

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

**Substantive Hearing
Monday 15 – Friday 19 & Monday 22 – Thursday 25 May 2023**

Virtual Hearing

Name of registrant: **Gautham Prakash**

NMC PIN: 18H0369O

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 23 August 2018

Relevant location: Brent

Type of case: Misconduct/Caution

Panel members: John Vellacott (Chair, Lay member)
Patience McNay (Registrant member)
David Anderson (Lay member)

Legal Assessor: John Bassett

Hearings Coordinator: Sherica Dosunmu

Nursing and Midwifery Council: Represented by Louise Cockburn, Case
Presenter

Mr Prakash: Not present and unrepresented at the hearing

Facts proved: All

Facts not proved: N/A

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 Cockburn, on behalf of the Nursing and Midwifery Council (NMC), made a request that parts of this case be held in private on the basis that proper exploration of Mr Prakash's case may involve reference to health matters. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

Having heard that there may be reference to health matters, the panel determined to hold such parts of the hearing in private.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Prakash was not in attendance and that the Notice of Hearing letter had been sent to Mr Prakash's registered email address on 13 April 2023.

Ms Cockburn submitted that the NMC had complied with the requirements of Rules 11 and 34.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and means of joining the virtual hearing and, amongst other things, information about Mr Prakash's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

The panel accepted the advice of the legal assessor.

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

Decision and reasons on proceeding in the absence of Mr Prakash

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

Ms Cockburn referred the panel to email correspondence between the NMC and Mr Prakash. She stated that in an email dated 21 December 2022, Mr Prakash was first notified of the proposed dates for the hearing and was provided with a Case Management Form (CMF), which he completed and returned to the NMC. She stated that in an email, dated 10 January 2023, the NMC sought clarification in respect of the completed CMF and Mr Prakash responded to this email on the same date.

Ms Cockburn referred the panel to eight further attempts made by the NMC to contact Mr Prakash on a variety of dates following this email. She submitted that despite repeated efforts by the NMC to contact Mr Prakash, no further response has been received from him after his email dated 10 January 2023.

Ms Cockburn submitted that Mr Prakash had voluntarily absented herself from today's proceedings. She submitted that there has been no application for an adjournment and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. She submitted that the allegations are serious and there is clear public interest in the expeditious disposal of this case.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Prakash. In reaching this decision, the panel has considered the submissions of Ms Cockburn, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Prakash;
- Mr Prakash has not engaged with the NMC since 10 January 2023, and has not responded to any further correspondence from the NMC in relation to these proceedings;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Witnesses are due to give live evidence, and may be caused inconvenience if there was a delay to this hearing; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Prakash in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel’s judgement, this can be mitigated. The panel can make allowance for the fact that the NMC’s evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence that it identifies. Furthermore, the limited disadvantage is the consequence of Mr Prakash’s decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Details of charge (as amended)

That you a registered nurse:

1. On or about 18 April 2019
 - a. Removed or intended to remove oxycodone from the CD stock without clinical justification. **[PROVED]**
 - b. Your conduct at charge 1a was dishonest in that you intended to use the oxycodone for your personal use which you knew was not permitted. **[PROVED]**
 - c. On taking or with the intention of taking the oxycodone from your employer you forged colleague 1's signature in the controlled drugs book. **[PROVED]**
 - d. Your conduct at charge 1c was dishonest in that you sought to create the impression that at the time you removed or intended to remove the oxycodone out of the drugs cupboard there had been or would have been a second checker present when you knew there had not or would not have been. **[PROVED]**
2. On 12 September 2020
 - a. Took remifentanil from your employer without permission whilst on shift for your own personal use. **[PROVED]**

- b. Used the remifentanil for your own personal use whilst on shift which was not permitted. **[PROVED]**
- c. Your actions at charge 2a and /or 2b were dishonest in that you knew you were not authorised to take and/or use the remifentanil. **[PROVED]**

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

That you, a registered nurse:

- 1. On 3 July 2019 accepted a caution for the following offence "Theft by Employee'**[PROVED]**

And in the light of the above your fitness to practise is impaired by reason of your caution

Decision and reasons on application to admit hearsay evidence

Ms Cockburn made an application under Rule 31 to admit Colleague 6's NMC written witness statement and local statement exhibit as hearsay evidence. She informed the panel that Colleague 6 will no longer give live evidence in these proceedings.

Ms Cockburn referred the panel to various email correspondence between the NMC and Colleague 6. She informed the panel that Colleague 6 was notified by email of the hearing on 14 April 2023. She stated that Colleague 6 responded by email on 17 April 2023 to advise the NMC that he would be on a trip abroad during the hearing and was not sure if he will have reliable internet to give evidence. She indicated that the NMC responded to Colleague 6 by email on 18 April 2023 to suggest he gives evidence by telephone, to which Colleague 6 provided a further response on 20 April 2023, explaining that he may not have phone reception where he will be located but is willing to do a test call in the morning, on 18 May 2023, when he is due to give evidence.

Ms Cockburn explained that the NMC tried to contact Colleague 6 in the morning, on 18 May 2023, but the call went straight to voicemail. She submitted that it can be assumed that Colleague 6's phone may not have reception as he previously indicated.

Ms Cockburn submitted that Colleague 6 is not able to give evidence and by applying the principles of relevance and fairness referred to in Rule 31, Colleague 6's written witness statement and exhibit should be admitted as hearsay evidence. She submitted that Colleague 6's evidence is relevant to charge 2, and fair on the basis that the weight of the evidence can be tested through the live evidence of Colleague 7 and Colleague 8.

Upon the panel's request, on 18 May 2023, the NMC made further enquiries to ascertain whether Colleague 6 would be available to give evidence on 19 May 2023 instead, and also requested the date he would return from holiday to the UK.

On 19 May 2023, Ms Cockburn informed the panel that the NMC has not received a response from Colleague 6. She submitted that the NMC has made considerable efforts to ensure Colleague 6's attendance in these proceedings but his reasons for non-attendance is beyond the NMC's control.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included Rule 31 which provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel approached its decision by considering firstly the relevance of the hearsay evidence and then secondly whether it would be fair to admit it having regard to the principles identified in the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*.

The panel considered whether Colleague 6's NMC written witness statement and contemporaneous local statement exhibit signed and dated 20 September 2020 contained relevant evidence. The panel considered that Colleague 6 was present at the incident on

12 September 2020 which concerned the substance of the allegations in charge 2. The panel was therefore of the view that Colleague 6's statements would be relevant to the matters of this case, particularly charge 2.

The panel next considered whether it would be fair to admit this evidence. The panel had sight of emails which indicated that Colleague 6 warned the NMC of a pre-booked holiday before the start of these proceedings. Further, the panel noted that the NMC also made attempts to secure the attendance of Colleague 6 while on holiday, which were unsuccessful due to apparent lack of internet and mobile reception. The panel took into account that the NMC has not been given any indication of when Colleague 6 will be back from holiday, and there was public interest in the issues of this case being explored fully, which supported the admission of this evidence into the proceedings.

Additionally, the panel noted that Colleague 6's written statements were not the sole and decisive evidence relied upon in respect of charge 2, as Colleague 7 and Colleague 8 were also present at the incident on 12 September 2020, which concerned the substance of the allegations in this charge. The panel therefore determined that it would be possible to fairly assess Colleague 6's evidence.

In these circumstances, the panel was satisfied that this evidence was relevant and that it would not be unfair to Mr Prakash if it were admitted. The panel will of course give appropriate weight to this evidence and will bear in mind that it will not be tested in cross examination.

Decision and reasons on application to amend the charge 1

The panel heard an application by Ms Cockburn to amend the wording of charge 1 and its subsections. The application was made in order for charge 1 and its subsections to reflect the evidence in this matter more accurately, in particular, the account ultimately provided by Mr Prakash. She accepted that there was evidence, particularly from Colleague 2 and Mr Prakash's accounts in the course of the local investigation, that indicated that Mr

Prakash had not physically removed Oxycodone although this had been his original intention. She made suggestions for the panel to include wording which inserted Mr Prakash's intention in these charges.

Ms Cockburn submitted that the proposed amendments to charge 1 and its subsections would not cause prejudice or injustice to Mr Prakash, as such amendment would simply reflect the position Mr Prakash ultimately adopted.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The following proposed amendments were drafted and sent to the NMC:

Draft amendments:

1. On **or about** 18 April 2019
 - a. Removed **or intended to remove** oxycodone from the CD stock without clinical justification.
 - b. Your ~~actions~~ **conduct** at charge 1a ~~were~~ **was** dishonest in that you ~~sought~~ **intended** to use the oxycodone for your personal use which you knew was not permitted.
 - c. On taking **or with the intention of taking** the oxycodone from your employer **you** forged colleague 1's signature in the controlled drugs book.
 - d. Your ~~actions~~ **conduct** at charge 1c ~~were~~ **was** dishonest in that you sought to create the impression that **at the time you removed or intended to remove** ~~there was a second checker present when taking~~ the oxycodone out of the drugs cupboard **there had been or would have been a second checker present** when you knew there ~~was~~ **had not or would not have been**.

At the request of the panel, the NMC sent the proposed amendments to Mr Prakash on 19 May 2023, and requested that he provide a response, should he wish to, by 9:30 on 22 May 2023. In order to afford Mr Prakash the opportunity to respond to the proposed amendments, there was a short adjournment on 19 May 2023 for the day, until 9:30 on 22 May 2023.

On the 22 May 2023, the hearing resumed at 9:30 and Ms Cockburn informed the panel that there has been no response from Mr Prakash.

The panel was of the view that such amendments were in the interests of justice, did not change the nature or gravity of the charges against Mr Prakash, clarified the case against him and reflected the position he had taken in his final account. On the basis that Mr Prakash was afforded the opportunity to respond to the charges, the panel was satisfied that there would be no prejudice to him, and no injustice would be caused to either party by the proposed amendments being allowed. The panel determined that it was therefore appropriate to allow the amendments above, to ensure clarity and accuracy.

Background

The NMC received a referral on 26 April 2019 from London North West University Healthcare NHS Trust (the Trust). Mr Prakash commenced employment with the Trust as a registered nurse in April 2018, after arriving in the UK on a working visa from India. At the time of the concerns raised in the referral, Mr Prakash was employed by the Trust as a Band 5 registered nurse, working at Northwick Park Hospital (Northwick).

Mr Prakash worked on Sainsbury Ward (the Ward) at Northwick. The Ward is a private wing unit with the capacity for 18 patients, mainly surgical. Mr Prakash's duties on the Ward included direct patient care, which involves access to Controlled Drugs (CD).

The process on the Ward for signing out CD for patient care involves two nurses being present from signing the CD out through to the CD being administered. The nurses have to record the patient's details, date, time, dose, in the CD book, and record these on the patient's medication chart as well.

On 21 April 2019, as nurse in charge of the day shift on the Ward, Colleague 1, undertook a CD check alongside the nurse in charge of the night shift. Colleague 1 noted that the check revealed one more ampoule of Oxycodone in the CD cupboard than the entry recorded in the CD book on 18 April 2019. That entry purported to show that an ampoule of Oxycodone had been administered to a patient on 18 April 2019 at 13.50 by Mr Prakash and another nurse, Colleague 3. It is alleged that when asked about this discrepancy Mr Prakash stated that he could not recall what happened. Colleague 3 was questioned separately about this and indicated that she could not recall signing for this entry as the patient was not on the Ward at the time the entry specified in the CD book, and she believed her signature may have been forged.

The Trust conducted an investigation on the basis that there had been a violation of the drug policy. As part of this investigation, Mr Prakash was interviewed on 23 April 2019 and asked to provide a statement. The referral alleges that Mr Prakash made admissions to the allegations in the investigation interview and in his statement, which was sent by email on 24 April 2019.

A disciplinary hearing was held on 30 July 2019. It is alleged that during the disciplinary hearing Mr Prakash made admissions to following allegations:

- Took a Trust drug, namely Zopiclone, tablet from the drugs trolley and took this home;
- Took a Trust drug, namely Oxycodone, injection from the controlled drugs cabinet and wrote in the CD book for a previous patient;
- Took a Trust drug, namely Flucloxacillin, capsule from the ward stock; and
- Falsified a signature for Trust medication.

The outcome of the disciplinary hearing concluded that Mr Prakash's actions amounted to gross misconduct, and he was issued with a final written warning for a period of 18 months as well as appointed to an alternative Band 5 role within the Trust.

Following the disciplinary outcome, Mr Prakash was transferred to work as a Band 5 scrub nurse in the theatres at Ealing Hospital (Ealing).

On 12 September 2020, Colleague 7 (Anaesthetic and ITU Specialty Doctor), Colleague 8 (Anaesthetic Nurse) and Mr Prakash were all working in an emergency theatre at Ealing, alongside other staff. This theatre was used for treating patients who needed emergency surgery. While working, Colleague 8 and Colleague 7 noticed that a syringe with Remifentanyl was no longer on the theatre tray where it had been left. Each assumed that the other had removed it. Remifentanyl is a CD used to stop a patient's breathing to allow the use of a ventilator.

A short time later Mr Prakash was found unresponsive on the theatre kitchen floor by Colleague 7, where he checked Mr Prakash's pulse and noticed that he was not breathing. Colleague 7 called for help while he started the process of ventilating Mr Prakash, and as he was not being heard from the theatre kitchen, Colleague 7 made an emergency call on his mobile phone to Colleague 6 (an on-call Specialty Doctor in Anaesthetics). Colleague 6 joined Colleague 7 and attended to Mr Prakash, along with other colleagues and gave him Naloxone, which is an antidote for opioids. Mr Prakash regained consciousness quickly after Naloxone was administered and was taken to the emergency department where he was admitted for 24 hours. It is alleged that when later questioned, Mr Prakash admitted to using Remifentanyl, although he denied this when he was initially questioned after regaining consciousness.

Following Mr Prakash's recovery, the Trust investigated the incident of 12 September 2020. During the Trust's investigation, Mr Prakash provided a statement, dated 13

October 2020, in which he admitted taking the CD Remifentanil and self-administering while on duty.

Decision and reasons on facts

At the outset of the hearing, the panel noted that Mr Prakash had returned to the NMC a CMF which was completed to indicate admissions to charges 1c, 1d, 2a, 2b, and 2c. However, the panel had regard to the fact that the completed CMF was not signed by Mr Prakash, and he was not in attendance at the hearing to confirm the admissions. As a result, the panel determined not to find any of the charges proved by way of admission. The panel therefore invited the NMC to prove all charges.

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

The panel has drawn no adverse inference from the non-attendance of Mr Prakash.

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:

- Colleague 1: Staff Nurse at Northwick, at the relevant time;
- Colleague 2: Clinical Nurse Manager at Northwick, at the relevant time;

- Colleague 3: Staff Nurse at Northwick, at the relevant time;
- Colleague 4: Divisional Head of Nursing at the Trust;
- Colleague 5: Divisional Head of Nursing at the Trust;
- Colleague 7: Specialty Doctor in Anaesthetics and intensive care at Ealing;
- Colleague 8: Senior Anaesthetic Practitioner at Ealing.

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

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

Charge 1a

1. On or about 18 April 2019
 - a. Removed or intended to remove oxycodone from the CD stock without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 1, Colleague 2, Colleague 3 and Colleague 4. The panel also had regard to the documentary

evidence exhibited, which included a disciplinary hearing outcome letter, dated 13 August 2019.

The panel accepted Colleague 2's evidence, in which she provided clear detailed accounts of four different versions of events put forward by Mr Prakash when questioned during the local investigation about the discrepancy in the Oxycodone stock discovered on 21 April 2019. The panel found that the fourth account detailed by Colleague 2 reflected Mr Prakash's final position taken at the disciplinary hearing, dated 13 August 2019. It considered that at the disciplinary hearing, Mr Prakash advanced the following response to the allegation:

*'Allegation 2: You took a Trust drug namely Oxycodone injection from the controlled drugs cabinet and wrote in the controlled drugs book for a previous patient;
[...]*

In your statement via email to Clinical Nurse Manager [Colleague 2] at 19:03 hours on the 24 April 2019 you stated that 'I planned to take an oxycodone injection from the CD cupboard and wrote in CD book for a previous patient, but due to fear I didn't take it from the cupboard. I was then unable to make any correction in the CD book'. Also in a text to Divisional Head of Nursing [Colleague 4] from phone number on Tuesday 30 April 2019 at 13:30 hours you wrote: 'Gautham here. I haven't taken oxycodone ampule as mentioned in the letter. I wrote in the CD book, but I haven't taken it'.

The panel considered that the first two versions advanced by Mr Prakash, in which it was purported he had administered the Oxycodone to the patient, were not credible and had been admitted to be untruthful by Mr Prakash.

In the third version, given initially to Colleague 2, Mr Prakash appeared to admit that he had removed the Oxycodone and hidden it for later use by himself. However, the panel noted that the evidence of Colleague 1 and Colleague 2 both indicated that the strips of

Oxycodone ampoules were seen to be intact on 21 April 2019 and there was no separate ampoule. The panel considered that this was inconsistent with Mr Prakash actually removing the Oxycodone from the CD stock. The panel also noted that Colleague 2 had accepted that when she spoke to Mr Prakash he had been distressed and that he was being questioned about other incidents that had occurred. The panel considered that this might well have affected the accuracy of the third version he advanced. Further, the panel acknowledged that, in his oral evidence, Colleague 4 had stated that Mr Prakash had told him that he had hidden the Oxycodone after taking it. However, he had made no contemporaneous record of this conversation and initially told the panel that he could not recall whether he had been given this account by Mr Prakash or someone else. Consequently, while not doubting that he was trying to assist the panel as best he could, the panel was unable to rely on this evidence from Colleague 4.

The panel determined that, in respect of Oxycodone being removed from the ward's CD stock, there was no conclusive evidence.

In the circumstances, the panel was therefore satisfied, on the balance of probabilities, that the NMC had proved on the evidence, that Mr Prakash had intended to remove the Oxycodone but had not proved that he had actually done so.

The panel considered whether there was clinical justification for Mr Prakash's intention to remove Oxycodone from CD stock. It accepted Colleague 1 and Colleague 3's evidence that the entry in the CD book made by Mr Prakash related to a patient who was already discharged from the Ward. This is consistent with Mr Prakash's admission at the disciplinary investigation. The panel concluded that Mr Prakash's intention to remove the Oxycodone from the CD stock was without clinical justification as the patient was not present for the medication and his intention had been to use it himself.

Accordingly, the panel found charge 1a proved.

Charge 1b

1. On or about 18 April 2019
 - b. Your conduct at charge 1a was dishonest in that you intended to use the oxycodone for your personal use which you knew was not permitted.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 1, Colleague 2 and Colleague 3. The panel also had regard to the documentary evidence exhibited, which included a disciplinary hearing outcome letter, dated 13 August 2019.

The panel bore in mind its reasoning for charge 1a, in respect of Mr Prakash's accepted account, that he had intended to take Oxycodone from the Ward's CD stock.

The panel applied the legal test for dishonesty and referred to the case of *Ivey v Genting Casinos* [2017] UKSC 67. The panel considered whether Mr Prakash knew his intention to take the Ward's Oxycodone was not permitted; and whether he was dishonest when he planned to do so.

The panel noted Mr Prakash's assertion at the disciplinary hearing that '*it was not unusual practice in India to get medications from the area of work*' and considered whether Mr Prakash was of the impression that such conduct would be permissible at the Trust.

However, the panel accepted Colleague 2's evidence which indicated that Mr Prakash participated in all the relevant training at the Trust which would have made him aware that such conduct was not permitted. The panel found that Colleague 2's evidence was corroborated by Colleague 1, who also asserted in her evidence that '*all staff know that we not allowed to take any medication from the ward stock*'. The panel also noted that Mr Prakash had put this forward in the local disciplinary hearing as mitigation, rather than a defence.

Additionally, the panel noted that Colleague 3 was unequivocal in her written and oral evidence that she did not sign for the CD along with Mr Prakash and that her signature was forged. The panel regarded Colleague 3's evidence as compelling, which suggested that Mr Prakash went to the extent of falsifying his entry in the CD book to enable him to take the Oxycodone. The panel determined that this evidence demonstrated Mr Prakash's knowledge of the Trust's policy, which required the signature of two nurses to remove CD.

The panel concluded that, by the standards of ordinary and decent people, Mr Prakash's conduct was dishonest as he knew the Trust's drug policy and used another nurse's signature in an attempt to breach it without detection.

Accordingly, the panel found charge 1b proved.

Charge 1c

1. On or about 18 April 2019
 - c. On taking or with the intention of taking the oxycodone from your employer you forged colleague 1's signature in the controlled drugs book.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 2, Colleague 3 and Colleague 4. The panel also had regard to the documentary evidence exhibited, which included a disciplinary hearing outcome letter, dated 13 August 2019.

The panel noted that Colleague 2, Colleague 3 and Colleague 4 all describe the process at the Trust that has to be completed before CD is removed from the Ward's stock. The process involves two nurses being present when a CD is removed and administered. The nurses must record the patient's details, date, time, dose, in the CD book. Upon the CD being administered to a patient, both nurses are required to sign the patient's chart to confirm the CD has been administered.

The panel noted the following evidence from Colleague 3's written witness statement:

'[The patient] was receiving end of life care but his consultant agreed that he could leave the ward on 18 April 2019. [The patient's] take away medication (TPA) wasn't ready but he didn't want to wait around, so he said that he would come back that same night for his medication. He left the ward at midday on 18 April 2019. I know [the patient] was not on the ward when this entry was made on the controlled drugs book. I produce as Exhibit PS/02 a copy of [the patient's] patient notes, which state that he left the ward on 18 April 2019.

I produce as Exhibit PS/03 the relevant page from the controlled drug book. The entry on exhibit PS/03, dated "18/4/2019 at 13.00 for was signed first by Gautham. The second signature states "PS". PS purports to be my signature, but I did not sign this drug out. This is not my handwriting and is a forged entry of my signature. I assume that Gautham completed this forged signature. I don't know who else would have forged it.'

The panel considered that Colleague 3's account was consistent with her oral account, in which she maintained that her signature was forged, as the patient was not on the Ward, therefore, she would not have signed for the medication.

The panel was of the view that this was further supported by Mr Prakash's accepted version of events, in which he admitted to having the intention to taking Oxycodone from the Ward's stock. The panel found that from the evidence, Mr Prakash would not have been able to do so without the signature of a second colleague.

On behalf of the NMC, Ms Cockburn also relied on the CMF in which Mr Prakash had apparently admitted the charge. The panel has already indicated why it has not treated the CMF as containing formal admissions by Mr Prakash. However, it is the case that he has

not advanced any further alternative explanation than his ultimate account given to the local investigation.

The panel was therefore satisfied that, on the balance of probabilities, it was more likely than not that Mr Prakash forged Colleague 3's signature when he intended to take Oxycodone from the Ward's stock.

Accordingly, the panel found charge 1c proved.

Charge 1d

1. On or about 18 April 2019
 - d. Your conduct at charge 1c was dishonest in that you sought to create the impression that at the time you removed or intended to remove the oxycodone out of the drugs cupboard there had been or would have been a second checker present when you knew there had not or would not have been.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 2, Colleague 3 and Colleague 4. The panel also had regard to the documentary evidence exhibited, which included a disciplinary hearing outcome letter, dated 13 August 2019.

The panel bore in mind its reasoning for charge 1c, in respect of Mr Prakash's accepted account, that he had intended to take Oxycodone from the Ward's CD stock. It also had regard to Colleague 3's evidence that her signature was forged, as well as Colleague 2, Colleague 3 and Colleague 4's description of the CD removal process, that Mr Prakash would not have been able to take the Ward's CD stock without the signature of a second colleague.

The panel applied the legal test for dishonesty and referred to the case of *Ivey v Genting Casinos* and determined that for the reasons set out above, Mr Prakash was dishonest when he sought to create the impression that a second checker signed the CD book when he forged his colleague's signature.

Accordingly, the panel found charge 1d proved.

Charge 2a

2. On 12 September 2020
 - a. Took remifentanil from your employer without permission whilst on shift for your own personal use.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 6, Colleague 7 and Colleague 8. The panel also had regard to the documentary evidence exhibited, which included a statement from Mr Prakash, dated 13 October 2020.

The panel noted that Colleague 7 and Colleague 8 both provided consistent accounts indicating that the CD Remifentanil went missing while they were on shift on 12 September 2020, prior to Mr Prakash being found unresponsive on the theatre kitchen floor by Colleague 7.

The panel found that Colleague 6 and Colleague 7 provided clear evidence that Mr Prakash was found unresponsive with symptoms consistent with having taken opioid. The panel noted Colleague 6's immediate diagnosis prescribed Naloxone, which is a reversible treatment for opium overdose. The panel accepted the evidence of Colleague 6 that the immediate positive reaction by Mr Prakash to the administration of Naloxone was consistent with having taken an opioid. Colleague 7 also stated that he '*saw an injection mark on the Prakash's left elbow by his vein*'.

Additionally, the panel found that this was further supported by Mr Prakash's admission, in a statement dated, 13 October 2020, in which he stated the following:

'I found a syringe loaded with some Remifentanyl on the anaesthetic machine which was left over after the case. At that moment I was preparing there for the next case. On seeing the syringe , without thinking about the consequences , I took the fentanyl. I took the syringe and went to the toilet and administered it intravenously to myself.'

The panel was therefore satisfied that the evidence, including Mr Prakash's admissions at local investigation, indicated that Mr Prakash took Remifentanil whilst on shift for his own personal use on 12 September 2020.

Accordingly, the panel finds charge 2a proved.

Charge 2b

2. On 12 September 2020
 - b. Used the remifentanil for your own personal use whilst on shift which was not permitted.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 6, Colleague 7 and Colleague 8. The panel also had regard to the documentary evidence exhibited, which included a statement from Mr Prakash dated 13 October 2020.

The panel bore in mind its reasoning for charge 2a and determined that Mr Prakash took Remifentanil whilst on shift for his own personal use on 12 September 2020. The panel

noted that Mr Prakash has never suggested that he believed the personal use of Remifentanil was permitted.

Accordingly, the panel found charge 2b proved.

Charge 2c

2. On 12 September 2020
 - c. Your actions at charge 2a and /or 2b were dishonest in that you knew you were not authorised to take and/or use the remifentanil.

This charge is found proved.

In reaching this decision, the panel also had regard to the documentary evidence exhibited, which included a disciplinary hearing outcome letter, dated 13 August 2019 and a statement from Mr Prakash, dated 13 October 2020.

The panel applied the legal test for dishonesty and referred to the case of *Ivey v Genting Casinos*. The panel considered whether Mr Prakash knew he was not permitted to use Remifentanil; and whether he was dishonest when he did so whilst on shift.

The panel bore in mind its reasoning for charge 2a and 2b, that Mr Prakash took Remifentanil whilst on shift for his own personal use on 12 September 2020.

The panel took into account that at the disciplinary hearing on 30 July 2019, Mr Prakash was issued with a final written warning for 18 months due to a drug policy violation, where he was found to have attempted to take the Ward's CD for personal use. Additionally, the panel considered that at the time Mr Prakash received the warning from the Trust he had already completed all relevant training which would have made him aware that taking medication from the Trust was not permitted.

The panel found that this was further supported by Mr Prakash's admission, in his statement dated, 13 October 2020, in which he stated that he took the CD '*without thinking about the consequences.*'

The panel concluded that, by the standards of ordinary and decent people, Mr Prakash's actions were dishonest.

Accordingly, the panel found charge 2c proved.

Decision and reasons on facts in relation to the caution charge

Following the panel's decision on the facts in relation to the misconduct charges, Ms Cockburn informed the panel that there is an additional charge that concerns Mr Prakash's fitness to practise. This additional charge relates to a police caution that Mr Prakash received on 17 July 2019.

The panel was provided with an unredacted copy of the Notice of Hearing that was sent to Mr Prakash, which included the caution charge. The notice informed Mr Prakash that the panel would be made aware of and invited to consider the caution charge 1 following its decision on facts for the misconduct charges 1a to 2c in accordance with Rule 29(2). The panel was satisfied that it could continue with the facts stage and consider the charge relating to the caution as, for the reasons stated above, it was satisfied that the notice had been effectively served on Mr Prakash. The panel was also satisfied, for the reasons stated above, that it is fair, appropriate and proportionate to proceed in the absence of Mr Prakash.

In reaching its decision on this charge, the panel took into account the documentary evidence, which included a bundle with a record of the police caution. It also took into account the submissions made by Ms Cockburn on behalf of the NMC.

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

Caution Charge 1

1. On 3 July 2019 accepted a caution for the following offence 'Theft by Employee'

This charge is found proved.

The panel had regard to the Record of Simple Caution and the Simple Caution Acceptance Form both dated 17 July 2019, which detail that Mr Prakash was cautioned by the police for an offence under section 1 of the Theft Act 1968. The caution stated that on 21 April 2019, whilst working on the Ward at Northwick, Mr Prakash stole a Zopiclone tablet belonging to the Trust.

The panel noted that the Simple Caution Acceptance Form was signed by Mr Prakash where he acknowledged and admitted to the offence and agreed to be cautioned.

Taking into account the above, and the fact that Mr Prakash has not at any stage disputed the fact that he was cautioned, the panel therefore found this charge proved.

After the panel had found the charge proved, it noted that the charge incorrectly gave the date of the caution as 3 July 2019, rather than 17 July 2019. Having taken advice from the legal assessor, the panel was satisfied that, although it was no longer possible to amend the charge under Rule 28(1), the date stated in the charge was not a '*material averment*'.

Accordingly, the panel's finding is not affected.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Prakash's fitness to practise is currently impaired. The panel also considered whether Mr Prakash's fitness to practise is currently impaired by reason of his police caution. 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, Mr Prakash's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Cockburn referred the panel 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 Cockburn 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. She identified the specific, relevant standards where Mr Prakash's actions amounted to misconduct.

Ms Cockburn submitted that Mr Prakash took various medications from his employer and accepted a police caution. She submitted that, to enable him to steal a CD, Oxycodone, Mr Prakash falsified patient records and forged a colleague's signature. She submitted that Mr Prakash changed his mind and did not take the Oxycodone from the cabinet not out of concern for his patients or his colleagues but because he did not want to become addicted to it.

Ms Cockburn stated that the Trust made Mr Prakash subject to an 18-month final written warning, prevented him from dealing with medication and transferred him to a different hospital. She stated that, whilst Mr Prakash was still subject to the warning, he injected himself with a CD while he was working, where he collapsed, was resuscitated by colleagues and thereafter admitted to hospital.

Submissions on impairment

Ms Cockburn 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. It also included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin). She submitted that all four limbs set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant* were engaged in this case.

Ms Cockburn submitted that although there is no evidence that patients were harmed, the panel is required to consider the risk of harm. She submitted that by falsifying records, Mr Prakash incorrectly recorded a patient's treatment, which self-evidently presents a risk to the patient's safety and well-being. Further, she stated that after Mr Prakash self-administered Remifentanyl colleagues were diverted from treating patients thereby endangering safety.

Ms Cockburn submitted that Mr Prakash has breached the fundamental tenets of the nursing profession and he has brought the nursing profession into disrepute. She stated that he has stolen medication, including CD, and also accepted a police caution for theft from his employer. She submitted that Mr Prakash has acted dishonestly by falsifying patient records and by forging his colleague's signature. She highlighted that proper documentation is key to the basic fundamentals of nursing care. She submitted that Mr Prakash's repeated dishonesty suggests deep-seated attitudinal concerns.

Ms Cockburn submitted that Mr Prakash has accepted that his fitness to practise is impaired by his misconduct and by the caution. She invited the panel to take into account the factors set out in the case of *Cohen v GMC* when looking at whether Mr Prakash has remediated his conduct.

Ms Cockburn stated that record keeping concerns often could be considered capable of being addressed whether it be by requiring attendance at training courses or by practising under supervision. However, she submitted that Mr Prakash's conduct involved deliberate falsification of records that called into question his underlying attitudes and his professionalism which are much more difficult to address.

Ms Cockburn stated that level of insight is relevant and although some insight has been demonstrated, the panel must assess its quality and nature. She submitted that Mr Prakash has shown only limited insight. She submitted that he has failed to acknowledge the potential harm that could have been caused to patients, the dangers and added stress his actions have caused his colleagues as well as the impact of his conduct upon the reputation of the profession. Further, she submitted that Mr Prakash has not provided a clear demonstration of how he would act differently were he to find himself again in a similar position. She stated that Mr Prakash has suggested that he would address his health, but no health concerns have been identified thereby rendering irrelevant the suggestion. She submitted that the panel may consider that Mr Prakash has sought to minimise his conduct by attributing it to [PRIVATE]. Additionally, she stated that Mr

Prakash also suggested that pressures from the pandemic were a feature in his conduct, however, the pandemic placed all health and social care staff under significant stress and pressure. She submitted that this was not sufficient to absolve him of his professional responsibilities. She submitted that taking all of the foregoing into consideration, there is insufficient evidence of meaningful insight or attempted remediation.

Ms Cockburn submitted that Mr Prakash's conduct was not a one-off incident, but a pattern of behaviour which he repeated whilst subject to an 18-month final written warning. She submitted that his dishonesty raises concerns about his attitude which, in turn, increases the risk of repetition. Further, she submitted that there is insufficient evidence of meaningful insight or attempted remediation to permit the panel to conclude that the risk of repetition is low. She submitted that it cannot reasonably be concluded that Mr Prakash is no more likely than anyone else to repeat his behaviour. She stated that, as such, there remains a risk to the health, safety and well-being of the public including colleagues.

Ms Cockburn submitted that Mr Prakash's conduct raises fundamental concerns about his trustworthiness. Notwithstanding the high threshold for taking action to promote public confidence or professional standards, she submitted that the panel should also take restrictive action in the public interest.

Ms Cockburn submitted that a finding of current impairment is necessary both to protect the public and to satisfy the collective need to maintain public confidence in the profession.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

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

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

'10 Keep clear and accurate records relevant to your practice

10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

13 Recognise and work within the limits of your competence

13.4 take account of your own personal safety as well as the safety of people in your care

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

18.2 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

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

19.4 take all reasonable personal precautions necessary to avoid any potential health risk to colleagues, people receiving care and the public

20 Uphold the reputation of your profession at all times

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

20.2 act with honesty and integrity at all times...

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the charges individually and cumulatively, as well as the circumstances of the case as a whole. It took account of all the evidence before it.

The panel considered charge 1a, 1b, 1c, and 1d together. In respect of these charges the panel found that Mr Prakash intended to take a patient's CD for personal use, and in a dishonest attempt to breach his employer's policy, he forged his colleague's signature. The panel considered that in doing so, Mr Prakash created a false entry of the administration of a CD on a patient's medical record, and therefore presented a risk to the patient's safety and the follow up care they would receive from other professionals. The panel determined that in respect of these charges Mr Prakash demonstrated failings in fundamental aspects of nursing which amounted to misconduct.

The panel considered charge 2a, 2b and 2c together. The panel found that in these charges Mr Prakash is found to have taken a CD while on shift and dishonestly breached his employer's policy, despite already being subject to an 18-month final written warning for a violation of his employer's drug policy. The panel took into account that Mr Prakash was still working when he took the CD and intended to provide patient care whilst under influence of an opioid, but instead collapsed, which not only created a risk to patient care but would have negatively impacted his colleagues. It noted that through his own actions,

Mr Prakash also placed his own life in significant danger. The panel was of the view that Mr Prakash demonstrated a repeated pattern of behaviour which puts patients and his colleagues at risk, even after significant intervention from management. It determined that Mr Prakash demonstrated an unacceptably low standard of professional practice in this area and his actions in each charge amounted to misconduct.

Having considered charges 1a to 2c, the panel found that Mr Prakash's actions were compounded by a police caution, which involved theft from an employee. The panel was of the view that honesty and integrity are fundamental to the nursing profession and to deliberately steal and attempt to steal CD from his employer for personal use, creates a harmful environment for patients and Mr Prakash's colleagues. The panel determined that Mr Prakash's actions in each charge would be considered deplorable by fellow practitioners and damaging to the trust that the public places in the profession.

The panel therefore concluded that Mr Prakash's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and caution, Mr Prakash'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. 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 in the above test were engaged in this case.

Taking into account all of the evidence adduced in this matter, the panel finds that patients were put at unwarranted risk of harm as a result of Mr Prakash's misconduct and caution. The panel determined that Mr Prakash'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.

Regarding insight, the panel noted that whilst Mr Prakash had made some early admissions at the local level investigation and accepted a police caution, it was not presented with substantial evidence of insight or reflection. The panel considered that it had not received any evidence to suggest that Mr Prakash has demonstrated an understanding of how his actions had put patients at a risk of harm or how this impacted negatively on the reputation of the nursing profession. The panel noted that Mr Prakash returned an unsigned CMF to the NMC, however, it took into account that he disengaged with the process and therefore it was not presented with any information regarding his current level of insight. The panel determined that Mr Prakash demonstrated very limited insight and it was not presented with any evidence of remorse.

The panel was of the view that the misconduct and caution in this case evidenced behaviour that is more difficult to put right. The panel considered the evidence before it and concluded that it has not received any information to suggest that Mr Prakash has taken any steps to address the specific concerns raised about his practice, such as relevant training or reflection on the consequences of his conduct and dishonesty.

The panel was of the view that due to the lack of insight, remorse and evidence of strengthened practice, there remains a high risk of repetition. The panel considered that Mr Prakash's actions set out in the charges found proved demonstrated a pattern of dishonesty that fails to acknowledge professional and clinical protocols, which is indicative of deep-seated attitudinal problems. The panel was of the view that by deliberately taking and attempting to take medication from his employer, Mr Prakash's actions could have placed multiple patients at a significant risk of harm. On the basis of all the information

before it, the panel decided that there is a risk to the public if Mr Prakash was allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel bore in mind 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. The public would be shocked if no finding of impairment was made. The panel therefore also finds Mr Prakash's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Prakash'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 Mr Prakash off the register. The effect of this order is that the NMC register will show that Mr Prakash has been struck-off 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) and the guidance for serious cases published by the NMC.

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Cockburn informed the panel that the NMC was seeking the imposition of a striking-off order, as Mr Prakash's behaviour is incompatible with remaining on the NMC register.

Ms Cockburn referred the panel to the SG and invited the panel to consider whether the least restrictive sanction would be enough to achieve public protection, and if it was not, the panel should then consider escalation until it arrives at a sanction with the most appropriate outcome.

Ms Cockburn outlined aggravating factors she identified in this case:

- Mr Prakash was warned in 2019 about taking medication from his employer;
- Mr Prakash falsified an entry in the CD book and forged his colleague's signature;
- Mr Prakash's conduct was so serious that he was formally cautioned by the police;
- Notwithstanding this warning he again took medication from his employer;
- The final written warning remained extant at the time of Mr Prakash's repeated conduct in 2020;
- Mr Prakash self-medicated on shift using a CD which rendered him unconscious and required resuscitation followed by in-patient admission; and
- Mr Prakash has not engaged with the NMC since 10 January 2023 and failed to respond to correspondence from the panel.

Ms Cockburn also outlined the mitigating factor she identified in this case:

- After initially denying the conduct, Mr Prakash admitted to the majority of the charges.

Ms Cockburn submitted that making no order or imposing a caution order would not be proportionate given the seriousness of this case.

Ms Cockburn submitted that a conditions of practice order would not be appropriate given the panel's findings that Mr Prakash engaged in a pattern of dishonesty which fails to acknowledge professional and clinical protocols and that his conduct was indicative of deep-seated altitudinal problems. She submitted that in this respect, it would be difficult to formulate conditions that would adequately address the concerns that would not be tantamount to a suspension order, as Mr Prakash would require supervision at all times.

Ms Cockburn submitted that a suspension order would not adequately reflect the seriousness of Mr Prakash's conduct. She submitted that Mr Prakash's conduct, including his dishonesty, raises fundamental concerns about his trustworthiness and calls into question his professionalism.

Ms Cockburn submitted that given the seriousness of the behaviour, as well as the significant and adverse effect that it had upon those involved, public confidence in the profession can be maintained only if Mr Prakash is removed from the register. She submitted that a striking-off order is the only sanction which sufficiently protects patients and members of the public and maintains professional standards.

Decision and reasons on sanction

Having found Mr Prakash'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:

- Repeated conduct which put patients and colleagues at risk of harm;
- Abuse of a position of trust, which included self-medicating on shift using a CD;

- A pattern of dishonesty over a protracted period of time; and
- Lack of insight and remorse.

The panel also took into account the following mitigating features:

- Early admissions to some of the allegations at a local investigation and on the unsigned CMF; and
- Personal mitigation, [PRIVATE].

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 Mr Prakash'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 Mr Prakash'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 Mr Prakash's registration would be a sufficient and appropriate response. The panel considered that the concerns in this matter relate to Mr Prakash taking CD from his employer in a deliberate breach of policy, on more than one occasion, and demonstrating a pattern of dishonesty. The panel noted that Mr Prakash repeated this behaviour despite a police caution and significant intervention from management. In this respect the panel considered that the misconduct and caution in this case reflected deep-seated attitudinal problems. The panel also took into account that there was a lack of current evidence of insight and remorse, as

Mr Prakash has disengaged with NMC proceedings. The panel was therefore of the view that there are no practical or workable conditions that could be formulated, given the nature of this case and the risk of repetition which has been identified. Furthermore, the panel concluded that the placing of conditions on Mr Prakash's registration would not adequately protect the public and meet the public interest.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that the concerns in this case do not relate to an isolated incident and Mr Prakash demonstrated a pattern of misconduct across two different hospitals, which were part of the Trust. It noted that the misconduct included repeated dishonesty as well as a police caution for theft, which reflected deep-seated attitudinal problems. The panel also took into account that it was presented with very limited insight with no evidence of remorse, and therefore found a high risk of repetition.

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 Mr Prakash's actions is fundamentally incompatible with Mr Prakash 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?*

The panel noted that Mr Prakash has demonstrated a lack of insight and remorse into his misconduct. Further, the panel noted that it had no evidence that Mr Prakash has strengthened his current practice in respect of the specific concerns in this matter. The panel considered that honesty and integrity are at the heart of the nursing profession, and repeated dishonesty is fundamentally incompatible with nursing. The panel found that Mr Prakash has not demonstrated that he can be trusted as a registered nurse to keep patients safe from unwarranted risk of harm, which raises fundamental questions about his professionalism. The panel determined that members of the public would be shocked if a registered nurse who breached professional and clinical protocols with such breadth and frequency as in the circumstances of this case, was allowed to remain on the register. Taking account of the SG and the guidance on serious cases, the panel could not be satisfied that anything less than a striking-off order would maintain professional standards, keep the public protected and address the public interest in Mr Prakash's case.

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 Mr Prakash's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered the impact which a striking-off order may have upon Mr Prakash and appreciated that it may result in some hardship. However, the panel decided that this was outweighed by its duty to protect the public and satisfy the public interest, which would only be met by a striking-off order.

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 Mr Prakash in writing.

Submissions on interim order

The panel took account of the submissions made by Ms Cockburn. She submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. She invited the panel to impose an interim suspension order for a period of 18 months for the reasons stated in the panel's findings.

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 Mr Prakash's own interest until the suspension sanction takes effect.

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

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 for a period of 18 months to allow for any possible appeal.

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

That concludes this determination.