

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

**Substantive Hearing
Monday 21 November 2022 to Thursday 24 November 2022**

Virtual Hearing

Name of registrant:	Vikash Joye
NMC PIN:	96A0243E
Part(s) of the register:	Registered Nurse – Sub part 1 Mental Health Nurse – February 1999
Relevant Location:	Nottingham
Type of case:	Misconduct
Panel members:	Sophie Lomas (Chair, Lay member) Susan Field (Registrant member) Rachel Robertson (Lay member)
Legal Assessor:	Gillian Hawken
Hearings Coordinator:	Chantel Akintunde
Nursing and Midwifery Council:	Represented by Joe O'Leary, Case Presenter
Mr Joye:	Present and unrepresented at the hearing
Facts proved:	Charges 1, 2, 3 and 4
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Conditions of practice order (12 months)
Interim order:	Interim conditions of practice order (18 months)

Details of charges as amended

That you, a registered nurse:

- 1) On 21 August 2019, on 3 occasions, administered the wrong dose of controlled drug to Resident A in that you administered 5ml doses when Resident A was prescribed 2ml doses.*
- 2) Between 20 & 21 August 2019, on 6 occasions, failed to follow controlled drug administration policy in that you failed to get a countersignature in the controlled drug register for the controlled drug administrations to Resident A.*
- 3) Between 20 & 21 August 2019, on 6 occasions, falsified a witness signature in the controlled drug register.*
- 4) Your actions in charge 3 above were dishonest in that you knew your administration of the controlled drugs had not been witnessed and you had signed the counter-signatory section of the controlled drug register yourself.*

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

Decision and reasons on application to amend the charge

The panel heard an application, made by Mr O'Leary on behalf of the NMC, to amend the wording of charge 4.

The proposed amendment was to correct a typographical error in the writing of charge 4 as follows:

- 4) "Your actions in charge 3 above were dishonest in that you knew your administration of the controlled drugs had not been ~~witnesses~~ **witnessed** and you had signed the counter-signatory section of the controlled drug register yourself."*

You told the panel that you had no objection to the proposed amendment to charge 4.

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 such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure accuracy.

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you made full admissions to charges 1, 2, 3 and 4. However, you denied that your fitness to practise in relation to these charges is impaired.

Mr O'Leary informed the panel that no witnesses will be called by the NMC to give live evidence during this hearing. This is because you have not challenged any of the documentary evidence in this case, and confirmed you are content to have the witnesses' statements read into the record.

The panel accepted the advice of the legal assessor.

The panel considered your admissions and the NMC's position in relation to the facts of this case. The panel was satisfied that your admissions were clear and unequivocal. In light of this, the panel finds charges 1, 2, 3 and 4 proved in their entirety, by way of your admissions under Rule 24(5).

Background

The charges arose whilst you were employed as a registered agency nurse by Beechdale Manor Care Home (the Home). Resident A, an elderly resident residing at the Home, was prescribed 1 to 2ml of Oxycodone four times a day for pain, and 5ml of Shortec at night for pain and restlessness.

It was alleged that during a shift on 20 August 2019, you made a medication error by administering 2ml of Shortec three times to Resident A. It was also alleged that on 21 August 2019, you made another medication error by administering 5ml of Shortec three times to Resident A.

It is also alleged that, on Resident A's MAR chart, you incorrectly indicated that Oxycodone had been administered on 20 and 21 August 2019 when it had not. The error was discovered when the controlled drug register and stock levels were checked by another registered nurse.

It is further alleged that you failed to get a second person to sign for and witness your administration of the controlled drug to Resident A, which is contrary to the Home's controlled drug policy and wider accepted practice. It is then alleged that you falsified the witness signature on the controlled drug register. The register showed your signature and a second signature that cannot be identified as it did not match any signatures of staff at the Home. The referrer and the other staff members advised that no one was asked to witness your administration of the controlled drugs to Resident A.

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 your 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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

You gave live evidence under affirmation.

Mr O'Leary invited the panel to take the view that the facts admitted by you and found proved amount to misconduct.

Mr O'Leary made reference to the following cases: *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311; *R v Calhaem* [1985] QB 808; and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr O'Leary referred the panel to '*The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates (2015, updated 2018)* (the Code). He submitted that your actions amounted to breaches of the Code.

In relation to charge 1, Mr O'Leary submitted that your actions were serious and amount to misconduct. He stated that Resident A's MAR sheet and controlled drug register clearly indicated the medication and doses he was prescribed. Mr O'Leary stated that you failed to take the necessary precautionary checks before administering the drug to Resident A, and that your conduct fell below the standards expected of a registered nurse.

In relation to charge 2, Mr O'Leary submitted that your actions were serious and amount to misconduct. He stated that the controlled drug policy which requires a countersignature on drug administration is a widespread practice not only within the Home, but within the nursing profession as a whole. As a registered nurse who had worked at the Home prior to the incident, Mr O'Leary stated that you would have been fully aware of the policy in place around this.

In relation to charge 3 and 4, Mr O'Leary submitted that falsification of a countersignature and dishonesty is a direct violation of the fundamental principles of the nursing profession. He stated that restrictions around controlled drugs are in place to ensure transparency and accurate record keeping. Mr O'Leary stated that members of the public would find your deliberate action of falsifying a countersignature within the controlled drug register, knowing that no one had witnessed you administer the medication to Resident A (which you admitted) deplorable.

Mr O'Leary referred to the NMC guidance on dishonesty, which states that dishonesty, irrespective of the circumstances, is always considered serious. Mr O'Leary submitted that in this case, your dishonesty in relation to charges 3 and 4 amounts to misconduct.

Mr O'Leary then proceeded to make submissions on impairment. He noted that you have been a registered nurse since 1999, and acknowledged the NMC have not received a referral regarding your nursing practice either prior to or since the incident in this case occurred.

Mr O'Leary made reference to the following cases: *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin); *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *The Professional Standards Authority v The Health and Care Professions Council & Ghaffar* [2014] EWHC 2723.

Mr O'Leary also made reference to the judgment in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC

927 (Admin). He stated that dishonesty is considered an attitudinal concern, which is hard to remediate.

Mr O'Leary referred to the NMC guidance titled '*Serious concerns which are more difficult to put right*' (ref FTP-3a).

In relation to charge 1, Mr O'Leary submitted that you have not demonstrated sufficient insight into your misconduct. He acknowledged the training you had undertaken in medication management, but stated that the learning you have gained from this is questionable. Mr O'Leary stated that when asked during your live evidence about what would you have done differently, your response was that you would seek help from senior colleagues. Given that the concern involves fundamental aspects of nursing, Mr O'Leary submitted that a registered nurse who requires reassurance from senior colleagues in checking medication should be considered impaired.

In relation to charges 2, 3 and 4, Mr O'Leary submitted that you have also not demonstrated sufficient insight into your misconduct. Mr O'Leary stated that when asked during your live evidence why you did not have a colleague witness your drug administration, but rather, falsified a countersignature on the controlled drug register, your response was that Resident A was in agony, and that at the time, you felt under pressure due to the busy work environment. Mr O'Leary submitted that there is no excuse for falsifying a countersignature on a document, and that a registered nurse who does not adhere to controlled drug policy should be considered impaired.

Mr O'Leary submitted that your lack of insight into the matter overall, despite the training and reflection you have completed, means that you pose a risk to the public as your actions are likely to be repeated in the future.

Mr O'Leary referred to the testimonials you provided, and asked that the panel exercise caution when considering these. Particularly as one of individuals providing the reference had only just been made aware of the allegations against you.

Mr O'Leary invited the panel to consider that your fitness to practise is currently impaired on the grounds of public protection and public interest. He stated that the nature of the charges is serious, particularly as they involve dishonesty. Mr O'Leary asked the panel to bear in mind, although you have admitted to all the charges, you had initially denied the allegations and maintained your innocence until you received the evidence gathered by the NMC during their investigation into the matter.

You told the panel that you understand the seriousness of your actions and that, moving forward, you will ensure that this matter is not repeated. Since the incident, you stated that you have learned from your mistakes and have taken steps to change the way you work. For example, you explained that you are now more vigilant and take the time not to rush when caring for patients. You stated that you have also undertaken additional training to improve your skills and practice. You asked the panel to have regard to the documentary evidence available which outlines your achievements during your 23 year nursing career. You stated that you are a caring and respectful nurse and have enjoyed your career within the nursing profession. You referred the panel to the witness statements of Witness 1 and Witness 3, both of whom state that they have no concerns with regard to your fitness to practise.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Nandi v General Medical Council*; *General Medical Council v Meadow*; and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant*.

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council* 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.*'

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 your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to breaches of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity.

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively.

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.

To achieve this, you must:

10.1 complete 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 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.

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.

To achieve this, you must:

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

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

To achieve this, you must:

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.

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that your failure to properly check Resident's A MAR chart and the controlled drug register on a number of occasions over two shifts was a significant departure from the standards expected of a registered nurse. The panel considered that this, along with your failures to get a person to witness and countersign the administration of a controlled drug, put a patient at risk of serious harm. The panel also considered that your dishonesty in falsifying a countersignature in the controlled drug register, knowing that no one had witnessed you administer the drug to Resident A, was serious. The panel took into account the reasoning behind your actions, where you state you were feeling pressured due to the busy work environment and Resident A's pain at the time, but determined that this did not justify your actions.

The panel found that your actions in relation to all charges did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your 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 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 finds that a patient was put at risk as a result of you administering the incorrect doses. Although the patient involved in this matter suffered no actual harm, the panel found that the patient was put at significant risk of harm as a result of your actions. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. In relation to dishonesty, the panel considered that there was no evidence of deep-seated attitudinal concerns, or that your actions were for personal gain. Nevertheless, the panel found that your misconduct in not having another colleague witness your drug administration to Resident A, but rather, falsifying a countersignature on the controlled drug register was dishonest. The panel therefore found that your actions engaged all four limbs as set out in the test referred to in the case of Grant.

With regard to insight, the panel found that you have demonstrated developing insight into your misconduct by undertaking additional training in medication management and recognising that you must not let clinical pressures affect your nursing practice. However, the panel considered that you have not fully appreciated the seriousness of your actions, have not been able to fully articulate the reasons for it, and have not demonstrated an understanding as to the impact your misconduct had on patient safety, as well as public confidence in the nursing profession. Whilst you told the panel that you have had time to reflect since the incident, this has not been fully demonstrated in your live evidence. For example, the panel was concerned by your oral and written evidence that you believed the matter could have been resolved locally at the Home, rather than being referred to the NMC.

The panel went on to consider whether the misconduct in this case is capable of remediation. It took into account the fact that dishonesty is difficult to remediate, but the

panel considered that in your case there were no deep-seated attitudinal issues and that you have demonstrated developing insight and some degree of reflection. The panel further considered that your misconduct in relation to medication management in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account the training you have undertaken around medication management, which demonstrates your positive attempts to address and improve your practice in this area of concern.

However, the panel considered that there is a risk of repetition of your misconduct. During your live evidence, whilst you accepted that your actions were wrong, there was a lack of explanation on the reasoning behind your actions (besides from the pressured and busy work environment you state you experienced at the time). Although the panel considered that no similar concerns have been raised during your 23 year career in nursing, it noted that the medication error was repeated on three occasions within a day. The panel also noted that your failure to follow the controlled drug policy, and falsifying the countersignature in the controlled drug register, were both repeated on six occasions over the course of two days.

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. It considered that patients were put at serious risk of harm as a result of your misconduct, and that there is a real risk of repetition of your actions due to your lack of insight. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case in light of the proved concerns. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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

Submissions on sanction

Mr O'Leary informed the panel that in the Notice of Hearing, dated 10 October 2022, the NMC had advised you that it would seek the imposition of a 3 to 6 month suspension order with a review if the panel found your fitness to practise currently impaired.

Mr O'Leary referred the panel to the NMC guidance on sanctions.

Mr O'Leary referred to the panel's findings on impairment and submitted that the aggravating factors to consider in this case are as follows: your lack of fully developed insight; your failure to appreciate the seriousness of your misconduct; your lack of remorse; your initial denial of the allegations up until June 2022; and your failure to articulate your reasoning behind your misconduct (besides from work environmental factors).

Mr O'Leary submitted that the mitigating factors to consider in this case are as follows: your admissions to the charges; that the misconduct occurred within a single workplace and involved one resident; that you have undertaken additional training in the areas of

concern; and that there have been no further concerns regarding your practice either prior to or after the incident.

Mr O'Leary submitted that the purpose of a sanction is to protect the public, rather than punish a registrant. He then moved on to address the sanctions available to the panel.

Mr O'Leary submitted that taking no action would not mark the seriousness of the case, and is inappropriate in all the circumstances of this case.

Mr O'Leary submitted that a caution order would not be appropriate in this case. This is because such an order would neither address the risks identified in the panel's findings on impairment, nor would it ensure public safety.

Mr O'Leary submitted that a conditions of practice order would also not be appropriate in this case. He accepted the panel's findings with regard to the dishonesty in this case, that it was not indicative of deep-seated attitudinal concerns. However, given the seriousness of the proved misconduct, which involves a failure to comply with the controlled drug policy and falsifying a countersignature on the controlled drug register, any conditions imposed would not guarantee public safety. Mr O'Leary further submitted that imposing conditions may prove difficult as, since the incident, you have only undertaken agency and bank nursing roles. He also noted that your remediation in the areas of concern only took place recently, as you had initially denied the allegations and expressed that the matter should have been dealt with locally at the Home.

Mr O'Leary submitted that a suspension order would ensure public safety and maintain public confidence in the nursing profession. He referred the panel to the NMC guidance on sanctions with regard to dishonesty. Mr O'Leary submitted that the lack of further concerns raised since this incident should not affect the need to appropriately mark the seriousness of the misconduct. Whilst it is accepted that no actual harm was caused to Resident A, there was a risk of harm as a result of your failings. Mr O'Leary reminded the panel that in its findings, it was considered that you failed to fully understand the seriousness of and provide an explanation for your actions.

Mr O'Leary submitted that a striking off order would not be appropriate in all circumstances of this case.

Mr O'Leary therefore submitted that the only appropriate sanction in this case is a suspension order, and invited the panel to impose this for a period of 3 to 6 months, with a review before the order expires. He submitted that such an order would adequately mark the seriousness of the proved misconduct.

You asked the panel to consider the fact that this is the first time you have been referred to the NMC in your 23 year career in nursing. You said that you feel remorseful and have learned from your mistakes. You explained that you are passionate about nursing, and have enjoyed your time working within the profession. You asked the panel to take into account the impact any sanction will have on your personal circumstances. However, you stated that if the panel are inclined to impose a suspension order as proposed by the NMC, you requested that the minimum period available be imposed.

Decision and reasons on sanction

Having found your 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 feature:

- Your misconduct put a patient at significant risk of harm.

The panel also took into account the following mitigating features:

- You have provided evidence of additional training you have undertaken in the regulatory areas of concerns, namely in medication management; and

- You have provided positive testimonials to attest to your character and practice.

The panel considered your developing insight and its findings on this at the impairment stage. It determined that this was neither an aggravating nor mitigating feature in this case.

The panel also considered whether there was a pattern of behaviour in the misconduct found proved. Although your misconduct was repeated several times over the course of two days and therefore not an isolated incident, it took into account the fact that the matter occurred at the same workplace, involved the same patient, and did not occur over a long period of time during the course of your nursing career. The panel therefore determined that this was also neither an aggravating nor mitigating feature in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate as it would not mark 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 your 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 your 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel considered that the concerns around your medication management and record keeping could be sufficiently managed by conditions. A significant consideration for the panel was that you have been working as a registered nurse without further incident since these matters in 2019 and no concerns have been raised about your practice. During this time, you have undertaken relevant training and successfully completed medication competency assessments. The panel took into account your willingness to undergo further training to strengthen your practice, which you have already demonstrated and evidenced in relation to medication management. With regard to dishonesty, whilst it is difficult to impose conditions to manage this, the panel considered that a reflective practice profile along with a requirement to undertake Duty of Candour training would be effective in your case. This would allow you to work on your insight, and deeply reflect on the gravity of your misconduct and the impact it had on the resident involved, as well as public confidence in the nursing profession. It would also allow you to reflect on the importance of honesty and integrity in your nursing practice.

The panel had regard to the fact that this was not an isolated incident, and that your actions put a patient at risk of harm. However, other than this incident, you have had an unblemished 23 year career as a nurse, and have demonstrated that you are capable of returning to safe practice moving forward. The panel considered that you should be given the opportunity to develop your insight and strengthen your practice whilst continuing to work in a nursing capacity. The panel was therefore of the view that it was

in the public interest that, with appropriate safeguards, you should be able to continue to practise as a nurse.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order. It considered that it was possible to formulate appropriate and practical conditions that would address the failings highlighted in this case.

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of your case. It bore in mind the NMC guidance on sanction with regard to dishonesty, but considered that suspending your practice or removing you from the register was not necessary and that it would be in the public interest to allow you, an experienced nurse, the opportunity to reflect, remediate and to strengthen your practice.

In making this decision, the panel carefully considered the submissions of Mr O'Leary in relation to the sanction the NMC was seeking in this case. However, the panel considered that the areas of concern in this case could be suitably managed by conditions, and in turn, protect the public against the risks identified. It considered that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are workable, appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. You must not administer medication unless under the direct supervision of another registered nurse, or until you have been certified as competent to do so by your clinical line manager, mentor or supervisor. Any such certification must be in writing and a copy sent to your NMC case officer within 7 days of receiving it.
2. You must work with your clinical line manager, mentor or supervisor to create a personal development plan (PDP). Your PDP must address the following clinical areas of concerns:
 - Medication management and administration
 - Record keeping
3. With regard to your PDP, you must:
 - a) Meet with your clinical line manager, supervisor or mentor at least every month to discuss your progress in achieving the aims set out in your PDP.
 - b) Send your NMC case officer a copy of your PDP within 7 days of it being put in place.
 - c) Send your NMC case officer a report from your clinical line manager, supervisor or mentor prior to the next review hearing. This report must show your progress towards achieving the aims set out in your PDP.
4. You must keep a reflective practice profile. The profile will provide a minimum of 10 reflections which details how you have demonstrated honesty and integrity in your nursing practice and how you have developed resilience in your clinical practice. Each of the reflections should include feedback from your clinical line manager, supervisor or mentor. You must send your NMC case officer a copy of the profile prior to the next review hearing.
5. You must send your NMC case officer evidence that you have successfully completed training in Duty of Candour and training in

Developing Resilience in Clinical Practice prior to the next review hearing.

6. You must keep your NMC case officer informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
7. You must keep your NMC case officer informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
8. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
9. You must tell your NMC case officer, within seven days of your becoming aware of:

- a) Any clinical incident you are involved in.
- b) Any investigation started against you.
- c) Any disciplinary proceedings taken against you.

10. You must allow your NMC case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a) Any current or future employer.
- b) Any educational establishment.
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months which, in the panel's view, will be sufficient time for you to achieve the aims set out in you PDP and to demonstrate your developed insight, honesty and integrity.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- A written reflective piece on the seriousness of your actions and the impact your misconduct had on patient safety and public confidence in the nursing profession;
- Up-to-date testimonials attesting to your clinical practice; and
- Evidence of additional training you have completed to further strengthen your practice.

Interim order

The conditions of practice order cannot take effect until 28-days after the date on which the decision letter is served, or, if an appeal has been lodged, before the appeal has been finally determined. The panel has therefore considered whether an interim order is required to cover the appeal period 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 your own interest until the conditions of practice 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 O'Leary. He referred the panel to article 31 of the Nursing and Midwifery Order 2001 (the Order) which sets out the appropriate test when considering whether an interim order is necessary.

Mr O'Leary submitted that the NMC are seeking the imposition of an interim conditions of practice order for a period of 18 months on the grounds of public protection, and that it is otherwise in the public interest.

Mr O'Leary submitted that, as the current order will procedurally not take effect until at least after the 28 day appeal period, an interim order is necessary to protect the public during this period. In light of the panel's findings that you had developing insight and lacked appreciation for the seriousness of your misconduct, which gave rise to a risk of repetition, such risks need to be managed immediately by way of conditions on your practice.

Mr O'Leary submitted that there is a high bar set for imposing an interim order on public interest grounds alone. Given the panel's findings on the need to ensure public safety following the finding of impairment, he stated that the public would be shocked if you were allowed to practise freely before the sanction order takes effect. Mr O'Leary submitted that the panel should therefore consider the need to protect the public and

uphold the reputation of the NMC as a regulator when deciding whether to impose an interim order.

Mr O'Leary submitted that an 18 month interim conditions of practice order, in the same terms as the substantive conditions of practice order, would suffice in this case to cover the appeal period, and any subsequent appeal hearing should you wish to appeal the panel's decision in your case.

You told the panel that you did not have any further submissions to make at this stage.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order, on the grounds of public protection and in the public interest, to ensure that the public is sufficiently protected against the risks identified in the panel's findings. The period of this interim conditions of practice order will be for 18 months to cover the appeal period, and any subsequent appeal hearing.

This interim conditions of practice order will take effect immediately. If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.