

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

Substantive Meeting

Friday, 7 June 2024 – Monday, 10 June 2024

Virtual Meeting

Name of Registrant: Franchesca Morgan

NMC PIN: 16I0047E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nurse – 19 September 2016

Relevant Location: Wirral

Type of case: Misconduct

Panel members: Konrad Chrzanowski (Chair, Lay member)
Patience McNay (Registrant member)
Joanne Morgan (Lay member)

Legal Assessor: Trevor Jones (7 June 2024)
Marian Gilmore (10 June 2024)

Hearings Coordinator: Eyram Anka

Facts proved by way of admission: Charges 1(a), 1(b), 2 and 3

Fitness to practise: Impaired

Sanction: **Suspension order (6 months)**

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

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Miss Morgan's registered email address by secure email on 2 May 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this meeting would be heard virtually.

In the light of all of the information available, the panel was satisfied that Miss Morgan has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1. Took paracetamol belonging to Wirral University Teaching Hospital for your own use without permission on:
 - a. 10 June 2021. **[PROVED BY WAY OF ADMISSION]**
 - b. 18 June 2021. **[PROVED BY WAY OF ADMISSION]**
2. Took lactulose belonging to Wirral University Teaching Hospital for your own use without permission on 18 June 2021. **[PROVED BY WAY OF ADMISSION]**
3. Your actions at charge 1a and/or 1b and/or 2 were dishonest in that you knew you did not have permission to take the medication. **[PROVED BY WAY OF ADMISSION]**

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

Background

Miss Morgan was referred to the NMC on 7 June 2022 by NHS Professionals Limited (“NHSP”) in relation to her practice as a band 5 registered nurse at Arrowe Park Hospital, Wirral Teaching Hospital NHS Foundation Trust.

As a result of unaccounted medication losses, a covert camera was installed in the medication room of the Hospital. CCTV footage obtained from 10 June 2021 shows the registrant taking and then swallowing tablets from the cupboard with water. CCTV footage obtained from 18 June 2021 shows Miss Morgan putting tablets into her pocket as well as pouring lactulose into a paper cup and drinking it. She did not obtain a prescription for the medication, and it was intended for patients.

Miss Morgan sent an email to NHSP on 25 February 2022 stating that she could only assume that she had placed paracetamol in her pocket to give to a patient when being in a rush and that she had not intentionally set out to steal medication.

At a meeting on 6 April 2022, Miss Morgan initially said that she had never orally consumed medication whilst working at the Hospital. On being shown the CCTV, she accepted that she consumed paracetamol on 10 June 2021 and states that on 18 June 2021 it looks like lactulose that she took. In relation to the paracetamol on that date she said that she must have just taken a couple of paracetamols and comments that it is a “*known thing that if you have a headache, you can take paracetamol*”.

Miss Morgan was subsequently convicted of theft of medication at Wirral Magistrates’ Court on 20 December 2022 and was given a conditional discharge. The basis of plea recorded by the Legal Adviser in court was: ‘*The defendant on two occasions took paracetamol for herself without permission*’.

Within a written response to the NMC dated 8 March 2023, Miss Morgan confirms that she took the medications with assumed consent as she was feeling poorly. She stated that the taking of paracetamol was commonplace within the ward environment amongst staff and therefore she assumed that it would be okay. A statement from the Associate Director of

Nursing for the Trust, confirms that it was not commonplace for staff to take medications for personal use and that it was against the Trust's Medicines Management Policy.

Decision and reasons on facts

The panel noted that Miss Morgan made full admissions to the charges in a Court of law which resulted in her conviction. The panel also had regard to Miss Morgan's reflective statement, dated 8 March 2023 and her email to the NMC dated 11 September 2023 in which she made full admissions to charges 1(a), 1(b), 2 and 3 respectively.

The panel therefore finds charges 1(a), 1(b), 2 and 3 proved in their entirety, by way of Miss Morgan's admissions.

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 Miss Morgan's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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, Miss Morgan's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.’

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015’ (“the Code”) in making its decision.

The NMC identified the specific, relevant standards where Miss Morgan’s actions amounted to misconduct which were sections 20, 20.1, 20.2, 20.3 and 20.4.

The NMC further provided the following written submissions on misconduct:

‘We consider the misconduct serious because the registrant stole controlled medication on two separate occasions, and the medication stolen was intended for patients. Theft of medication clearly falls short of what would be expected from a registered nurse and would no doubt be deemed deplorable by another nurse and members of the public. It is a serious breach of professional conduct, amounting to an abuse of her role and access to medication afforded to a nurse.

Honesty is integral to the standards expect of a registered nurse and central to the Code. The concerns call into question the basics of the registrant’s professionalism.’

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC provided the following written submissions on impairment:

'The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. 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. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

- 1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- 3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- 4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

It is the submission of the NMC that all four limbs can be answered in the affirmative in this case.

By stealing medication, the registrant's actions had the potential to put patients at unwarranted risk of harm, as it could have reduced sufficient supplies for patients who require the medication. The official records of medication would also be

inaccurate if medication is stolen, and the registrant's colleagues may base clinical decisions on medication which is not available.

The misconduct in this case is serious and involves dishonesty. The registrant's actions brings the nursing profession into disrepute and undoubtedly causes damage to the reputation of the nursing profession. Her actions also breached the fundamental tenets of the profession. Nurses are expected to act with honesty, integrity, and trustworthiness at all times.

Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

We consider the registrant has displayed some insight by saying "I realise it is not acceptable to take medication belonging to the ward as this could be seen as theft. I have spent many hours reflecting on the situation I placed myself in" and she shows some remorse for what happened and the impact of this on public confidence. However, the registrant has not demonstrated what she has learned and how she would behave differently in the future if placed in the same situation.

We consider there is a continuing risk to the public due to the registrant's lack of full insight and failure to confirm how she would prevent it from occurring again.

Public interest

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.”

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 and conduct and/or to maintain public confidence in the profession.

In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. 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.

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.

We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior [sic]. The registrant's conduct engages the public interest because there were two separate instances of dishonesty in a clinical setting, and the registrant's actions raise fundamental questions about her trustworthiness as a registered nurse/professional.'

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).

Decision and reasons on misconduct

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

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

'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...

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Morgan's admissions supports the panel's view that her actions were serious and could have potentially caused harm to patients. The panel considered that the public and patients would expect a registered nurse to behave professionally and honestly. The panel therefore found that Miss Morgan's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Morgan's 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.'

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

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

- 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 considered that no actual harm was caused to patients, but it took the view that there was still a risk of harm because Miss Morgan took medication that was meant for patients for her own personal use. The panel found that her misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It determined that multiple instances of theft and dishonesty is a serious departure from what is expected of a registered nurse. 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 found that all four limbs of the *Grant* test are engaged in this case.

Regarding insight, the panel considered that Miss Morgan made full admissions to the charges. The panel had regard to Miss Morgan's reflective statement and noted that she made mention of how her misconduct impacted negatively on the reputation of the nursing profession. However, the panel was not convinced that Miss Morgan demonstrated a full or developed understanding of the issues raised by the proven allegations. It took the view that her insight into the proven allegations is quite limited.

Further, the panel was mindful that there was no evidence of any further relevant training, notwithstanding that training does not directly address the concerns in a dishonesty case. The panel therefore determined that it would be difficult for her to reach the high bar for remediation given that dishonesty is always difficult to remediate.

In considering Miss Morgan's likelihood to act dishonestly in the future, the panel had regard to the numerous instances of dishonesty over a short period of time. Whilst the

panel accepts the positive testimonials supporting Miss Morgan's practice, it determined that her practice is not in question in this case. The panel had no evidence before it to conclude that matters of the kind found proved would not be repeated in the future. It therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because a reasonable and well-informed member of the public would find it perverse if the panel did not make a finding of impairment in this case given the seriousness of the dishonesty charges found proved. In the light of this, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Miss Morgan's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 6 months. The effect of this order is that the NMC register will show that Miss Morgan's 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.

Representations on sanction

The panel noted that in the Notice of Meeting, dated 2 May 2024, the NMC had advised Miss Morgan that it would seek the imposition of a suspension order if it found Miss Morgan's fitness to practise currently impaired.

The panel bore in mind the following written submissions provided by the NMC:

'We consider the following sanction is proportionate: 4-6 months suspension order with a review. With regard to our sanctions guidance the following aspects have led us to this conclusion:

In line with SAN-2, allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register.

Taking no action and caution order would be inappropriate in this case in view of the seriousness of the case. I note the guidance suggests that a caution will be appropriate for cases 'at the lower end of the spectrum of impaired fitness to practise'. In my judgment, such a characterisation is not appropriate in this case. It would not be proportionate nor in the public interest to take no further action or to impose a caution order.

The concerns in this case do not relate to clinical failings, instead they relate to the registrant taking medication from the Hospital without authorisation on two separate occasions. Her actions were dishonest and indicate that she has an attitudinal/behavioural problem which cannot be addressed by a conditions of practice order. There are no conditions which can adequately address the dishonesty in relation to the theft of medication. It would therefore not be appropriate or proportionate in these circumstances to impose conditions as they would not adequately protect the public or satisfy the significant public interest in this case.

Although this case does not consist of a single instance of misconduct nor can it be said that there are no attitudinal issues, this is case where the seriousness requires temporary removal from the register. A suspension order for 4-6 months is sufficient to mark the seriousness of the misconduct, particularly the dishonesty and maintain public confidence in the profession.

A striking-off would be disproportionate and punitive in the circumstances, given the registrant's insight and remorse.'

Decision and reasons on sanction

Having found Miss Morgan'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:

- Abuse of a position of trust (dishonesty conviction related to practice).
- Lack of insight into failings.
- A pattern of misconduct on more than one occasion over a short period of time.
- Conduct which put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- Admission of all charges.
- Evidence of limited insight.

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 Miss Morgan'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 Miss Morgan's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Morgan's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*

The panel is of the view that there are no practical or workable conditions that could be formulated that would be relevant to these particular charges, 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 Miss Morgan'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 panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

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. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Morgan's case to impose a striking-off order.

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 Miss Morgan. 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 6 months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Attendance at the next review hearing (including remote attendance)
- An updated and more comprehensive reflective statement that addresses the impact of Miss Morgan's misconduct on patients.

- Up to date testimonials from any employment, particularly within a healthcare setting, paid or unpaid.

This will be confirmed to Miss Morgan in writing.

Interim order

As the suspension 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 Miss Morgan's own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the following written representations made by the NMC:

'If a finding is made that the registrant's fitness to practise is impaired on a public protection basis and a restrictive sanction is imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest'

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim

suspension order for a period of 18 months to cover the appeal period in order to protect the public and meet the public interest considerations in this case. In making this order, the panel took account of the impact the order will have on you and is satisfied that this order, for this period, is appropriate and proportionate.

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

That concludes this determination.