

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

**Substantive Hearing  
Monday, 17 April 2023 – Friday, 5 May 2023**

Virtual Hearing

**Name of Registrant:** Zena Pickering

**NMC PIN** 18D0438E

**Part(s) of the register:** Registered Nurse, Sub Part 1 – 10 January 2019

**Relevant Location:** Paignton

**Type of case:** Misconduct

**Panel members:** Christina Mckenzie (Chair, registrant member)  
Michael Duque (Registrant member)  
Rachel Onikosi (Lay member)

**Legal Assessor:** Charles Parsley (17-28 April 2023)  
Juliet Gibbon (2-5 May 2023)

**Hearings Coordinator:** Clara Federizo

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

**Mrs Pickering:** Not present and not represented

**Facts proved by admission:** Charges 1a, 1b, 1c, 1d, 1e, 2a, 2b, 2c, 2d, 2e, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, 3n, 3o, 3p, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 5, 6, 7, 9a, 9b, 10, 11, 12, 13, 14, 15a, 15b, 16, 17, 18, 21a and 21b (077967/2020)

Charge 1 (078835/2020)

**Facts proved:** Charges 4a, 7, 8, 9 10 and 11 (078835/2020)

**Facts not proved:**

Charges 3j, 8a, 8b, 19, 20, 22 and 23  
(077967/2020)

Charges 2, 3a, 5, 6, 12 and 13 (078835/2020)

**Fitness to practise:**

Impaired

**Sanction:**

**Striking-off Order**

**Interim order:**

**Interim Suspension Order (18 months)**

## **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 in private on the basis that proper exploration of this case involves reference to Mrs Pickering's health and private personal matters. 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 determined to go into private session in connection with any references to Mrs Pickering's health and personal matters as and when such issues are raised, in order to protect her privacy and confidentiality in these proceedings.

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mrs Pickering was not in attendance and that the Notice of Hearing letter had been sent to Mrs Pickering's registered email address by secure email on 16 March 2023.

Ms Knight, on behalf of the Nursing and Midwifery Council (NMC), referred the panel to the supplementary documentation which provided evidence that the Notice was sent to Mrs Pickering on 16 March 2023. Ms Knight submitted that the meeting link details were also sent to Mrs Pickering. Ms Knight submitted that the NMC had complied with the requirements of Rules 11 and 34.

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, date and that the hearing was to be held virtually, and, amongst other things, information about Mrs Pickering's right to attend, be represented and call evidence, as well as the panel's power to proceed in their absence.

In the light of all of the information available, the panel was satisfied that Mrs Pickering 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 Mrs Pickering**

The panel next considered whether it should proceed in the absence of Mrs Pickering. It had regard to Rule 21 and heard the submissions of Ms Knight who invited the panel to continue in the absence of Mrs Pickering.

Ms Knight referred the panel to the email correspondence from Mrs Pickering, dated 12 April 2023, which states:

*"...I can confirm that I will not be attending the hearing and [PRIVATE]."*

In light of this, Ms Knight submitted that Mrs Pickering had voluntarily absented herself. Ms Knight further submitted that there is no request from Mrs Pickering for an adjournment nor indication that she intends to attend a hearing at a later date. Ms Knight submitted that there is a public interest in the expeditious disposal of the case.

The panel noted that the Notice of Hearing documents were sent by secure email, and despite having been supplied password and instructions, Mrs Pickering experienced issues opening these. The panel considered Ms Knight's submissions that these documents could not be sent without password protection as it was a legal matter. Further, Ms Knight outlined that the alternative of sending a physical copy of the documents would be unsuitable, as Mrs Pickering has requested that documents should not be sent to her

home address due to private personal circumstances. Ms Knight submitted that the NMC have sent the documents to Mrs Pickering via email and that the panel had found good service on Notice, therefore invited the panel to consider all the charges presented before it.

The panel accepted the advice of the legal assessor, which included that in the context of proceeding in absence, the panel should have regard to the fairness to the NMC, to the registrant, and to take into account public interest.

The legal assessor advised that while it is clear that the panel found there has been good service within the Rules of the Notice of Hearing on 16 March 2023 which set out both sets of charges arising from the two referrals, the email correspondence from Mrs Pickering on 17 April 2023 outlined that she did not understand what the changes were in the charges. The changes are particularly relevant to the three charges concerning Patient Z. The panel might consider that different considerations apply in respect of these charges when one has regard to the fairness of proceeding in absence. Further, that the panel may consider, in the overall context of seriousness, that there are a number of more serious charges to which these additional three may not make a significant difference. The legal assessor reminded everyone that this is a matter for the panel.

The panel considered that in light of Mrs Pickering's recent engagement with the NMC on 17 April 2023, although it had found good service of Notice, it found an issue of fairness. The panel determined that, in the interest of fairness to Mrs Pickering, it would only consider the charges she had sight of according to her responses on the case management form on '*section 3. Your responses to the charges*', which she completed in March 2022.

The panel determined to proceed in absence and consider all the charges in the first referral (077967/2020). The panel determined to consider the charges on second referral (078835/2020), with the exception of the charges 14, 15a, 15b and 16, as these were additional charges that Mrs Pickering has not had sight of. The panel concluded that those

additional charges do not make a material difference to the overall seriousness of the case.

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.

With the exception of charges 14, 15a, 15b and 16 of case reference 078835/2020, the panel has decided to proceed in the absence of Mrs Pickering. In reaching this decision, the panel has considered the submissions of Ms Knight, the correspondence from Mrs Pickering and the advice of the legal assessor. It 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 Mrs Pickering;
- Mrs Pickering has received the Notice of Hearing and confirmed that she would not attend the hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses are due to attend to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- 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 Mrs Pickering in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address,

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 Mrs Pickering'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 Mrs Pickering. The panel will draw no adverse inference from Mrs Pickering's absence in its findings of fact.

#### **In relation to charges 14, 15a, 15b and 16 of case reference 078835/2020**

Upon seeking instructions, Ms Knight submitted that the NMC will be offering no evidence in relation to charges 14 to 16 of the second referral. Ms Knight outlined for the panel the relevant parts of the NMC guidance on offering no evidence:

***"Where part of the charge doesn't make the case more serious***

*If we're satisfied that one or more of the alleged facts against the nurse, midwife or nursing associate doesn't add anything to how serious the case against them is, we may decide to offer no evidence on those parts of the charge. We won't do this unless we're satisfied that the remaining parts of the charge properly reflect the extent of our concerns about the nurse, midwife or nursing associate's fitness to practise, and the evidence about them. We'll need to consider the risk of harm to patients, or the public's trust in nurses, midwives and nursing associates that could arise from what the nurse, midwife or nursing associate is alleged to have done."*

Ms Knight submitted that charges 14 to 16 relate to similar elements and behaviour of Mrs Pickering as in other charges within the schedule, therefore whilst the charges are serious,

these do not add to the seriousness of the case in the context of the rest of the charges overall. For this reason, Ms Knight submitted that it is the NMC's position to offer no evidence in relation to charges 14 to 16 of case reference 078835/2020.

The panel therefore found these charges not proved.

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Ms Knight to amend the wording of charges 3 and 4 of the case reference: 077967/2020. She submitted that charges 3(f) and 3(l), should state '30 mg', and charge 4(a) should read 'Patient F' not 'Patient E'.

The proposed amendments were to correct typographical errors. It was submitted by Ms Knight that these would provide clarity and more accurately reflect the evidence. The proposed amendments are as follows:

*"That you, a registered nurse, whilst employed by Ramsey Health Care at Mount Stuart Hospital ('the Hospital') between February & March 2020:*

...

3. *On or around 11 March 2020;*

- a) Did not dispense Patient C's prescribed Codeine Phosphate 30-60mg to Patient C on discharge.*
- b) Did not sign Patient C's Codeine Phosphate 30mg back into the controlled drugs book.*
- c) Did not return Patient C's Codeine Phosphate 30mg back into the controlled drugs cupboard.*
- d) Inaccurately completed Patient C's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient C.*
- e) Took Patient C's prescribed Codeine Phosphate 30mg without permission.*



- f) *Did not dispense Patient D's prescribed Codeine Phosphate 30mg to Patient D on discharge.*
  - g) *Did not sign Patient D's Codeine Phosphate 30mg back into the controlled drugs book.*
  - h) *Did not return Patient D's Codeine Phosphate 30mg back into the controlled drugs cupboard*
  - i) *Inaccurately completed Patient D's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient D.*
  - j) *Placed Patient D's Codeine Phosphate 30mg into your own pocket prior to discharge.*
  - k) *Took Patient D's prescribed Codeine Phosphate 30mg without permission.*
  - l) *Did not dispense Patient E's prescribed Codeine Phosphate 30mg to Patient E on discharge.*
  - m) *Did not sign Patient E's Codeine Phosphate 30mg back into the controlled drugs book.*
  - n) *Did not return Patient E's Codeine Phosphate 30mg back into the controlled drugs cupboard*
  - o) *Inaccurately completed Patient E's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient E.*
  - p) *Took Patient E's prescribed Codeine Phosphate 30mg without permission.*
4. *On or around 12 March 2020:*
- a) *Did not dispense Patient F's prescribed Codeine Phosphate 30mg to Patient E Patient F on discharge..."*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules. The panel was of the view that such amendments, as applied for, was to correct typographical errors. The panel was satisfied that there would be no prejudice to Mrs

Pickering 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 clarity and accuracy.

The panel also determined to make further amendments to the wording of charges 11, 12 and 13 of the case reference: 078835/2020. The panel recognised that the term to be used in the charges should be '*clients*' as opposed to '*patients*' considering the context of the alleged charges are within the aesthetics field.

In relation to charge 12, the panel determined to amend the wording of the charge to correct a typographical error, as the charge refers to alleged dishonesty in both charge 8 and 10. However, the alleged dishonesty in charge 8 is already addressed in charge 9. Therefore, the panel determined that charge 11, 12 and 13 should state as follows:

*"11. On 8 July 2020 did not inform one or more ~~patients~~ **clients** during their initial consultation that you were subject to an Interim Suspension Order*

*12. Your actions/omissions in ~~one or more charges of 8 &~~ **charge** 10 were dishonest in that you sought conceal that regulatory restrictions were placed upon your practice from Prescriber X.*

*13. Your actions/omissions in charge 11 were dishonest in that you sought conceal that regulatory restrictions were placed upon your practice from one or more ~~patients~~ **clients.**"*

The panel was satisfied that there would be no prejudice to Mrs Pickering and no injustice would be caused to either party by the amendments being allowed. It was therefore appropriate to allow the amendments to ensure clarity and accuracy.

### **Details of charge**

Case Reference: 077967/2020

That you, a registered nurse, whilst employed by Ramsey Health Care at Mount Stuart Hospital ('the Hospital') between February & March 2020:

1. On or around 15/16 February 2020, following Patient A's refusal of Codeine;
  - a) Did not dispense Patient A's prescribed Codeine 30mg to Patient A on discharge. **[ADMITTED]**
  - b) Did not sign Patient A's Codeine 30mg back into the controlled drugs book. **[ADMITTED]**
  - c) Did not return Patient A's Codeine 30mg back into the controlled drugs cupboard. **[ADMITTED]**
  - d) Inaccurately completed Patient A's summary discharge letter to indicate that you had dispensed Codeine 30-60mg to Patient A. **[ADMITTED]**
  - e) Took Patient A's prescribed Codeine 30mg without permission. **[ADMITTED]**
  
2. On or around 10 March 2020;
  - a) Did not dispense Patient B's prescribed Codeine Phosphate 30mg to Patient B on discharge. **[ADMITTED]**
  - b) Did not sign Patient B's Codeine Phosphate 30mg back into the controlled drugs book. **[ADMITTED]**
  - c) Did not return Patient B's Codeine Phosphate 30mg back into the controlled drug cupboard. **[ADMITTED]**
  - d) Inaccurately completed Patient B's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient B. **[ADMITTED]**
  - e) Took Patient B's prescribed Codeine Phosphate 30mg without permission. **[ADMITTED]**

3. On or around 11 March 2020;
- a) Did not dispense Patient C's prescribed Codeine Phosphate 30-60mg to Patient C on discharge. **[ADMITTED]**
  - b) Did not sign Patient C's Codeine Phosphate 30mg back into the controlled drugs book. **[ADMITTED]**
  - c) Did not return Patient C's Codeine Phosphate 30mg back into the controlled drugs cupboard. **[ADMITTED]**
  - d) Inaccurately completed Patient C's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient C. **[ADMITTED]**
  - e) Took Patient C's prescribed Codeine Phosphate 30mg without permission. **[ADMITTED]**
  - f) Did not dispense Patient D's prescribed Codeine Phosphate 30mg to Patient D on discharge. **[ADMITTED]**
  - g) Did not sign Patient D's Codeine Phosphate 30mg back into the controlled drugs book. **[ADMITTED]**
  - h) Did not return Patient D's Codeine Phosphate 30mg back into the controlled drugs cupboard. **[ADMITTED]**
  - i) Inaccurately completed Patient D's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient D. **[ADMITTED]**
  - j) Placed Patient D's Codeine Phosphate 30mg into your own pocket prior to discharge. **[NOT PROVED]**
  - k) Took Patient D's prescribed Codeine Phosphate 30mg without permission. **[ADMITTED]**
  - l) Did not dispense Patient E's prescribed Codeine Phosphate 30mg to Patient E on discharge. **[ADMITTED]**
  - m) Did not sign Patient E's Codeine Phosphate 30mg back into the controlled drugs book. **[ADMITTED]**

- n) Did not return Patient E's Codeine Phosphate 30mg back into the controlled drugs cupboard. **[ADMITTED]**
  - o) Inaccurately completed Patient E's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient E. **[ADMITTED]**
  - p) Took Patient E's prescribed Codeine Phosphate 30mg without permission. **[ADMITTED]**
4. On or around 12 March 2020;
- a) Did not dispense Patient F's prescribed Codeine Phosphate 30mg to Patient F on discharge. **[ADMITTED]**
  - b) Did not sign Patient F's Codeine Phosphate 30mg back into the controlled drugs book. **[ADMITTED]**
  - c) Did not return Patient F's Codeine Phosphate 30mg back into the controlled drugs cupboard. **[ADMITTED]**
  - d) Inaccurately completed Patient F's summary discharge letter to indicate that you had dispensed Codeine 30mg to Patient F. **[ADMITTED]**
  - e) Took Patient F's prescribed Codeine Phosphate 30mg without permission. **[ADMITTED]**
  - f) Did not dispense Patient G's prescribed Tramadol 50mg to Patient G on discharge. **[ADMITTED]**
  - g) Crossed off the Tramadol medication on Patient G's summary discharge letter. **[ADMITTED]**
  - h) Did not sign Patient G's Tramadol 50mg back into the controlled drugs book. **[ADMITTED]**
  - i) Did not return Patient G's Tramadol 50mg back into the controlled drugs cupboard. **[ADMITTED]**

- j) Took Patient G's prescribed Tramadol 50mg without permission. **[ADMITTED]**
5. Your actions in one or more of the above charges, 1 b), 1 d), 2 b), 2 d), 3 b), 3 d), 3 g), 3 i), 3 m), 3 o), 4 b), 4 d), 4 h) were dishonest, in that you knew you had not dispensed medication to one or more patients but sought, to represent that you had. **[ADMITTED]**
6. Your actions in one or more of the above charges, 1 b), 1 d), 2 b), 2 d), 3 b), 3 d), 3 g), 3 i), 3 m), 3 o), 4 b), 4 d), 4 h) were dishonest, in that you falsified records to conceal that you had stolen medication from your employer/one or more patients. **[ADMITTED]**
7. Your actions in one or more charges of the above charges, 1 a), 1 c), 1 e), 2 a), 2 c), 2 e), 3 a), 3 c), 3 e), 3 f), 3 h), 3 j), 3 k), 3 l), 3 n), 3 p), were dishonest in that you sought/took medication belonging to your employer/prescribed for one or more patients, with an intention not to return it. **[ADMITTED]**

That you, a registered nurse, whilst employed at the Devon Partnership Trust ("the Employer") at Torbay Hospital between 14 May 2020 and 15 June 2020:

8. Did not comply with paragraph 2 of the Interim Conditions Practise Order imposed on 1 June 2020 by an Investigating Committee of the NMC, in that you;
- a) On 5 June 2020 administered medication to Patient H, on one or more occasion without being directly supervised by another registered nurse. **[NOT PROVED]**
- b) On 11 June 2020 administered medication to Patient H, on one or more occasion without being directly supervised by another registered nurse. **[NOT PROVED]**
9. Did not comply with paragraph 6 a) of the Interim Conditions Practise Order imposed on 1 June 2020 by an Investigating Committee of the NMC, in that you;
- a) Between 1 June 2020 and 15 June 2020 did not immediately provide a copy of the Interim Conditions of Practice Order to your employer. **[ADMITTED]**
- b) Between 1 June 2020 and 15 June 2020 did not disclose to your employer that you were subject to an Interim Conditions of Practise Order. **[ADMITTED]**

10. Your actions in one or more charges 8 a), 9 a) & 9 b) were dishonest, in that you sought to conceal, that regulatory restrictions were placed upon your practice, from your employer. **[ADMITTED]**

That you a registered nurse between 16 March 2020 & 15 June 2020:

11. Between 18 April 2020 and 22 April 2020 inaccurately informed the Devon Partnership Trust that Colleague Z, a prospective referee was a manager at your previous employer Ramsey Health Care. **[ADMITTED]**

12. Your actions in charge 11 above were dishonest in that you sought to misrepresent Colleague Z's position/status/employment details, in order to provide a false reference. **[ADMITTED]**

13. On 24 April 2020 inaccurately informed the Devon Partnership Trust that Colleague Y a prospective referee, was your manager in the ambulatory care unit at your previous employer. **[ADMITTED]**

14. Your actions in charge 13 above were dishonest in that you sought to misrepresent Colleague Y's position/status in order to provide a false reference. **[ADMITTED]**

15. Did not disclose to the Devon Partnership Trust, that you were subject to a disciplinary investigation/proceeding at your previous place of employment Ramsey Health Care, for;

a) Stealing medication prescribed to patients; **[ADMITTED]**

b) Inaccurate record keeping. **[ADMITTED]**

16. Between 21 April 2020 and 15 June 2020 did not disclose to the Devon Partnership Trust that you had been dismissed from your place of previous employment at Ramsey Health Care. **[ADMITTED]**

17. Your actions in one or more charges 15 a) & 15 b) above were dishonest in that you sought to conceal that you were subject to a disciplinary investigation/proceedings by Ramsey Health Care, from your prospective/new employer. **[ADMITTED]**

18. Your actions in charge 16 above were dishonest in that you sought to conceal that you were dismissed by Ramsey Health Care, from your prospective/new employer.

**[ADMITTED]**

19. On 16 July 2020 during an investigation interview, inaccurately told Colleague X that you had not received a letter/a decision in writing from the NMC regarding the Interim Conditions of Practice Order imposed on 1 June 2020. **[NOT PROVED]**
20. Your actions in charge 19 above were dishonest, in that you knew that you had been sent a written determination setting out your Interim Conditions of Practice Order but sought to represent that you had not. **[NOT PROVED]**
21. On 1 June 2020 during your Interim Order hearing before the Investigating Committee at the NMC, you inaccurately stated that:
- a) You had informed Devon Partnership NHS Trust about your investigation at Ramsay Health Care, in that you used words to the effect;
    - i) *"...I've been completely truthful with them about everything"* **[ADMITTED]**
    - ii) *"That there's an investigation going on"* **[ADMITTED]**
  - b) That you would not be administering medication at the Devon Partnership NHS Trust alone, in that you used words to the effect;
    - i) *"You never would go to the patient on your own with medication"* **[ADMITTED]**
    - ii) *"You would always work in twos"* **[ADMITTED]**
    - iii) *"You always dispense in twos and you always –that is just how they work on the ward"* **[ADMITTED]**
22. Your actions in charge 21 a) i) & 21 a) ii) above were dishonest, in that you sought to represent, that you had disclosed your investigation to Devon Partnership NHS Trust, knowing that you had not. **[NOT PROVED]**
23. Your actions in charge 21 b) i), 21 b) ii) and 21 b) iii) above were dishonest, in that you sought to represent that you would always be administering medication with a second nurse/under supervision, knowing that you would be allowed to administer medication independently. **[NOT PROVED]**



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

Case Reference: 078835/2020

That you, a registered nurse:

1. On 1 June 2020 at a new interim order hearing before an Investigating Committee at the NMC, incorrectly informed the Investigating Committee that you would not be seeking additional work outside your substantive employer the Devon Partnership NHS Trust. **[ADMITTED]**
2. Your actions in charge 1 above were dishonest, as you sought to conceal that you would be taking on additional work in aesthetics/administering Botox from your regulator. **[NOT PROVED]**
3. Between 1 June 2020 and 1 July 2020 breached conditions 5 a) & b) of the Interim Conditions of Practice Order imposed by an investigating Committee in that you;
  - a) Did not disclose to the NMC that you were booked for an online refresher training course at the Aesthetics Training Academy starting on 20 June 2020. **[NOT PROVED]**
4. Between 1 June 2020 and 1 July 2020 breached conditions 6 b) of the Interim Conditions of Practice Order by an investigating Committee in that you;
  - a) Did not disclose to the Aesthetics Training Academy that you were subject to an Interim Conditions of Practice Order. **[PROVED]**
5. Your actions/omissions in charge 3 a) were dishonest in that you sought conceal information of an organisation where you were going to undertake/ had undertaken training from your regulator. **[NOT PROVED]**
6. Your actions/omissions in charge 4 a) were dishonest in that you sought to conceal that regulatory restrictions were placed upon your practice from the Aesthetics Training Academy. **[NOT PROVED]**

7. Between 28 June 2020 and 1 July 2020 did not inform Prescriber X that you were subject to an Interim Conditions of Practice Order imposed by an Investigating Committee at the NMC. **[PROVED]**

Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:

8. On or around 1 July 2020 incorrectly informed Prescriber X that you had professional indemnity insurance with 'Cosmetic Insure'. **[PROVED]**
9. Your actions in charge 8 above were dishonest in that you sought to mislead Prescriber X into believing that you had professional indemnity insurance with 'Cosmetic Insure'. **[PROVED]**
10. Between 1 July 2020 and 9 July 2020 did not inform Prescriber X that you were subject to an Interim Suspension Order. **[PROVED]**
11. On 8 July 2020 did not inform one or more clients during their initial consultation that you were subject to an Interim Suspension Order. **[PROVED]**
12. Your actions/omissions in charge 10 were dishonest in that you sought conceal that regulatory restrictions were placed upon your practice from Prescriber X. **[NOT PROVED]**
13. Your actions/omissions in charge 11 were dishonest in that you sought conceal that regulatory restrictions were placed upon your practice from one or more clients. **[NOT PROVED]**
14. Around July 2020, requested Patient Z's medical records, without Patient Z's permission. **[No evidence offered – NOT PROVED]**
15. Between 21-23 July 2020 whilst communicating via 'Facebook Messenger' with Patient Z;
  - a) On 22 July 2020 inaccurately informed Patient Z that you could/were permitted to administer Botox. **[No evidence offered – NOT PROVED]**
  - b) On 23 July 2020 inaccurately informed Patient Z that your Interim Suspension Order on your registration was going to be lifted/removed in the following week. **[No evidence offered – NOT PROVED]**

16. Your actions in one or more of charges 15 a) & 15 b) were dishonest as you sought to conceal the Interim Suspension Order imposed on 1 July 2020 and/or represent that you were permitted to practice as a nurse/administer Botox without restriction.  
**[No evidence offered – NOT PROVED]**

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

## **Background**

The initial referral relating to case reference 077967/2020, arose whilst Mrs Pickering was working as a registered nurse for Ramsey Health Care at Mount Stuart Hospital. The allegations related to missing drugs, poor record keeping and dishonesty between February and March 2020. The referral triggered an NMC Investigating Committee hearing on 1 June 2020, which resulted in restrictions being placed on Mrs Pickering's practice whilst an investigation was undertaken by the NMC.

Mrs Pickering changed employer to Devon Partnerships Trust (the Trust) and concerns were raised about her not meeting the requirements of the Interim Conditions of Practice Order imposed on her by the NMC Investigating Committee.

These concerns resulted in an early review of the Interim Conditions of Practice Order on 1 July 2020. The Interim Order was amended and became an Interim Suspension Order. This meant that Mrs Pickering could not practice as a registered nurse whilst the NMC investigation continued.

The second referral, case reference 078835/2020, arose whilst Mrs Pickering was subject to the above interim restrictions imposed on her nursing practice by the NMC and relates to her working as a self-employed aesthetician. The NMC received two referrals from independent providers of aesthetics. These related to alleged non-disclosure of restrictions on Mrs Pickering's practice.

## **Decision and reasons on facts**

At the outset of the hearing, the panel had sight of the registrant response bundle and evidence matrix, which informed the panel that Mrs Pickering made full admissions to charges 1a, 1b, 1c, 1d, 1e, 2a, 2b, 2c, 2d, 2e, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, 3n, 3o, 3p, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 5, 6, 7, 9,a, 9b, 10, 11, 12, 13, 14, 15a, 15b, 16, 17, 18, 21a and 21b of case reference 077967/2020. Mrs Pickering also admitted charge 1 of case reference 078835/2020.

The panel therefore finds these charges proved in their entirety by way of Mrs Pickering's admissions.

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 Ms Knight on behalf of the NMC. The panel also had regard to the various responses made by Mrs Pickering during these proceedings, including emails, formal responses and her comments at the hearing on 1 June 2020.

The panel has drawn no adverse inference from the non-attendance of Mrs Pickering.

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 / Colleague X:           Employed by Devon Partnership Trust (DPT) as a Ward Manager;
- Witness 2 / Patient D:           At the time of the incident, was a patient at Mount Stuart Hospital;

- Witness 3 / Prescriber X: Self-employed in aesthetics and an independent nurse prescriber;
- Witness 4: Employed as Senior Monitoring and Compliance Officer by the NMC;
- Witness 5: Independent nurse prescriber and co-owner of a Medical Aesthetics Training Academy ('the Academy').

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

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

Case Reference: 077967/2020

### **Charge 3(j)**

*“That you, a registered nurse, whilst employed by Ramsey Health Care at Mount Stuart Hospital (‘the Hospital’) between February & March 2020:*

*3. On or around 11 March 2020;*

*j) Placed Patient D’s Codeine Phosphate 30mg into your own pocket prior to discharge.”*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the witness statement and oral evidence of Patient D as well as his General Practitioner ('GP') summary discharge letter, dated 11 March 2020.

The panel found Patient D's witness evidence to be consistent and credible. The panel noted that in answering questions during his oral evidence, Patient D stated that he overheard Mrs Pickering say: "*you won't need that one*", he then went home and discovered there was no Codeine in his discharge medicines. He said that he did not see Mrs Pickering put his Codeine medication in her pocket, but that he "*assumed*" she had done so as "*her hand went into her pocket*". He did not see any medication elsewhere.

Further, the panel considered Patient D's GP discharge letter, which stated that he was prescribed "*1 Box*" of Codeine 30-60mg on 11 March 2020. During his oral evidence, Patient D could not remember whether the medication was in a box or in a packet.

The panel determined that, on the balance of probabilities, it was more likely than not that the Codeine medication supplied was in a box as per the GP discharge letter. Although Patient D saw Mrs Pickering put her hand in her pocket, this may not have been the Codeine, because a box of medication would have protruded or bulged when put inside a pocket. When questioned, Patient D made no indication of this during his oral evidence. While Mrs Pickering has admitted other charges in respect of Patient D's medication, the panel concluded that the NMC has not discharged its burden of proof on the balance of probabilities in relation to charge 3j.

The panel therefore finds charge 3j not proved.

### **Charges 8(a) and 8(b)**

*"That you, a registered nurse, whilst employed at the Devon Partnership Trust ("the Employer") at Torbay Hospital between 14 May 2020 and 15 June 2020:*

8. *Did not comply with paragraph 2 of the Interim Conditions Practise Order imposed on 1 June 2020 by an Investigating Committee of the NMC, in that you;*
- a) *On 5 June 2020 administered medication to Patient H, on one or more occasion without being directly supervised by another registered nurse.*
  - b) *On 11 June 2020 administered medication to Patient H, on one or more occasion without being directly supervised by another registered nurse.”*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the witness statement and oral evidence of Colleague X and the Medicines Administration Record (MAR) chart. The panel acknowledged that when looking at the entries for 5 and 11 June 2020 on the MAR chart there should have been two signatures if Mrs Pickering was supervised.

The panel considered Colleague X's supplementary witness statement, dated 23 February 2023, which stated:

*“I know this is Zena’s signature as through process of elimination through other familiar signatures of staff on shift and comparisons of shift patterns...”*

The panel recognised that Colleague X is not a handwriting expert, therefore, there is a possibility of human error in only using a process of elimination to determine another person's signature, as opposed to knowing with certainty that a signature belongs to a specific individual.

The panel noted that no signature identification record or rota of nursing staff members who were on shift during the specific dates in question has been produced by the NMC. Such contemporaneous documents may have assisted the panel in assessing Colleague X's evidence regarding Mrs Pickering's signature.

In the above circumstances, the panel determined that the NMC has not discharged its burden of proof on the balance of probabilities in relation to charge 8a. Having determined that charge 8a was not proved, the panel could not find charge 8b proved for the same reasons.

The panel therefore finds charge 8, in its entirety, not proved.

### **Charge 19**

*“That you a registered nurse between 16 March 2020 & 15 June 2020:*

*19. On 16 July 2020 during an investigation interview, inaccurately told Colleague X that you had not received a letter/a decision in writing from the NMC regarding the Interim Conditions of Practice Order imposed on 1 June 2020.”*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the witness statement and oral evidence of Colleague X and the investigation interview she held with Mrs Pickering on 16 July 2020, as well as the correspondence between Mrs Pickering (ZP) and the NMC regarding the Interim Conditions of Practice Order decision.

The relevant section of the local investigation interview notes placed before the panel, dated 16 July 2020, stated:

*“SV – Did you get a letter?*

*ZP – I have had nothing from them*

*SV – So they told you verbally?*

*ZP – Yeah*

*SV – Whilst you were in the hearing?*



*ZP – Yes and that’s all I’ve had”*

The panel also had regard to the email correspondence from the NMC to Mrs Pickering dated 2 June 2020 containing a word document of the decision letter in writing regarding the Interim Conditions of Practice Order imposed on 1 June 2020. The panel had sight of the transcript of the Interim Order hearing held on this date. The relevant sections of the transcript states:

*“THE CHAIR: ...So, thank you for your patience everyone. We have now made a decision. That decision is to impose an interim conditions of practice order for 18 months. Mrs Pickering that order does get automatically reviewed after six months or if there are any change in any circumstances either from yourself or the NMC.*

*The decision will come down to you in writing and my understanding from the panel secretary that is likely to be tomorrow...”*

The panel acknowledged that this was an early virtual hearing as a result of Covid lockdown. The current practice of checking, at the conclusion of the hearing, whether the parties have received the decision letter by email did not occur at the hearing held on 1 June 2020. Instead, Mrs Pickering was told that she would receive this decision in writing the day after the hearing.

Whilst the panel recognised that there was evidence that the decision letter was emailed by the NMC to Mrs Pickering on 2 June 2020, the panel concluded that this did not constitute proof of receipt.

The panel further noted that the emails sent by the NMC are encrypted, for confidentiality and legal purposes. The panel had sight of evidence that Mrs Pickering had difficulty opening encrypted documents received from the NMC as far back as June 2020.

A telephone log, dated 29 June 2020, from the NMC:

*“The registrant confirmed that she received our email on 23.06.20 and requested the password, but the password wouldn’t work so she gave up and has not seen the documents. The registrant confirmed that she had a pen and paper to write the password down. NMC password provided again – I explained that this password only needs to be used once, then the registrant will need to use her personal Egress login details and the password she will have created”*

The panel determined there was no evidence before it to indicate that Mrs Pickering was successful in creating a personal Egress account and have heard from witness 4 that because of the passage of time it is not possible to confirm whether an Egress account was accessed by Mrs Pickering.

Mrs Pickering’s difficulties with the Egress system appear to have continued.

On 17 April 2023, Mrs Pickering emailed the NMC:

*“Whatever you sent me via this, it will not open, can you email it 8bstead [sic] please”*

*“I have tried from phone, iPad and laptop and not working”*

*“It keeps saying unable to open!!”*

On 19 April 2023, Mrs Pickering emailed the NMC:

*“Hello I still can’t access any of the secure messages. The passwords provided do not work”*

In the light of the above, the panel were unable to exclude the possibility that Mrs Pickering could not open and read the written determination following the Investigating Committee hearing.

In these circumstances, the panel was unable to conclude on the balance of probabilities that Mrs Pickering's statement to Colleague X that she had not received a decision letter from the NMC was inaccurate.

The panel therefore finds charge 19 not proved.

### **Charge 20**

*"That you a registered nurse between 16 March 2020 & 15 June 2020:*

*20. Your actions in charge 19 above were dishonest, in that you knew that you had been sent a written determination setting out your Interim Conditions of Practice Order but sought to represent that you had not."*

**This charge is found NOT proved.**

The panel noted that in order for this charge to be proved, the facts of charge 19 had to have been proved. Having determined that charge 19 was not proved, it also finds charge 20 not proved.

### **Charge 22**

*"That you a registered nurse between 16 March 2020 & 15 June 2020:*

*22. Your actions in charge 21 a) i) & 21 a) ii) above were dishonest, in that you sought to represent, that you had disclosed your investigation to Devon Partnership NHS Trust, knowing that you had not."*

**This charge is found NOT proved.**

The panel acknowledged that Mrs Pickering admits the factual elements of charge 21. The panel had regard to the transcript of the Interim Order hearing held on 1 June 2020. At several points in the hearing, Mrs Pickering appears to be confused and have a limited understanding of what was happening. An extract from the transcript reads:

*“THE CHAIR: ...There are some conditions but they are more administrative. They are the main three. What I would call the main three practice conditions. Okay, but you will get our reasons for why we propose that order and the order and the conditions will be sent to you, I think, tomorrow.*

*Okay, does that now formally end this hearing? Thank you everybody for your time. Mrs Pickering, are you -- do you understand what I have said to you?*

*THE REGISTRANT: So, basically, I have lost my job for 18 months.*

*THE CHAIR: Say that again?*

*THE REGISTRANT: Are you saying that I've lost my job for 18 months?*

*THE CHAIR: No, we are not saying you have lost your job for 18 months. What I am --?*

*THE PANEL SECRETARY: Sorry, maybe myself, the legal assessor and case presenter could stay in the meeting and speak to the registrant after, just to explain the conditions to her.*

*THE REGISTRANT: Have I got confused?*

*THE CHAIR: Yes, I think -- so, Mrs Pickering.*

*THE REGISTRANT: What?*

*THE CHAIR: Some people will stay behind with you. The people that spoke to you this morning will stay behind just so that you are very clear about what the order means. Okay? So, you stay on the line. Myself, [PRIVATE] will leave the call because the hearing is now over, but you will have somebody -- you will have the three people that you spoke to this morning to take you through that conditions of practice order and what that means, okay?*

*THE REGISTRANT: Okay."*

The panel noted that the Chair of the Investigating Committee hearing requested that the Panel Secretary and the Legal Assessor stay behind to try and explain the outcome to Mrs Pickering. However, the panel had sight of witness 6's statement where he says:

*"5. I do not recall the hearing specifically however, the transcript at Exhibit RJ/1 show that myself, the case presenter and the legal assessor stayed on the line after the panel left to assist the registrant with any questions she had."*

The transcript shows that Mrs Pickering was not given advice by the panel about giving evidence or making a statement or answering questions. She, nevertheless, provided an oral response contesting the allegations which were the subject of the referral. The statements which are the subject of this charge were made in response to questions by the legal assessor about her subsequent employment with the Trust, and there was no specific question relating to who in the Trust she had informed.

The panel is mindful that what it has to decide in respect of this charge is to identify Mrs Pickering's actual state of mind when she used the words in charge 21 in answer to the legal assessor's questions. The panel noted that she admitted that her statements were

inaccurate in her case management form on 2 March 2023, nearly three years after the events, but it is her state of mind at the time that is the focus of the panel's deliberation. This was not a considered answer to the Investigating Committee and in the absence of a specific follow up question, the panel cannot be certain about whom she was talking when she said *"I've been completely truthful with them about everything"*.

The panel considered that Mrs Pickering was unrepresented, she appeared to be confused by the process and, in the panel's assessment, responded as best she could to the legal assessor's questions. In these circumstances, this panel does not find that Mrs Pickering was being dishonest when trying to assist the Investigating Committee.

In these circumstances, the panel is not satisfied that the only conclusion it can draw is that Mrs Pickering was being dishonest in her actions at charge 21.

The panel therefore finds charge 22 not proved.

### **Charge 23**

*"That you a registered nurse between 16 March 2020 & 15 June 2020:*

*23. Your actions in charge 21 b) i), 21 b) ii) and 21 b) iii) above were dishonest, in that you sought to represent that you would always be administering medication with a second nurse/under supervision, knowing that you would be allowed to administer medication independently."*

**This charge is found NOT proved.**

In considering this decision, the panel took into account the same considerations it noted in charge 22. The panel was of the view that the answers that Mrs Pickering gave to the questions of the legal assessor in charges 21 b) i), 21 b) ii) and 21 b) iii) appeared to be an explanation of her knowledge of what would happen at the Trust during medicine

administration. The panel is of the view that with the benefit of hindsight Mrs Pickering realised her responses to the Investigating Committee were inaccurate and therefore admitted the elements of charge 21 b) in her case management form in March 2023.

The panel was not satisfied that there was sufficient evidence to prove, on the balance of probabilities, that Mrs Pickering was dishonest when she stated that she would be administering medication with a second nurse/under supervision.

The panel therefore finds charge 23 not proved.

Case Reference: 078835/2020

## **Charge 2**

2. *“Your actions in charge 1 above were dishonest, as you sought to conceal that you would be taking on additional work in aesthetics/administering Botox from your regulator.”*

**This charge is found NOT proved.**

The panel took into account the transcript of the investigating committee hearing on 1 June 2020, Mrs Pickering’s responses to the NMC in her case management form on 2 March 2023 and statement and oral evidence from Prescriber X and witness 5.

In considering Mrs Pickering’s actions in relation to charge 1, the panel was of the view that the same considerations which were identified in respect of the Interim Order hearing also applied to this charge.

In respect of charge 2, the panel found no information from the transcript of the hearing which indicates that Mrs Pickering would not be seeking additional work following the Interim Order hearing. The panel had regard to condition 1, which states:

*“1. You must confine your nursing practice to your current role at Devon Partnership NHS Trust and you must not undertake any bank or agency work.”*

However, the panel also had regard to the preamble which sets out the conditions:

*“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.”*

Mrs Pickering is only subject to regulation by the NMC in respect of her practice as a registered nurse. Any additional work, for example as an agency nurse, would therefore be a matter of legitimate concern to the NMC but work in the field of aesthetics would not.

The panel heard oral evidence from Prescriber X and witness 5. Both witnesses informed the panel that one does not have to be a registered nurse to work in the aesthetics field, and that the whole sphere of aesthetics practice is unregulated in the UK. Witness 5 told the panel that her organisation, the course provider, required individuals to be registered medical professionals to comply with one of their business insurance cover requirements.

The panel accepted that work in aesthetics does not require nurse registration and therefore does not come under the requirements of the conditions of practice order.

The panel noted that although Mrs Pickering has admitted she had incorrectly informed the Investigating Committee that she would not be seeking additional work, there is no record of that in the transcript. In addition, Mrs Pickering has qualified her admission in her case management response form of 2 March 2023 by stating that at the time of the hearing:

*“because at that time I wasn’t”*



The panel was not satisfied that it has been presented with evidence which would prove that Mrs Pickering was seeking to conceal that she was intending to work in the aesthetics field. Therefore, the dishonesty element within charge 2 is not proved.

The panel therefore finds charge 2 not proved.

### **Charge 3(a)**

*“That you, a registered nurse:*

*3. Between 1 June 2020 and 1 July 2020 breached conditions 5 a) & b) of the Interim Conditions of Practice Order imposed by an investigating Committee in that you;*

*a) Did not disclose to the NMC that you were booked for an online refresher training course at the Aesthetics Training Academy starting on 20 June 2020.”*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the witness statements and oral evidence of Prescriber X and witness 5. The panel had regard to the Interim Conditions of Practice imposed on 1 June 2020. This charge particularly related to condition 5, which sets out:

*“5. You must keep us 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.”*

However, the panel also had regard to the preamble which sets out the conditions:

*“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.”*

Having heard from the oral evidence of Prescriber X and witness 5, which confirmed that the aesthetics field is unregulated and can be carried out by non-medically registered individuals, the panel was of the view that the conditions set out were not applicable to the aesthetics course as this course was not of educational study connected to nursing, midwifery or nursing associates.

Further, the panel had sight of the documentary evidence and noted that Mrs Pickering completed the initial training course at the Academy before any referral was made to the NMC. The panel heard from witness 5 that the refresher course starting on 20 June 2020 was only to remind aestheticians of the content and that notice for this was sent to Mrs Pickering on 16 June 2020 when she booked herself on. Although Mrs Pickering could have notified the NMC about this course, the course itself is not about nursing practice and therefore does not fall within the requirement of the interim conditions of practice order. It follows that there was no breach of the condition.

The panel therefore finds charge 3a not proved.

#### **Charge 4(a)**

*“That you, a registered nurse:*

- 4. Between 1 June 2020 and 1 July 2020 breached conditions 6 b) of the Interim Conditions of Practice Order by an investigating Committee in that you;*

- a) *Did not disclose to the Aesthetics Training Academy that you were subject to an Interim Conditions of Practice Order.”*

**This charge is found proved.**

The panel considered the written and oral evidence of witness 5.

The panel had regard to the Interim Conditions of Practice imposed on 1 June 2020. In respect of this charge, the panel considered condition 6 and the preamble, which sets out:

*“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.*

...

*6. You must immediately give a copy of these conditions to:*

*a) The organisation or person you work for.*

*b) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.”*

The panel accepts the evidence of witness 5, that she was not told about the conditions of practice order and have found no evidence to the contrary.

The panel therefore finds charge 4a proved.

**Charge 5**

5. *“Your actions/omissions in charge 3 a) were dishonest in that you sought conceal information of an organisation where you were going to undertake/ had undertaken training from your regulator.”*

**This charge is found NOT proved.**

The panel bore in mind that this charge is reliant on charge 3a having been proved. Having determined that Mrs Pickering did not act as described in charge 3a, and having concluded that charge 3a was not proved, the panel also finds charge 5 not proved.

**Charge 6**

6. *“Your actions/omissions in charge 4 a) were dishonest in that you sought to conceal that regulatory restrictions were placed upon your practice from the Aesthetics Training Academy.”*

**This charge is found NOT proved.**

The panel bore in mind that this charge is reliant on charge 4a. Having determined that charge 4a has been proved, the panel considered whether that omission was dishonest.

The panel noted the view it had taken when considering charge 19 of Mrs Pickering’s knowledge and understanding of the interim conditions of practice imposed by the investigating committee and in particular the conditions other than conditions 1 to 3 which were referred to by the Chair:

*“THE CHAIR: There are some conditions but they are more administrative. They are the main three. What I would call the main three practice conditions. Okay, but you will get our reasons for why we propose that order and the order and the conditions will be sent to you, I think, tomorrow.”*

The panel noted that the Chair did not specify what the administrative conditions included, and the panel cannot be satisfied that Mrs Pickering knew or understood what the administrative conditions were. Although factually Mrs Pickering did not tell the Academy

about any restrictions, there is no evidence to satisfy the panel that Mrs Pickering sought to conceal matters nor consequently that she acted dishonestly.

The panel therefore finds charge 6 not proved.

### **Charge 7**

*“That you, a registered nurse:*

- 7. Between 28 June 2020 and 1 July 2020 did not inform Prescriber X that you were subject to an Interim Conditions of Practice Order imposed by an Investigating Committee at the NMC.”*

### **This charge is found proved.**

The panel heard the oral evidence of Prescriber X. The panel considered that Prescriber X's oral evidence was clear and consistent with her witness statement. It therefore found Prescriber X's evidence to be credible.

The panel also had regard to the documentary evidence placed before it, including screenshots of the text message exchange between Mrs Pickering and Prescriber X.

In this particular instance, the panel considered the act of requesting prescription of medicines to be administered by Mrs Pickering to be related to nursing practice. The panel has accepted Prescriber X's evidence and there is no evidence to the contrary. Therefore, the panel can be satisfied that Mrs Pickering did not inform Prescriber X that she was subject to an interim conditions of practice order.

However, in finding charge 7 proved, the panel noted its earlier finding in respect of Mrs Pickering's lack of knowledge and understanding of the interim conditions of practice which would have included her obligation to inform Prescriber X.

The panel therefore finds charge 7 proved.

### **Charge 8**

*“Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:*

- 8. On or around 1 July 2020 incorrectly informed Prescriber X that you had professional indemnity insurance with ‘Cosmetic Insure’.”*

### **This charge is found proved.**

The panel heard the oral evidence of Prescriber X and found it to be clear, credible and consistent with her witness statement.

The only evidence of insurance provided by Mrs Pickering is a policy document of insurance cover with Hiscox Insurance Ltd. This did not commence until September 2022. Mrs Pickering has not supplied any evidence of insurance through Cosmetic Insure for the period in question, July 2020.

The panel also had regard to the documentary evidence placed before it, which included screenshots of the text message exchange between Mrs Pickering and Prescriber X:

*“Prescriber X – ...Which pharmacy and insurance company are you registered with? Xx*

*ZP – Im registered with church pharmacy and cosmetic insure”*

The panel concluded that Mrs Pickering’s statement that she was with Cosmetic Insure was incorrect.

The panel therefore finds charge 8 proved.

### **Charge 9**

*“Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:*

- 9. Your actions in charge 8 above were dishonest in that you sought to mislead Prescriber X into believing that you had professional indemnity insurance with ‘Cosmetic Insure’.”*

**This charge is found proved.**

Having sufficient evidence before it to suggest that Prescriber X had to find out herself upon checking with ‘Cosmetic Insure’ that the information Mrs Pickering provided was incorrect, the panel was of the view that Mrs Pickering failed to be forthcoming.

The panel determined that, on the balance of probabilities, it was more likely than not that Mrs Pickering was dishonest in that she sought to mislead Prescriber X into believing that she had professional indemnity insurance with 'Cosmetic Insure' because there is no evidence either that she was insured or believed she was insured with Cosmetic Insure.

The panel therefore finds charge 9 proved.

### **Charge 10**

*“Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:*

*10. Between 1 July 2020 and 9 July 2020 did not inform Prescriber X that you were subject to an Interim Suspension Order.”*

**This charge is found proved.**

The panel heard the oral evidence of Prescriber X and found it to be clear, credible and consistent with her witness statement. The panel had particular regard to paragraph 18 of Prescriber X's witness statement:

*“18. Usually pharmacies are quite strict and will not release the medications to a beautician or to someone without medical training, only to a registered healthcare professional. They usually therefore check the registers themselves, before issuing the products. That is the way the pharmacy Zena used, MedFX, work. I understand that it was not until the pharmacy received Zena's prescription request that they checked the NMC register and saw that she is currently suspended.”*

Further, the panel also considered the documentary evidence before it, including screenshots of text messages between Prescriber X and Mrs Pickering on 9 July 2020. In particular:

*“Prescriber X – I've been informed that you are currently on suspension from the NMC therefore I will be unable to prescribe for you. I'm not sure why you did not inform me? Xx*

*ZP – Because I have contacted the NMC and they have said that I can continue to proto [sic]*

*ZP – Practice even”*



In light of all of the above, the panel had sufficient evidence before it to determine that Mrs Pickering did not inform Prescriber X that she was subject to an Interim Suspension Order.

The panel therefore finds charge 10 proved.

### **Charge 11**

*“Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:*

*11. On 8 July 2020 did not inform one or more clients during their initial consultation that you were subject to an Interim Suspension Order.”*

### **This charge is found proved.**

In reaching this decision, the panel had regard to the witness evidence of Prescriber X who was present on the 8 July 2020 appointment with clients. The panel also had sight of the prescription screening forms for Client A, Client B and Client C, dated 8 July 2020. None of these forms contained information about Mrs Pickering’s registration.

Although Prescriber X cannot recall what Mrs Pickering said to her clients about her registration status, she told the panel that if she’d heard anything relating to restrictions to Mrs Pickering’s practice, she would have reacted. Prescriber X’s lack of reaction on 8 July 2020, would indicate that nothing had been said about restrictions on Mrs Pickering’s practice.

When on 9 July 2020 Prescriber X received information that Mrs Pickering was suspended from practice, she messaged Mrs Pickering on Facebook stating that she would be unable to prescribe to her. Later that day Mrs Pickering replied stating that she had contacted the

NMC which she says they said she can continue to practice. The panel inferred from this, that Mrs Pickering was not aware before contacting the NMC on 9 July that she was suspended and it would be consistent with that that she would or could not have informed clients of her suspension.

The panel determined that, on the balance of probabilities, that Mrs Pickering did not inform clients on 8 July 2020 that she was subject to an Interim Suspension Order.

The panel therefore finds charge 11 proved.

### **Charge 12**

*“Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:*

*12. Your actions/omissions in charge 10 were dishonest in that you sought conceal that regulatory restrictions were placed upon your practice from Prescriber X.”*

**This charge is found NOT proved.**

In reaching its decision, the panel recognised that although it found charge 10 proved, this does not automatically constitute that charge 12 would be.

The panel had regard to the documentary evidence provided by the NMC that the Notice and outcome of the 1 July 2020 hearing was sent. The panel noted its earlier findings in relation to Mrs Pickering’s ability to access the encrypted files sent by the NMC and that there was no evidence that she had received and opened any communications relating to the determination. Therefore, it was not possible for the panel to ascertain whether Mrs Pickering has received or opened these in order to be aware of them.

The panel considered the witness evidence of Prescriber X to be clear, credible and consistent. However, the panel also noted the Facebook conversation between Prescriber X and Mrs Pickering on 9 July 2020:

*“Prescriber X – Unfortunately I am unable to prescribe for you at this time as you need to be fully active on the register. The prescriptions are valid for 6 months xx*

*ZP – I cannot see things changing in the next 6 months, I didn’t even know about this hearing”*

In light of the above, the panel was mindful of the possibility that Mrs Pickering was not aware that she was subject to an Interim Suspension Order if she was not aware of the outcome of the hearing.

The panel determined, on the balance of probabilities, that Mrs Pickering may not have been aware of the outcome of the review hearing on 1 July 2020. In that event, Mrs Pickering could not have been dishonest in not informing Prescriber X of the restrictions placed upon her practice if she was not aware of this information herself.

The panel therefore finds charge 12 not proved.

### **Charge 13**

*“Following the imposition of an Interim Suspension Order (ISO) against your registration/Pin by an Investigating Committee at the NMC on 1 July 2020:*

*13. Your actions/omissions in charge 11 were dishonest in that you sought conceal that regulatory restrictions were placed upon your practice from one or more clients.”*

### **This charge is found NOT proved.**

As was the case for charge 12 and for the same reasons, the panel determined, on the balance of probabilities, that Mrs Pickering may not have been aware of the outcome of the review hearing on 1 July 2020. In that event, Mrs Pickering could not have been dishonest in not informing clients of the restrictions placed upon her practice if she was not aware of this information herself.

The panel therefore finds charge 13 not proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Pickering's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’ Ms Knight also referred the panel to the NMC guidance on misconduct (ref: FTP-2a).

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 Mrs Pickering’s actions amounted to misconduct. The panel had regard to Ms Knight’s oral and written submissions, which set out:

“Misconduct

1. *The Registrant is charged with misconduct.*
2. *Per the case of Roylance v. General Medical Council (No 2) [2000] 1AC 311 at p 331, misconduct is “a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances”.*
3. *The NMC submits that the facts proved amount to misconduct. That is, that the Registrant knew what to do but chose not to do it and provided care that fell short of what was proper in all the circumstances.*
4. *When considering what would have been proper in the circumstances the panel will have regard to the NMC Code of conduct, ‘The Code: Professional standards of practice and behaviour for nurses and midwives 2015’ (“the Code”).*
5. *The panel may consider that in particular, the Registrant’s actions fell below the following standards per the Code:*
  - a) *4 – Act in the best interests of people at all times;*

- b) 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;
  - c) 20 – Uphold the reputation of your profession at all times;
6. It is also appropriate for the panel to take into account the following internal procedure/protocol documents which were not followed by the Registrant:
- a) Exhibit GA/1 – Controlled Drugs Update for Manor Ward & ACU; and
  - b) Exhibit GA/26 – Medicines Management Policy 19/02/2020.
7. It is submitted that in relation to the charges, the Registrant knew what was required of her but chose not to act accordingly.
8. It is submitted that the facts found proven amount to misconduct.”

### **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 relevant case law such as *Cohen v GMC* [2007] EWHC 581 (Admin) and the questions formulated by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of *CHRE v Grant & NMC* [2011] EWHC 927 (Admin) ('Grant') by Cox J.

Ms Knight also referred the panel to the NMC guidance on impairment (ref: DMA-1). The panel had regard to Ms Knight's oral and written submissions, which set out:

#### *“Impairment*

11. *The panel must have regard to protecting the public and the wider public interest. This includes the need to declare and maintain proper standards and*

*maintain public confidence in the profession and in the NMC as a regulatory body.*

*12. In relation to impairment the panel will consider the questions formulated by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of CHRE v Grant & NMC [2011] EWHC 927 (Admin) ('Grant') by Cox J. They are as follows: Do the findings of fact in respect of the misconduct, deficient professional performance, show that his/her fitness to practise is impaired in the sense that s/he:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

*13. NMC submits that all limbs are engaged:*

*a. Unwarranted risk of harm:*

- i. It is clear that in not dispensing medications per the charges in case 077967, the Registrant was putting those patients at unwarranted risk of harm because they did not have access to medication that they may have needed. Further by completing documentation such as discharge summaries incorrectly, she put the patients at risk of harm that was unwarranted.*
- ii. In not supplying her employer with her ICPO (charges 9a and 9b case 077967) she put patients at risk of harm as the conditions were imposed to safeguard the public. The same applies to charges 11, 13, 15, and 16.*

*b. Bringing medical profession into disrepute:*

- i. *The panel may consider that the number and severity of the facts proven brings the profession into disrepute.*
  - ii. *In particular, the charges of dishonesty that have been admitted and/or found proven by the panel bring the medical profession into disrepute. The charges of non-disclosure of information to the NMC/employers/prescriber/training providers also bring the profession into disrepute.*
- c. *Has in the past breached fundamental tenets of the profession:*
  - i. *The panel has been referred to the Code above.*
- d. *Dishonesty*
  - i. *The Registrant has admitted to some charges of dishonesty and the panel have found other charges of dishonesty proven.*

14. *Honesty and integrity are fundamental tenets of the profession, and to breach them in such a way as in this case could lead the panel to find that impairment is required.*

15. *The seriousness of this case is increased because of the number of incidents of dishonest actions and words over a prolonged period of time. It is also submitted that the seriousness is increased because the Registrant's dishonest actions continued after Interim Orders were imposed.*

16. *The panel has had some indication from the Registrant that her personal circumstances affected her behaviour. However, it is submitted that the panel has not heard from the Registrant directly about this and further, limited supporting evidence has been provided. In any event, the Registrant's circumstances cannot justify dishonest behaviour.*

17. *The panel must consider whether the Registrant's fitness to practise is currently impaired. The panel should consider Cohen v GMC [2007] EWHC 581 (Admin), in which the court set out three matters which it described as being 'highly*



*relevant' to the determination of the question of current impairment and they are as follows:*

- a. Whether the conduct that led to the charge is easily remediable;*
- b. Whether it has been remedied; and*
- c. Whether it is highly unlikely to be repeated.*

*18. The NMC submits that the charges which relate to dishonesty including stealing medication, falsifying records, and misinforming the regulator and/or employers/training providers illustrate conduct which is not easily remediable. They indicate serious levels of dishonesty over a prolonged period.*

*19. When considering whether the conduct has been remedied, the panel should take into account any insight shown by the Registrant, also any remorse or remediation. The NMC submits:*

- a. Some insight has been shown by the Registrant in the admission of some charges.*
- b. The panel has not had the opportunity to hear directly from the Registrant regarding insight/remorse/remediation.*
- c. The Registrant has not provided evidence of insight/remorse/remediation.*

*20. Therefore it is submitted that the panel is likely to find that Registrant's fitness to practice is currently impaired.*

#### *Impairment – Public interest grounds*

*21. The panel need to consider whether the public component of impairment is engaged by the admitted/proven facts. The panel will have to address the question of whether given the nature of the allegation and the facts found proved, would public confidence in the profession be undermined if there were to be no finding of impairment?*

22. *Per the case of Grant, the panel should ask themselves whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.*

23. *In this case, the reputation of the nursing profession would be damaged if the Registrant were permitted to practise unrestricted and if a finding of current impairment were not made given the serious circumstances.*

### Conclusion

24. *For the reasons given above it is submitted that it is matter for the judgment of the panel as to whether there is misconduct in respect of charges proved. The panel is invited to make a finding of current impairment.”*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*\_(No 2) [2000] 1 A.C. 311, *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen 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 and considered the two referrals separately.

The panel was of the view that Mrs Pickering’s actions amounted to numerous 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***

1.4 *make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

**4 Act in the best interests of people at all times**

*To achieve this, you must:*

4.1 *balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment*

**6 Always practise in line with the best available evidence**

*To achieve this, you must:*

6.1 *make sure that any information or advice given is evidence-based, including information relating to using any health and care products or services*

6.2 *maintain the knowledge and skills you need for safe and effective practice*

**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:*

10.3 *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*

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

*To achieve this, you must:*

14.1 *act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm*

**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:*

18.1 *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*

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

**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:*

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

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

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

20.4 *keep to the laws of the country in which you are practising*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It had regard to the case of *Roylance*, 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.*'

Case Reference: 077967/2020

Charges 1a to 4j in relation to Patient A, Patient B, Patient C, Patient D, Patient E, Patient F and Patient G

The panel considered that Mrs Pickering's actions in each of the individual charges found proved relating to Patients A, B, C, D, E, F and G were serious, as she failed to deliver fundamentals of care effectively and without undue delay, failed to keep clear and accurate records having not completed the patients' summary discharge letters and had misappropriated patients' Codeine or Tramadol medications.

The panel concluded that Mrs Pickering has not acted in the best interest of her patients. It noted that one patient had been caused harm and there was the potential for harm in respect of the other patients in not having their prescribed medication available to them. Further, it noted that there are legal requirements around the supply of prescriptions and the administration of medicines, which Mrs Pickering did not comply with as inferred by her admissions to these charges.

The panel determined that Mrs Pickering's actions breached fundamental tenets of the Code and failed to uphold the reputation of the nursing professions. It, therefore, concluded that Mrs Pickering's actions in charges 1a to 4j did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## Charges 5, 6 and 7

The panel noted that Mrs Pickering admitted to the charges 5, 6 and 7. However, it acknowledged that admission to the charges does not automatically constitute misconduct. Therefore, in considering these, the panel had regard to NMC guidance on 'making decisions on dishonesty charges':

*“To help the panel focus on the central issues and be able to express this in their reasoning, it needs to consider the following:*

- *What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *Whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely.”*

The panel determined that Mrs Pickering knew what she was doing and the expectation of her as a registered nurse in a position of trust. It also determined that her actions were dishonest, in that Mrs Pickering knew she had not dispensed medication to one or more patients but sought to represent she had, falsified records to conceal that she had stolen medication from her employer/patients and took medication belonging to her employer/prescribed to patients.

The panel took into consideration Mrs Pickering's health conditions presented before it. It had regard to the fitness to work medical certificate provided by Mrs Pickering, dated 18 April 2023, which support [PRIVATE]. Witness 1 confirmed to the panel that they had knowledge that Mrs Pickering had [PRIVATE] in the past. However, the panel were mindful that the limited evidence placed before it only supported that Mrs Pickering's health conditions were a reason for non-attendance at the hearing, as opposed to an

explanation for her mindset at the time of the charges and any impact these may have had on her behaviour.

In the absence of strong medical evidence before the panel for the period of the incidents, it could not find Mrs Pickering's health conditions to be an alternative explanation for what she had done/admitted to. The panel determined that Mrs Pickering was dishonest in her actions on charges 5, 6 and 7.

The panel then had regard to the NMC guidance on seriousness. It was of the view that Mrs Pickering's dishonest actions were serious as these demonstrated a pattern of dishonesty. The panel also noted that although there is no formal mention of 'theft' in the charges, it considered the act of taking a patient's medication without intent of returning them amounts to theft, which are a serious departure from the behaviour and professional standards expected of a registered nurse.

The panel determined that Mrs Pickering's dishonesty breached fundamental tenets of the Code and failed to uphold the reputation of the nursing profession. It, therefore, concluded that Mrs Pickering's conduct was very serious and would be considered as '*deplorable*' by fellow practitioners. The panel, therefore, determined that Mrs Pickering's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

#### Charges 9a and 9b

In relation to these charges, the panel explored its earlier decision of facts and determined that Mrs Pickering may not have understood or been aware of condition 6a of the interim conditions of practice order, which states:

- "6. You must immediately give a copy of these conditions to:*
- a) The organisation or person you work for.*

*b) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.”*

The panel had regard to the transcript of the Interim Order hearing held on 1 June 2020. At several points in the hearing, Mrs Pickering appears to be confused and have a limited understanding of what was happening. When the outcome was handed down to her at the hearing, she replied “*Are you saying that I've lost my job for 18 months?*” which implied that Mrs Pickering may not have completely understood what conditions of practice were. The panel noted its earlier findings that although there is evidence that a written determination of the outcome was sent to Mrs Pickering, it was not possible to ascertain whether she read or had been able to access this.

The panel acknowledged that Mrs Pickering admits the factual elements of charges 9a and 9b, however, it determined that this did not automatically constitute dishonesty. The panel also considered that Mrs Pickering applied to Devon Partnership Trust several months before leaving Ramsey Health Care, as indicated in her case management form. Therefore, it found that Mrs Pickering’s actions in charges 9a and 9b do not amount to misconduct.

### Charges 11 and 12

The panel had regard to the application form (369-A-20-54914), where Mrs Pickering included Colleague Z as her employment reference but did not disclose any relationship or contact details. The panel also took into account the email chain exchange between Mrs Pickering and the Devon Partnership Trust regarding her employment references, dated 18 April 2020, which states:

*“...Can you send it to this email then please, it is a manager at Ramsay as well as within the NHS? I have worked with this person for the past 6 years off .and on. Is that OK? [PRIVATE]...”*



The panel concluded that Mrs Pickering's actions above showed that she did inaccurately inform Devon Partnership Trust that Colleague Z was her manager at her previous employer Ramsey Health Care. The panel had regard to the witness statements and exhibits placed before it, providing that the counter fraud investigator found Colleague Z was employed by Torbay in South Devon NHS foundation as a healthcare assistant.

The panel was of the view that Mrs Pickering's actions were dishonest as she deliberately provided the name and contact details of Colleague Z, knowing that she was a healthcare assistant not a senior sister/manager, with intention to deceive and misrepresent who her managers were.

The panel determined that Mrs Pickering's dishonesty breached fundamental tenets of the Code and failed to uphold the reputation of the nursing professions. It, therefore, concluded that Mrs Pickering's conduct was very serious and would be considered as '*deplorable*' by fellow practitioners.

The panel, therefore, determined that Mrs Pickering's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

#### Charges 13 and 14

The panel took into account the email chain exchange between Mrs Pickering and the Devon Partnership Trust regarding her employment references, dated 23 April 2020, which states:

*"...Hello Sorry for the delay, we are running on skeleton staff at the moment so just finding the most senior person to do the reference [PRIVATE]..."*

The panel concluded that Mrs Pickering's actions above showed that she did inaccurately inform Devon Partnership Trust that Colleague Y was her manager in the ambulatory care unit at her previous employer, when in reality she was a healthcare assistant and not

allowed to provide an employer reference for her. The panel was of the view that Mrs Pickering's actions were dishonest as she deliberately provided the name and contact details of Colleague Y, knowing she was providing a false reference with intention to misrepresent who her managers were.

The panel determined that Mrs Pickering's dishonesty breached fundamental tenets of the Code and failed to uphold the reputation of the nursing professions. It, therefore, concluded that Mrs Pickering's conduct was very serious and would be considered as '*deplorable*' by fellow practitioners.

The panel, therefore, determined that Mrs Pickering's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

#### Charges 15a, 15b and 17

The panel acknowledged that Mrs Pickering admitted to the charges that she did not disclose that she was subject to a disciplinary investigation/proceeding at Ramsey Health Care. The panel noted that there is no explicit requirement on the application form for Mrs Pickering to do so.

However, in considering the Code which nurses must adhere to, the panel had regard to the following:

***“Promote professionalism and trust***

*You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.”*

In light of the above, the panel concluded that regardless of whether it was asked on the application form, Mrs Pickering had a duty as a registered nurse to inform her prospective employer of any investigation or disciplinary process in relation to stealing medication prescribed to patients and poor record keeping.

The panel was of the view that this was dishonest in that Mrs Pickering should have raised this honestly with her prospective employer and disclose it upon application. It, therefore, determined that Mrs Pickering's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### Charges 16 and 18

The panel had regard to the following section of the Code which nurses must adhere to:

***“Promote professionalism and trust***

*You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.”*

In light of the above, the panel concluded that there is an expectation for Mrs Pickering, as a registered nurse, to demonstrate honesty and integrity by informing her prospective employer that she had been dismissed by her previous employer. In not doing so, the panel found Mrs Pickering's actions to be dishonest.

The panel noted that had Mrs Pickering honestly disclosed such information, the prospective employer would have been given a choice of whether to employ her, and if so, whether they could support her to ensure her practice became safe as she posed a risk to patients due to poor record keeping and misappropriation of medication. This risk had not been mitigated as Mrs Pickering had failed to disclose the information.

The panel, therefore, determined that Mrs Pickering's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### Charges 21a and 21b

The panel referred back to charges 22 and 23 of its earlier decision of facts, which it found not proved. It determined that Mrs Pickering appeared to be confused and had a limited understanding of what was happening at the hearing on 1 June 2020. The panel considered that Mrs Pickering was unrepresented, she appeared to be confused by the process and, in the panel's assessment, responded as best she could to the questions asked to her at the hearing. In these circumstances, this panel does not find that Mrs Pickering was being dishonest when trying to assist the Investigating Committee.

The panel acknowledged that Mrs Pickering admits the factual elements of charges 21a and 21b, however, it determined that this did not automatically constitute dishonesty. The panel is of the view that with the benefit of hindsight Mrs Pickering realised her responses to the Investigating Committee were inaccurate and therefore admitted the elements of charge 21a and 21b in her case management form in March 2023. The panel determined that Mrs Pickering's actions in charges 21a and 21b do not amount to misconduct.

### Case Reference: 078835/2020

#### Charge 1

The panel referred back to charge 2 of its earlier decision on facts, which it found not proved. The panel considered its earlier finding that Mrs Pickering appeared to be confused about the hearing process. The panel noted that although Mrs Pickering has admitted she had incorrectly informed the Investigating Committee that she would not be seeking additional work, there is no record of that in the hearing transcript. In addition, Mrs Pickering stated that her explanation for this was "*because at that time I wasn't*".

The panel acknowledged that Mrs Pickering admits the factual elements of charge 1, however, it determined that this did not automatically constitute dishonesty. It also referred to its earlier decision on facts where charge 2, which related to dishonesty in charge 1, was found not proven. Therefore, the panel determined that Mrs Pickering's actions in charge 1 do not amount to misconduct.

#### Charge 4a

The panel referred back to its earlier findings of fact relating to charge 4a. It considered the evidence of witness 5 and the Interim Conditions of Practice imposed on 1 June 2020. In respect of this charge, the panel considered condition 6 and the preamble, which sets out:

*“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.*

...

*6. You must immediately give a copy of these conditions to:*

*a) The organisation or person you work for.*

*b) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.”*

The panel accepted the evidence of witness 5, that she was not told about the conditions of practice order and there is no evidence to the contrary. It therefore found this charge factually proved as she did not disclose to the Academy that she was subject to an interim conditions of practice order. However, the panel considered that this did not meet threshold of misconduct as it was of the view that Mrs Pickering had no obligation as, in light of the preamble, condition 6a did not apply to her aesthetics practice.

Therefore, the panel determined that Mrs Pickering's actions in charge 4a do not amount to misconduct.

### Charge 7

The panel referred back to its earlier decision on facts. The panel determined that although it found this charge to be factually proved, as Mrs Pickering did not inform Prescriber X that she was subject to an interim conditions of practice order, the panel noted its earlier finding in respect of Mrs Pickering's lack of knowledge and understanding of the interim conditions of practice which would have included her obligation to inform Prescriber X.

The panel determined that Mrs Pickering's actions in charge 7 could not have been dishonest if she was not aware of being subject to such condition to disclose and therefore, this act does not amount to misconduct.

### Charges 8 and 9

The panel referred back to its earlier decisions on facts for charge 8 and 9. Having regard to the reasons why it found these proved, the panel determined that Mrs Pickering's actions were dishonest in incorrectly informing and misleading Prescriber X into believing that she had professional indemnity insurance with 'Cosmetic Insure'.

The panel was of the view that Mrs Pickering failed to be forthcoming in her actions and noted that she had not produced any certificates or evidence from Cosmetic Insure or any other insurance company to show that she was insured with them at the time of the charges.

The panel, therefore, determined that Mrs Pickering's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### Charge 10

Although the panel found this charge factually proved as Mrs Pickering did not inform Prescriber X of her interim suspension order, the panel determined that Mrs Pickering's actions did not meet misconduct threshold for this charge. The panel had regard to the email exchanges from Mrs Pickering before the hearing of 1 July 2020 informing that she could not access the hearing bundles via Egress and indeed gave up on trying to access these. Further, the panel noted she was not present at the hearing.

The panel determined that Mrs Pickering's actions in charge 10 could not have been dishonest if she was not aware of being subject to an interim suspension order and therefore, this act does not amount to misconduct.

### Charge 11

The panel referred back to its earlier decisions on facts in relation to charge 11, where it found this charge factually proved as Mrs Pickering did not inform clients of her interim suspension order as there was no evidence before it to suggest that she had informed them. However, the panel determined that Mrs Pickering's actions did not meet misconduct threshold for this charge.

The panel had regard to the email exchanges from Mrs Pickering before the hearing of 1 July 2020 informing that she could not access the hearing bundles via Egress. The panel also noted she was not present at the hearing. Further, the panel considered evidence that the aesthetics field does not require an individual to be a registered nurse. Therefore, despite the interim suspension order, the panel noted that Mrs Pickering would not have been required to inform the clients of this as aesthetics is not nursing practice.

The panel determined that Mrs Pickering's actions in charge 11 could not have been dishonest if she was not aware of being subject to an interim suspension order nor that

she had a duty to disclose. Therefore, it determined that this act does not amount to misconduct.

### **Decision and reasons on impairment**

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

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

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*



*determination show that his/her/ fitness to practise is impaired in the sense that S/He:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that all limbs of the *Grant* test were engaged.

In relation to the first referral, the panel finds that patients were put at risk as a result of Mrs Pickering's misconduct of misappropriating patients' medications as the patients needed these prescribed medications for their health recovery after being discharged. Mrs Pickering's 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 dishonesty extremely serious.

The panel considered that Mrs Pickering made admissions to various charges of the first referral, which demonstrate some insight into her actions. However, the panel found this to be limited as Mrs Pickering did not yet demonstrate an understanding of how her actions put the patients at a risk of harm or reflections of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel did not

have enough information before it to attribute any of Mrs Pickering's actions to her ill-health.

The panel next considered whether the misconduct and dishonesty were remediable. It was satisfied that some of the misconduct in this case is capable of remediation. However, it bore in mind that dishonesty is often more difficult to remediate than clinical concerns. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Pickering has remedied her conduct.

The panel had no evidence before it to suggest that Mrs Pickering has taken steps to strengthen her practice in relation to medication management or record keeping. Therefore, it could not be satisfied that appropriate remediation had taken place.

In relation to both referrals, the panel found a continuous pattern of dishonesty in Mrs Pickering's practice. It noted that although not all of the charges found proven were found to be dishonest, there is evidence of multiple instances of dishonesty.

The panel is of the view that there is a risk of repetition based on the fact that the dishonesty continued and raised further concerns in the second referral despite Mrs Pickering's transition to the aesthetics field. The panel were mindful that this pattern of dishonesty and multiple concerns being raised, having only been on the register for a short period and later transitioning to an unregulated field, was indicative of the significant risk of harm Mrs Pickering potentially posed to patients and the public. The panel therefore decided that a finding of current impairment is necessary on the grounds of public protection.

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

The panel considered there to be a public interest in the circumstances of this case. The panel found that the charges found proved are serious and include dishonesty. It was of the view that a fully informed member of the public would be concerned by its findings on facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of current impairment was not made in this case. Therefore, the panel determined that a finding of current impairment on public interest grounds was also required.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Pickering off the register. The effect of this order is that the NMC register will show that Mrs Pickering has been removed from the register.

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**

Ms Knight referred the panel to the Sanctions Guidance and the approach to be adopted in considering sanctions, in that the panel is to consider the order which has the least impact on the registrant first, and if that option is not appropriate, then it may move on to the next least restrictive option. Ms Knight outlined that the guidance also suggests that it should consider the aggravating and mitigating features.

The aggravating features proposed by Ms Knight were:

- A pattern of misconduct and over a period of time, including and in particular, a pattern of dishonesty.
- Conduct which put patients at risk of suffering harm.

The mitigating features proposed by Ms Knight were:

- Personal mitigation, including [PRIVATE].

Ms Knight submitted that the panel did not have sufficient evidence of insight or remediation from Mrs Pickering that could amount to mitigating features.

Further, Ms Knight referred the panel to the NMC guidance on dealing with matters involving dishonesty and submitted that these are always considered to be serious. Ms Knight submitted that the misconduct in this particular case relates to theft of medication and falsifying records and dishonesty towards employers, which are all significant departures from the professional standard expected of a registered nurse. Ms Knight submitted that a risk of harm and repetition remain, and having found current impairment on Mrs Pickering's practice, an order is required on the grounds of public protection and is otherwise in the public interest.

Ms Knight addressed the panel on why the least restrictive orders are not appropriate to mitigate the risks identified in this case. Ms Knight submitted that workable conditions of practice are difficult to formulate as dishonesty is difficult to remediate. Ms Knight also submitted that a suspension order is a temporary removal from the register, and without sufficient evidence of insight or remediation, it would not be suitable as Mrs Pickering's actions raises fundamental questions about her professionalism and trustworthiness. Ms Knight invited the panel to consider a striking-off order as Mrs Pickering's actions were fundamentally incompatible with remaining on the register.

### **Decision and reasons on sanction**

Having found Mrs Pickering'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:

- A pattern of misconduct over a period of time, having two referrals including issues of dishonesty.
- Abuse of her position of trust as a registered nurse, in a hospital setting, with access to medication.
- Lack of insight into her failings and the impact these had on patients, the public and colleagues.
- Conduct which put vulnerable patients at risk of suffering harm. There is evidence of actual harm to one patient and potential harm to six other patients.
- No evidence of steps taken to strengthen her practice.

The panel also took into account the following mitigating features:

- Mrs Pickering's early admissions to a number of charges in the first referral.
- Limited personal mitigation including [PRIVATE]. However, the panel noted there is no medical opinion to suggest whether either of these personal circumstances may have impacted her actions at the time of her misconduct.

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 Mrs Pickering'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 Mrs Pickering's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Pickering's 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.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges. The panel noted that it did not have any material of reflection from Mrs Pickering, and without this, it is difficult for the panel to produce any workable conditions. Further, the panel recognised that Mrs Pickering's case is not predominantly a clinical practice concern and thus, a conditions of practice order will not satisfactorily address the public interest. The misconduct identified in this case was not something that can be addressed through retraining.

The panel concluded that the placing of conditions on Mrs Pickering's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where:

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel determined that Mrs Pickering's case did not fall into any of the examples above. It considered that the repeated misconduct relating to deep-seated attitudinal problems would be difficult to address. The panel noted that there is no information from Mrs Pickering to suggest that a suspension from the NMC register would help her to recognise or deal with the misconduct identified. Therefore, it was of the view that a temporary suspension from practice would not address the public interest and public protection risks identified.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Pickering's dishonest actions is fundamentally incompatible with Mrs Pickering remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

Mrs Pickering's actions in stealing drugs from patients and covering up her thefts through her entries to patient records were significant departures from the standards expected of a registered nurse. Her dishonesty to patients, colleagues and her employers on several occasions is fundamentally incompatible with her remaining on the register.

The panel was of the view that the findings in this particular case demonstrate that Mrs Pickering's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mrs Pickering's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was 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.

This will be confirmed to Mrs Pickering in writing.

### **Interim order**



As the striking-off 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 Mrs Pickering's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Knight. She invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period, on the basis that it is necessary for the protection of the public and is otherwise in the public interest.

### **Decision and reasons on interim order**

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order to reflect the seriousness of the charges found proved because to do otherwise would be incompatible with its earlier findings. The period of this order is for 18 months to allow for the possibility of an appeal to be made and concluded.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Mrs Pickering is sent the decision of this hearing in writing.

That concludes this determination.