Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing
Monday, 13 February 2023 – Friday, 17 February 2023
Wednesday, 11 October 2023 – Friday, 13 October 2023

Virtual Hearing

Name of Registrant:	Damilola Akinkugbe
NMC PIN:	07B3486E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nurse (Level 1) (13 December 2007)
Relevant Location:	Essex and Tendring
Type of case:	Misconduct
Panel members:	Bryan Hume (Chair, lay member) Richard Lyne (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Michael Hosford-Tanner
Hearings Coordinator:	Nandita Khan Nitol
Nursing and Midwifery Council:	Represented by Dan Santos-Costa, Case Presenter
Ms Akinkugbe:	Present and represented by Catherine Collins, instructed by the Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1b), 1d)ii)
Facts proved:	Charge 3 and Charge 2 (in relation to physical abuse only)
Facts not proved:	Charges 1a), 1c), 1d)i) and 1d)iii)
Fitness to practise:	Impaired
Sanction:	**Conditions of practice order (12 months)**

Interim order: **Conditions of practice order (18 months)**

Details of charge

That you, a registered nurse:

1. On 17/18 July 2020:

    a. Having witnessed Colleague A be verbally abusive to Patient A, failed to intervene and/or escalate.
    b. Having witnessed Colleague A be physically abusive to Patient A, failed to intervene and/or escalate.
    c. Allowed Patient A to be secluded when there was no clinical reason for seclusion.

    d. Failed to report:
        i. the verbal abuse;
        ii. physical abuse;
        iii. inappropriate seclusion;
        of Patient A to safeguarding or at all.

2. Subsequent to the events set out at charge 1, created an inaccurate statement in that you omitted to record the verbal and/or physical abuse of Patient A and/or Patient A's inappropriate seclusion.

3. Your actions at charges 1d and 2 were dishonest in that you were seeking to conceal the abuse Patient A had suffered and/or Patient A's inappropriate seclusion.

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

Background

The NMC received a referral on 28 July 2020 from Cygnet Health Care Services. You had worked at Yew Trees Hospital (the Hospital) as an agency nurse.

On the night of 17/18 July 2020, it is alleged that you witnessed an assault, by a male support worker (Colleague A), on a vulnerable patient at the Hospital. During the incident you witnessed Colleague A and another support worker drag Patient A by the arms across the floor and then into her bedroom. You then followed Colleague A into the patient's bedroom and closed the door. The assault took place in your presence during which time you allegedly failed to intervene or thereafter report the assault. The incident was captured on CCTV.

You also allegedly provided an inaccurate statement of the events for the hospital investigation into the incident.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Collins on your behalf, who informed the panel that you made admissions to charges 1b), 1d)ii).

The panel therefore finds charges 1b), 1d)ii) proved in their entirety, by way of your admissions.

Decisions and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Santos-Costa on behalf of the Nursing and Midwifery Council (NMC), Ms Collins on behalf of you and Ms Jennifer Agyekum on behalf of Ms Dora Margaret Pasirayi (another registrant involved in this case).

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 witness called on behalf of the NMC:

- Witness 1: Operations Director of Cygnet Health Care at the time

The panel also heard evidence from both the registrants under oath.

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 both the NMC and the representatives of both the registrants.

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

Charge 1a)
That you, a registered nurse:

1. On 17/18 July 2020:

    a. Having witnessed Colleague A be verbally abusive to Patient A, failed to intervene and/or escalate.

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral and documentary evidence and the CCTV footage.

The panel comprehensively viewed the CCTV footage and noted that the video did not have any sound to consider the verbal aspect of the conversation. The panel took account of the documentary evidence and heard in evidence that Patient A was profoundly deaf and required the assistance of Makaton as a visual tool for communication. The panel noted from the CCTV that Colleague A was using exaggerated hand gestures in order to communicate with Patient A. The panel also heard in evidence that there was a lot of noise in that Patient A was shouting and the patient from the adjacent room (room 7) was also shouting at the time of the incident.

The panel determined that the tendency and or need to be loud and expressive was to communicate with Patient A and due to all the noises at the time of the incident in conjunction with the fact that Patient A was deaf. The panel received no evidence to assist as to whether the hand gestures used were consistent with the use of Makaton.

The panel took into account the background information that it heard in evidence and the evidence of the two registrants, and it determined that in the absence of any independent witnesses, the panel was not satisfied to infer from the soundless CCTV that the verbal communication was abusive.

Therefore, the panel was not satisfied that you were in breach of any duty by not intervening or escalating the issue on the basis of Colleague A being verbally abusive to Patient A.

Accordingly, this charge is found not proved.

Charges 1c), 1d)i), 1diii)

That you, a registered nurse:

1. On 17/18 July 2020:
    c. Allowed Patient A to be secluded when there was no clinical reason for seclusion.
    d. Failed to report:
        i. the verbal abuse;

iii. inappropriate seclusion;
of Patient A to safeguarding or at all.

This charge is found NOT proved.

The panel took into account of the definition of seclusion from the Hospital policy guidance, which states that:

'Seclusion refers to supervised confinement and isolation of the individual, away from other individuals, in an area from which the individual is prevented from leaving, where it is of immediate necessity for the purposes of containment of severe behavioural disturbance which is likely to cause harm to others.'

The panel considered the definition from the Hospital policy and determined that by that definition, and by the plain meaning of the word, Patient A was secluded as she was prevented from leaving her room and did not have the free will to wander around in the hospital which was a deprivation of liberty.

However, the panel determined that there were clinical reasons behind Patient A's seclusion.

The panel considered the CCTV footage along with the oral evidence of Witness 1 and the evidence from both the registrants. The panel heard in oral evidence, which was not challenged, that the patient in room 7 made threats to harm Patient A, who had disturbed her and was trying to enter her room. It also heard in evidence that prior to the incident in question earlier in the evening, Patient A behaved similarly. At that previous incident, the Hospital staff struggled to get her to come away from room 7 and the patient in Room 7 was making threats. They managed to get Patient A to her bed at 11:00 pm and settled her.

The panel noted the evidence of Witness 1, where he said that there was no clinical reason for seclusion, and that Patient A was at no immediate harm to herself or

anybody else. However, it also noted that Witness 1 was not aware of any earlier incidents, nor was he aware of Patient A's care plan.

The panel accepted the oral evidence from you that there was a clinical reason to seclude Patient A for her own safety and for the safety of others. The patient in room 7 was threatening to attack her and that Patient A was continually going back to the door of room 7, which resulted in her being put at risk.

The panel did not find that Colleague A was verbally abusive to Patient A in 1a) and that the seclusion was inappropriate. Therefore, the panel was not satisfied that you were in breach of any duty to report the matters alleged and did not amount to a failure.

Accordingly, this charge is found not proved.

Charge 2

That you, a registered nurse:

2. Subsequent to the events set out at charge 1, created an inaccurate statement in that you omitted to record the verbal and/or physical abuse of Patient A and/or Patient A's inappropriate seclusion.

This charge is found proved.

In reaching its decision the panel considered its previous decision for charge 1a) and 1d). The panel did not find the charge in 1a), 1d)i) and 1d)iii) proved and therefore, did not consider the omission of the record of verbal abuse or inappropriate seclusion to be inaccurate.

The panel took account of the admissions by both the registrants to charge 1b) namely that they had each witnessed Colleague A be physically abusive to Patient A.

In reaching this decision, the panel determined that you failed to create an accurate statement with regards to the physical abuse that you witnessed.

The panel was helpfully provided with the incident report by Ms Collins on your behalf. However, the report did not refer to any inappropriate behaviour or physical abuse by Colleague A. Neither did your handwritten report mention the physical abuse.

The panel took account of your evidence where you said that you had been asleep in the morning after a night shift when you were called to come to the Hospital. Upon arrival you were told that the police had been contacted and that the CQC had been informed. You were asked by your manager to make a handwritten statement about an incident and told the panel that you were unclear about which incident they were concerned about and that you were not provided with any access to any documentation or CCTV footage. You further said that after hearing about the police and the CQC you became nervous and that you forgot the details of the incident.

Similar evidence was given by Ms Pasirayi that she had been called in abruptly, had been criticised and informed that the police and CQC had been notified. She said that this left her in a state of shock when she made her handwritten statement, which was also without access to any hospital documents or CCTV footage.

The panel watched the CCTV footage and saw that you were present and had full sight when Patient A was dragged across the corridor and into her room by Colleague A and another support worker. The panel noted that at the time of the handwritten note you were in a state of shock. However, the panel noted that your handwritten statement contained significant detail in relation to Patient A's behaviour and the events surrounding the physical abuse, yet in relation to the physical abuse itself only reference is to ' *…she was physically removed from there*' and '*…was removed to her room by SSFA and CSWBD*'. The panel took account of the fact that your electronic incident report stated that Patient A was physically transferred or taken to her room but omitted any reference to physical abuse. Your handwritten statement also omitted any reference to physical abuse.

Therefore, the panel was satisfied that you made an inaccurate statement of the events of the night in question in that it omitted any reference to physical abuse.

In light of the above, the panel found Charge 2 proved on the balance of probabilities in relation to the omission to report physical abuse.

Charge 3

That you, a registered nurse:

3. Your actions at charges 1d and 2 were dishonest in that you were seeking to conceal the abuse Patient A had suffered and/or Patient A's inappropriate seclusion.

This charge is found.

In reaching its decision the panel considered its previous decision for charge 1d). The panel did not find the charge in 1d)i) and 1d)iii) proved and therefore, did not consider the lack of reference to verbal abuse or seclusion to be dishonest.

The panel took into account its decision to find the Charge in 1d)ii) proved in relation to you. The panel also took account of the CCTV footage and the documentary evidence produced by both the registrants.

The panel is satisfied that you were dishonest in seeking to conceal the physical abuse that Patient A had suffered.

The panel took into account that you admitted that you failed to report the physical abuse of Patient A. The panel accepted the evidence that an incident report was produced which would lead to a CCTV review, but the panel considered that there was a need to identify the physical abuse and alert any management reviewer to this. This would have been appreciated by you.

The evidence from the registrants was that the two registrants acted as a team although technically Ms Pasirayi was nurse in charge. The electronic incident report was made by you, but your evidence was that you consulted others including Ms Pasirayi when compiling it. It was submitted on your behalf that completion of an incident report shortly following the incident was evidence to support the fact that you were not seeking to conceal the events. However, the panel noted that Patient A was referred in the incident report as the perpetrator/alleged perpetrator and the report was focused on her behaviour during the evening as opposed to the behaviour of Colleague A at the time of the physical abuse.

With regards to handwritten statements, the panel considered that they were evidence of a continuation of the intention by each of the registrants to conceal the physical abuse suffered by Patient A.

The panel found that the circumstances and background are such that when the incident report was logged, you knew about your error of not taking any action about the physical abuse at the time of the incident. The report was designed to conceal and create misleading impression that it would seem so minor that CCTV would not get reviewed with the full vigour that would follow if physical abuse on a patient by a member of staff had been clearly identified.

In reviewing the evidence, the panel determined that it was reasonable to infer that as a registered nurse you would have known that the incident amounted to a physical abuse. The panel noted that you had a duty to report under the policy and also based on registered nurse's wider duty of candour. The panel considered carefully the alternative explanations that your course of action might have been innocent, with no intention to conceal the physical abuse, but no such explanation was credible. The panel is satisfied that each of the registrants intended to conceal the physical abuse and knew that was dishonest.

In light of the above, the panel also found that your actions were dishonest according to the standards of ordinary decent people.

The panel therefore found charge 3 proved in respect of Charges 1d)ii) and 2 (in relation to physical abuse) on the balance of probabilities.

Fitness to practise

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

The panel has considered your case separately from that of Ms Pasirayi.

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

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

Submissions on misconduct and impairment

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.'* The panel further took into account the test of 'a serious departure from acceptable standards' approved in case of *Johnson and Maggs v NMC* [2013] EWHC 2140 (Admin).

Mr Santos-Costa invited the panel to take the view that the facts found proved amount to misconduct. Mr Santos-Costa referred to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision. He identified the specific, relevant standards where your actions amounted to misconduct.

In respect of charge 1b) Mr Santos-Costa submitted that the conduct constitutes neglect of a vulnerable adult. He said that Patient A was especially vulnerable as she was detained under section 3 of the Mental Health Act 1983 including being profoundly deaf and suffering from learning difficulties. Mr Santos-Costa drew the panel's attention to the CCTV footage where it showed that Patient A was physically abused by Colleague A. He submitted that Patient A was struck on the arms multiple times and kicked once in the leg when Colleague A pulled her and dragged Patient A across the floor and eventually dragged her into the bedroom with the assistance of another member of staff.

Mr Santos-Costa submitted that this was an undeniable incident of physical abuse where Patient A was at the risk of psychological and physical harm. He also submitted that it has never been part of the NMC's case that either you or Ms Pasirayi were responsible for that physical abuse. However, Mr Santos-Costa submitted that Patient A was in the care of both you and Ms Pasirayi and that there was no contextual background which could justify your and Ms Pasirayi's failure to intervene and escalate having witnessed the incident.

Mr Santos-Costa submitted that both you and Ms Pasirayi's failed to report the physical abuse at all. On the contrary, he submitted that at the fact stage there were repeated mentions of a desire not to upset or arouse other volatile patients which suggested that both you and Ms Pasirayi were more concerned with maintenance of peace and stability on the ward at the expense of Patient A in those circumstances. Mr Santos-Costa submitted that this behaviour suggested attitudinal issues.

Mr Santos-Costa pointed out to the panel that it is fundamental duty of a practitioner to maintain and prioritize patient safety and part of that maintenance is timely reporting of incident involving abuse of patients. Mr Santos-Costa submitted that both you and Ms

Pasirayi were responsible for leaving Patient A exposed to an unwarranted risk of harm due to both of your failing to intervene in the physical abuse along with the subsequent failure to report the incident and thereafter creating inaccurate statements which omitted to record the physical abuse.

Therefore, Mr Santos-Costa submitted that your actions in the charges found proved/admitted did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Mr Santos-Costa moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2007] EWHC 581 (Admin).

Mr Santos-Costa submitted that all four limbs of *Grant* are engaged in this case. Mr Santos-Costa submitted that both your and Ms Pasirayi's actions in failing to intervene the physical abuse and the subsequent concealment of the nature of the physical abuse breached the professional duty of candour. He further submitted that both of your failings put Patient A at a real risk of harm, your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

However, Mr Santos-Costa submitted that it is a matter for the panel's own judgement as to whether and to what extent you have demonstrated insight, and what significance to attach in this case to the presence or lack of insight.

Mr Santos-Costa acknowledged that you have been practising as a registered nurse with no further concerns. However, he submitted that you have not yet been able to demonstrate sufficient insight into the incident. Therefore, Mr Santos-Costa submitted that there is a risk of repetition based on the limited insight and the lack of full remediation which requires a finding of impairment on public protection grounds.

Mr Santos-Costa submitted that in view of the seriousness of the case, public confidence in the profession would be undermined and a finding of impairment is required on the grounds of public interest.

Having regard to all of the above, Mr Santos-Costa invited the panel to make a finding that your fitness to practise is currently impaired.

Ms Collins' submissions on misconduct and impairment

Ms Collins stated that she did not propose to argue against a finding of misconduct and then moved on to the submissions on impairment.

Ms Collins submitted that your fitness to practise is currently not impaired.

In respect of public protection, Ms Collins submitted that you have demonstrated insight and Ms Collins pointed out to the panel that you made early admissions and that you accept that the information you recorded was inaccurate. Ms Collins highlighted to the panel that in your evidence you said that at the time of the incident you did not recognise that Colleague A dragging Patient A along the floor was abuse but you are also not deflecting the blame onto any other person.

Ms Collins drew the panel's attention to the fact that you have no prior warnings or concerns about your practice and that you have a good character which is supported by very positive testimonials. Ms Collins explained to the panel that how you look after vulnerable patients by following six C's of nursing that is care, compassion, competence, communication, courage and commitment. Ms Collins told the panel that you are able to build working relationships and networks with families. She further explained to the panel by referring to the example you gave in evidence how your communication and exceptional nursing skills proved highly efficient when a patient becoming distressed where you took over from another colleague who was raising their voice and your professionalism and empathy enabled you to help and calm the patient. You had said that you had spoken to the colleague and your line manager and recorded the matter.

Ms Collins submitted that with regards to the night in question matters got out of hand and that at that time you lacked training. However, she added that you have remediated by having extensive training. Ms Collins pointed out to the panel that in your evidence you told the panel how you would do things differently in the future. Additionally, you were able to you explain to the panel that you have since observed a number of appropriate restraint techniques being used and completed the Prevention and Management of Violence and Aggression (PMVA) course.

Further, Ms Collins informed the panel about your career history and the fact that you are practising with no concerns and that your current ward manager was confident in your ability to assure that you are following correct safeguarding procedures.

Ms Collins submitted that the incident happened three years ago, and you have been working as a registered nurse in an intensive mental health care unit in an NHS mental hospital for a period of over a year with no further complaints along with the evidence of training certificates and positive testimonials. Therefore, she submitted that there is no risk of repetition and thus the panel is not required to find impairment in order to protect the public.

Ms Collins submitted you are not impaired on public interest grounds. She submitted that you contested the dishonesty charge but accepted the panel's findings and that your positive testimonials support your good character. Ms Collins referred to the case of *Ali v General Medical council* [2023] EWHC 797 (Admin) and *Sawati v The General Medical Council* [2022] EWHC 283 (Admin) and *Amao v NMC* [2014] EWHC 147 (Admin) and submitted that it would be wrong to equate denial of allegations and maintenance of innocence with lack of insight. She further submitted that you are able to demonstrate insight without admitting to dishonesty. However, she submitted that you accept the panel's findings in the fact stage without admitting to it and understand the gravity of the situation you witnessed in July 2020.

Finally, Ms Collins submitted that there is no risk of public protection, and a member of the public would not be surprised if you are assessed as being not currently impaired.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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

'1.1 treat people with kindness, respect and compassion
1.2 make sure you deliver the fundamentals of care effectively
1.5 respect and uphold people's human rights.

3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care.

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need.
10.3 complete 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.
14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly.

16 Act without delay if you believe that there is a risk to patient safety or public protection.

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other healthcare setting and use the channels available to you in line with our guidance and your local working practices.

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.

20.5 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. However, the panel was of the view that the breaches of the Code did amount to misconduct due to the extensive omissions in your actions. The panel noted that you witnessed the assault specifically from the part involving dragging on the floor and subsequently you completed an incident report. However, the panel found that the report you provided failed to offer an accurate account of the physical assault. The panel determined that your failure to intervene during the assault and the subsequent inaccuracies in your documentation, which focused on Patient A as the alleged perpetrator rather than addressing the behaviour of Colleague A, was an act of concealment of the assault which constitutes a dishonest action.

The panel considered that Patient A was exposed to an unwarranted risk of harm through your failure to intervene and then the subsequent failure to report and/or escalate this. The panel noted that you took no steps to minimise the unwarranted risk of harm that Patient A had been exposed to and, your failure to record and report it left other patients at risk of similar behaviour from Colleague A.

Based on all the evidence, the panel was of the view that your conduct would be deplorable in the particular circumstances of this case.

The panel found that your acts and omissions above did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct in each and all of the charges found proved.

Decision and reasons on impairment

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

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

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that 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 four limbs of the *Grant* test are engaged.

The panel carefully considered the breaches of the Code and the charges found proved. The panel had regard to the evidence in this case and it found that Patient A was put at risk of unwarranted physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that it was a one-off incident but 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 has accepted the submission of Ms Collins on your behalf that it was not condition precedent for finding full insight that you must admit the dishonesty charge. Ms Collins provided the panel with authorities which the panel has considered. The

panel has considered all the evidence when determining whether you have gained full insight and the risk of repetition of your misconduct, including Ms Collins' submissions to take account of your previous good character and the evidence that this was a one-off incident.

In terms of strengthening of practice the panel acknowledged the various testimonials you have provided and that you have been practising as a registered nurse with no further concerns. It also appreciated the example you provided demonstrating how you have since effectively managed a situation involving a vulnerable patient.

However, the panel was of the view that your insight remained limited as there was insufficient understanding of the impact on Patient A. In the panel's judgement, you appeared more inclined to emphasise that the correct restraining technique was not used, rather than acknowledging that the dragging of Patient A constituted a physical abuse regardless of which technique was employed at the time.

Given your level of insight into charges found proved, the panel decided that there is a risk of repetition and that a finding of impairment is necessary on the grounds of public protection.

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.

In this regard, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore also finds your fitness to practise impaired on public interest grounds.

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

Sanction

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

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

Submissions on sanction

Mr Santos-Costa's Submission on sanction

In his submissions on sanction, Mr Santos-Costa invited the panel to impose a striking-off order. Mr Santos-Costa outlined what the NMC considered to be the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts found proved in this case, the only sanction that would suitably satisfy the public protection and public interest would be to permanently remove your name from the register.

Mr Santos-Costa invited the panel to consider SAN-2, 'Considering sanctions for serious cases', of the fitness to practice library when considering its decision.

Mr Santos-Costa reminded the panel that it is under a duty to make sure that any decision to restrict fitness to practise is justified, and being proportionate means striking a fair balance between the nurse's rights and an understanding of the overarching objective which is public protection. He submitted that a sanction is not necessarily a punishment, and it must go no further than tackling the reasons why the nurse is not currently fit for practise. Mr Santos-Costa also reminded the panel that the interests of the registrant must be somewhat weighed against the public interest in appropriately sanctioning a registrant whose fitness to practise is currently impaired, taking into

account any aggravating or mitigating features. He added that if the sanction is not enough to achieve public protection, the panel should consider the next most serious sanction. He pointed out to the panel that when the panel finds the sanction that is enough to achieve public protection, then it has gone far enough.

Mr Santos-Costa referred to the Guidance which states that the purpose of regulatory proceedings is to protect the public and not to punish the nurse, therefore mitigating features carry less weight than they otherwise would in the Criminal Justice System, for example (*Bolton v Law Society* [1994] 1 WLR 512).

Mr Santos-Costa submitted whilst dishonesty will always be serious, that there is no general rule and no general assumption that dishonesty will always attract a striking-off order. The panel must approach it in exactly the same proportionate way that it would with any other type of misconduct.

Mr Santos-Costa referred to the guidance and submitted that dishonest conduct would generally be less serious in cases of one-off incident, opportunistic or spontaneous conduct where there is no direct personal gain. He submitted that your dishonesty was a deliberate breach of professional duty of candour by covering up when things have gone wrong and that is indicative of an attitudinal concern which has not been put right. Therefore, he submitted that there is a risk of repetition and that your conduct fundamentally undermines public confidence in the nursing profession and the conduct that the public would expect of a nurse namely to act with honesty, integrity and professionalism.

Mr Santos-Costa submitted that any lesser sanction than a striking-off order would be insufficient to protect the public and to meet the public interest as your behaviour was fundamentally incompatible with continued registration.

Ms Collins' submissions on Sanctions

Ms Collins submitted that it is a fundamental principle of these proceedings that the sanction must be both proportionate and also not be unnecessarily punitive. She outlined the possible mitigating features of the case for the panel to consider.

Ms Collins asked the panel to consider that it was your report that indicated that there had been some physical intervention which led to the investigation of the matter and resulted in the trust by taking action against Colleague A.

Ms Collins asked the panel to look carefully at the length of the incident that you witnessed, with you being present for less than a minute and the dragging of Patient A lasting nine seconds in a very a difficult and stressful situation. She submitted that it was a brief but nonetheless serious incident and asked the panel to take into account that this was neither a preplanned action nor was there any personal gain. Ms Collins submitted that you expressed remorse in your reflective piece towards Patient A and her family including to colleagues and to the wider nursing profession.

Ms Collins reminded the panel that it has all the sanctions available in ascending order and told that panel that she was not going to make any representations in terms of no order.

Ms Collins invited the panel to make a caution order of a lengthy period of time.

Ms Collins submitted there have never previously been any concerns or disciplinary issues. She asked the panel to consider your practice both before and since the incident and that there is no evidence of any harmful personality or attitudinal problems or concerns. She submitted that you have been in continuous employment in an NHS mental hospital for a period of over a year with no further complaints along with the evidence of training certificates and positive testimonials.

Ms Collins submitted if the panel was not with her in terms of caution order, she would invite the panel to consider conditions of practice order. She submitted that you are

making good progress with the interim conditions of practice and echoed her submission in relation to mitigating factors. She further submitted that the panel should carefully consider the length of the order.

Ms Collins submitted that you have got a number of testimonials and that none of those documents highlight a harmful deep-seated personality or attitudinal problem. She submitted that it was a one-off incident where you lacked taking control of the situation and allowed Colleague A to act in an inappropriate and abusive way. However, she submitted that you have been working as a registered nurse in a challenging NHS mental health Unit with no further complaints and that there is no risk of repetition.

Ms Collins submitted you are working well within the mental health intensive care unit and would love to continue to provide that service to the members of the public. Therefore, she submitted that a suspension or striking- off order would be a disproportionate response to the matter.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The incident involved a vulnerable patient.
- Conduct which put patients at risk of suffering harm.
- Did not take any measure to intervene the act of assault.

The panel also took into account the following mitigating features:

- Early admissions
- Witnessed a relatively short and one-off incident in a challenging environment.
- Acknowledgement of the fact that the behaviour of Colleague A was an assault.
- Completed an incident report promptly which did mention physical intervention which was picked up by line managers and led to the investigations of the incident by viewing CCTV.
- Working as a Registered nurse with no further concerns
- Previous good character
- Positive testimonials and training certificates
- No personal gain in relation to the dishonesty findings.

The panel has weighed the aggravating factors against the mitigating factors and considered that there was significant mitigation despite you not acting promptly when witnessing physical abuse of a vulnerable patient by a colleague. The panel further took account of the fact that you came upon a situation that had already escalated and which you were unaware of the earlier violence inflicted by Colleague A.

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 your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions

imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel considered Ms Collins' submissions that you have successfully complied with an interim conditions of practice order for over a year. However, it bore in mind that this panel's function is different to one assessing risk at an interim stage.

The panel had regard to the fact that this incident happened around three years ago, and you have continued to work in the health care sector since the incident, at first as health care assistant when subject to an interim suspension order and subsequently as a nurse when the interim suspension order was replaced by an interim conditions of practice order. The panel also had regard to the fact that, other than this isolated incident, you have had an unblemished career of a number of years as a nurse. It further took into account that the failings are neither wide-ranging in respect of your clinical practice, nor are they as a result of any attitudinal concerns. Therefore, the panel accepted that, as you have previously successfully complied with an interim conditions of practice order, it is likely that you would be willing to comply with conditions of practice. Accordingly, the panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to practise as a nurse.

The panel was impressed with your written reflective piece and more importantly that you have worked in a challenging NHS mental health intensive care unit without any repetition of any complaint about your practice enabling the panel to conclude that you have made considerable steps towards remediation. Accordingly, it is anticipated that full remediation can now be achieved by you with the support envisaged in a conditions of practice order.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

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

> ‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.
>
> 1. You must limit your practice to a single employer. If it is an agency, then you must only accept placements of no less than three months duration.

2. You must ensure that you are supervised by another registered nurse at any time you are working. Your supervision must consist of working at all times on the same shift and on the same floor or area but not always directly supervised by another registered nurse.

3. You must be allocated a clinical supervisor, who must be a registered nurse, with whom you must meet weekly to discuss your clinical practice. These discussions must relate to your conduct in general nursing practice particularly in relation to the following:
    - Safeguarding
    - Communication
    - Escalation of concerns
    - Record keeping
    - Professional candour

4. In advance of any review, you must provide to your NMC case officer a report from your clinical supervisor that draws on your record of clinical supervision to report particularly on the areas listed in condition 3.
5. You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about:

    - Safeguarding
    - Communication
    - Escalation of concerns
    - Record keeping
    - Professional candour

    You must:
    • Send your case officer a copy of your PDP by four weeks from today.

• Send your case officer a report from your supervisor every three months.

This report must show your progress towards achieving the aims set out in your PDP.

6. You must engage with your supervisor on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:
    - Meeting with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.

7. You must keep us informed about anywhere you are working by:
    a) Telling your case officer within seven days of accepting or leaving any employment.
    b) Giving your case officer your employer's contact details.

8. 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.

9. You must immediately give a copy of these conditions to:
    a) Any organisation or person you work for.
    b) Any agency you apply to or are registered with for work.
    c) Any employers you apply to for work (at the time of application).
    d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

10. You must tell your case officer, within seven days of your becoming aware of:
    a) Any clinical incident you are involved in.
    b) Any investigation started against you.
    c) Any disciplinary proceedings taken against you.

11. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
    a) Any current or future employer.
    b) Any educational establishment.
    c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for one year which should allow you to strengthen your practice in that period.

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

Any future panel reviewing this case would be assisted by:

- Evidence of your compliance with these conditions and testimonials from your line manager or supervisor that detail your current work practices.
- A reflective piece addressing the misconduct found by the panel at this hearing.
- Engagement with the NMC and attendance at any future NMC hearing

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Santos-Costa. He submitted that an interim order is required as the substantive order will not come into force until the end of the 28-day appeal period. He submitted that an interim conditions of practice order, mirroring the substantive order, for a period of 18 months is required to give assurance that some order would be in place, should you lodge an appeal against this panel's decision. He said that this period is required to allow for this appeal to be heard, and if no such appeal is made, the interim order will fall away in 28-days.

Ms Collins did not oppose the application.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive

order for a period of 18 months for the same reasons and in the same terms as the substantive conditions of practice order, in order to uphold public protection for the period which it may take to resolve any potential appeal of this substantive order.

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

That concludes this determination.
This will be confirmed to you in writing.