Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday, 9 May 2023 – Wednesday, 17 May 2023

Virtual Hearing

Name of Registrant:	Hannah Kargbo
NMC PIN	11F2135E
Part(s) of the register:	RNA: Adult Nurse – Sub Part 1 Level 1 – 18 January 2012
Relevant Location:	London
Type of case:	Lack of competence/Health
Panel members:	Simon Banton (Chair, Lay member) Carol Porteous (Registrant member) Rachel Barber (Lay member)
Legal Assessor:	Christopher McKay
Hearings Coordinator:	Dilay Bekteshi
Nursing and Midwifery Council:	Represented by Alastair Kennedy, Case Presenter
Miss Kargbo:	Not present and not represented
Facts proved:	Charges 1a), 1b), 2), 3), 4), 6), 7), 8), 9)
Facts not proved:	Charge 5)
Fitness to practise:	Impaired
Sanction:	Suspension order (12 months)
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Kargbo was not in attendance and that the Notice of Hearing letter had been sent to Miss Kargbo's registered email address and her home address by recorded delivery on 5 April 2023.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Kargbo's registered address on 5 April 2023. It was signed for against the printed name of *'H.KARGBO'*.

Mr Kennedy, 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Kargbo's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Kargbo has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Kargbo

The panel next considered whether it should proceed in the absence of Miss Kargbo. It had regard to Rule 21 and heard the submissions of Mr Kennedy who invited the panel to continue in the absence of Miss Kargbo. He referred the panel to the Proceeding in Absence bundle in which the case coordinator had made several attempts to contact Miss Kargbo. Mr Kennedy said that there has been some contact from Miss Kargbo and she had attended one of the NMC offices at one point, but there has been no contact from her for some considerable time. Mr Kennedy also referred the panel to an email by a tracing agent which confirmed that Miss Kargbo resides at the same address as listed on the WISER print-out.

Mr Kennedy submitted that Miss Kargbo has voluntarily absented herself. There has been no application for an adjournment and there is nothing to suggest an adjournment would secure her attendance at a future date. He submitted that it is in the public interest that cases such as this are concluded as quickly as possible. He submitted that if the panel were to adjourn today this can affect the memory of witnesses, and in relation to the witnesses there are potentially five live witnesses to give evidence, and this could cause considerable inconvenience if this matter was to be put off to a later date. Mr Kennedy therefore submitted that the panel should exercise its discretion and proceed in the absence of Miss Kargbo.

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 Miss Kargbo. In reaching this decision, the panel has considered the submissions of Mr Kennedy 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 Miss Kargbo;
- Miss Kargbo has not engaged with the NMC for some time and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Five witnesses are due to attend; and not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and 2019;
- 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 Miss Kargbo in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Kargbo's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

That you, a Registered Nurse:

1) On 16 May 2018 did not:

    a) Review Patient A's medical records to confirm their allergy to metronidazole;
    b) Review Patient A's wristband for patient's allergy status.

2) On 16 May 2018 administered metronidazole to Patient A without a prescription.

3) On or before 13 November 2018, on one or more occasions did not pass the workbook practical drug administration.

4) On 6 February 2019, on one or more occasions administered eye drops in Patient B's left eye.

5) On 6 February 2019, on one or more occasions administered eye drops into Patient B's right eye at incorrect intervals.

6) On 6 February 2019 reused your signature on the prescription chart when you recorded you had administered drops to Patient B's right eye.

7) On or before 26 April 2019 failed to pass the competencies for the theatre circulating role.

8) On 21 December 2018 you refused to accept an unknown patient from recovery.

9) [PRIVATE]

AND in light of the above, your fitness to practise is impaired by reason of your lack of competence in respect of charges 1 – 7 and by reason of your misconduct or lack of competence in respect of charge 8 and by reason of your health in respect of charge 9.

1. [PRIVATE]

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

At the outset of the hearing, Mr Kennedy made a request that parts of this case be held in private as matters relating to Miss Kargbo's health would arise during the course of the hearing. 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.

The panel agreed that parts of the transcript or written documentation of this hearing, which relates to Miss Kargbo's health, should be marked as private as her right to privacy and confidentiality in respect of these matters outweighed the public interest in these details being published.

Background

The NMC received a referral about Miss Kargbo's fitness to practise In January 2020. The referral came from the Head of Nursing, Kings College Hospital (the Trust). Miss Kargbo entered the Register in January 2011, and she began her employment at the Trust as a registered nurse on 29 October 2012.

On 16 May 2018, Miss Kargbo was tasked with caring for Patient A post operatively. At that time Miss Kargbo was working in the day unit. Patient A was allergic to Metronidazole, and this was noted in her records and by her red wrist band. It is alleged that Miss Kargbo gave Patient A metronidazole without a prescription. Patient A called the unit after going home and enquired if she had been given any medication she was allergic to as she had developed a rash on her body. After this incident Miss Kargbo was removed from medication administration. She was required to complete a medication training package again and write a reflective account. It allegedly took Miss Kargbo six months to complete the training package which should have taken around two weeks.

It is further alleged that in February 2019, Miss Kargbo dilated the wrong eye of Patient B when preparing them for eye surgery. Record keeping errors were noted in relation to the eye drops. It is alleged that four drops were meant to go into the eye at fifteen-minute intervals, but notes reflect that Ms Kargbo must have originally administered the eye drops to the wrong eye twice, realised her error, crossed out the first two timings and then written in the new times for the subsequent four drops in the correct eye, reusing her signature from the first two drops.

Following the medication error, Miss Kargbo was moved to a theatre circulating role. Her role consisted of working as a supernumerary third member of the team. It is alleged that she did not achieve the competencies expected within a theatre circulating role. The NMC were told that Miss Kargbo could no longer practise as a nurse and would have to perform a Health Care Assistant (HCA) role within the theatre.

It is also alleged that in December 2018, Miss Kargbo was asked to care for a patient. However, she refused to accept the patient because she had already cared for four patients in the morning and had two patients in the afternoon, and that she claimed that she only had to care for six patients in a day. It was pointed out to her that that was not in fact the case.

[PRIVATE]

Decision and reasons on facts

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

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

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:

- Witness 1: Lead Nurse at the Trust
- Witness 2: Matron at the Trust
- Witness 3: Consultant Anaesthetist at the Trust
- Witness 4: Band 6 Junior Sister at the Trust

- Witness 5: Band 6 Theatre Nurse at the Trust

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC.

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

Charge 1a)

1) On 16 May 2018 did not:
    a) Review Patient A's medical records to confirm their allergy to metronidazole;

This charge is found proved.

The panel took into account the Patient Observation reports for Patient A and noted those records were the standard integrated care pathway which was used at the time. It also noted that under 'patient observations' there is one entry in the allergy box which states 'metronidazole'.

The panel also considered the oral and documentary evidence of Witness 1 and Witness 2. It noted that following Patient A's procedure, they had received a 'standard pack' of medication which is given to a patient in order to prevent any sort of infection postoperatively and metronidazole is one of the drugs in the pack.

In Witness 2's statement it states that: "*On 17 May 2018, I received a call from a patient who had attended the ward the day before and was informed that she may have received medication that she was allergic to. The patient explained that when she was receiving the medication, the nurse who was administering the medication was rushing and explained that the patient must just take their medication."*

The panel had particular regard to Miss Kargbo's written statement dated 21 May 2018 which states: *"If on this occasion I failed in given metronidazole medication despite it was not prescribed and patient having and allergy, then this would be in my mind highly uncharacteristic of my practices and I am truly sorry for the mistake and would like to apologise unreservedly to the patient. I strive to attain the highest possible standards of patients care and must say that I have never received any similar complaints previously.*"

The panel determined that it is evident from Witness 1 and Witness 2's evidence that Miss Kargbo could not have reviewed Patient A's medical records prior to administering the post operative drugs because these records would have shown the patient's allergy and consequently, she would not have administered the standard pack containing metronidazole. The panel also had regard to the five rights of drug administration which includes checking medical records and confirming with the patient any allergies they may have.

In light of the evidence above, the panel decided that, on the balance of probabilities, it is more likely than not that Miss Kargbo did not review Patient A's medical records to confirm their allergy to metronidazole. Therefore, the panel finds charge 1a) proved.

Charge 1b)

1) On 16 May 2018 did not:
    b) Review Patient A's wristband for patient's allergy status.

This charge is found proved.

The panel took into account the evidence of Witness 1 and Witness 2 who both explained the use of red wristbands to alert staff that the patient has an allergy. In oral evidence, Witness 1 explained to the panel that all patients will receive a normal white wristband,

which has their patient identifying markers on it such as name, date of birth and hospital number. She also said that some patients will also get a red wristband, which indicates that they have an allergy.

The panel also had regard to Witness 2's statement in respect of Patient A having a red wristband, which states: "*The patient also confirmed this to me during our call. The patient's red wristband is indicative of the patient as having an allergy. The wristband is there to act as a warning so that the medical staff are warned to be cautious. The registrant should have reviewed this. As noted above, the registrant did not check the patient's wristband ahead of administering the medication. The patient recovered and aside from the rash, no further harm was caused. I believe the rash went away…"*

The panel took into account the Adverse Incident Report Form, dated 17 May 2018, which states: **"***Patient reports her wristband was not inspected i.e. 5 rights of medication management were not followed."*

In light of the evidence above, the panel decided that, on the balance of probabilities, it is more likely than not that Miss Kargbo did not review Patient A's wristband to confirm their allergy status. Therefore, the panel finds charge 1b) proved.

Charge 2)

2) On 16 May 2018 administered metronidazole to Patient A without a prescription

This charge is found proved.

The panel heard evidence from Witness 1 and Witness 2 that metronidazole is a standard post operative drug following the procedure Patient A underwent. They also explained that metronidazole is a distinctive drug. Witness 1 and Witness 2 said "*it is a very distinctive tablet from all other sorts of tablets"* and that it is *"yellow and is easily identifiable".*

The panel took into account the Patient A's 'Day Surgery Centre – Care Document' dated 16 May 2018 which lists the post operative prescriptions and metronidazole was not one of them. The panel then considered the record of the meeting which took place on 1 April 2019 which states: *"[Miss Kargbo] explained that she had informed the patient she was giving them antibiotics and gave them the standard treatment of metronidazole and azithromycin."*

The panel further noted the evidence of Witness 2 who spoke to Patient A after the incident and investigated the matter. Witness 2 told the panel that Patient A had detailed their reason for attending the ward and also described the medication. Based on the information provided by Patient A, Witness 2 was able to deduce that the patient had been administered metronidazole by Miss Kargbo, despite their allergy.

The panel considered the Adverse Report Incident Form dated 17 May 2018 which states: *"…patient documented as allergic to Metronidazole. Called the day surgery department on 17/5/18) this morning to report she thinks she was given metronidazole during admission as she has developed a Red itchy and burning rash all over her body…"* It also noted the hearsay evidence of Patient A's reaction to metronidazole that they had developed a rash all over their body.

In light of the evidence above, the panel decided that, on the balance of probabilities, it is more likely than not that Miss Kargbo administered metronidazole to Patient A without a prescription. Therefore, the panel finds charge 2) proved.

Charge 3)

3) On or before 13 November 2018, on one or more occasions did not pass the workbook practical drug administration.

This charge is found proved.

The panel considered the oral and documentary evidence of Witness 1. She explained that nurses are required to complete their medication training again if they have made a medication error. She explained that the training involves completing a maths test for calculations and redoing medication competencies where the nurse is observed by another qualified nurse administering the medication. She also said that a nurse would have to describe various safety measures around the five rights of drug administration. It also noted Witness 2's statement which states *"As per the Trust's process, once the error was realised, the registrant was suspended from administering medication and was required to undergo retraining for medication administration before she was allowed to administer medication independently."*

The panel also took into account email correspondence dated 14 November 2018 between Witness 2 and Miss Kargbo which states that Miss Kargbo did pass the necessary medicines administration. It noted that it had taken Miss Kargbo six months to pass the course.

In Witness 1's oral evidence she stated that Miss Kargbo was unable to pass despite multiple attempts to do so. She also explained that it was online training, and a nurse cannot progress until they have passed their theory. Witness 1 also said that the course should have taken two weeks to complete. The panel also considered Witness 1's statement which states: "*Ordinarily, including failing once or twice, it can take up to two weeks to complete the medication training. It took the registrant almost six months. I cannot recall how many times the registrant had to redo the training but I believe it was approximately five or six times. This was over a long period of time. The medication training is all online so I cannot obtain a copy of the completed training. It also does not retain information about failed attempts."*

Witness 2 also stated in oral evidence that it should have taken around four weeks to pass the course.

Although the panel does not have access to full records to confirm the amount of times Miss Kargbo did not pass the workbook practical drug administration, it decided that, on the balance of probabilities, Miss Kargbo did not pass the necessary course on one or more occasions. It therefore found charge 3) proved.

Charge 4)

4) On 6 February 2019, on one or more occasions administered eye drops in Patient B's left eye.

This charge is found proved.

The panel took into account the oral and documentary evidence of Witness 3. His evidence was that Patient B was due to have the right eye operated on, but he noticed that the left eye had been dilated. He reported that Patient B had unilaterally decided that they wanted the left eye done, but that Miss Kargbo would have known to put drops in the right eye because that is what was on the operation list and on Patient B's prescription. Witness 3 also explained the preparatory steps that are carried out before the surgery including biometry which involves taking accurate measurements of the eye to determine the correct lens to insert and will often involve a detailed discussion with the patient.

In Witness 1's oral evidence she told the panel that for any operation where it is appropriate to do so, the doctor will mark the site with a marker or arrow which will tell the nurse which eye is being operated on. She said that a nurse should not just be relying on the mark, as on occasions the nurse will see the patient to administer the drops before the surgeon has marked the eye. As a registered nurse, they should be looking at the prescription, speaking with the patient and checking if that is correct. Should there be any discrepancy between the prescription, the operating list or the patient's understanding then the nurse should stop and consult with the surgeon.

The panel considered the Ophthalmology Report for Patient B which Witness 3 explained it is a pre-prepared booklet that is solely for eye surgery. It noted that in the Ophthalmology Report, it is clear that surgery is listed for the right eye.

The panel also took into account Witness 2's statement which refers to the timings handwritten by Miss Kargbo on the Ophthalmology Report, which states: "*I reviewed the prescription following the incident having been brought to my attention. The prescription clearly marks that the eye drops were for the right eye. The registrant administered the drops to the patient's left eye. It, therefore, became clear that the registrant did not review the prescription."*

Further in Miss Kargbo's written stated dated 28 February 2019, it states: "*I came to [Patient B] to administered their eyedrops but they were not marked I asked the patient which eye he has expecting to have surgery on; and the patient pointed his left eye. Stating that it was his left eye he came to have surgery on. With the patient's consent I began the dilating drops in the eye the patient pointed to me as having it done. After three set of an eye drops the anaesthetist finally came and saw the patient; it was this time he drew my attention to the pre-op notes that stated the patient was to have the right eye done not the left. On further investigation it was revealed that the patients were in fact having the right eye done not the left as he told me. The error was highlighted to the senior staff present in the unit with me and they informed the ward manager. The patient apologised that he had given incorrect information. I was then subsequently moved from that area and placed in another ward area to work, for the remainder of my shift."*

The panel also had regard to an email from Miss Kargbo dated 17 May 2019 which states: "*On reflection on my nursing practice and also at the serious incident informal investigation meeting I would disagreed* [sic] *at two paragraphs based on my answers. I admitted it is a drug error and I sincerely apologies and i will reflect and improve on my nursing practice, that is. 1. "[Witness 2] asked HK if she had on the occasion, where the*

drug error had been made had she checked on the notes to what eye was being treated. HK said no as the patient was asked what eye was being treated." answer yes”.

The panel noted that Miss Kargbo has made an admission that there was a drug error. Miss Kargbo also stated that the correct eye had not been marked by the surgeon and that the patient was adamant it was the left eye that was to be operated on. However, the panel decided that it is the duty of a nurse to check the records to show which eye is to be operated on and seek clarification if they are unsure.

The panel noted that there are other steps taken that depend on the correct eye being identified, namely the measurements and preparation of the lens which is to be inserted. Therefore, the panel decided that, on the balance of probabilities, it is more likely than not that Miss Kargbo, on one or more occasions administered eye drops in Patient B's left eye. Therefore, the panel finds charge 4) proved.

Charge 5)

5) On 6 February 2019, on one or more occasions administered eye drops into Patient B's right eye at incorrect intervals.

This charge is found NOT proved.

In reaching this decision, the panel took into account the Ophthalmology Report which states that the eye drops must be administered *“four times in 1 hour”*.

Witness 3 explained that there are drugs listed on the right-hand side of the box with the surgeon's signature to prescribe them. The four boxes subsequently to the right of that are the signature of the nurse that they have administered them. The panel noted that the times written on the Ophthalmology Report were: 13:26, 13:30, 13:38 and 13:45.

Witness 3 in his oral evidence said that Miss Kargbo may have been under pressure to get the right eye dilated fairly quickly and that administering the eyedrops in that frequency would not have caused any harm, and that different patients' eyes would dilate at different speeds with some not requiring all four drops.

Evidence from Witness 1 and Witness 2 indicated that there is an expectation that eyedrops should ideally be administered at equal intervals every fifteen minutes. However, there was no evidence provided by the NMC to support that the administration of eyedrops in this case was incorrect and that this administration was not, for example, at the direction of the surgeon in order to ensure the patient was ready for their operating slot. Witness 1 and Witness 2 did concede in their oral evidence that sometimes eyedrops were administered more quickly due to time constraints.

In the absence of evidence to show, on the balance of probabilities, that the administration of eyedrops was incorrect, the panel therefore found charge 5) not proved.

Charge 6)

6) On 6 February 2019 reused your signature on the prescription chart when you recorded you had administered drops to Patient B's right eye.

This charge is found proved.

In reaching this decision, the panel took into account the Ophthalmology Report which shows that three drugs of which were administered according to the signatures and the times written by Miss Kargbo which were: 12:36 and 12:55 which appear as being crossed out.

The panel took into account Witness 2's statement which states: "*… the registrant initially signed for the left eye and then after; realising the error, she scored out the times for the left eye and reused the signature for the right eye drops. Therefore, in addition to there*

being a medication administration error, the registrant also made a record keeping error." It noted that Witness 1 and Witness 2 both stated that a new prescription should have been used for the eyedrops administered to the right eye rather than reusing the signatures already documented.

The panel also considered the Serious Incident Informal Investigation Meeting notes dated 1 April 2019, which states: *"[Witness 2] showed HK the patients drug chart, prescription and theatre list for the day the drug error happened. [Witness 2] asked HK to confirm that the drug chart was prescribed for the right eye and that the theatre list listed the procedure for the right eye, HK confirmed that this was correct. [Witness 2] asked HK if the signatures on the drug chart were hers. HK confirmed they were. [Witness 2] read the times the medication was given 1236, 1255, 1326, 1335, 1338, 1345 and asked HK to confirm that these were the times the eye drops were given. 1236 and 1255 had a number of lines through them and [Witness 2] asked HK to confirm that these medications had been given and that the drug chart had been used twice for these medications, however 2nd signatures were not present for the 2nd administration of the medication. [Witness 2] asked HK to confirm which eye the eye drops were prescribed for, HK confirmed that it was the right eye that the eye drops were signed for. [Witness 2] asked HK why she had then administered the drops into the left eye and HK said It was because the patient told her it was the left eye for surgery."* The panel noted that Miss Kargbo has made an admission to this charge during the investigation meeting on 1 April 2019.

In light of the evidence above, the panel decided that, on the balance of probabilities, it is more likely than not that Miss Kargbo reused her signature on the prescription chart when she recorded that she had administered drops to Patient B's right eye. Therefore, the panel finds charge 6) proved.

Charge 7)

7) On or before 26 April 2019 failed to pass the competencies for the theatre circulating role.

This charge is found proved.

The panel took into account the outcome letter dated 30 April 2019, which states: "*We discussed that you have had 4 weeks in a supernumerary capacity in theatres to learn the role but unfortunately you have not been able to pass your competencies in this role."*

The panel also considered the oral and documentary evidence of Witness 5. Witness 5 said that her role was to support Miss Kargbo, work through those competencies and to sign her off as having demonstrated competencies in each objective. Witness 5 also gave evidence about Miss Kargo's attitude to the process and that she was angry about being reassigned. Witness 5 said that Miss Kargbo came across as reluctant to learn and effectively refused to engage with the mentorship process.

The panel decided that it is evident from the outcome letter dated 30 April 2023 that Miss Kargbo had not passed the competencies for the theatre circulating role. The panel therefore found charge 7) proved.

Charge 8)

8) On 21 December 2018 you refused to accept an unknown patient from recovery.

This charge is found proved.

The panel did not have any direct evidence of the refusal to accept an unknown patient from recovery. The only evidence the panel had before it was from Witness 1.

A meeting was held to discuss Miss Kargbo's refusal to take an unknown patient on the 21 December 2018. A meeting outcome letter was published on 4 January 2019. In the letter Miss Kargbo admitted that she had refused to take the patient. Miss Kargbo moreover, said that she felt that she had seen enough patients and it was pointed out to her that it was not a matter for her to decide. The outcome letter dated 4 January 2019, states: "*You confirmed that you had refused to accept the patient citing that you had cared for 4 patients in the morning and had 2 patients now and that you only had to care for 6 patients for the day."*

Based on the information before it, the panel decided that there is clear evidence of an admission to the refusal by Miss Kargbo as well as the contemporaneous outcome letter dated 4 January 2019. It therefore found charge 8) proved.

Charge 9)

9) [PRIVATE]

This charge is found proved.

[PRIVATE]

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 a lack of competence and in respect of charge 8), misconduct or lack of competence. Then, noting its earlier findings on facts relating to Miss Kargbo's health, whether Miss Kargbo's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to lack of competence and/or misconduct. Secondly, only if the facts found proved amount to lack of competence and /or misconduct, the panel must decide whether, in all the circumstances, Miss Kargbo's fitness to practise is currently impaired as a result of that lack of competence and/or misconduct.

Submissions on misconduct and lack of competence (charges 1 – 8)

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

Mr Kennedy referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision. He invited the panel to take the view that the charges 1a), 1b), 2), 3), 4), 6) and 7) amount to lack of competence. He submitted that Miss Kargbo's behaviour fell below the standards expected of a Band 5 nurse.

Mr Kennedy said that charges 1a), 1b), 2), 3), 4), 6) and 7) relate to Miss Kargbo's practice in various acts and aspects of the process for the administration of drugs. Miss Kargbo did not adhere to the five rights of medication administration as she administered metronidazole to Patient A who was allergic to it, despite the allergy being recorded. Miss

Kargbo also subsequently administered eyedrops to Patient B's wrong eye despite only recently passing her medication competencies. Mr Kennedy submitted that Miss Kargbo did not carry out basic checks and the failures relate to basic nursing.

Mr Kennedy submitted that it can be satisfied that these were not isolated errors. They were events that occurred due to Miss Kargbo's lack of competence in these areas. He further submitted that the panel may find it of significance when looking at the question of competence that Miss Kargbo failed competency assessments in both medicines administration and the theatre circulating role. He told the panel that Miss Kargbo received help and support, but despite this, her performance did not meet the required standard of a registered nurse.

In respect of charge 8), Mr Kennedy submitted that Miss Kargbo's behaviour fell below the standards expected of a registered nurse by her refusing to take care of a patient who needed assistance. He submitted that Miss Kargbo put her own views and needs ahead of the needs of a patient and that this is an example of a petulant attitude. He therefore invited the panel to find that charge 8) amounts to misconduct.

Mr Kennedy 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).

Mr Kennedy submitted that Miss Kargbo has not shown sufficient insight. [PRIVATE]. Miss Kargbo was also reluctant to accept that she had made drug errors, and she put her own needs above those of a patient. [PRIVATE]. He also said that there is little known about Miss Kargbo's current employment.

Mr Kennedy submitted that Miss Kargbo's behaviour, her lack of competence and misconduct raised questions about the extent to which she can be trusted to treat patients. He also submitted that Miss Kargbo's behaviour has had an adverse impact on the Trust.

Mr Kennedy accepted that matters of competence and misconduct can be remedied, but Miss Kargbo has not worked as a nurse since 2019 and there is no evidence that she had remediated these concerns. He therefore submitted that there is a risk of the behaviour being repeated in the future.

In respect of public protection, Mr Kennedy submitted that there was actual harm to Patient A as a result of Miss Kargbo's behaviour and that Patient B was exposed to potential harm. He submitted that there are no references or testimonials from Miss Kargbo's current employment about her performance or evidence that she has kept her nursing skills up-to-date. Mr Kennedy therefore submitted that the risk of repetition in the future remains.

[PRIVATE]. Mr Kennedy therefore submitted that a finding of current impairment is necessary for both public protection and public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Rylands v General Medical Council* [1999] Lloyds Rep Med 139, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *Cohen v GMC* [2008] EWHC 581 (Admin).

Decision on lack of competence (charges 1 – 7) and misconduct (charge 8)

When determining whether the facts found proved amount to a lack of competence the panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code").

The panel, in reaching its decision, has had regard to the protection of the public, the wider public interest and accepted that there is no burden or standard of proof at this stage and exercised its own professional judgement.

The NMC has defined a lack of competence as:

> "A lack of knowledge, skill or judgment of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified or seeks to practice."

The panel considered the charges individually and determined the following:

Charges 1a) and 1b)

The panel determined that the following sections of the Code were engaged by Miss Kargbo's actions, in relation to charges 1a) and 1b):

> **1.2** make sure you deliver the fundamentals of care effectively
>
> **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
>
> **18.3** 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

The panel noted that Miss Kargbo did not adhere to the five rights of medication administration as she administered metronidazole to Patient A who was allergic to it,

despite the allergy being recorded. Miss Kargbo's failure to review Patient A's medical records and wristband compromised her ability to deliver safe and effective care to Patient A. It also noted that Patient A was put at risk of harm and indeed suffered harm as a result of Miss Kargbo's actions.

The panel therefore concluded that Miss Kargbo's practice was below the standard that one would expect of a reasonably competent registered nurse. The safe and effective administration of medication is a basic nursing task. In all the circumstances, the panel determined that Miss Kargbo's actions demonstrated a lack of competence.

Charge 2)

The panel determined that the following sections of the Code were engaged by Miss Kargbo's actions, in relation to charge 2):

> **1.2** make sure you deliver the fundamentals of care effectively
>
> **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
>
> **18.3** 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

For the same reasons outlined in charges 1a) and 1b), the panel determined that Miss Kargbo's actions demonstrated a lack of competence.

Charge 3)

The panel determined that the following section of the Code was engaged by Miss Kargbo's actions, in relation to charge 3):

> **22.3** keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance

The panel noted that Miss Kargbo did not pass the workbook practical drug administration for a period of six months. The panel heard evidence that the workbook practical drug administration involved basic areas of nursing practice and were basic competencies to pass. There was persuasive evidence that the necessary standards could be achieved in a matter of weeks. The panel therefore concluded that Miss Kargbo's practice was below the standard that one would expect of a reasonably competent registered nurse. In all the circumstances, the panel determined that Miss Kargbo's actions demonstrated a lack of competence.

Charge 4)

The panel determined that the following sections of the Code were engaged by Miss Kargbo's actions, in relation to charge 4):

> **1.2** make sure you deliver the fundamentals of care effectively
>
> **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
>
> **18.3** 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

The panel considered that the ability to administer medication safely and effectively to patients is a basic and fundamental element of nursing. Miss Kargbo would have been required as a registered nurse to check the prescriptions and ensure that she had administered the eyedrops to the correct eye or seek further clarification if she was unsure. It also noted that although no harm was caused to Patient B, there was potential for harm in that unnecessary medication was administered to Patient B's left eye. The panel therefore determined that Miss Kargbo's practice was below the standard that one would expect of a reasonably competent registered nurse. In all the circumstances, the panel determined that Miss Kargbo's actions demonstrated a lack of competence.

Charge 6)

The panel determined that the following sections of the Code were engaged by Miss Kargbo's actions, in relation to charge 6):

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

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

The panel noted that there was an expectation for Miss Kargbo to check the operation list and the prescription to ensure that she had administered the eyedrops correctly and to ensure the safe provision of care to patients and to prevent any harm from arising. The panel determined that such actions fell below the standards expected of a registered

nurse. The panel therefore determined that Miss Kargbo's actions demonstrated a lack of competence.

Charge 7)

The panel determined that the following section of the Code was engaged by Miss Kargbo's actions, in relation to charge 7):

> **22.3** keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance

The panel heard evidence from Witness 1 and Witness 2 that the competencies for the theatre circulating role were basic skills. However, Miss Kargbo failed to achieve the skills and knowledge of a theatre circulating role over a period of four weeks which, would normally take no more than two weeks. This was despite the support by the Trust and her colleagues. It further noted that this was not an isolated incident and is another example of training, for whatever reason, Miss Kargbo failed to comply with as an experienced Band 5 nurse. The panel therefore determined that Miss Kargbo's actions demonstrated a lack of competence.

Charge 8)

The panel took into account the NMC Fitness to Practise Library on Misconduct (FtP-2a) which states: *"We don't need to become involved in issues like bad timekeeping, or minor breaches of a local disciplinary policy, because they won't put patients or members of the public at risk of suffering harm, and they don't raise fundamental questions about a nurse, midwife or nursing associate's trustworthiness as a registered professional."* Although the panel accepts that it was an unprofessional act on Miss Kargbo's behalf to refuse the care

of a patient, the panel was of the opinion that charge 8) was not serious enough to amount to misconduct and was an isolated incident which did not constitute a lack of competence.

Decision and reasons on impairment

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

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

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

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

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

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) *…*

Lack of competence

The panel determined that limbs a, b and c of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by Miss Kargbo's past actions. The panel considered that Miss Kargbo's failings related to essential nursing practice, and as such her actions harmed Patient A and placed Patient B at risk of harm, and she breached fundamental tenets of the profession. The panel considered that failings in such essential areas also brought the nursing profession into disrepute.

Having regard to the test for remediation set out in the case of *Cohen v GMC*, the panel determined that Miss Kargbo's lack of competence is capable of remediation. In considering whether it has been remedied, the panel assessed Miss Kargbo's practice since these errors arose as well as her level of insight.

The panel had regard to the testimonials provided by Miss Kargbo and the oral evidence of Witness 1 and Witness 2 who both said that Miss Kargbo was a kind and good nurse. However, Miss Kargbo has not proactively engaged with the NMC in respect of these regulatory proceedings; she has provided no information as to any attempts at remediating her practice, any current relevant training she has undertaken, or any current references from previous or current employers as to the level of her clinical competence. Aside from

the limited levels of insight demonstrated in the reflective pieces undertaken by Miss Kargbo at a local level, the panel has also no information as to Miss Kargbo's current level of insight into her actions. The panel also had no evidence before it to suggest that since 2019 Miss Kargbo had worked in a safe and effective capacity as a nurse, and that she had been able to successfully perform tasks in those areas where her skills were said to be lacking.

Given Miss Kargbo's lack of insight into her own failure to demonstrate the standards of knowledge, skill and judgement expected of a registered nurse, and the lack of remediation of the concerns, the panel considered that there remained a risk of repetition. The panel therefore determined that a finding of impairment was necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that confidence in the profession would be undermined if a finding of impairment was not made in this case. The panel therefore determined that a finding of impairment was also necessary on public interest grounds, in order to maintain confidence in the nursing profession, and in order to declare and uphold proper standards of conduct and performance.

[PRIVATE]

Sanction

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

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

Submissions on sanction

Mr Kennedy informed the panel that the NMC had advised Miss Kargbo that it would seek the imposition of a suspension order for a period of twelve months if the panel found Miss Kargbo's fitness to practise currently impaired.

Mr Kennedy submitted that had Miss Kargbo engaged and expressed a willingness to retrain [PRIVATE] a conditions of practice order may have been appropriate as remediation could be possible. However, for conditions to be effective, they must be acknowledged by Miss Kargbo and she must be prepared to abide by them. Mr Kennedy submitted that due to Miss Kargbo's lack of engagement, there is nothing to suggest that she would be prepared to work with any conditions.

Mr Kennedy therefore submitted that a suspension order for a period of twelve months would allow Miss Kargbo an opportunity to reflect and consider reengaging with the NMC process and would allow her to develop insight [PRIVATE].

Decision and reasons on sanction

Having found Miss Kargbo's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful

regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Kargbo's lack of engagement with her regulator;
- Miss Kargbo's failings related to basic nursing practice;
- A pattern of lack of competence over a period of time;
- Miss Kargbo's failings caused harm to Patient A and had the potential to cause harm to Patient B;
- Miss Kargbo's tendency to place blame on others;
- Her reluctance to engage with re-training;
- No current evidence of sufficient remediation or insight.

The panel also took into account the following mitigating features:

- Miss Kargbo had made some admissions at the local investigation, although these were limited.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Kargbo's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Kargbo's failings were 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 to impose a conditions of practice order. Whilst there were identifiable areas of Miss Kargbo's practice in need of assessment and retraining, she had not been engaging with the NMC's proceedings for some time. [PRIVATE].

The panel therefore considered that there was no evidence that Miss Kargbo would be willing to comply with a conditions of practice order at this time. Furthermore, since the events took place, there was no evidence to suggest that Miss Kargbo had demonstrated a period of safe and effective practice. Miss Kargbo was unable to make progress despite the training and support put in place for her by the Trust. The panel therefore considered that imposing a conditions of practice order at this stage would not protect patients during the period that they are in force. In the circumstances, the panel concluded that it was not possible to formulate practicable and workable conditions of practice which would sufficiently protect the public and satisfy the wider public interest.

The panel then considered whether to impose a suspension order. Miss Kargbo had demonstrated limited insight into the incidents in the local investigation, although she appeared to lack insight into her own nursing practice. The panel considered that there would be a risk to patient safety if Miss Kargbo were permitted to practise subject to conditions of practice at this time. In these circumstances, the panel considered that a suspension order would protect the public. It also considered that a suspension order would give Miss Kargbo the opportunity to reflect on her own nursing practice and the seriousness of the concerns in this case and to take steps towards remediating and addressing the issues identified. The panel also determined that a suspension order would mark the seriousness of the case and satisfy the public interest by maintaining confidence in the nursing profession and in the NMC as a regulator, whilst declaring and upholding appropriate standards of performance.

As this case relates to Miss Kargbo's lack of competence and health, the panel does not have the power to impose a striking-off order at this time.

The panel determined that a suspension order for a period of twelve months was appropriate and proportionate in this case.

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

Any future panel reviewing this case would be assisted by Miss Kargbo's:

- Engagement with the NMC and/or attendance at the reviewing hearing;
- Acknowledgment of the incidents and charges found proved articulated through a structured reflective piece (for example, using the Gibbs' model);
- Evidence of development of professional practice such as online courses;
- Testimonials or references from any employment she has undertaken between the date of this hearing and the review hearing, whether paid or unpaid;
- [PRIVATE];
- [PRIVATE].

Interim order

As the suspension order cannot take effect until the end of the twenty-eight-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Kargbo's own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel considered the submissions made by Mr Kennedy that an interim suspension order for a period of eighteen months should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest in order to cover any appeal process undertaken by Miss Kargbo. Mr Kennedy submitted that the purpose is to protect the public in the appeal period and in the wider public interest.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for eighteen months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the suspension order twenty-eight days after Miss Kargbo is sent the decision of this hearing in writing.

That concludes this determination.