# Nursing and Midwifery Council
# Fitness to Practise Committee

**Substantive Hearing**
**Tuesday, 2 January 2024 – Friday, 5 January 2024,**
**Tuesday, 16 January 2024 – Thursday, 18 January 2024**

Virtual Hearing

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|---|---|
| **Name of Registrant:** | Melanie Valencia |
| **NMC PIN** | 07A0074O |
| **Part(s) of the register:** | RN1: Adult Nurse (Level 1) – January 2007 |
| **Relevant Location:** | Isle of Man |
| **Type of case:** | Misconduct |
| **Panel members:** | Simon Banton (Chair, Lay member)<br>Lorna Taylor (Registrant member)<br>Margaret Wolff (Lay member) |
| **Legal Assessor:** | Graeme Henderson |
| **Hearings Coordinator:** | Daisy Sims |
| **Nursing and Midwifery Council:** | Represented by Samuel March, Case Presenter |
| **Ms Valencia:** | Present and not represented at this hearing |
| **Facts proved by admission:** | Charges 1a, 1b, 1c, 2a, 2b, 2c, 3a(i), 3a(ii), 3a(iii), 3b, 3c(i) and 3c(ii) |
| **Facts proved:** | Charges 4 and 5b |
| **Facts not proved:** | Charge 5a |
| **Fitness to practise:** | Impaired |
| **Sanction:** | **Suspension order (3 months without review)** |
| **Interim order:** | **No order** |

**Details of charge (as amended)**

That you a registered nurse, whilst working at Castle View Care Home [the Home];

1) Did not administer Prednisolone 14 x 5mg tablets to Resident A as prescribed on;

a) 28 January 2022. **(Proved by admission)**
b) 29 January 2022. **(Proved by admission)**
c) 30 January 2022. **(Proved by admission)**

2) Incorrectly administered Prednisolone 1 x 5mg tablets to Resident A on;

a) 28 January 2022. **(Proved by admission)**
b) 29 January 2022. **(Proved by admission)**
c) 30 January 2022. **(Proved by admission)**

3) On 31 January 2022;

a) Inaccurately altered the running balance of Prednisolone in Resident A's MAR Chart for the dates of;

i) 28 January 2022. **(Proved by admission)**
ii) 29 January 2022. **(Proved by admission)**
iii) 30 January 2022. **(Proved by admission)**

b) Took/removed Prednisolone from the Home. **(proved by admission)**
c) Did not escalate that you had administered an incorrect dose of Prednisolone to Resident A, to the;

i) General Practitioner. **(Proved by admission)**
ii) The Home Manager. **(Proved by admission)**

4) Your actions in charge 3 a) i), 3 a) ii) & 3 a iii) above were dishonest in that you falsified Resident A's MAR chart to conceal that you administered an incorrect dose of Prednisolone on one or more occasion. **(Proved)**

5) Your actions in charge 3 b) above were dishonest, in that you without permission took medication belonging to Resident A;

a) With an intention not to return it. **(NOT Proved)**
b) To conceal that you had administered an incorrect dose of Prednisolone on one or more occasion. **(Proved)**

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

**Decision and reasons on application to amend the charges**

The panel heard an application made by Mr March on behalf of the Nursing and Midwifery Council ('NMC') to amend the wording of charges 3b and 5.

He submitted that the purpose of the proposed amendment was to more accurately reflect the evidence which came out of the live evidence of Witness 1, Witness 2 and Witness 3. It was submitted by Mr March that the proposed amendment would provide clarity and more accurately reflect the evidence. He submitted that this amendment does not go to the heart of the mischief of the allegations but instead is a technical amendment that clarifies the charge.

The proposed amendment is as follows:

"That you, a registered nurse, whilst working at Castle View Care Home;

3. On 31 January 2022;
    a. …
        i. …
        ii. …
        iii. …
    b. Took/removed Prednisolone from the medication ~~cabinet~~ **trolley**.

5. Your actions in charge 3 b) above were dishonest, in that you without permission took medication belonging to ~~your employer~~ **Resident A**;

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

You explained, in relation to charge 3b, that the medication cabinet is a '*double locked door'* in that there is a lock on the store cupboard door itself and there is another lock on the cabinet inside which you did not hold on the shift in question. You then explained that the medication trolley only requires one key.

You submitted, in relation to charge 5, all medication belongs to residents and not the employer and so it is more accurate to change the wording to 'Resident A'.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel considered each part of Mr March's application separately. For charge 3b, it acknowledged that there is confusion in the evidence as to what the cabinet, trolley and stock room (also mentioned in evidence) are and the differences between these at the Home. The panel noted your submission that the cabinet is in the stock room and is separate to the medication trolley. The panel also noted that there appears to be differing control protocols for those two separate areas (one being a locked cabinet where excess

medication is secured, within the locked stock room and the other being the medication trolley which would be moved throughout the Home). The nurse in charge would hold the keys for these. The panel determined that the proposed amendment to charge 3b could not be made without injustice to you because you might have asked different questions to the preceding witnesses (Witness 1, Witness 2 and Witness 3). Additionally, the panel considered that this proposed amendment to charge 3b would, at this late stage, make the charge significantly more onerous than it currently is and would change the nature of the mischief of this charge.

The panel therefore denied the application to amend charge 3b.

The panel then considered the application to amend charge 5. The panel noted your submission that the medication belongs to residents and not to the Home which is consistent with the evidence provided by Witness 2. It determined that the proposed amendment does not change the mischief of this charge and so there is no material unfairness to you in allowing this amendment. It determined that the proposed amendment to charge 5 would more accurately reflect the evidence and would not cause injustice to you.

The panel therefore accepted the application to amend charge 5.

**Further application to amend charge 3b**

After the written decision on the previous application to amend the charges was handed down, Mr March made a further application to amend charge 3b.

The proposed amendment is as follows:

> “That you, a registered nurse, whilst working at Castle View Care Home;
>
> 4. On 31 January 2022;

a. …
    i. …
    ii. …
    iii. …
b. Took/removed Prednisolone from ~~the medication~~ ~~cabinet~~ **the Home**.

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

Mr March made it clear he was not seeking to go behind the panel's previous decision on the amendment of the charge. He recognised that there was a balancing act between the public interest in fully exploring serious allegations and your right to receive fair notice of the allegations made against you.

Mr March stressed that it is important for the panel to focus on the substance of the misconduct rather than matters that are more tangential. He submitted that there is no dispute to the facts of the proposed amendment as it is reported in the record of the internal interview which took place on 3 February 2022 that you had the medication in your bag, and you handed this back to the Home. Mr March submitted that the issue is not whether the medication was taken from a cabinet or a trolley, but that it was taken from the Home.

Mr March submitted that if charge 3b falls away because the panel could not determine whether the medication was taken from the cabinet or a trolley it would have an impact on charge 5 which goes to a serious regulatory concern, namely dishonesty.

Mr March reminded the panel that it can, of its own volition, amend a charge.

Mr March referred the panel to the case of *Harris v GMC* [2020] EWHC 2518 (Admin).

You made no response to this application.

The panel heard and accepted further advice from the legal assessor.

The panel was concerned that making this amendment at this late stage could be unfair to you, particularly as you are unrepresented. However, the panel was satisfied that this amendment could be made without injustice. The proposed amendment may make this charge less serious. It would no longer imply you would have had to make a premeditated or deliberate attempt to remove the medication from locked medicine storage areas. The proposed charge is no longer alleging that you entered a locked cabinet or trolley but that you simply removed the medication from the Home.

The panel therefore accepted the proposed amendment to charge 3b.

**Background**

You were referred to the NMC on 24 June 2022 by the Home Manager at the Home.

You were working as a staff nurse at the Home on 28, 29 and 30 January 2022 and during the medication round for these three shifts, it is alleged that instead of administering 14 x 5mg tablet of Prednisolone ('the medication') daily (70mg) as prescribed to Resident A, you only administered 1 x 5mg tablet (5mg) on each of the three days.

Underdosing the prescribed dose of the medication had the potential to cause Resident A blindness.

The medication error was noted by the Nurse in Charge (Colleague A) of the shift on 31 January 2022, who told Witness 3 who in turn contacted you about it. You then checked the situation with the nurse who had discovered the error.

It is alleged that you then amended the MAR chart of Resident A to make it appear that you had administered the prescribed dose of medication correctly to Resident A between 28 – 30 January 2022.

It is further alleged that you removed a box of the medication prescribed for Resident A from the Home on 31 January 2022. You were not on duty as a registered nurse at this time, as you were completing a shift as a carer, and so you would not have had independent access to the medication trolley.

It is alleged that you did not report this error to the Home Manager or to Resident A's General Practitioner ('GP').

These events were investigated by the Home. You were suspended at the end of an investigatory meeting on 3 February 2022 with a formal letter confirming this on 4 February 2022. You were then dismissed on 8 March 2022 following a disciplinary hearing on 21 February 2022.

**Decision and reasons on facts**

At the outset of the hearing, the panel had sight of both your written statement, your evidence bundle and your completed Case Management Form which outlined that you had admitted to charges 1a, 1b, 1c, 2a, 2b, 2c, 3a(i), 3a(ii), 3a(iii), 3c(i) and 3c(ii). You then confirmed these admissions orally to the panel.

At the close of your case on facts, Mr March raised the issue of whether you would like to reconsider your denial of charge 3b. He reminded both you and the panel that in cross examination you admitted that you had taken the medication from the Home. The panel then asked you whether you admit to charge 3b given your response to Mr March in cross examination. You stated that you do admit this charge.

The panel therefore finds charges 1a, 1b, 1c, 2a, 2b, 2c, 3a(i), 3a(ii), 3a(iii), 3b, 3c(i) and 3c(ii) proved in their entirety, by way of your admissions.

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Deputy Manager at the Home
- Witness 2: Manager at the Home at the time of the allegations
- Witness 3: Registered Nurse at the Home

The panel also heard evidence from you under affirmation.

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 you.

**Amendment issues**

After the close of both your case and that of the NMC and during the panel's deliberation on facts it was concerned that there might be a potential issue regarding undercharging in

respect of charge 3c(i) and 3c(ii) in that there is an absence of a connected dishonesty charge. The panel noted that its principal responsibility is that of protection of the public and stated that its duty is to highlight this concern. The panel requested an indication from Mr March as to whether the NMC is content with the current charges.

Mr March accepted that, as a result of his cross examination of you there might be some grounds for this concern. He sought an adjournment to take instructions.

Mr March submitted that, although the NMC were not seeking an amendment, the panel could amend the charges of its own volition. He stated that the panel must consider fairness, particularly whether it would be fair to you to add a new charge at this late stage. However, Mr March submitted that there is no significant issue of unfairness to adding an additional charge as he put the non-charged dishonesty elements in relation to charge 3c(i) and 3c(ii) to you in cross examination. He stated his belief that it is unlikely that you would have given further evidence in relation to a new dishonesty charge.

You stated that you had nothing further to state in relation to this issue.

The panel heard and accepted advice from the legal assessor which included reference to the case of *PSA v HCPC + Doree* [2017] EWCA Civ 319.

The panel considered two principal issues in relation to adding a new charge or further amending the charges on the schedule. First, it noted that this issue is being addressed, at a very late stage of proceedings whilst the panel was making its decision on facts and that you are unrepresented. Second, that the absence of this new charge does not make a material difference to the regulatory concerns in this case. You are already facing two charges of dishonesty arising from the detection of a medicines management error that day. The panel therefore determined that the addition of a new dishonesty charge in relation to charges 3c(i) and 3c(ii) is not necessary as there are other dishonesty charges in this case that address the NMC's regulatory concerns and would uphold public protection sufficiently.

The panel further directed that there would be no additional charges or further amendments to the existing schedule of charges.

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

**Charge 4**

"That you, a registered nurse whilst working at Castle View Care Home;

4. Your actions in charge 3 a) i), 3 a) ii) & 3 a iii) above were dishonest in that you falsified Resident A's MAR chart to conceal that you administered an incorrect dose of Prednisolone on one or more occasion."

**This charge is found proved.**

In reaching this decision, the panel was mindful of the NMC's Guidance on *Making decisions on dishonesty charges* (DMA-7). Which states the following:

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

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

The panel also bore in mind the case of *Ivey v Genting Casinos* [2017] UKSC 67, particularly the following questions outlined in this case:

- *'What was the defendant's actual state of knowledge or belief as to the facts;*
- *Whether that belief was genuinely held; and*
- *Was the conduct dishonest by the standards of ordinary decent people?'*

The panel noted your admission that you did amend Resident A's MAR (medication administration record) chart. The panel had sight of Resident A's MAR chart and determined that it had been amended. The panel found that you had initially correctly documented the administration of an erroneous underdose of Prednisone, administered on 3 consecutive days. The amendment made to these entries on the MAR chart gave the impression that you had given the correct prescribed dose of the medication on the 3 days in question. You failed to document that this was a retrospective amendment.

In considering the first bullet point outlined in the NMC's Guidance at DMA-7, the panel noted your evidence that you knew it was wrong to retrospectively amend Resident A's MAR chart in the manner that you did, and that you were *'ashamed'* of this action. Based on your evidence that you are a long serving registered nurse who had worked at the Home for many years prior to this incident and are aware of the 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) of Conduct, the panel determined that you did have an understanding of the expectations of you in relation to medicines administration and documentation at the time at the Home.

In considering the second bullet point outlined in the NMC's Guidance at DMA-7, the panel considered the questions outlined on *Ivey v Genting Casinos.* The panel was mindful of your evidence to it that you knew what you were doing was wrong but that you were '*stressed'* and '*panicked'* by the situation and that you were being urged by Colleague A to make the change. The panel therefore determined that you were aware you knew this action was wrong and this belief was genuinely held. You explained that you knew how to

properly amend a chart to show that it had been retrospectively altered. However, the panel determined that as you deliberately falsified Resident A's MAR chart, in an attempt to cover up your medication error, that this conduct is dishonest by the standards of an ordinary decent person.

The panel therefore determined that it is more likely than not that your actions at 3 a) i), 3 a) ii) & 3 a iii) were dishonest in that you falsified Resident A's MAR chart to conceal that you administered an incorrect dose of Prednisolone on one or more occasion.

**Charge 5a**

"5) Your actions in charge 3 b) above were dishonest, in that you without permission took medication belonging to Resident A;

a) With an intention not to return it"

**This charge is found NOT proved.**

**Charge 5b**

"5) Your actions in charge 3 b) above were dishonest, in that you without permission took medication belonging to Resident A;

b) To conceal that you had administered an incorrect dose of Prednisolone on one or more occasion."

**This charge is found proved.**

The panel considered both parts of charge 5 together. Before reaching its decision on charge 5a, however, the panel first considered and decided on charge 5b.

The panel noted your admission that you did take the medication away from the Home, it then considered the contextual factors that led up to this and whether this amounted to dishonesty through an attempt to conceal that you had administered an incorrect dose of Prednisolone on one or more occasion.

The panel accepted the evidence that you were handed the medication by Colleague A and you then placed the medication in your pocket, rather than the hearsay evidence from Witness 2 that you took it from the medication trolley. It noted your express intention to show the medication to Witness 1. However, the panel noted that this did not occur. This meant that the evidence of the medication error was not available to management. You claimed to have been busy throughout the remainder of your shift but offered no other explanation for not showing Witness 1 the medication.

The panel went on to consider your evidence to it that you had forgotten that you had the box of medication in your pocket and removed it from the Home, unintentionally. You stated that you had only remembered it was there when you found it in your pocket, when you were preparing to return to work late in the evening of 2 February, after 2 days off. However, it noted that there is contradictory evidence that you were aware that you had the medication in your possession earlier than the evening of 2 February 2022 in the record of your disciplinary meeting on 21 February 2022, where you explained the medication had fallen out of your uniform when changing at the end of your shift and you had moved it to your jacket. You set out you had been distracted at this point and had again forgotten to inform Witness 1 of the incident before you left the Home. The panel noted that you failed to inform Witness 1 or Colleague B you had removed the medication from the home, when you called them in an attempt to ‘discuss the incident’ on 2 January.

The panel considered it reasonable that you should have told the Home you had the medication in your possession immediately on becoming aware that you had taken it from the Home. The panel noted you waited until returning to work on 3 February 2022 when you had been called to an investigatory meeting. The panel found your evidence

contradicted the contemporaneous documentation it had before it in relation to these events.

The panel then considered your intention in taking the medication away from the Home. It noted Witness 2's oral evidence that you returned the medication to her without prompting on 3 February 2022. Given this evidence, and Witness 2's report that the medication still showed when it was returned that only three 5mg tablets had been taken from the strip, the panel determined that there is insufficient evidence before it to suggest that you removed the medication from the Home with an intention not to return it. However, the panel determined that the effect of removing the medication from the Home would have concealed during any subsequent routine check of medication at the Home that an incorrect dose of the medication had been administered to Resident A.

The panel therefore determined that whilst you may have intended to return the medication, it is more likely than not that you did not inform the Home that you had taken the medication earlier so as to conceal that you had administered an incorrect dose of Prednisolone on one or more occasion.

Based on the panel's findings at charge 5b that there is insufficient evidence before it to suggest that you removed the medication with an intention not to return it especially since you did return it unprompted, the panel found charge 5a not proved.

**Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired.

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.'*

Mr March invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of the Code in making its decision. Mr March identified the specific, relevant standards where your actions amounted to misconduct. Mr March submitted that there is not a charge that has been found proved that does not amount to misconduct. Mr March took the panel through the reasons why the NMC consider that each charge amounts to misconduct.

Mr March 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2)* and *Grant* [2011] EWHC 927 (Admin).

Mr March submitted that all limbs of the test outlined in the case of Grant are engaged. He submitted that the charges found proved relate to serious clinical errors which put a

patient at risk of harm. He submitted that there are public protection and public interest concerns in this case as you failed to administer the correct dose of the medication which placed Resident A at risk of harm and also placed other staff members at a risk due to the inaccurate records you made. Mr March stated that there has been some time since these incidents occurred and noted the positive testimonials and evidence you have provided. Nevertheless, Mr March submitted that there is a strong public interest in the need to uphold proper standards of the profession and so a finding of impairment on both public protection and public interest grounds should be made.

You told the panel that your actions were not deliberate and that you made a mistake. You stated that you did not want to harm any of your residents, and you tried your best to give them the best care. You stated that you did not agree that any of your actions were deliberate. You admitted that you made a mistake and that you need to move forward. You indicated that this was a very difficult experience for you and you have learnt a lot '*emotionally, physically and spiritually'* from this experience.

In response to a panel question on what advice you would give to another nurse who may find themselves in a similar situation you stated that you do this regularly: you discuss the mistakes you made with your current colleagues. You stated that if errors occur now you take the lead personally, escalating incidents straight away, by calling the doctor, doing the residents' observations and that you document it all straight away.

In your previous workplace, you stated that all notes were handwritten but in your current work it is computerised, you stated that you take the lead all the time and tell people to escalate straight away.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin). He also referred to the case of *Towuaghantse v GMC* [2021] EWHC 681 (Admin).

**Decision and reasons on misconduct**

The panel noted your admission to misconduct in your written statement in that you stated:

'*I accept that my shortcomings in this case amount to misconduct, I can readily see that I should not have made the mistake I did in the first place, and should have acted differently when the error was pointed out to me. I regret this and can only apologise for it, and assure the panel it will not happen again'.*

Whilst the panel acknowledged this admission, it determined that it was its duty to determine whether the facts found proved amount to misconduct. In reaching this decision, the panel had regard to the terms of the Code.

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:

***'Prioritise people***

*You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern […]*

***1 Treat people as individuals and uphold their dignity***
*To achieve this, you must:*

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

***10 Keep clear and accurate records relevant to your practice***
*To achieve this, you must:*

***10.1*** *complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event*

***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 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*

***14.2*** *explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers*

***14.3*** *document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly*

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

*To achieve this, you must:*

***18.4*** *take all steps to keep medicines stored securely*

***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 […]'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel then considered each charge and whether it amounts to misconduct.

The panel considered charges 1 and 2 collectively. It considered that this was a medication error that occurred due to your careless act in first misreading a prescription, and then administering the same incorrect dose of the medication on two further occasions. Whilst the panel noted that there was a significant risk of harm in administering the incorrect dose of the medication to Resident A, it determined that this was a medication error rather than a knowing deviation from the prescription and so would not in itself amount to misconduct in relation to charges 1 and 2 in their entirety.

The panel determined that there was no reasonable justification for your actions at charge 3a in its entirety. It determined that this act was dishonest as it was a deliberate attempt to cover up your medication error, and falsely document that the correct dose had been administered. The panel determined that this was a serious breach of the Code and does amount to misconduct.

In relation to charge 3b, the panel determined that this was a further attempt to cover up your mistake. It had found previously that you were aware that you had the medication on your person at the Home and proceeded to take the medication away from the Home. It determined that this was a serious breach of the Code and does amount to serious misconduct.

In relation to charge 3c(i) and (ii), the panel determined that whether you were working as a carer or a nurse on the shift in question, you still had a duty to abide by and uphold the standards set out in the Code, especially to escalate any incidents you were directly involved in to the relevant professionals. The panel determined that you had a duty to report your error to senior staff in the Home and to Resident A's GP. You failed to ensure that Resident A was safe and that the risks posed by your error were being appropriately

managed. The panel noted your submission that you thought Colleague A would manage this. However, the panel determined that as this was a significant medication error, it was wrong of you to accept Colleague A's assurances that he would '*sort it'* as sufficient as it was your responsibility to ensure that your error was reported promptly and managed appropriately. The panel therefore determined that this amounts to a serious breach of the Code and amounts to misconduct.

In relation to charge 4, the panel noted your evidence that you were panicked and that you were being urged to amend the MAR chart by Colleague A. However, the panel determined that you were aware that this was wrong and so this amounts to a deliberate falsification of the medication records. The panel therefore determined that this was a serious breach of the Code and amounted to misconduct.

In relation to charge 5b, the panel noted that you did return the medication to the Home Manager three days later. This was following your days off and on your own initiative. However, it determined that taking the medication away from the Home was a deliberate attempt to conceal that you had administered an incorrect dose of the medication and that this was a serious breach of the Code and amounted to misconduct.

The panel found that your actions at charges 3a, 3b, 3c, 4 in their entirety and 5b did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

**Decision and reasons on impairment**

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

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.'*

In this regard the panel also considered the test of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 76, she said:

*'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 finds that Resident A was put at risk of 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. 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 therefore determined that all four limbs of the test are engaged in respect of your past misconduct.

In considering whether the four limbs above are engaged in the future, the panel considered the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) where the court set out three matters which it described as being *'highly relevant'* to the determination to the question of current impairment:

> *'1. Whether the conduct that led to the charge(s) is easily remediable*
> *2. Whether it has been remedied*
> *3. Whether it is highly unlikely to be repeated'*

The panel was of the view that dishonesty is difficult to remediate. However, the panel noted the below steps you have made to remedy your actions:

- That you made early admissions to some charges;
- You have expressed deep remorse for your actions;
- You cooperated with your employer during the initial investigation, and you have cooperated with the NMC proceedings;
- You have demonstrated an understanding of how your actions put Resident A at a risk of harm;
- You have demonstrated how you would handle the situation differently in the future and explained that you share your experience with other colleagues;
- You have provided evidence of the extensive supervision you have undertaken;
- You have completed extensive targeted Continuous Professional Development ('CPD');
- You have provided a significant number of written reflections over an extended period of time relating your misconduct to the appropriate sections of the Code and have acknowledged how you have breached the Code;
- You are in supervised employment currently;
- There have been no concerns regarding your practise or your integrity raised by your current practice supervisor across multiple supervisions;

- You have provided positive testimonials that speak to your good character from your current employer and previous employers.

The panel considered the testimonials provided from your recent employer in an email dated 27 October 2022, specifically:

*'She is very open to criticisms and asks what she can do to make herself better. I feel that she is very conscientious and she takes responsibility for her actions. […]*

*Nurse MV always owns up of she had made a mistakes. […]*

*I have supervisions with her when we are just discussing ways to maybe work much efficiently and much organised and I feel that she is taking on board my suggestions as I have observed her doing it when she is on shift'.*

Based on the above, the panel determined that the first limb of Grant is not engaged in the future in that you are not liable in the future to act so as to put a patient or patients at unwarranted risk of harm. The panel determined that you are not liable in the future to bring the medical profession into disrepute based on the evidence you have provided. Whilst the panel acknowledged that you did in the past breach one of the fundamental tenets of the medication profession, it determined that you are not liable in the future to breach these. Additionally, the panel determined that given your previous good character, this conduct was a temporary aberration, and you are not likely to repeat your dishonest conduct in the in the future. Although you contested the charges of dishonesty, you accepted the primary facts and only defended them on a subjective basis which involved your analysis of the primary facts.

However, the panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining

public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that whilst a finding of impairment is not necessary on public protection grounds as there is not a risk of repetition, a finding of impairment on public interest grounds is required due to the seriousness of the misconduct found and the extent of the departures from the Code.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds alone.

**Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of three months without review. The effect of this order is that the NMC register will show that your registration has been suspended.

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

**Submissions on sanction**

Mr March informed the panel that in the Notice of Hearing, dated 29 November 2024, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. During the course of the hearing, the NMC revised its proposal and submits that a suspension order is more appropriate in light of the panel's findings that your impairment is on public interest grounds alone.

Mr March submitted that there are no workable, measurable or proportionate conditions that could be formulated to address the removing of medication or falsifying an MAR chart

in an attempt to cover up a failure. He submitted that the concerns fall outside of the scope of clinical practice failures which can adequately be addressed by means of supervision.

Mr March referred the panel to the NMC Guidance on considering sanctions for serious cases (SAN-2) and the NMC Guidance on how we determine seriousness (FTP-3). He submitted that based on the panels findings on impairment, the least restrictive sanction available to the panel would be that of a suspension order. He submitted that it is a matter for the panel as to how long a suspension order should be imposed.

The panel also bore in mind your submissions in which you expressed that you have a passion for being a nurse. You acknowledged that you made a terrible mistake and stated that you have learnt a lot from this. You submitted that if given a chance you would finish a management and leadership course that you started before these incidents and stopped after the incidents occurred.

The panel heard and accepted advice from the legal assessor.

**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 re-examined seriousness in light of the guidance and verified this against its findings on facts and impairment. It determined that the following bullet points outlined in the Guidance at SAN-2 *Guidance involving dishonesty* are engaged:

*'Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*
- *vulnerable victims*
- *direct risk to patients'.*

The panel also paid particular attention to the following section of the NMC Guidance on *serious concerns which are more difficult to put right* (FTP-3a):

*'In cases like this, we will be keen to hear from the nurse, midwife or nursing associate if they have reflected on the concerns and taken opportunities to show insight into what happened. Because concerns of this nature, when they aren't put right, are likely to lead to restrictive regulatory action, if we don't hear from the nurse, midwife or nursing associate we will usually focus on preparing the case for the Fitness to Practise Committee at the earliest possible opportunity.*

*We will need to do this where the evidence shows that the nurse, midwife or nursing associate is responsible for:*

- *breaching the professional duty of candour to be open and honest when things go wrong, including covering up, falsifying records, […]'*

Additionally, the panel noted the NMC Guidance on *Serious concerns based on public confidence or professional standards* (FTP-3c), specifically:

*'A need to take action because the public may not feel able to trust nurses, midwives or nursing associates generally is a high threshold. It suggests that*

*members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses, midwives or nursing associates. […].'*

In light of this guidance the panel determined that your dishonesty was serious and at the higher end of the spectrum but is not at the top of this spectrum as it was not premeditated, systematic or longstanding deception and there is no evidence of personal financial gain from a breach of trust.

The panel took into account the following aggravating features:

- Dishonesty and the breach of your duty of candour;
- Deliberate attempt to cover up an error;
- Conduct that led to a risk of harm to a vulnerable resident.

The panel also took into account the following mitigating features:

- Sufficient insight, evidenced by your oral submissions and detailed written reflections which address your misconduct and the importance of honesty and integrity in your role as a registered nurse;
- Significant efforts to address concerns through supervised practice with your current employer;
- Evidence of following the principles of good practice and your understanding of and adherence to the Code since the incident;
- Evidence of the importance you place on duty of candour through ensuring that you take personal responsibility in your current role.

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. 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 the seriousness of the dishonesty in your falsification of Resident A's MAR chart and concealing taking the medication away from the Home. 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 a conditions of practice order on your 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 misconduct found proved is not clinical and its finding that you do not pose a risk to 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 panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel determined that imposing a suspension order would maintain public confidence in the profession.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of three months without review was appropriate in this case to mark the seriousness of the misconduct. It determined that whilst it is important to mark the seriousness of the misconduct, it is in the public interest to allow a nurse who is capable of good practice to return to unrestricted practice.

Having found that your fitness to practise is solely impaired on the grounds of public interest, the panel was of the view that a review was unnecessary in this case. Therefore, in accordance with Article 29 (8A) of the Order, it determined that a review of the substantive order is not necessary.

This will be confirmed to you in writing.