

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

**Substantive Hearing
Tuesday 7 May 2024 – Friday 10 May 2024
Monday 13 May 2024 - Thursday 16 May 2024**

Virtual Hearing

Name of Registrant: Shani McAdam

NMC PIN 1316435E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing (16 September 2013)

Relevant Location: Stockport

Type of case: Misconduct

Panel members: Dave Lancaster (Chair, Lay member)
Allwin Jay Mercer (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Justin Gau

Hearings Coordinator: Elizabeth Fagbo

Nursing and Midwifery Council: Represented by Alys Williams, Case Presenter

Miss McAdam: Present and not represented at the hearing

Facts proved: Charges 1 and 2

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on application for adjournment

At the outset of the hearing, you made a request for today's hearing to be adjourned as you submitted that you did not receive the bundles for the hearing until this morning, namely the witness statements. You told the panel that you would need the rest of the day to read all of the documentation to enable you to adequately prepare for the hearing [PRIVATE].

Ms Williams on behalf of the Nursing and Midwifery Council (NMC) provided the panel with a brief timeline of when documentation had been sent to you. She stated that on 27 November 2023 your case officer sent the case management form to you by post, however you did not complete and return this form. Your case officer then sent you a follow up email on 4 January 2024 which you responded to acknowledging receipt of all documentation, including the case management form that outlined the substantive hearing dates. She told the panel that there was some discussion between you and your case officer regarding the option of an agreed removal, he provided you with the relevant form, however you did not complete it. Following a telephone conversation with your case officer on 2 March 2024, you requested for the case management form to be sent to you again. It was sent by your case officer on 13 March 2024 to which you did not respond. The notice of hearing was then sent by recorded delivery on 4 April 2024, which was signed for, and is attached to the bundle before the panel today. You were also sent all of the documentation via email to which you responded, *'I have received all relevant documents.'* Ms Williams submitted that the witness statements were attached to this email.

Ms Williams submitted that all documentation has been served in accordance with the rules and the NMC wish to proceed with the hearing today, as you have been awarded a fair opportunity to prepare for this hearing. She told the panel that adjourning may cause issues as one witness out of five was scheduled to give evidence today.

Whilst the panel was satisfied that the NMC had provided service in accordance with the rules and had given you numerous opportunities to prepare for the hearing today, it was

mindful of the fact you may have not been aware of today's proceedings as you vehemently denied that you were the person who signed for the delivery of the notice of this hearing. [PRIVATE] It determined that it was fair to adjourn today's hearing to allow you the opportunity to thoroughly read all of the documentation and prepare your evidence.

The panel recognised that there is a public interest in the expeditious disposal of this matter, however, took into account the NMC's values of fairness and kindness. The panel noted that there is a need to balance your interests with the need to protect the public and uphold the standard of the profession. The panel determined that it would be fair to allow an adjournment to enable your full and meaningful participation in the hearing.

The panel adjourned the proceedings and reconvened the next day.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Williams made an application that this case be held partially in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You did not oppose this application.

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

Having heard that there will be reference to [PRIVATE], the panel determined to hold the hearing partially in private. The panel was satisfied that this would protect each parties right to privacy and confidentiality.

Details of charge

“That you, a registered nurse:

*1) Between 19 December 2017 and 26 March 2018 took one or more tablets of the following medication from your place of work and/or placed them in your bag **[FOUND PROVED]***

- a) Zopiclone;*
- b) Lorazepam.*

*2) Your conduct in charges 1a) and/or 1b) was dishonest in that you knew the aforesaid medication belonged to your employers and was intended for the use of residents. **[FOUND PROVED]***

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

You denied both charges.

Background

You were employed as a registered mental health nurse at Bowerfield House ("the Home"), a care and residential home since 19 December 2017.

Concerns were raised in January 2018 and March 2018 regarding the theft of medications, including controlled drugs. Further concerns were raised by the Home Manager following the allegations of medications theft, as it was identified that residents receiving end of life care were not being provided with the medication noted on their MAR charts. It was believed that you had noted medications to be given to patients that were not medically

required and, in addition to previous concerns, you had failed to destroy medication that was marked on records as destroyed.

You were arrested by Greater Manchester Police on 26 March 2018 on suspicion of theft of controlled drugs.

Your employment was suspended on 26 March 2018 and thereafter terminated on 29 March 2018. Your criminal trial was due to take place on 18 July 2022 (following delays as a result of the COVID-19 pandemic). On that date you pleaded guilty to the two charges of possession of a Class C controlled drug (namely possession of Lorazepam and Zopiclone). This was accepted by the prosecution, and they therefore asked for the remaining charges of theft to 'lie on file'. (This means that for these charges there was no decision, and the proceedings are therefore not formally terminated). You were sentenced to a 12-month conditional order and ordered to pay a victim surcharge of £20.

This matter has been investigated, in part, on the basis of a potential explanation for your conduct, namely that you have been dishonestly taking medication for your own personal use and making false records to cover up your conduct.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Williams under Rule 31 to allow the written statement of Witness 6, an Administrator at the Home, dated 26 March 2018 and also the written statement of Witness 7, a Care Assistant at the Home, dated 26 March 2018 into evidence. She told the panel that the statement details Witness 6's awareness of medication going missing in March 2018 and a Facebook post made by you on 22 March 2018 where you referred to your frustrations with the doctor's surgery [PRIVATE]. Ms Williams submitted that the NMC made sufficient efforts to ensure that Witness 6 was present at this hearing however, she was unable to attend due to [PRIVATE] which she outlined in an email to the NMC dated 27 February 2024. In this email Witness 6 also

stated that she is unable to recall anything from the time of the incident as it took place in 2018.

Ms Williams told the panel that Witness 7's statement details her experience of you telling her that you were going to destroy 28 tablets of Lorazepam due to the Home having had enough of it in the locked medication cabinet and asking for her assistance on 23 March 2018. Witness 7 stated that she signed for the medication to be destroyed however, she did not witness you destroying it. Ms Williams submitted that the NMC also made sufficient efforts to ensure that Witness 7 would be present at this hearing, having made multiple attempts to contact her throughout January, February, March, and April, however, each attempt was unsuccessful. Ms Williams submitted that the evidence is highly relevant and was produced for the purpose of the police investigation into the matter. The NMC therefore made an application to adduce this written evidence and associated exhibits into evidence before the panel by way of hearsay.

Ms Williams reminded the panel that under Rule 31, the panel has the discretion to admit evidence in the proceedings, including hearsay evidence, as long as it meets the criteria of being relevant and fair. She further referred the panel to the NMC guidance on '*Evidence*' (reference: DMA-6) and the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

Ms Williams submitted that the statements of Witness 6 and Witness 7 are not the sole and decisive evidence in relation to charge 1 and therefore, their exclusion would not meet the threshold for unfairness to you. She submitted that the NMC is relying on the evidence of five witnesses who you have had or will have an opportunity to challenge. The NMC is also relying on your conviction for possession of the drugs that were missing from the Home, the corresponding MAR chart, the controlled drug form, your guilty plea, forensic reports, and your hair sample, which was taken upon your arrest. Ms Williams therefore invited the panel to admit the statements and exhibits of Witness 6 and Witness 7 as hearsay. Ms Williams told the panel that charge 2 in relation to dishonesty is a matter for the panel to consider. Ms Williams submitted that any unfairness to you by these

statements being admitted without you having an opportunity to challenge them can be balanced by the weight that the panel attaches to the evidence in its final deliberations.

Ms Williams submitted that the second feature to consider is the nature and extent of the challenge to the contents of the statements. She told the panel that you disputed Witness 7's claim that she did not witness the destruction of the Lorazepam tablets on 25 March 2018 in your recorded interview, which she submitted is a clear conflict. She submitted that Witness 6's evidence is not challenged in the same way as the statement utilises a Facebook post from 22 March 2018 made by you.

There is no suggestion that either Witness 6 or Witness 7 had reasons to fabricate their statements that were given to the police in the course of their employment and professional duties on the day of your arrest, and there is nothing before the panel to undermine the reliability of their evidence.

Ms Williams told the panel that it should take into account whether you had prior notice that these witness statements would be read. She told the panel that you have stated that you did not have prior notice that these statements would be read, and that these witnesses would not be called. She submitted however that this is partially due to your non engagement with these proceedings up until the first day of this hearing therefore, you did communicate with your case officer, were not aware of the hearing and did not complete the case management form in advance of the hearing. She submitted that this was not the fault of the of the NMC.

Ms Williams therefore submitted that it would be fair and relevant to admit the hearsay evidence of Witness 6 and Witness 7 and invited the panel to take this view.

You submitted that you oppose this application as it is unfair that you would not have the opportunity to question Witness 6 about the Facebook post in question. You submitted that Witness 7 was usually responsible for countersigning medication with you, and it would be unfair for her evidence to be admitted as hearsay as the medication that was

destroyed is a big part of the case. You told the panel that you have been engaged with the NMC proceedings for six years and [PRIVATE]. You submitted that you did not deliberately disengage.

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

The panel gave the application in regard the statements of Witness 6 and Witness 7 serious consideration. The panel noted that all reasonable efforts were made by the NMC to ensure their engagement, however, Witness 6 was unable to attend [PRIVATE] and doubted her ability to recollect anything as the incident happened in 2018 and Witness 7 did not engage.

The panel determined that the statements are not the sole and decisive evidence of the charges as there are five other witness who are relevant and have been or will be considered as live evidence. There are also exhibits that the NMC say corroborate its case. The panel was of the view that neither Witness 6 or Witness 7 had any reason to fabricate their statements as they were given on the day of the incident. It determined that any disadvantage to you could be addressed if you choose to give evidence.

The panel determined that you would have been aware of the existence of both of the witness statements as they were included as part of the prosecution evidence in the criminal trial you faced, and they were included in the bundle of statements that were sent to you in advance of the hearing. In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statements of Witness 6 and Witness 7 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on facts

(a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and

(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'

The panel also took into account the Criminal Law relating to possession of controlled drugs:

S.5(2) Misuse of Drugs Act 1971:

'(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.'

S.28 of the Misuse of Drugs Act 1971 provides a Defence to an offence under s.5(2):

'(2) Subject to subsection (3) below, in any proceedings for an offence to which this section applies it shall be a defence for the accused to prove that he neither knew of nor suspected nor had reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged.

... (emphasis added)'

The panel also considered the witness and documentary evidence provided by both the NMC and you as well as the police witness statements and exhibits of Witness 6, an Administrator at the Home and Witness 7, a Care Assistant at the Home.

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

Charge 1

1) Between 19 December 2017 and 26 March 2018 took one or more tablets of the following medication from your place of work and/or placed them in your bag

(a) Zopiclone;

(b) Lorazepam.

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it including your medical notes, the Forensic Toxicology Hair Sample Report dated 28 May 2018, a Forensic Drugs Report dated 23 July 2018, and the Certificate of Conviction dated 18 July 2022 where you pleaded guilty to possession of controlled drugs at the Crown Court sitting in Manchester. You pleaded guilty on what would have been the first day of your trial. It also considered the oral evidence it had heard during the course of the hearing from yourself and five live witnesses, along with two witness statements from Witness 6 and 7 that were admitted as hearsay evidence.

The panel took into account your medical records that were obtained by the Police [PRIVATE].

The panel noted that you became employed by the Home in December 2017. In January 2018, the Manager of the Home (Witness 1) became aware that 18 x Diazepam tablets and 21 x Zopiclone tablets had gone missing. Upon conducting an audit, she realised that 30 x Zopiclone tablets were also unaccounted for. Due to this medication going missing the management made those medications subject to the controlled drugs procedures despite there not being a legal requirement to do so.

The panel noted the oral evidence of Witness 1 that medication procedures were lax at the time at the Home despite controlled drugs procedures being in place.

On 24 March 2018, the Manager missed a phone call from you, followed by a text message reporting that medication had gone missing, this time being Lorazepam. The Manager contacted the Deputy Manager who was on call to help look for the missing medication which was not found at that time. On 25 March 2018, the Manager reported the incident to the Police. On 26 March 2018, the Manager conducted an audit and realised that you were one of the members of staff who had signed out Zopiclone every night around 19:30pm for a patient who was on end-of-life care and would not necessarily need sleeping tablets. The panel also considered the witness statement of Witness 4 who stated that he did not agree with your decision to administer Zopiclone to this patient however, he accepted your judgment and did not question you.

The Manager further updated the police on 26 March 2018, and they arrived at the Home whilst you were on shift. Upon searching your handbag, the police located a brown plastic bottle containing seven round white Zopiclone tablets , 11 oblong blue tablets of Lorazepam, three round peach-coloured tablets of Zopiclone and 880 mgs of white broken tablet halves of Lorazepam and a glass brown medicine bottle labelled '*56 Dihydrocodeine 30 mg tablets*' containing 63 white tablets. You were arrested on suspicion of the theft and possession of controlled drugs. The panel considered the Forensic Report dated 23 July 2018 which found that the tablets located in your handbag were a mixture of Zopiclone and Lorazepam. The white tablets found in the brown glass medicine bottle were 63 Dihydrocodeine tablets.

The MAR chart for Resident B also disclosed that you had apparently signed for the administration of Zopiclone at 9:00pm on 26 March 2018. In fact, you had been arrested some hours before that.

The panel also noted that upon your arrest a hair sample was taken by the Police, and when tested low levels of Zopiclone and Lorazepam were found in your hair. The expert forensic analysis showed that you had used Lorazepam between approximately November 2017 and mid-January 2018, and you had used Zopiclone from mid-January to mid-March 2018. Further, the panel accepted the Certificate of Conviction dated 18 July 2022 where you pleaded guilty to possession of Class C drugs, namely Zopiclone and Lorazepam.

The panel also accepted the hearsay evidence of Witness 6 and 7 written statements taken by the police. Namely that of Witness 7, dated 26 March 2018, which stated the following:

'...On Friday 23rd at 18:00 I was at work when Shani ... asked me to countersign some medication in the treatment room. I could see from the controlled drug recording book that these were Lorazepam and was for a resident...

I watched Shani count 28 tablets which she then told me she was going to destroy as we had enough in the locked cabinet which I though was odd as I have never seen this happen before...

...

I didn't see Shani destroy the tablets as she told me that she had something else to do and would destroy them later. I also found this strange as again it would be normal practice to destroy them straight away.

Later on that evening Shani asked me to counter sign [Resident A] medication Zopiclone tablets. I saw Shani pop the tablet out and place this in the medication clear pot, I did not see Shani give the medication tablet to Resident A...'

You gave evidence under affirmation. You submitted that whilst you “take responsibility” for being in possession of the controlled drugs, you did not know that they were in your handbag. [PRIVATE].

You submitted that you believe that the drugs were planted in your bag in an unmarked brown bottle that was identical to the bottle that you had filled with mixed medication and, because the drugs were found in your handbag by the police, you had no other choice than to plead guilty to possession of the controlled drugs. The panel allowed you to give this evidence despite Rule 31 of the NMC rules and the fact that you had not used this defence in the Crown Court. They did so as, unlike the Criminal trial where you had the assistance of Solicitor and Counsel you were unrepresented at this hearing. The panel considered that it would be fairer to allow you to give this evidence as there might have some features of this evidence that might assist you.

You stated that [PRIVATE]. You also told the panel that you have no explanation as to how Zopiclone and Lorazepam were found in your hair and that had you been taking these drugs you would have been sleepy and lethargic [PRIVATE].

[PRIVATE]. You stated that you have worked extremely hard and are now a different person as you have been working in areas unconnected to nursing since the allegations arose. You apologised for any harm you may have caused.

The panel determined that in order for you to plead guilty to the possession of controlled drugs, you must have known the drugs were in your possession. You had the benefit of a Solicitor and Counsel for your criminal trial. They must have explained the law to you. Therefore, the panel rejected your explanation that the drugs were planted on you.

Taking into account the evidence provided by Witness 4, and Witness 7 the panel determined that your accessibility to the controlled drugs presented you with the opportunity to take these drugs from the Home, and that the drugs found in your bag matched the drugs that the Home had reported as missing and that had been in your system for the period you were employed by the Home. The panel was also of the view that the witness statement of Witness 7 was credible and supported the idea that you did not destroy or administer the medication you had taken from the controlled drug cabinet. For these reasons, the panel found that this charge had been proved. [PRIVATE].

Charge 2

2) Your conduct in charges 1a) and/or 1b) was dishonest in that you knew the aforesaid medication belonged to your employers and was intended for the use of residents.

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it including your medical notes, the Forensic Toxicology Hair Sample Report dated 28 May 2018, a Forensic Drugs Report dated 23 July 2018, and the Certificate of Conviction dated 18 July 2022 where you pleaded guilty to possession of controlled drugs at the Crown Court sitting in Manchester. It also considered the oral evidence it had heard during the course of the hearing from yourself and five live witnesses, along with two witness statements from Witness 6 and 7 that were admitted as hearsay evidence.

The panel used the test as set out by the legal assessor:

'(a) what was the defendant's actual state of knowledge or belief as to the facts and

(b) was his conduct dishonest by the standards of ordinary decent people?'

Firstly, the panel considered your state of mind it was of the view that you were aware that what you were doing was wrong. You knew you were not entitled to take medication which is why you led colleagues to believe that you were administering the medication to residents or destroying them. In truth, you were actually taking the medication from the Home [PRIVATE].

The panel then considered whether your conduct would be considered dishonest by ordinary, decent people. The panel was quite satisfied that removing controlled medication from the Home, intended to be administered to residents, [PRIVATE] was plainly dishonest. The panel also noted that you admitted to having a history of dishonesty [PRIVATE].

The panel was of the view that you had acted dishonestly and below the expected standards of a registered nurse and that charge 1 links with charge 2. For these reasons, the panel found this charge 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. 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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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.*'

Ms Williams invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code)'. She outlined the relevant sections and invited the panel to consider those sections in making its decision.

Ms Williams submitted that your conduct in relation to improper record keeping, administration of medication, taking of medication from the Home and dishonesty have been found proven and were sufficiently serious to amount to misconduct. She submitted that your conduct was a serious departure from the expected standards of a registered nurse and fell far short of what would be proper conduct.

Ms Williams submitted that although there is no evidence before the panel to suggest that any residents at the Home were harmed by your conduct, there was a risk of harm that residents who were in need of the missing medication would not have access to it due to you taking the medication from the Home. She submitted that your improper record keeping, and your failure to administer medication could have also put residents at a risk of harm as their treatment could have been negatively affected as a result of this.

Ms Williams submitted that in all circumstances of this case, your actions in the charges proved depart from good professional practice and are sufficiently serious to constitute serious misconduct.

Submissions on impairment

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

Ms Williams submitted that the following questions outlined in the case of Grant can be answered in the affirmative in respect of this case, in that you:

- *Have 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 breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

Ms Williams submitted that although there is no evidence before the panel to suggest that any residents were harmed as a result of your conduct, there was a risk of harm to residents at the Home as there was no clear paper trail of the medication. She told the panel that the missing and unaccounted for medication could have led to resident's not having access to medication they needed, or residents being administered medication they did not need, leading to harm.

Ms Williams submitted there is no evidence before the panel at present that you have been able to remediate the regulatory concerns identified in the charges as you have not practiced as a registered nurse since being suspended six years ago. She submitted that your insight is also limited as although you accept being in possession of the missing medication, you do not accept that you were aware of the medication being in your bag or that you put the medication in your bag. Ms Williams submitted [PRIVATE]. She submitted that due to your limited insight into your conduct and lack of remorse from you as you do not accept that you put the medication into your bag the panel cannot be satisfied that [PRIVATE] there is no risk of your conduct being repeated if you were permitted to practise.

Additionally, Ms Williams submitted that you have breached individual provisions of the Code, which constitutes a breach of fundamental tenets of the nursing profession, particularly the requirements for honesty and integrity.

For these reasons, Ms Williams submitted that a finding of impairment is required to maintain public confidence in the profession and to uphold proper professional standards. She submitted that public confidence in the profession and the NMC as its regulator would be undermined if such behaviour were not marked as unacceptable.

[PRIVATE]. You accepted the panel's suggestion that they take into account your written submissions sent to the NMC before and during the hearing.

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

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, 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:

'10 Keep clear and accurate records relevant to your practice

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

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

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

18.4 take all steps to keep medicines stored securely

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

20 Uphold the reputation of your profession at all times

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

20.9 maintain the level of health you need to carry out your professional role

23 Cooperate with all investigations and audits'

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

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. It was of the view that you abused your

position of trust in the Home by deliberately taking medication that residents may have required. The panel noted that you acted dishonestly by falsifying MAR charts, taking medication and lying to this panel. The panel determined that your conduct could have resulted in serious harm to residents and colleagues at the Home and that individually and cumulatively, your actions would be considered deplorable by fellow practitioners, thereby damaging the trust that the public places in the profession.

[PRIVATE].

The panel therefore concluded that your actions proved in charges 1 and 2 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.’

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust,

nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel finds that although there is no evidence that your conduct resulted in the physical and/or emotional harm of residents if you were to repeat the falsification of MAR charts and the theft of residents' medication you could put residents and colleagues at risk in the future. The risks include depleting stocks of needed medication or affecting residents' treatment by falsifying records. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. On this basis, the panel determined that limb 'a' of the 'test' was engaged.

The panel determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that limbs 'b' and 'c' in the above 'test' were also engaged in this case.

The panel also determined that your actions in falsifying MAR charts, taking residents medication for your own use and lying to this panel you have behaved dishonestly. On this basis the panel determined that limb 'd' of the above 'test' was also engaged.

Regarding insight, the panel noted that you have never accepted either taking the medication or placing it in your handbag. The panel noted the sentencing remarks of the Judge at your criminal hearing where you admitted possession of these drugs:

'...it is quite clear you are not remorseful about this...'

The panel is of the view that your attitude remains the same. [PRIVATE]. The panel therefore determined that you have demonstrated a significant lack of insight and remorse.

The panel was of the view that the misconduct in this case evidenced behaviour that is inherently more difficult to put right, since it raises concerns around attitudinal issues that

are difficult to remediate through training courses. The panel considered the evidence before it and concluded that it has not received any information to suggest that you have taken any steps to address the specific concerns raised about your conduct and you did not provide any reflection on the consequences of your conduct or the testimonials attesting to your previous conduct at work.

The panel was of the view that there is a risk of repetition due to the lack of insight, remorse, evidence of strengthened practice and [PRIVATE]. It determined that your actions have the potential to put residents at risk of harm in the future if you were to repeat such conduct. On the basis of all the information before it, the panel decided that there is a risk to the public if you were allowed to practise without restriction. The panel 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.

In addition, 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 also finds your fitness to practise impaired on the grounds of public interest. A member of the public in possession of all the facts in this case would be surprised if a finding of impairment was not made by this regulator given that it involved dishonesty with drugs being removed from the Home [PRIVATE].

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

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

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Williams informed the panel that in the Notice of Hearing, dated 4 April 2024, the NMC had advised you that it would seek the imposition of a suspension sanction bid for a proposed period 12 months with a review at the end if it found your fitness to practise currently impaired.

Ms Williams outlined the aggravating factors she identified in this case:

- Abuse of position of trust due to the theft of medication from the Home
- Risk of harm to residents and colleagues as a result of your conduct
- Intrinsic dishonesty
- Criminal conviction
- Refusal to engage with the NMC's regulatory proceedings [PRIVATE]
- Lack of remorse or insight
- Attitudinal concerns

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

- [PRIVATE]

Ms Williams submitted that making no order or imposing a caution order would be inadequate given the seriousness of this case which involves dishonesty. She submitted that imposing a conditions of practice order would also be inadequate as such an order would not protect the public.

Ms Williams submitted that taking medication from an employer is intrinsically dishonest. She told the panel that your actions in taking medication from the Home and inaccurately recording medication that had been administered could have put residents at a risk of harm. She referred the panel to the SG in relation to your rejected defence of dishonesty (SAN-2). She submitted that despite your conviction, you refuse to admit to the objective facts of the case and have blamed someone else for planting the medication in your handbag. However, you have not named who you believe was responsible for this.

Ms Williams further submitted that there is a lack of insight, and remorse. She submitted that a suspension order of 12 months would allow you sufficient time to engage [PRIVATE].

Ms Williams told the panel that a striking off order may be punitive, as you have recently engaged with these proceedings [PRIVATE]. However, she stated that attitudinal concerns are difficult to remediate therefore a striking off order is a matter for the panel to consider.

The panel also bore in mind your submissions. You stated that you would like the proceedings over and done with as you do not wish to have this hanging over you, although you also stated that you did not want to be struck off the register.

Decision and reasons on sanction

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

SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of position of trust due to the theft of medication from the Home
- Risk of harm to residents and colleagues as a result of your conduct
- A pattern of behaviour over a three-month period
- Intrinsic dishonesty
- Criminal conviction
- Failure to engage with the NMC's request for information
- Lack of remorse or insight with regard to these charges
- Attitudinal concerns
- Governance was lax at the home and rather than taking the chance to improve the security of medicines administration you took advantage of this [PRIVATE]

The panel also took into account the following mitigating features:

- [PRIVATE]

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct

was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the 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 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 charges in this case which involve intrinsic dishonesty. The misconduct identified in this case relates to dishonesty and did not concern issues with your clinical practise, therefore it was not something that can be addressed through training. Furthermore, the panel considered that the concerns in this matter involve serious fundamental concerns. It concluded that the placing of conditions on your registration would not adequately address the seriousness of this case or the attitudinal concerns. It was also of the view that conditions would not adequately protect the public or satisfy the public interest.

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

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

The panel considered that the concerns took place over a three-month period. It took the view that your actions reflected attitudinal concerns. The panel acknowledged that it has not been presented with any evidence of repetition of similar behaviour since the referral. However, it noted that you have not worked in a clinical setting since being suspended over six years ago. The panel also took into account that it had no evidence of insight and

no evidence of remorse with regards to the charges; therefore, it found a consequent risk of repetition.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *‘Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?’*
- *‘Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?’*
- *‘Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?’*

The panel noted that there was no evidence of any strengthened practice. Additionally, it noted that you have demonstrated no insight or remorse into your misconduct or how the impact of your misconduct could have affected residents and colleagues, therefore nothing to suggest that your behaviour would not be repeated. The panel was of the view that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

In making this decision, the panel carefully considered the submissions of Ms Williams in relation to the sanction that the NMC was seeking in this case. However, the panel considered that public confidence would not be maintained if you were to remain on the register.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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 will be confirmed to you in writing.

Interim order

Before considering an interim order the panel were notified that you would not be returning to the hearing.

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 your own interests until the striking-off sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Ms Williams. She submitted that the NMC is seeking the imposition of an interim suspension order for a period of 18 months to cover any appeal period until the substantive striking off order takes effect.

Ms Williams submitted that given the seriousness of the charges found proved, an interim suspension order is necessary on the grounds of public protection and is also otherwise in the wider 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 in order to protect the public and the wider public interest. Also to cover the 28-day appeal period and the duration of any appeal should you decide to appeal against the panel's decision.

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

That concludes this determination.