident on 28 September 2016 “I do not recall who else was on shift that day, nor am I sure that [Mr Speers] was also working on this day”. Later in her witness statement she writes “As the registrant had been working in this room the previous day it would have been his responsibility to update the record”. It was not clear to the panel which date she was referring to as the previous day.

In her contemporaneous incident form, Ms 8 states *“Whilst working on 28.9.16 in cedar medical room in the evening…I noted that there was a box of antibiotics medication for Patient [K] this had not been given to the patient on the previous day by Nurse Speir (sic) and no information left for nurse on duty the following day…Senior nurse was informed.. and medication given to the patient”.*

The panel considered this suggested she was referring here to the medication arriving on 27 September 2016 and the medication being given to the patient by her on 29 September 2016.

The panel also had sight of the MAR chart for Patient K. There is no record of the antibiotic being administered on 28 September 2016, nor 29 September 2016 either as suggested in Ms 8's contemporaneous incident form. The first time it is recorded as administered in the MAR card is 30 September 2016 signed for by Ms 8. There is no explanation give for this. As Ms 8 was not present to give evidence and be questioned, the panel were not able to gain clarification over any of these inconsistences.

The panel noted Mr Speers accepted the statement of Ms 8 although it appears that he could not properly recall the incident.

The panel was of the view that it was unclear which date the incident had occurred on and whether Mr Speers had indeed been working on the day of the incident. The panel determined that the NMC had not made out charge 3a because of the inconsistencies in

the evidence and the lack of clarity surrounding the date in question. The panel therefore found this charge not proved.

Charge 3b

On 28 September 2016;

b) Failed to record any reasons for the non-administration of the antibiotics to Patient K.

This charge is found not proved.

The panel determined that charge 3b is predicated on finding charge 3a proved. As 3a was not proved, charge 3b falls away.

Charge 4

On 27 September 2016 administered 3 Tramadol tablets to Patient C which had not been prescribed to Patient C.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1 and Ms 8 and Mr Speers' responses.

In her evidence, Ms 1 explained that in the prison environment certain medication, including Tramadol, can be used as currency and it would be "classic behaviour" for Patient C to try and obtain additional medication from nursing staff. However, a nurse could not administer medication that went beyond the current prescription, it was only for a doctor to prescribe more. She expected any nurse to know that they were not qualified to give additional medication without a prescription in any environment.

Ms 8 said in her statement *"When I asked Patient C why he received extra tablets on the above date, he stated that he went to the treatment room where he told [Mr Speers] he lost his medication and he issued four tablets to him. I called [Mr Speers] to confirm the extra amount and he confirmed that he issued the drug upon the patient telling him that he had lost his medication".*

Mr Speers accepted in his response to the NMC allegation on 1 March 2021, that he administered 4 Tramadol tablets to Patient C on 27 September 2016 and this is reflected in the MAR chart where Mr Speers recorded that he gave Patient C 4 Tramadol tablets on that date. He stated he was manipulated by Patient C whilst he was still in his induction period and in his later response he said that his intentions were misguided.

The panel was of the view that Mr Speers recognised that this incident occurred and should not have. The patient's prescription was clearly labelled in the MAR and had not been renewed or updated when Mr Speers decided to administer further Tramadol tablets to Patient C on 27 September 2016 outside what was permitted by the prescription.

The panel noted the charge relates to the administration of 3 Tramadol tablets and the panel found that Mr Speers had administered 4 tablets. However, the panel finds this charge proved on the basis that Mr Speers administered at least 3 Tramadol tablets. The panel therefore found charge 4 proved.

Charge 5

> *On 9 December 2016 falsely recorded on the Medication Administration Record of Patient I that you had administered Patient I with Gabapentin Oral Solution as a 'supervised swallow' between 12 – 14.30pm and between 4 – 6pm.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1 and Mr Speers' responses.

The evidence establishes that Patient I had a prescription for Gabapentin Oral Solution to be taken three times per day as a supervised swallow. Patient I was discharged from prison at 09:08 on 9 December 2016 and released from Court at 10:30. However, Patient I's MAR, as filled in and signed as administered by Mr Speers, shows that Gabapentin was administered on three occasions that day, the latter two being between 12:00-14:30 and 16:00-18:00.

Mr Speers accepted in his responses that he recorded he had administered Gabapentin to Patient I at those times and this is reflected in the MAR chart. He stated in his response of March 2021 "*I asked for guidance on procedure and received no reply. Prisoners are released with no record of 3-day supply of medication, in my error I noted that I gave "suspended swallow" for the rest of the day, my error but I could not understand why medication was given to prisoners on release with no record of the same".*

Ms 1 explained that Mr Speers' account that he was recording the three-day supply in this manner, made no sense: she said the patient would not be discharged with oral medication and would have been given a three-day supply of tablets which would have been recorded on the front of the MAR not signed for as administered. When patients went to Court they did not often know if they would return or not so sometimes patients were released without medication at all.

It is clear from the evidence that it would not have been possible for the medication to be administered between 12:00 and 14:30 and 16:00 and 18:00 because Patient I left the prison at 09:08am and did not return. The panel concluded that Mr Speers recorded two false entries that he had administered medication into Patient I's MAR as 'supervised swallow' at those times and therefore found charge 5 proved.

Charge 6

Your actions in charge 5 above were dishonest in that Patient I had been discharged from the prison at 09:08 on 9 December 2016 therefore you knew that you had not administered the Gabapentin Oral Solution to Patient I at the times stated in charge 5 above.

This charge is found proved.

In reaching this decision, the panel took into account its finding at charge 5 and Mr Speers' responses.

In its approach to this charge, the panel applied the two stage test of dishonesty set out in paragraph 74 of the decision in *Ivey v Genting Casinos* (UK) Ltd [2017] UKSC 67. Paragraph 74 states:

"*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest".*

The panel took into account that Mr Speers does not dispute that he made a false entry into the patient's MAR. He also accepts that this was dishonest. The panel considered that Mr Speers would be aware that Gabapentin could only be given as a 'supervised swallow'. This would not have been possible on 9 December 2016 between 12:00-14:30 and 16:00-

18:00 because Patient I was not on the premises after 09:08. It considered that Mr Speers knew that when patients went to Court they did not often know if they would return or not so sometimes patients were released without medication at all. Mr Speers was aware of this process since he would have encountered this since this was a regular occurrence at the prison. As an experienced nurse, Mr Speers should have known it was not acceptable to record medication being administered when that is not accurate.

The panel was of the view that Mr Speers was aware that when he falsely recorded that he had administered Patient I with Gabapentin that he had not actually administered it and he had recorded it on the MAR chart. Having applied the first part of the test, the panel next considered whether Mr Speers' actions would be regarded as dishonest by the standards of ordinary decent people and decided it would. Therefore found charge 6 proved.

Charge 7

> *On 29 December 2016 administered Carbamazepine to Patient B as 'in possession' medication when Patient B had been risk assessed as unsuitable for 'in possession' medication administration.*

This charge is found not proved.

In reaching this decision, the panel took into account the evidence of Ms 8 and Mr Speers' response.

The evidence of Ms 8 is that on the morning of 30 December 2016, Patient B went to the treatment room for his morning medication and communicated to her that he had been given an envelope with medication in it by the "older male nurse" the day before. He said he took the Carbamazepine tablet that morning. He gave Ms 8 the brown envelope that the medication was allegedly given in.

The panel had sight of the MAR card for Patient B. The panel was not satisfied based on the evidence presented on the MAR that it could identify that Carbamazepine was administered to Patient B on 29 December 2016. The panel did not hear live evidence from Ms 8 and could not question her about this incident. The panel had no direct evidence from Patient B nor was there any direct witness to this incident. Mr Speers in his response to the allegation on 1 March 2021 said he denied this charge.

Therefore the panel was not satisfied on the balance of probabilities that Patient B was administered Carbamazepine on the day in question or that Mr Speers had been the one to administer it. The panel determined that the NMC have not made out its case that Mr Speers had administered the medication and therefore found charge 7 not proved.

Charge 8

> *On 10 January 2017 administered a quantity of Vensir and Propanolol to Patient H when Patient H had not been prescribed Vensir or Propanolol.*

This charge is found proved.

In reaching this decision, the panel took into account Ms 4's evidence and Mr Speers' response.

Patient H had a committal interview with Ms 4 on 9 January 2017. There is no mention in the EMIS record of the assessment that they were prescribed Vensir or Propanolol or that they brought either medication into prison with them. That night the out of hours GP Prescribed Librium for Patient H as they were experiencing alcohol withdrawal symptoms and the EMIS record shows this was administered at 22:55.

Ms 4's evidence was that on 10 January 2017 she spoke with Patient H who told Ms 4 that she had already taken her medication. Ms 4 said in her evidence that Patient H specified she had been given Vensir and Propranolol. Ms 4 checked the MAR card which had

Vensir and Propranolol labels on it which had been signed off by Mr Speers as administered. She compared this to the EMIS and then checked with the Senior Nurse who confirmed that these were old prescriptions and so the administration of Vensir and Propranolol was incorrect.

Ms 4 told the panel that when she checked EMIS she saw Vensir and Propanolol had been previously prescribed for Patient H before but as it was not prescribed by the prison GP for this committal it was not considered a live prescription and should not have been administered. On 09.34 on 10 January 2017, the prison GP cancelled the Vensir and Propanolol prescription that then moved into the history screen on EMIS. At 09:38 the GP prescribed Patient H with different medications. Ms 4 and Mr 5 and Ms 7 confirmed that it would have been possible to print prescriptions that were not live in prison before they were moved to the history screen but not after. The panel saw evidence that Mr Speers had accessed EMIS at 08.47 on 10 January 2017 before the Vensir and Propanolol prescriptions had moved to the history screen and therefore could have printed out the prescription stickers

Mr Speers denies this charge in his written response of March 2021.

Having examined Ms 4’s evidence and the documentary evidence that Mr Speers had accessed EMIS at a time it was possible to print off the prescription labels, the panel was satisfied on the balance of probabilities that he had administered both Vensir and Propanolol when Patient H had not been prescribed either. The panel therefore found charge 8 proved.

Charge 9

On 10 January 2017 destroyed Patient H's Medication Administration Record chart on which you had recorded the previous day's administration of Vensir and Propanolol in charge 8 above, replacing it with a new chart.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1, Ms 4 and Mr Speers' responses.

The panel found at charge 8 that Mr Speers had administered Vensir and Propanolol to Patient H when Patient H had not been prescribed Vensir or Propanolol.

Ms 4's evidence is that Patient H's MAR chart was destroyed by Mr Speers. She told the panel in her oral evidence that she raised her concerns about this drug error with the senior nurse and informed Mr Speers she had done so. When she told Mr Speers that he had made a mistake he said "*don't worry about it"* and tore up Patient H's MAR chart in front of her and threw it in the bin. Ms 4 told the panel that at the time of this incident, she was a bank nurse and she was not confident in her role. She said she was unsure what to do and how to raise her concerns about the incident. She acknowledged she could have emailed Ms 1 regarding her concerns sooner and she could have retrieved the torn up MAR and kept it as evidence. She said she would do things differently now. The panel considered Ms 4's evidence was consistent with her account of events at the time.

The panel noted that Ms 4 did not mention the MAR chart had been destroyed until she was interviewed by Ms 1. She stated that this was because she felt uncomfortable reporting a nurse, she had notified a senior nurse about the drug error and believed the senior nurse would deal with it.

The panel also heard evidence from Ms 1 who exhibited the email from Ms 4 dated 12 January 2017 describing how Ms 4 discovered the medication error and explaining that a MAR chart exhibited by Ms 4 without the drug Librium on it which had been prescribed

and administered the previous evening. The panel had sight of a MAR chart for Patient H which did not have prescription stickers for Vensir, Propanolol or the Librium that was administered on the 9 January 2017.

Ms 1's evidence was that she identified irregularities in the 'new MAR chart' for Patient H, and that medication was signed as administered between 08:00 and 10:00 on 10 January 2017 which were not yet prescribed.

Mr Speers denied this allegation stating in his response on 28 February 2022 "*This allegation rests on the destruction of said Kardex [MAR Chart], in an interrogation/interview with [Ms 1] on June 13th 2017, she stated that they had searched the whole prison and every bin for this Kardex and it was never found".*

Ms 4 told the panel that nurses remove the rubbish from the treatment rooms and take it to the main health centre for disposal at the end of each day.

Having found Ms 1 and Ms 4's evidence to be consistent with the documentary evidence, the panel accepted her account of the incident, in particular Ms 4's explanation of how shocked she was at the time that Mr Speers had destroyed the MAR chart in front of her was clear it caused her considerable discomfort at the time and she gave a consistent and clear account of the situation during her oral evidence.

The panel was satisfied on the balance of probabilities that Mr Speers had destroyed Patient H's MAR chart on which he had recorded the previous day's administration of Vensir and Propanolol, replacing it with another MAR chart. The panel therefore found charge 9 proved.

Charge 10

> *Your actions in charge 9 above breached the duty of candour in that you knew by destroying the Medication Administration Record chart and replacing it with a new*

chart you would be concealing the medication administration error detailed in charge 8 above.

This charge is found proved.

The panel found that Mr Speers destroyed Patient H's MAR chart on which he had recorded the previous day's administration of Vensir and Propanolol. The panel was of the view that Mr Speers destroyed the MAR chart in order to erase the written record of the medication administration error detailed in charge 8.

The panel considered that nurses have a professional duty of candour to raise concerns and errors immediately and to be open at all times. The panel determined that Mr Speers had breached the duty of candour and therefore found charge 10 proved.

Charge 11a

On 10 January 2017 administered a quantity of Diazepam to Patient C and;

a) Patient C did not have a current prescription for Diazepam.

This charge is found not proved.

In reaching this decision, the panel took into account the evidence of Ms 8 and Mr Speers' response.

Ms 8's evidence is that on 11 January 2017 she was informed by a prison officer that Patient C had been given an envelope the day before with a Diazepam tablet by a male nurse. This envelope was provided to Ms 8 who then passed it on to Ms 1 as part of the investigation. Ms 8 told the panel there was no medication in the envelope when it was given to her and Patient C had told the prison officer he had taken the tablet the night before when it was given to him. Ms 8 said she checked Patient C's MAR and there was

no signature confirming Diazepam had been administered to Patient C on 10 January 2017.

Mr Speers' position is that the writing on the envelope is not in his handwriting. The panel was not shown any evidence that established that the handwriting on the envelope was Mr Speers'. The panel took into account that the envelope did not identify what if any medication it had contained and when it should be taken.

Ms Speers also stated that Patient C was known to try and obtain medication when it was not prescribed to him and this had also been confirmed by Ms 1 in her evidence given in relation to charge 4. The panel noted there was no record of any administration of Diazepam for Patient C on 10 January 2017. The panel did not hear any evidence from Patient C or the prison officer involved.

The panel determined that there was insufficient evidence to prove that Mr Speers had administered Diazepam to Patient C on 10 January 2017 as specified in the head of the charge 11. The panel therefore found charge 11a not proved.

Charge 11b

> *On 10 January 2017 administered a quantity of Diazepam to Patient C and;*
>
> *b) You administered the Diazepam to Patient C as 'in possession' medication notwithstanding that Diazepam must only be administered as a 'supervised swallow' medication within the prison healthcare setting.*

This charge is found not proved.

As the panel determined that there was insufficient evidence to prove that Mr Speers had administered Diazepam to Patient C as specified in the head of the charge 11 for the same reasons as 11a the panel could not find 11b proved.

Charge 11c

On 10 January 2017 administered a quantity of Diazepam to Patient C and

c) You failed to record the administration of Diazepam to Patient C.

This charge is found not proved.

The panel determined that there was insufficient evidence to prove that Mr Speers had administered Diazepam to Patient C as specified in the head of the charge 11 for the same reasons as 11a the panel could not find 11c proved.

Charge 12

On 23 April 2017 failed to raise a discrepancy when recording the number of remaining Concerta drugs during an audit of controlled drugs

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1, Mr 3 and Mr Speers' responses.

The panel heard evidence from Ms 1 and Mr 3 that Concerta and Longtec are controlled drugs. They both confirmed that the stock of controlled drugs needed to be counted before and after they are administered, recorded in the controlled drugs log book and witnessed and signed for. On 23 April 2017, Mr Speers was assisting Mr 3 with the audit of controlled drugs.

Mr 3's evidence is that he would have expected Mr Speers to understand this procedure and the importance of recording the figures accurately since these were controlled drugs. Mr 3 said he counted 32 Concerta tablets and Mr Speers confirmed that this was correct. Mr 3 said he then counted 20 Longtec tablets and Mr Speers observed that there were 19

as per the records. Mr 3 then looked at the records and observed that the figure for the Concerta tablets had been changed from 33 tablets to 32. Mr 3 said in his evidence that Mr Speers admitted he had not pointed out the discrepancy to Mr 3 and had changed the figure and accepted that he should not do this.

Mr Speers' response to this charge is that he *"realised the discrepancy and alerted [Mr 3], this SN stated that he noticed the discrepancy."*

The panel had sight of the controlled drugs log book entry for Concerta tablets on 23 April 2017 where the total figure had been crossed out and amended. The panel accepted Mr 3's account of the incident and was satisfied that Mr Speers had not raised the discrepancy in the Concerta tablets. The panel determined that Mr Speers had a duty to do so when this arose. The panel therefore found charge 12 proved.

Charge 13

> *On 12 May 2017 had possession of the medicine keys when you were expressly forbidden to have possession of them.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 1, Ms 2 and Mr Speers' response.

On 12 May Mr Speers was working alongside another Nurse, Ms 9. Ms 9 was called away to an emergency. Ms 2's evidence is that shortly after this, she found Mr Speers to be in possession of the medicine keys in the treatment room with the medicine trolley open in the absence of Ms 9.

Ms 2 stated in her evidence that when Mr Speers found himself in possession of the keys on his own, he should have locked up the treatment room and returned the keys to Ms 9 or herself.

The panel heard evidence from Ms 1 and Ms 2 that Mr Speers had been told on a number of occasions that he was not to have the medicine keys. Ms 1 recalled having a conversation with Mr Speers about whether he wanted her to explain to his colleagues that he was not to hold the keys and he said he would prefer to tell colleagues himself as and when necessary.

Mr Speers accepted in his responses that he was in possession of the medicine keys when Ms 9 had been called away.

The panel determined that Mr Speers was in possession of the medicine keys on 12 May 2017 when he had been expressly forbidden to have possession of them. The panel therefore found charge 13 proved.

Charge 14

> *On 12 May 2017 completed various patient's Medication Administration Record charts confirming the administration of medication which had not yet been administered.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence Ms 2 and Mrs Speers' response.

This charge arose when Ms 2 found Mr Speers in the treatment room alone with the medicine keys on 12 May 2017. Ms 2 gave evidence to the panel that she observed Mr Speers preparing a number of medications for administration, popping out tablets into

medicine pots. She said she also checked the MAR charts and found some were signed by Mr Speers as medication having been administered although no patients had actually received medication yet. When she asked Mr Speers what he was doing, she said he explained he was trying to help. Ms 2 confirmed that none of this medication was administered to patients by Mr Speers and the prepared medication had to be disposed of.

The panel took into account that Mr Speers does not appear to dispute that he was signing for medication for administration to patients before it had been administered. He states *"I was being proactive- all medication was being checked and cosigned by staff nurse as I would have done with a final year student"*.

The panel also had sight of the MAR charts for Patients C, D and E signed as medication administered by Mr Speers on 12 May 2017. Based on the evidence of Ms 1 and Ms 2 and the MAR charts, the panel was satisfied that Mr Speers had signed the MAR charts before medication was administered. The panel therefore found charge 14 proved.

Charge 15

> *On 1 February 2018 failed to disclose, when asked at interview, that you were subject to an NMC investigation.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 6 and Mr Speers' response.

Ms 6 explained in her evidence that Mr Speers was invited for an interview on 1 February 2018 for the role of a registered nurse at the nursing home where she was the manager. Ms 6 said there is no question on the application form about investigations by the NMC, but she said it is her practice to always ask this question during the interview. In her contemporaneous interview notes there is no record of the question being asked.

However, Ms 6 said in her evidence that Mr Speers did not disclose that he was subject to an NMC investigation in the interview. She said he explained that there had been an internal investigation at his last employer which was related to a clash of personality with a co-worker which led him to leave that employer.

In her evidence, Ms 6 told the panel that any nurse that came for interview would know they had a duty to disclose any issues raised about their practice if it impacted on patient safety and if they were subject to an NMC investigation.

Mr Speers stated in his response on 1 March 2021 *"Had a 5 minute conversation with Matron Patience over "alert" and NMC investigation. I had disclosed to … Nursing Home re NMC investigation and also Matron for … had phoned the NMC to ask what I was being investigated about- why would I not tell some NH?*" In his response on 28 February 2022 he stated *"I fail to understand why SN Patience did not realise that one of my referees stated that the fact that they were representing me in my NMC investigation? Also I have told every job interviewer prior to my employment and after my employment with the Somme Nursing Home".*

The panel took into account that Mr Speers had been informed by the NMC by letter dated 3 November 2017 that he was being investigated. The panel considered therefore, that he was aware he was under investigation by the NMC when he went for the interview for a registered nurse position on 1 February 2018.

The panel considered that in the record of the interview Ms 6 had made a note of what she said was the reason for Ms Speers leaving his previous employment at the prison. Her account is consistent with the documentary evidence. She was clear in her evidence that the question was put to Mr Speers in interview about any NMC investigation and the answers he gave for his leaving previous employer.

Having considered all of the evidence, the panel preferred Ms 6's account of the incident. The panel considered that Mr Speers had a professional duty to disclose that he was

subject to an NMC investigation. The panel determined that, on the balance of probabilities, Mr Speers failed to disclose at interview that he was subject to any investigation by the NMC. The panel therefore found charge 15 proved.

Charge 16

> *Your actions in charge 15 above were dishonest in that you knew you were subject to an NMC investigation.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 6, Mr Speers' responses, its finding at charge 15 and the documentary evidence.

In its approach to this charge, the panel once again applied the two stage test of dishonesty set out in paragraph 74 of the decision in *Ivey V Genting as stated above.*

The panel first considered Mr Speers' knowledge and belief as to the facts. The panel concluded that Mr Speers was aware that he was subject to an NMC investigation because he had been notified by letter on 3 November 2017. As a registered nurse he would have been aware that he had a duty to disclose that he was subject to an NMC investigation when applying for any registered nurse position. It would have been evident to Mr Speers that he should have disclosed that he was subject to an NMC investigation at the interview. The panel further considered that Mr Speers' conduct was dishonest by the standards of ordinary decent people. The panel therefore found charge 16 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 Mr Speers' 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 without restriction.

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 considerations. 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 Speers' 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.'*

Ms Kerridge invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) where the NMC say Mr Speers' actions amounted to breaches of the Code and fell short of the standards expected of a registered nurse.

Ms Kerridge submitted that the charges found proved related to medication administration errors, poor record keeping, the falsification and destruction of medication records and the failure to disclose the NMC investigation at a job interview and associated dishonesty. She submitted that it does not appear that there was any actual harm caused to the patients

involved. However, she submitted there was a real and direct risk to patient safety and in some instances this risk potentially exposed other individuals in the prison environment as a result of the Mr Speers' acts and/or omissions.

Ms Kerridge submitted that the position of the NMC is that dishonesty is always serious. She submitted that the factors in this case that made Mr Speers' dishonesty more serious are:

a) The conduct making up the dishonesty posed a risk to patients under his care

b) There were multiple incidents

c) Failure to demonstrate remorse, remediation and insight into the concerns at the time

d) Ongoing lack of insight in relation his failure to answer direct questions regarding past concerns.

She submitted the factors that make the dishonesty less serious include that:

a) There were no concerns prior to these

b) The Registrant was working alone to a considerable extent in the prison context which may have made it more difficult for him to obtain advice quickly in areas he was not sure of

c) Acceptance of some of the concerns (charges 5-6)

d) Initial engagement with the NMC.

Ms Kerridge also referred the panel to the relevant NMC Guidance on the Duty of Candour.

Ms Kerridge submitted that Mr Speers' conduct amounted to serious misconduct and fell far below the standards expected of a registered nurse.

Submissions on impairment

Ms Kerridge moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Kerridge submitted that while Mr Speers has provided a response to the charges, there is a continued lack of understanding about the seriousness of his actions and the risk his actions may have posed to patients. She submitted that Mr Speers' lack of remediation, coupled with the issues around dishonesty and not complying with his duty of candour undermine public trust and confidence in the profession. It is submitted that given the number and seriousness of the charges, that professional standards and public confidence in the profession would be undermined if a finding of impairment was not made in these circumstances.

The panel accepted the advice of the legal assessor.

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 and NMC guidance on the professional duty of candour.

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

"1 Treat people as individuals and uphold their dignity

You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern…
1.2 make sure you deliver the fundamentals of care effectively

2 Listen to people and respond to their preferences and concerns
2.1 work in partnership with people to make sure you deliver care effectively

4 Act in the best interests of people at all times

6 Always practise in line with the best available evidence
6.2 maintain the knowledge and skills you need for safe and effective practice

8 Work cooperatively
8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate
8.2 maintain effective communication with colleagues
8.5 work with colleagues to preserve the safety of those receiving care
8.6 share information to identify and reduce risk

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues
9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance

10 Keep clear and accurate records relevant to your practice
This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.
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

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements
10.4 attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation

13 Recognise and work within the limits of your competence
13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

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
14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm
14.2 explain fully and promptly what has happened, including the likely effects, an apologise to the person affected and, where appropriate, their advocate, family or carers
14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly

16 Act without delay if you believe that there is a risk to patient safety or public protection
16.4 acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so
16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

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

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines

18.4 take all steps to keep medicines stored securely

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 act with honesty and integrity at all times…

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct or impairment.

In relation to charge 1, the panel considered Mr Speers' conduct was such that the medication in question could have fallen into the possession of unauthorised persons with potential adverse effects. The panel found that Mr Speers' actions at charge 1 did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 2b, the panel considered that although Mr Speers failed to dispose of the discontinued Clarithromycin, they were stored in a secure place and his actions could be put down to human error as he was fairly new into the prison healthcare system. The panel decided that the risk to the patient was not only due to Mr Speers' actions but those of the staff who subsequently administered the medication without checking the prescription. Therefore the panel decided this charge was not serious enough to amount to misconduct.

In relation to charge 4, the panel considered that Mr Speers went beyond his scope of practice by administering additional Tramadol tablets to Patient C which had not been prescribed. Mr Speers was not qualified to prescribe Tramadol to the patient and he put Patient C at risk because this patient had not been assessed by a doctor to ensure it was appropriate. The panel found that Mr Speers' actions at charge 4 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 5, the panel considered that Mr Speers' actions by falsely recording on Patient I's MAR that he had administered Gabapentin to the patient when he had not been present at the prison, was serious and was not an accurate record. The panel considered that by failing to accurately record how and why the relevant medication was provided to Patient I, it meant that there was no accurate record of what he might have in his system should there be any issue, or should a doctor review his prescriptions once discharged. The panel found that Mr Speers' actions at charge 5 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 6, the panel considered that Mr Speers' actions were dishonest in that he knew that he had not administered the medication to Patient I at the times stated. The panel considered that a nurse making a false entry into a legal document is wrong. Indeed, Mr Speers accepted that he was dishonest in this regard. The panel found that Mr Speers' actions at charge 6 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 8, the panel considered that the administration of non-prescribed medication presented a risk to Patient H in the event it reacted badly, given there was no oversight from a doctor in its prescription. In addition, if this medication came from another patient, this could present a risk to that patient in the event their stock ran out earlier than anticipated. The panel considered that as an experienced nurse, Mr Speers should have made the appropriate checks before administering medication to a patient including checking that the medication was current. The panel found that Mr Speers' actions at charge 8 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 9, the panel considered that destroying Patient H's MAR and replacing it with a new one presented a risk to Patient H as it meant that there was no accurate record of what this patient may have had in her system. The panel found Mr Speers' actions particularly serious in that he destroyed the MAR even when the error had been brought to his attention by another colleague and he was aware it had been escalated to a senior nurse. In addition, Mr Speers replaced the MAR with a new one in order to cover his tracks. The panel found that Mr Speers' actions at charge 9 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 10, the panel considered that Mr Speers breached his duty of candour to be open about the medication error he had made. The panel considered that Mr Speers should have acted immediately to put his error right and minimise the risk of harm to Patient H, when in fact he did the opposite taking action to conceal his error. The panel also noted that the duty of candour extends to Mr Speers' employer and by not being open with them about his error they would have been prevented from supporting him to rectify matters for the patient. The panel found that Mr Speers' actions at charge 10 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charge 12, the panel heard in evidence that it was not unusual for arithmetic errors to be made in relation to drug audits. The panel considered that Mr Speers had

been undertaking this task together with a colleague who shared responsibility for noticing and resolving discrepancies and the issue was resolved during that audit. The panel heard in evidence that it had been a busy clinic with a number of different controlled drugs being administered and recognised that lapses in concentration can occur. The panel therefore found that Mr Speers' actions at charge 12 were not serious enough to amount to misconduct.

In relation to charge 13, the panel considered the context in which Mr Speers had possession of the medication keys to be important. Mr Speers was handed the keys during an emergency situation. He had not sought to obtain the keys and on that basis that panel found this was not serious misconduct.

In relation to charge 14, Mr Speers' practice had been restricted to ensure he did not administer medication independently. The panel considered that as the medication for 3 patients had been prepared in advance and their MAR's signed as being administered when they had not , there was also a real risk that this might incorrectly reflect whether the medication was in fact administered and whether it was done in the manner described. The panel considered that this was serious and could have misled colleagues relying on potentially inaccurate records and/or inaccurate medications for those patients. The panel found that Mr Speers' actions at charge 14 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

In relation to charges 15 and 16, the panel considered that Mr Speers was under a duty to disclose he was under investigation by the NMC in relation to concerns around medication administration and record keeping and failed to do so. The panel considered that his dishonesty was serious and was also for personal advantage. By not disclosing the NMC investigation Mr Speers impeded the nursing home from assessing if recruiting him would pose any risk to patient safety. The panel found that Mr Speers' actions at charge 15 and 16 fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

The panel therefore found that Mr Speers' actions at charges 1, 4, 5, 8, 9, 10, 14, 15 and 16 fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Speers' 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. 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 found that limbs a – d were engaged in the *Grant* test. The panel found that multiple patients were put at risk of unwarranted harm as a result of Mr Speers' misconduct. Mr Speers' conduct was dishonest. His misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel took into account Mr Speers' written responses. It also took into account that Mr Speers had made some admissions to the charges including one of the dishonesty charges and that he accepted misconduct and impairment. However, the panel considered that Mr Speers had not demonstrated an understanding of how his actions put patients at risk of harm or how his misconduct would have negatively impacted his colleagues and the reputation of the nursing profession. The panel saw no evidence regarding how Mr Speers would handle these situations differently in the future and there was little evidence of remorse.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Speers has taken steps to strengthen his practice. The panel took into account that Mr Speers had not provided the panel with any information about what he has done since he last worked as a nurse in 2018 or how he has kept his knowledge and skills up to date. The panel noted that Mr Speers had not made progress in strengthening his practice when he was subject to an action plan when employed by the Trust. The panel saw no evidence of any relevant training he had undertaken or reflection on the incidents.

The panel was of the view that there is a risk of repetition based on the lack of information of Mr Speers' current insight or steps taken to strengthen his practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required. 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 Mr Speers' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Speers' 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 12 months with a review. The effect of this order is that the NMC register will show that Mr Speers' registration has been suspended.

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

Submissions on sanction

Ms Kerridge informed the panel that in the Notice of Hearing, dated 20 January 2022, the NMC had advised Mr Speers that it would seek the imposition of a 12 month suspension order with a review if it found Mr Speers' fitness to practise currently impaired.

Ms Kerridge submitted that, in this case, the most appropriate order is a 12 month suspension order with a review. She outlined for the panel what the NMC considered were the aggravating and mitigating factors. Ms Kerridge submitted that the NMC also considered whether a striking-off order would be appropriate. However, given Ms Speers' history of safe working prior to the incidents, the NMC considered a striking-off order to be disproportionate at this stage. She submitted that 12 months would give Mr Speers time to re-engage with the NMC and provide evidence of any attempts he has made to strengthen his practice should he wish to.

Decision and reasons on sanction

Having found Mr Speers' fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has carefully considered the NMC's submissions recommending a 12 month suspension order but has exercised its own independent judgment in deciding the appropriate sanction 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 panel took into account the following aggravating features:

- Mr Speers' misconduct involved a number of wide-ranging concerns.
- Mr Speers' demonstrated a pattern of repeated errors over a 17 month period of time.
- Mr Speers' misconduct put patients at potential risk of harm.
- Mr Speers has demonstrated a lack of insight in relation to a number of the incidents and on occasions sought to deflect blame onto others.
- Mr Speers' misconduct took place in an environment where patients were particularly vulnerable in a prison setting.
- Mr Speers' action in some of the charges had the potential to compromise colleagues.

The panel also took into account the following mitigating features:

- Mr Speers had accepted responsibility for some of his conduct. He admitted misconduct and current impairment. He stated in one of his response documents that he did make '*some glaring administration errors'*.
- Mr Speers has had a longstanding unblemished career in nursing prior to these events.

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 not protect the public nor be 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 Speers' 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 Speers' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing a conditions of practice order on Mr Speers' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel considered that although the clinical misconduct identified could potentially be addressed with conditions, the elements of dishonesty and the breach of the duty of candour would be more difficult to address with a conditions of practice order. The panel also had no evidence before it that Mr Speers would be willing to engage with a conditions of practice order. The evidence before the panel was that Mr Speers failed to comply with his action plan and restrictions place on his practice by his employer when working at the prison. Therefore, at present the panel was of the view that a conditions of practice order would not be appropriate in these circumstances. Furthermore, the panel concluded that the placing of conditions on Mr Speers' 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 SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was of the view that Mr Speers' case involved multiple instances of misconduct, he had displayed attitudinal problems and he had demonstrated limited insight. The panel had regard to the principal of proportionality. It considered the SG in relation to striking-off order:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel seriously considered whether a striking-off order would be proportionate. It made a careful assessment of the gravity of the misconduct in this case and whether a striking-off order would be the only order that would adequately protect the public and address the public interest considerations.

The panel took into account Mr Speers' engagement with the NMC up until the start of this hearing and his intention to participate in the hearing. The panel also took into account Mr Speers' longstanding nursing career and it considered that he should be given the opportunity to re-engage should he wish to and provide evidence to the NMC that he has addressed the concerns identified.

The panel took into account of all the information before and concluded that a striking-off order would be disproportionate. The panel considered that public confidence in nurses could be maintained if Mr Speers was not removed from the register. The panel also

considered that a suspension order would be sufficient to protect patients, members of the public and maintain professional standards.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Speers. 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 was appropriate in this case to mark the seriousness of the misconduct. The panel considered that 12 months would also be a sufficient period to enable Mr Speers to reflect, gather any evidence should he wish to do so and provide him with the opportunity to address the reviewing panel on the matters highlighted in this determination, in addition to any other relevant factors he may identify.

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 may be assisted by:

- Mr Speers' attendance and participation at the review hearing.
- A written reflective piece addressing:

    - The impact of his misconduct and dishonesty on patients, colleagues, the nursing profession and the public.
    - How he would do things differently in the future.
- Evidence of any training or learning Mr Speers has undertaken to keep his professional knowledge and skills up to date.
- Written references and testimonials from any paid or voluntary work that has been undertaken by Mr Speers.

This decision will be confirmed to Mr Speers in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, or if an appeal is lodged, until that appeal is otherwise disposed of, 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 Speers' 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 Ms Kerridge for an interim order.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate, as it would not provide sufficient public protection, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period.

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

That concludes this determination.