

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

**Substantive Hearing  
Friday, 16 February 2024**

Virtual Hearing

**Name of Registrant:** Nirali Patel

**NMC PIN** 14H2086E

**Part(s) of the register:** Registered Nurse  
RNHM: Mental Health Nurse, Level 1 (September 2016)

**Relevant Location:** Oxfordshire

**Type of case:** Misconduct

**Panel members:** Rachel Cook (Chair, lay member)  
Marcia Levene-Smikle (Registrant member)  
Helen Kitchen (Lay member)

**Legal Assessor:** Tim Bradbury

**Hearings Coordinator:** Daisy Sims

**Nursing and Midwifery Council:** Represented by Holly Girven, Case Presenter

**Mrs Patel:** Not present and not represented at this hearing

**Consensual Panel Determination:** Accepted

**Facts proved:** All charges

**Facts not proved:** N/A

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

**Interim order:** **Interim suspension order (18 months)**

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

The panel was informed at the start of this hearing that Mrs Patel was not in attendance and that the Notice of Hearing letter had been sent to Mrs Patel's registered email address by secure email on 10 January 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Patel's representative on 10 January 2024.

Ms Girven, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Patel's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

## **Decision and reasons on proceeding in the absence of Mrs Patel**

The panel next considered whether it should proceed in the absence of Mrs Patel. It had regard to Rule 21 and heard the submissions of Ms Girven who invited the panel to continue in the absence of Mrs Patel. She submitted that Mrs Patel had voluntarily absented herself.

Ms Girven informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Mrs Patel on 2 February 2024. She referred the panel to paragraph 1 of the CPD which states:

*'Mrs Patel is aware of the CPD hearing. Mrs Patel does not intend to attend the hearing and is content for it to proceed in her and her representative's absence. Mrs Patel will endeavour to be available by telephone [...].'*

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 Mrs Patel. In reaching this decision, the panel has considered the submissions of Ms Girven, the representations made on Mrs Patel's behalf within the CPD, 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:

- Mrs Patel has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Patel.

## Details of charge

That you, whilst working as a senior mental health nurse at HMP Bullingdon (the Prison), between 21 May 2021 and 31 December 2021;

- 1) During your one-to-one sessions with Patient A, on one or more occasions;
  - a) Stroked Patient A's arm;
  - b) Stroked Patient A's leg;
  - c) Told Patient A that you wanted to get a divorce from your husband.
- 2) Provided your personal email address to Patient A on a piece of paper.
- 3) Participated in one-to-one sessions with Patient A, more than once a week without any clinical justification.

After Patient A was released from HMP Bullingdon in December 2021;

- 4) Engaged in a personal relationship with Patient A.
- 5) On unknown dates sent Patient A 'Whatsapp' messages, using words to the effect;
  - a) 'Ur worth something to me, ur my friend, one friend I know I can talk to about anything. Someone I know I can trust'.
  - b) 'Love u [Patient A] xxx'
  - c) 'I'm glad I had that with u, trust me it was special. I found so much comfort with u, I felt safe, wanted and loved xxx.'
  - d) 'U give those feelings to me and it was so nice x.'
- 6) On 17 August 2022 sent Patient A an email using words to the effect;

a) 'I haven't stopped thinking about you and the thought of not seeing or speaking to you again breaks me.'

b) 'I do love you and miss you...'

c) 'You will always have a place in my heart and I will never forget you...'

d) 'Love u [Patient A] and take care xxx.'

7) On one or more occasions met Patient A, without any clinical purpose.

8) Engaged in sexual activity with Patient A.

9) Between January 2022 and March 2022 transferred to Patient A, a sum of £175 pounds.

10) Your actions in one or more of charges 1 a), 1 b) & 8) above were sexually motivated in that you sought sexual gratification, from one or more of these acts.

11) Your actions in one or more of charges 1 a), 1 b), 1 c), 2), 3) & 9) above were sexually motivated in that you sought to pursue a sexual relationship with Patient A from one or more of these acts

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

### **Consensual Panel Determination**

At the outset of this hearing, Ms Girven informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Mrs Patel.

The agreement, which was put before the panel, sets out Mrs Patel's full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness

to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

*'The Nursing & Midwifery Council ("the NMC") and Nurse Nirali Jayesh Patel, PIN 14H2086E ("the Parties") agree as follows:*

1. *Mrs Patel is aware of the CPD hearing. Mrs Patel does not intend to attend the hearing and is content for it to proceed in her and her representative's absence. Mrs Patel will endeavour to be available by telephone should clarification on any point be required, or should the panel wish to make other amendments to the provisional agreement that are not agreed by Mrs Patel.*

### ***The charge***

2. *Mrs Patel admits the following charges:*

*That you, whilst working as a senior mental health nurse at HMP Bullingdon (the Prison), between 21 May 2021 and 31 December 2021;*

- 1) *During your one-to-one sessions with Patient A, on one or more occasions;*

- a) *Stroked Patient A's arm;*

*b) Stroked Patient A's leg;*

*c) Told Patient A that you wanted to get a divorce from your husband.*

*2) Provided your personal email address to Patient A on a piece of paper.*

*3) Participated in one-to-one sessions with Patient A, more than once a week without any clinical justification.*

*After Patient A was released from HMP Bullingdon in December 2021;*

*4) Engaged in a personal relationship with Patient A.*

*5) On unknown dates sent Patient A 'Whatsapp' messages, using words to the effect;*

*a) 'Ur worth something to me, ur my friend, one friend I know I can talk to about anything. Someone I know I can trust'.*

*b) 'Love u [Patient A] xxx'*

*c) 'I'm glad I had that with u, trust me it was special. I found so much comfort with u, I felt safe, wanted and loved xxx.'*

*d) 'U give those feelings to me and it was so nice x.'*

*6) On 17 August 2022 sent Patient A an email using words to the effect;*

a) *'I haven't stopped thinking about you and the thought of not seeing or speaking to you again breaks me.'*

b) *'I do love you and miss you...'*

c) *'You will always have a place in my heart and I will never forget you...'*

d) *'Love u [Patient A] and take care xxx.'*

7) *On one or more occasions met Patient A, without any clinical purpose.*

8) *Engaged in sexual activity with Patient A.*

9) *Between January 2022 and March 2022 transferred to Patient A, a sum of £175 pounds.*

10) *Your actions in one or more of charges 1 a), 1 b) & 8) above were sexually motivated in that you sought sexual gratification, from one or more of these acts.*

11) *Your actions in one or more of charges 1 a), 1 b), 1 c), 2), 3) & 9) above were sexually motivated in that you sought to pursue a sexual relationship with Patient A from one or more of these acts*

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

## **The facts**

3. *Mrs Patel appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Nurse and has been on the NMC register since 2016.*
4. *The NMC received the referral on 25 August 2022 from Patient A.*
5. *Mrs Patel was employed as a Senior Mental Health Nurse at HMP Bullingdon which is a category B prison remand centre.*
6. *The prison provides specialised mental health services within the Midlands Partnership Foundation Trust, now called the Oxford Foundation Trust (The Trust).*
7. *Patient A was in Mrs Patel's care at the prison between 21 May 2021 and December 2021. Mrs Patel breached professional boundaries with Patient A during that time and also following his release from prison.*
8. *Patient A disclosed that the relationship began while Mrs Patel was assigned as his Mental Health Nurse. He states that Mrs Patel preyed on his vulnerabilities and seduced him, in their weekly meetings in prison.*
9. *Patient A states that Mrs Patel flirted with him, stroked his arms and played with his hands. Mrs Patel gave Patient A her email address when he was due to leave the prison and they met up on several occasions after his release when they engaged in a sexual relationship.*

10. *Between January 2022 and March 2022 Mrs Patel transferred £175.00 to Patient A.*

11. *Following the internal investigation Mrs Patel was suspended from the Trust on 21 September 2022. Mrs Patel then resigned from her post on 4 December 2022.*

12. *The Case Examiners, when making their decision whether Mrs Patel had a case to answer said: "In our view you have not sufficiently addressed the regulatory concerns in your response to the NMC, which we consider demonstrates limited insight. You have been subject to an Interim Suspension Order since 14 September 2022. Due to the nature and seriousness of the concerns, as well as your limited insight and limited attempt to address the issues, we consider the risk of repetition remains. As such, we do consider that you are currently a risk to the health, safety or wellbeing of the public."*

13. *Mrs Patel accepts responsibility for the inappropriate relationship in her reflective account to the NMC on 13 September 2022. Mrs Patel also completed the Case Management Form on 23 October 2023 admitting all charges and conceded that her fitness to practise was impaired on account of her misconduct.*

14. *Patient A does not wish to make any comments and has not engaged with the NMC since making the referral in 2022.*

15. *The facts in relation to the charges:*

**Charge 1 (a) (b) (c)**

16. *During one-to-one sessions with Patient A, Mrs Patel admits that after becoming his allocated Nurse it became a romantic relationship. Patient A*

*discloses that Mrs Patel seduced him by touching him and making verbal comments; “it is a long story it turned into a romantic relationship where she seduced me by touching and verbal comments, she would stroke my arms and legs”.*

## **Charge 2**

*17. On 25 August 2022 the NMC received a referral from Patient A who says that Mrs Patel provided him with her personal email address written on a piece of paper.*

*18. In Mrs Patel’s reflective statement, she confirms that she provided Patient A with her email address as she was concerned that the Patient may harm himself. “I let my guard down and I did hand him my email address and continued a platonic relationship with the service user however it quickly turned in to a relationship where we were emotionally attached to one another.”*

## **Charge 3**

*19. The NMC was provided with evidence that Mrs Patel was expected to see Patient A once a week in a private session, typically lasting 30 minutes. There was a fact- finding meeting and it came to light that Mrs Patel was seeing Patient A up to twice a week. “Patient A would see Mrs Patel once a week. The length of a sessions with any individual will depend on individual need and how much they want to engage. Typically, sessions would last 30 minutes to an hour with individuals and are held in private.”*

## **Charge 4**

20. Mrs Patel provided a reflective statement and confirms her relationship with Patient A, "I was involved in a relationship with a patient for a few months outside of work where I breached professional boundaries. An allegation of breaching professional boundaries was reported to the NMC by the patient."

**Charge 5 (a) (b) (c) (d)**

21. Screen shots of the Whatsapp messages were disclosed which evidence the personal and intimate relationship between Mrs Patel and Patient A.

**Charge 6 (a) (b) (c) (d)**

22. A copy of the email sent by Mrs Patel on 17 August 2022 read as follows: "I do love you and I miss you but I think you're right in saying were a mistake and it should have never happened".

**Charge 7**

23. Although Mrs Patel was expected to meet with Patient A once a week the NMC received the following evidence: "it came to light that Nirali was seeing Service user A more frequently than I was led to believe including, at times, up to twice per week. I would not expect an individual such as Service User A to be seen any more frequently than maximum of weekly."

**Charge 8**

24. Mrs Patel admits in a reflective piece dated 13 September 2022 to having a sexual relationship with Patient A. "I will never engage in a relationship, personal or sexual with another service user again. This experience has shown me how it has affected my profession, health, dignity and life as a whole ..."

### **Charge 9**

*25. Between January 2022 and March 2022 transferred to Patient A, a sum of £175 pounds. Patient A provided an email on 30 August 2022 with Metro bank transfer records confirming transactions made by Mrs Patel into Patient A's bank account.*

### **Charge 10**

*26. Mrs Patel admits in the Case Management Form dated 23 October 2023, that her actions in one or more of charges 1 a), 1 b) & 8) above were sexually motivated in that she sought sexual gratification, from one or more of these acts.*

### **Charge 11**

*27. Mrs Patel admits in the Case Management Form dated 23 October 2023 that her actions in one or more of charges 1 a), 1 b), 1 c), 2), 3) & 9) above were sexually motivated in that she sought to pursue a sexual relationship with Patient A from one or more of these acts.*

### **Misconduct**

*28. The parties agree that the acts and omissions of Mrs Patel amount to misconduct. The comments of Lord Clyde in *Roylance v General Medical Council* [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*

*Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and*

*standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances.*

*29. Further assistance might be found in the comments of Jackson J in R (Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) and Collins in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively*

*'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

*And*

*'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*

*30. The parties agree that the misconduct in this case is serious. Mrs Patel's conduct involves a breach of professional boundaries in respect of a vulnerable patient. It is conduct involving a power imbalance which represents a breach of trust and an abuse of position.*

*31. The parties agree that the following provisions of the Code have been breached in this case:*

- 4. Act in the best interests of people at all times*
  
- 17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*
  
- 20. Uphold the reputation of your profession at all times.*

- *20.1 keep to and uphold the standards and values set out in the Code*
- *20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*
- *20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*
- *20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*
- *20.6 stay objective and have clear professional boundaries at all times with people in your care*
- *21 Uphold your position as a registered nurse*

*32. Mrs Patel's role as a nurse requires a level of responsibility and professionalism to ensure that patients do not come to any harm. The conduct displayed by Mrs Patel is extremely serious as she placed her own personal interest above the duty of care owed to Patient A. Mrs Patel exploited her professional position of trust.*

*33. Mrs Patel's misconduct was not an isolated incident but a course of conduct, namely the pursuit of a sexual relationship with a vulnerable patient in a mental health setting. Mrs Patel initiated the relationship and seduced Patient A. Mrs Patel was in a position of power and used it to her advantage. Mrs Patel's actions have resulted in Patient A making an attempt on their own life. There is evidence of actual harm from the relationship.*

*34. In these circumstances, Mrs Patel's actions amount to an extremely*

*serious departure from the standards expected of a registered professional, and as such amount to serious professional misconduct.*

### ***Impairment***

*35. It is agreed that Mrs Patel's fitness to practise is currently impaired by reason of her misconduct.*

*36. The NMC's guidance<sup>1</sup> explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. This involves a consideration of both the nature of the concern and the public interest.*

*37. The parties agree that consideration of the nature of the concern involves looking at the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;*

- *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*
  
- *Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
  
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
  
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future*

38. *The parties agree that limbs a, b and c are engaged in this case.*

***Placing patients at unwarranted risk of harm***

39. *The parties agree that Mrs Patel's actions and behaviour have placed Patient A at unwarranted risk of harm.*

36. *Mrs Patel's actions in developing an inappropriate relationship with a patient breached professional boundaries and caused harm to Patient A's (and her own) emotional and physical wellbeing.*

37. *Nurses exercise a level of authority and influence over patients. The evidence suggests that Patient A was considered vulnerable, and concerns were identified about his emotional and mental wellbeing in the context of their relationship. Mrs Patel had a responsibility to maintain professional boundaries in order to ensure that there was no potential, or actual, harm to Patient A as a result of her conduct.*

38. *Patient A describes in his referral the impact that their relationship and behaviour has had on him. Patient A states that his mental health has deteriorated, and he attempted suicide.*

***Has in the past brought and/or is liable in the future to bring the professions into disrepute***

39. *The parties agree that Mrs Patel's actions, have brought the profession into disrepute.*

40. *Nurses occupy a position of trust and are required to keep to and uphold the standards in the Code of Conduct. This is so that members of the public*

*feel confident in placing their and their loved one's health in the hands of clinical professionals. Mrs Patel failed to adhere to the Code and the local Trust policy and guidelines in respect of professional boundaries and relationships at work. It was the Trust's expectation that she would inform her line manager if she felt any professional boundaries were being crossed, or if she thought that the relationship with Patient A was developing in a non-professional way.*

*40. Mrs Patel's conduct has fallen far below the standards expected of a registered nurse undertaking care and treatment of patients with mental health concerns.*

*41. As a Senior Nurse, Mrs Patel had additional clinical and leadership responsibilities for staff, patients and prisoners in her care. This means that Mrs Patel would have been well aware of the importance of maintaining professional relationships in order to avoid actual, or potential, conflicts of interest and the misuse of authority or power.*

***Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions***

*42. The parties agree that the Code of Conduct is divided into several sections: prioritise people; practise effectively; preserve safety; promote professionalism and trust. Together these represent the fundamental tenets of the profession. For these reasons set out above, the parties agree that Mrs Patel has breached these by failing to maintain professional boundaries with Patient A and caused harm to Patient A's (and her own) emotional and physical wellbeing.*

*43. The parties agree that due to the nature and seriousness of the concerns, as*

*well as Mrs Patel's limited insight and limited attempts to address the issues, the risk of repetition remains.*

*44. The parties agree that the assessment of Mrs Patel's fitness to practise requires the panel to examine what has happened since the issues of concern arose. As such the parties agree that helpful guidance can be found in the case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;*

- *Whether the conduct that led to the charge(s) is easily remediable.*
- *Whether it has been remedied.*
- *Whether it is highly unlikely to be repeated.*

*45. The NMC guidance (FTP-3a) gives examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns. These include: "inappropriate personal or sexual relationships with patients, service users or other vulnerable people".*

*46. The concerns in this case fall into this category and as such may be more difficult to address. This is endorsed by NMC guidance Serious concerns which are more difficult to put right (FTP-3a) which says that such serious concerns may include "...relationships with patients in breach of guidance on clear sexual boundaries" because sexual relationships, even with a former patient, may still be influenced by the previous professional relationship, which will often have involved an imbalance of power, as already outlined.*

*Remorse, reflection, insight, training and strengthening practice*

47. Mrs Patel provided a reflective piece to the NMC on 13 September 2022 in which she admits that she was in a relationship with the patient and therefore breached professional boundaries “ I let my guard down and I did hand him my email address and continued a platonic relationship with the service user however it quickly turned into a relationship where were emotionally attached to one another”.

48. The parties agree that Mrs Patel has shown genuine remorse for the consequences of her impaired decision making. Mrs Patel stated in her reflective statement, “I cannot take back what I have done but I am truly remorseful for what I have done”.

49. Mrs Patel has not sufficiently addressed the concerns and has demonstrated limited insight. There is insufficient evidence of remediation as Mrs Patel is no longer working as a Nurse and cannot demonstrate strengthened practice. Due to the nature and seriousness of the concerns, the risk of repetition remains and Mrs Patel is a risk to the health, safety and wellbeing of the public

*Public protection impairment*

50. For the reasons set out above, the parties agree that a finding of impairment is necessary on public protection grounds. In the absence of full insight and remediation the risk of repetition remains.

*Public interest impairment*

51. *It is agreed that a finding of impairment is also necessary on public interest grounds. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

*“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.”*

52. *Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards of conduct and maintain public confidence in the profession.*

53. *The Fitness to Practise Committee will need to consider whether the concern is easy to put right, however this is not a case where Mrs Patel can easily address the concerns. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

54. *However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

55. *For the reasons set out above, the parties agree that the breach of professional boundaries in this case which involved a sexual relationship with a vulnerable patient who had been in her care has undermined the trust and confidence the public has in the nursing profession and brought the nursing profession into dispute. Such behaviour has raised fundamental concerns about Mrs Patel's trustworthiness as a registered professional. As there remains a risk of this recurring in the future, a finding of impairment is required in the public interest.*

56. *In summary the parties agree that Mrs Patel's fitness to practice is impaired on both public protection and, public interest grounds.*

### **Sanction**

57. *After due consideration of all relevant factors, the parties agree that the appropriate and proportionate sanction is that of a Striking Off Order.*

58. *The parties agree that the aggravating factors (NMC Reference SAN 1) in this case include:*

- *Breach of professional position/Abuse of position of trust.*
- *Misconduct was a pattern of behaviour over a significant number of months.*
- *Mrs Patel conducted the active pursuit of a vulnerable mental health patient.*
- *A lack of insight and evidence of training around the breach of professional boundaries provided to the NMC.*

- *Deep seated attitudinal and behavioural issues.*
- *Mrs Patel engaged in sexual activity with Patient A.*
- *The relationship has caused Patient A psychological and physical harm.*

59. *The parties consider that the mitigating factors in this case include:*

- *Admission of the concerns*
- *Engagement with the NMC*

## **Sanction**

60. *Taking the least serious sanctions first, it is submitted that taking no further action or imposing a caution order would not be appropriate in the circumstances of this case where a public protection issue has been identified.*

61. *Imposing a Conditions of Practice Order is neither appropriate nor proportionate in this case which is attitudinal in nature and not concerned with clinical matters. The Order is insufficient to meet the public protection or public interest concerns.*

62. *The NMC guidance on suspension orders states that this sanction may be appropriate where there is a single isolated incident and where there is no evidence of deep seated and/or harmful attitudinal issue. However, the misconduct in this case does not stem from an isolated incident and*

*amounts to a course of conduct. Whilst Mrs Patel admits the charges, she has failed to demonstrate a meaningful level of insight into the concerns. The NMC guidance says that a suspension order is not appropriate where the misconduct concerned is incompatible with continued registration. This is a case which involves a senior psychiatric health nurse engaging in a personal and intimate relationship with a vulnerable patient who was in her care. There is clear evidence of harmful deep-seated personality and attitudinal problems and a lack of meaningful insight. It is obvious that the misconduct in this case is indeed incompatible with continued registration and a suspension order is not an appropriate sanction.*

*63. Mrs Patel abused her position as a Nurse caring for Patient A who was vulnerable. She and transgressed professional boundaries and actual harm resulted. Her actions have raised fundamental concerns surrounding her professionalism and trustworthiness and are incompatible with continued registration. A striking off order is the only sanction which will be sufficient to protect patients and members of the public. Public confidence in the nursing profession could not be maintained if Mrs Patel were not removed from the register and a striking off order required to declare and maintain proper professional standards.*

### **Interim order**

*64. The striking off order will not take effect for some 28 days and unless an interim order is put in place Mrs Patel would be at liberty to practise as a nurse without restriction. Mrs Patel would also be entitled to lodge an appeal during the 28-day period and if no interim were put in place Mrs Patel would be at liberty to practise without restriction until the conclusion of the appeal. On account of the fact that Mrs Patel's actions are*

*incompatible with continued registration it is agreed that it is necessary to impose an interim order to protect the public and satisfy public interest considerations. It is accepted that an interim suspension order is the appropriate and proportionate order in this case in view of the substantive order and that it should be of 18 months' duration to allow for the resolution of any appeal. This provisional agreement cannot bind a panel, and that the final decision on facts, impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel determining matters, provided that it would be relevant and fair to do so.'*

Here ends the provisional CPD agreement between the NMC and Mrs Patel. The provisional CPD agreement was signed by Mrs Patel on 2 February 2024 and the NMC on 6 February 2024.

### **Decision and reasons on the CPD**

The panel decided to accept the CPD agreement. However, the panel noted a typographical error at paragraph 39 in that the sub paragraphs numbering does not correlate with the rest of the CPD.

The panel heard and accepted the legal assessor's advice including a reference to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. The panel were reminded that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mrs Patel. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the nursing profession and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mrs Patel admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Mrs Patel's admissions, as set out in the signed provisional CPD agreement.

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

The panel then went on to consider whether Mrs Patel's fitness to practise is currently impaired by reason of her misconduct. Whilst acknowledging the agreement between the NMC and Mrs Patel, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of misconduct, the panel endorsed paragraphs 28 to 34 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Mrs Patel's fitness to practise is currently impaired by reason of misconduct.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

*'The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

The panel determined that Mrs Patel's fitness to practise is currently impaired and endorsed paragraphs 35 to 56 of the provisional CPD agreement.

## **Decision and reasons on sanction**

Having found Mrs Patel'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:

- Breach of professional position/Abuse of position of trust.
- Misconduct was a pattern of behaviour over a significant number of months.
- Mrs Patel conducted the active pursuit of a vulnerable mental health patient.
- A lack of insight and evidence of training around the breach of professional boundaries provided to the NMC.
- Deep seated attitudinal and behavioural issues.
- Mrs Patel engaged in sexual activity with Patient A.
- The relationship has caused Patient A psychological and physical harm.

The panel also took into account the following mitigating features:

- Admission of the concerns;
- Engagement with the NMC.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not

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

The panel next considered whether placing conditions of practice on Mrs Patel's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Patel's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where 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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel agreed that it was not a single incident, but a course of conduct. The conduct evidences deep-seated harmful personality

problems. Mrs Patel has failed to demonstrate a meaningful level of insight and strengthening of her practise.

The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Patel's actions is fundamentally incompatible with Mrs Patel 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 considered that Mrs Patel's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Patel's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel endorsed paragraph 63 of the CPD, particularly:

*'Public confidence in the nursing profession could not be maintained if Mrs Patel were not removed from the register and a striking off order required to declare and maintain proper professional standards.'*

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

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This determination will be confirmed to Mrs Patel in writing.

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

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Patel's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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 agreed with the CPD 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.

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

That concludes this determination.