

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

**Substantive Hearing
Wednesday 7 September 2022 – Friday 9 September 2022**

Virtual Hearing

Name of registrant: Frank Adu-Gyamfi

NMC PIN: 14J1036E

Part(s) of the register: Registered Nurse
Mental Health Nursing – February 2016

Relevant Location: London

Type of case: Misconduct

Panel members: John Vellacott (Chair, Lay member)
Richard Curtin (Registrant member)
Barry Greene (Lay member)

Legal Assessor: William Hoskins

Hearings Coordinator: Dylan Easton

Nursing and Midwifery Council: Represented by Isabelle Knight, Case Presenter

Mr Adu-Gyamfi: Present and unrepresented

Facts proved: Charges 1a and 1b

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Suspension order (12 months)**

Interim order: **No order**

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

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

You indicated that you supported the application.

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

The panel decided to go into private session as and when such issues of Patient A's health are raised in order to protect her right to privacy.

Details of charge

That you, a registered nurse:

1. Between 3 July 2017 and 25 November 2017 failed to maintain professional boundaries in that:
 - a. You made contact with Patient A on numerous occasions without clinical justification;
 - b. You entered into a relationship with Patient A which was sexual.

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

Background

A referral was made to the NMC by South West London and St George's Mental Health NHS Trust ("the Trust") with regard to allegations that you engaged in a sexual relationship with a patient after she had been discharged from the [Location 1] where you worked at the time.

It is alleged that you met and/or were involved in social media contact leading to this relationship after the patient was under your care at the Trust.

Decision and reasons on facts

At the outset of the hearing, the panel heard that you made full admissions to charges 1a and 1b.

The panel therefore finds charges 1a and 1b proved in their entirety, by way of your admissions.

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

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

Ms Knight identified the specific, relevant standards where your actions amounted to misconduct. She submitted that Patient A was put under an unwarranted risk of harm, fundamental tenets of the profession had been breached and that the reputation of nursing profession had been brought into disrepute by your actions.

Submissions on impairment

Ms Knight 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 Knight submitted that conduct of the kind found proved is not easily remediable and that it relates to your professional conduct rather than your clinical practice. She submitted that it is for the panel to decide whether you have remedied the concerns. She informed

the panel that it is the NMC's position that you have not adequately considered and reflected upon the impact your actions had on Patient A's mental health. She submitted that you show developing insight, but do not yet show full insight.

With regard to remediation, Ms Knight submitted that you have only completed one online training course amongst the mandatory training that you have undertaken. She submitted that many of the courses you have undertaken do not specifically relate to professional boundaries and this training is not enough to demonstrate that you have remedied the concern in your practice. She referred the panel to the testimonials from your colleagues and noted that none of these were written by a senior member of staff. She also noted that some of these colleagues were not fully aware of the allegations against you. In light of this, she submitted that these testimonials are of limited assistance in terms of determining current impairment and that the panel may wish to put less weight on these when reaching its decision.

With regard to public interest, Ms Knight submitted that confidence in the nursing profession would be damaged should you be permitted to practise without restriction and should a finding of impairment not be made.

The panel also heard oral evidence from you under affirmation. In your evidence you stated that you feel remorseful for the relationship that you had with Patient A and you apologised to Patient A and her family.

You told the panel that at the material time, your fitness to practise was impaired. You stated that you have since taken the necessary steps to remediate your practice and that you are no longer impaired. You stated that you have engaged throughout the NMC process, and you have considered the NMC Code.

You informed the panel that you had been dismissed by the Trust after the incidents and that you are currently a Deputy Ward Manager at Berkshire NHS Foundation Trust. You told the panel that you have been practising without concern at your new place of

employment for a considerable period of time, therefore you are not a risk to the public and that you will not repeat conduct of the kind found proved. You told the panel that you had made your current employer aware of the ongoing proceedings and the details of the charge.

You informed the panel that you have undertaken mandatory training as well as an optional professional boundaries training course which you completed in December 2021. You stated that you continue to read about maintaining proper boundaries, you have peer discussions with colleagues and that you also have meetings with line managers. You referred the panel to a reflective piece which includes information as to how you have been practising over the last few years.

In relation to the charges, you said that you were young and that you did not understand the gravity of your actions at the time. You explained to the panel what you would do differently should you find yourself in a similar situation.

You said that you have considered the impact your actions had on Patient A [PRIVATE]. You considered that you may have damaged the patient's confidence in the nursing profession, [PRIVATE]. [PRIVATE]. You stated that, as a result of this, you have changed how you practise as a mental health nurse and that this is a reminder to be mindful of your interactions with patients.

The panel accepted the advice of the legal assessor which included reference to *Roylance* and *Grant*.

Decision and reasons on misconduct

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

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

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carer.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that Patient A was vulnerable, and that actual harm came to her as a result of your actions. It also took into account your own admissions in that you recognise your actions amount to misconduct. It determined that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

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

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

d) [...]’

The panel finds that a patient was put at risk and was caused psychological harm as a result of your misconduct. It was of the view that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to a sexual relationship with a patient to be extremely serious and liable to undermine public confidence in the profession.

The panel also took into account the questions identified in *Cohen v General Medical Council*, namely whether the conduct which led to the charges is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated. The panel determined that, while difficult, it was satisfied that the misconduct in this case is remediable.

Regarding insight, the panel took into account all the information before it, including your reflective pieces and your oral evidence. The panel considered that you made full admissions, you have demonstrated an understanding as to why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. It also considered that, in your evidence, you apologised to the patient and her family for your misconduct and that you have sufficiently demonstrated how you would handle the situation differently in the future.

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 professional

boundaries training course you completed in December 2021, the additional reading you have undertaken and also that you have peer discussions with colleagues at your current place of employment. The panel was satisfied that you have taken the sufficient steps to strengthen your practice.

The panel also took into account the positive testimonials provided by your colleagues and noted that there is no evidence that there are any other concerns in your practice. The panel noted that an up-to-date testimonial from your line manager would have assisted in determining your current fitness to practise, however in the absence of this, it is nonetheless satisfied that you do not pose a risk to patients and that there is minimal risk of repetition. The panel considered that this has been tested by the fact that you have been working in a clinical environment as Deputy Ward Manager without reported incident.

In light of the above, the panel decided that a finding of impairment is not necessary on the grounds of public protection.

The panel bore in mind the overarching objective of the NMC 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 public confidence in the profession would be undermined if a finding of impairment were not made in this case. Therefore, the panel determined that your fitness to practise is impaired on the grounds of public interest only.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Ms Knight took the panel through the aggravating and mitigating features in this case and informed the panel that the NMC seeks the imposition of a suspension order for a period of 12 months with review if it found your fitness to practise currently impaired.

The panel also bore in mind submissions from you. You submitted that you hope the panel will consider all the factors in this case and come to the right decision.

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 NMC Sanction Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust;
- Abuse of a position of power and control over a vulnerable patient;
- You commenced a sexual relationship with a vulnerable patient shortly after she was discharged from your care;
- Psychological harm came to a vulnerable patient due to your misconduct; and
- Your misconduct occurred over an extended period of time.

The panel also took into account the following mitigating features, none of which related to the circumstances of the misconduct itself:

- Early and full admissions in both the NMC proceedings and the Trust's local investigation in 2017;
- You have shown remorse and, at this hearing, apologised to Patient A and her family for your actions;
- Evidence of good insight;
- Evidence of additional training and steps you have taken to address the concern;
- Positive testimonials from colleagues; and
- An isolated event in and no other regulatory concerns.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, 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 conditions of practice 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 is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. Further, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not adequately mark the public interest in this case.

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

- *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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register as, while the concerns are attitudinal, they were not deep-seated. The panel acknowledges that a

suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

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 you. 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.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision. In this respect it found your fitness to practise impaired on the grounds of public interest.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the substantive order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the suspension order sanction takes effect.

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

Submissions on interim order

The panel took account of the position taken by Ms Knight. She made no application for an interim order on the basis the panel made a finding of impairment solely on public interest grounds. However, she submitted that it is ultimately a matter for the panel to decide.

Decision and reasons on interim order

The panel decided not to impose an interim order.

In reaching its decision, the panel took into account the position taken by Ms Knight on behalf of the NMC and determined that, as there are no public protection concerns in this case and having found impairment solely on public interest grounds, an interim order would not be necessary.

That concludes this determination.