Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 16 June 2025 – Monday 23 June 2025

Virtual Hearing

Name of Registrant:	**Trey Vergara**	
NMC PIN:	01K2086O	
Part(s) of the register:	Registered Nurse – Adult (23 November 2001)	
Relevant Location:	Birmingham	
Type of case:	Misconduct	
Panel members:	Bernard Herdan Allison Brindley Kiran Musgrave	(Chair, Lay member) (Registrant member) (Lay member)
Legal Assessor:	Mark Ruffell	
Hearings Coordinator:	Ibe Amogbe	
Nursing and Midwifery Council:	Represented by Neair Maqboul, Case Presenter	
Mr Vergara:	Not present and unrepresented	
Facts proved:	Charges 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), (g),1(h), and 2	
Facts not proved:	Charges 1(i), and 3	
Fitness to practise:	Impaired	
Sanction:	**Suspension order (9 months) with review**	
Interim order:	**Interim suspension order (18 months)**	

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Vergara was not in attendance and that the Notice of Hearing letter had been sent to Mr Vergara's registered email address by secure email on 2 April 2025.

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

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Vergara

The panel next considered whether it should proceed in the absence of Mr Vergara. It had regard to Rule 21 and heard the submissions of Ms Maqboul who invited the panel to continue in the absence of Mr Vergara. She submitted that Mr Vergara had voluntarily absented himself.

Ms Maqboul referred the panel to correspondences between Mr Vergara and the NMC including an email dated 13 June 2025, which stated that:

> *'I am retired. (now based Overseas) My decision is final, and I have no professional or legal obligation to engage further.'*

Ms Maqboul also referred the panel to the undated letter from Mr Vergara, which was titled 'Last decision statement', which stated:

'As I am now officially retired, I request that you leave me alone'.

Ms Maqboul submitted that the NMC has made all reasonable efforts to contact Mr Vergara and that there has been no application from him to adjourn the hearing, nor any indication that an adjournment would secure his future attendance. She further stated that all the witnesses are available to give evidence and submitted that there is a strong public interest in resolving the matter without delay.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'.*

The panel has decided to proceed in the absence of Mr Vergara. In reaching this decision, the panel has considered the submissions of Ms Maqboul, the representations from Mr Vergara, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mr Vergara has voluntarily absented himself;
- No application for an adjournment has been made by Mr Vergara;
- Mr Vergara responded to the email sent by the hearing coordinator informing him of how he may join the hearing link so the panel is assured, he is aware of the hearing date;
- There is no reason to suppose that adjourning would secure his attendance at some future date;

- 5 witnesses are scheduled to give live evidence;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Vergara in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to him, he has made no formal response to the charges. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Vergara's decision to absent himself from the hearing, waive his rights to attend, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Vergara. The panel will draw no adverse inference from Mr Vergara's absence in its findings of fact.

Details of charge

"That you, a registered nurse:

1.On 12 August 2021 you:

(a) Shouted at Colleague A
(b) Shouted to Colleague A "I don't like you" or words to that effect
(c) Banged your fist on the table
(d) Pursued Colleague A when they left your office
(e) Shouted "Watch what will happen today" or words to that effect, to Colleague A

(f) Stared at Colleague A
(g) Called Colleague A “stupid”
(h) Shouted that you “will not deal with uneducated idiots” or words to that effect
(i) Called Colleague A “an idiot”

2. Your actions at one or more of Charges 1(a) to (i) created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more of your colleagues

3. Your actions at one or more of Charges 1(a) to (i) were racially motivated

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

Background

The charges arose whilst Mr Vergara was employed as a registered nurse by Hunters Moor, a rehabilitation Home (“the Home”). Mr Vergara worked as the Head of Nursing at the Home and was also the line manager to Colleague A, a rehabilitation assistant.

The allegations relate to an incident that was said to have occurred on 12 August 2021.

It is alleged that on 12 August 2021, Colleague A approached Mr Vergara in his office to seek clarification regarding a direction he had given about the storage of paperwork. During that exchange, it is said that Mr Vergara became very angry and proceeded to subject Colleague A to a sustained verbal tirade lasting 30 minutes. During this incident, Mr Vergara allegedly shouted at Colleague A, stating that he did not like her, and banged his fist on the table.

After Colleague A left his office, it is alleged that Mr Vergara followed her and continued to shout at her through the Home. He is alleged to have called her *‘stupid’*,

warned her to '*watch what will happen to you today'*, and continued by calling her an *'idiot'* and stating that he would not deal with '*uneducated idiots'*.

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Mr Vergara.

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:

- Colleague A: Rehabilitation assistant at the Home (at the time of the incident);
- Witness 1: Senior activity staff member employed at the Home (at the time of the incident);
- Witness 2: Clinical administrator employed at the Home
- Witness 3: HR administrator employed at the Home;

- Witness 4: Manager employed at the Home (at the time of the incident) and retired nurse

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the oral evidence of the witnesses, as well as the documentary evidence provided by the NMC.

The panel had also received the registrant's response bundle, which consisted of a partially completed NMC form titled '*Your response to our regulatory concerns'*. This had been signed by Mr Vergara's previous representative. While the panel reviewed it carefully, it ultimately determined that the bundle could only be afforded limited weight. This was due to the nature of the bundle, which did not significantly assist the panel in resolving the factual issues before it. Moreover, this did not constitute a witness statement, was not signed and dated by Mr Vergara and could not be tested by cross examination, given his non-participation in the hearing.

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

Charge 1(a)

"That you, a registered nurse:

1.On 12 August 2021 you:

(a) Shouted at Colleague A"

This charge is found proved.

In reaching this decision, the panel took into account the evidence given by Colleague A, who in her statement dated 29 July 2022, stated that on 12 August 2021, Mr Vergara *'chased me, shouted at me'.* In her local statement, made on the

day off the incident, she similarly recalled that after asking Mr Vergara a question, *he 'randomly started to get aggressive and shout… He continued shouting…'*

In her oral evidence, Colleague A recounted the same version of events. The panel found Colleague A's evidence to be credible, consistent, and compelling in recalling the account of the actions Mr Vergara took that day.

This account was corroborated by multiple other witnesses. Witness 1 stated in her contemporaneous local statement that she observed Colleague A walking out of Mr Vergara's office '*with [Mr Vergara] shouting'.* In her subsequent NMC witness statement, dated 4 April 2023, she also confirmed that Mr Vergara was *'shouting, calling out at* [Colleague A] *in an aggressive manner'.*

Witness 3 similarly described Mr Vergara as *'shouting, raving and ranting'* towards Colleague A. While Witness 2, was not present during the full incident, she stated that when she arrived in the aftermath, it was apparent that Mr Vergara '*was unable to calm himself down and the incident went on for about half an hour.'* She further noted that this was the first time she had seen Mr Vergara so angry.

Additionally, Witness 4 described Mr Vergara as '*so angry'*, and noted that '[Mr Vergara] *was loud and shouting*.'

The panel found that all witnesses gave clear, consistent accounts both in their written statements and in their oral evidence. Their recollections aligned on the essential details of Mr Vergara's behaviour on the day in question. The panel found the witnesses to be credible and reliable, and noted that their evidence was mutually corroborative.

In light of the consistent and credible evidence from several colleagues, the panel was satisfied, on the balance of probabilities, that Mr Vergara did shout at Colleague A on 12 August 2021, as alleged.

Accordingly, the panel found Charge 1(a) proved.

Charge 1(b)

"That you, a registered nurse:

1.On 12 August 2021 you:

(b) Shouted to Colleague A "I don't like you" or words to that effect"

This charge is found proved.

In considering this charge, the panel carefully reviewed the evidence provided by Colleague A, who was the only direct witness to the specific words alleged. While the panel acknowledged that this element of the charge rested solely on her account, it found her evidence to be clear, consistent, and credible.

In her NMC witness statement, Colleague A stated that Mr Vergara *'specifically told me that he doesn't like me'.* This was consistent with her local statement, taken on the day of the incident, in which she recalled that Mr Vergara shouted: *'How dare you come into my office and talk to me like that, I don't like you.'*

The panel noted that Colleague A gave her evidence on affirmation and that her account of events remained consistent throughout. It also took account of the fact that her local statement was made contemporaneously, lending further weight to the reliability of her recollection.

Although this charge was not corroborated by other witnesses, the panel was entitled to rely on the evidence of a single credible witness. In this instance, the panel considered Colleague A to be a credible and reliable witness whose evidence was consistent when viewed in the context of the wider incident.

On the balance of probabilities, the panel was satisfied that Mr Vergara did shout words to the effect of *'I don't like you'* at Colleague A.

Accordingly, the panel found Charge 1(b) proved.

Charge 1(c)

"That you, a registered nurse:

1.On 12 August 2021 you:

(c) Banged your fist on the table

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Colleague A, who was the only witness to specifically describe Mr Vergara banging his fist on the table during the incident.

In her contemporaneous local statement, made on the day of the incident, Colleague A stated: '*He started to bang the table with his fist and continued to shout'*. This account was consistent with both her later witness statement provided to the NMC and her oral evidence during this hearing. When asked directly by the panel whether Mr Vergara had banged the table, Colleague A confirmed that he had. She described how, after the initial exchange, he stood up and banged the table while shouting at her.

Although this allegation was not corroborated by other witnesses, the panel was satisfied that Colleague A's evidence was clear, detailed, and credible. Her account was consistent and aligned with the broader pattern of behaviour described by others in relation to the incident. The panel therefore considered her evidence to be persuasive.

On the balance of probabilities, the panel was satisfied that Mr Vergara did bang his fist on the table during the exchange with Colleague A.

Accordingly, the panel found Charge 1(c) proved.

Charge 1(d)

"That you, a registered nurse:

1.On 12 August 2021 you:

(d) Pursued Colleague A when they left your office"

This charge is found proved.

In reaching this decision, the panel took into account the consistent and corroborated evidence from two witnesses, both of whom confirmed that Mr Vergara followed Colleague A after she left his office.

Colleague A, in her local statement made on the day of the incident, stated:

> '*I had left the office … to try and de-escalate the situation, to which he followed right behind me into the dining room.*' She further added, *'I continued to walk away and make my way to the cabin …. He still then found a way to come after me.'*

This account was repeated in her NMC witness statement and reinforced during her oral evidence.

This version of events was corroborated by Witness 1. In her local statement, Witness 1 noted, *'I see [*Mr Vergara*] following her*.' In her NMC statement, she similarly described Mr Vergara following Colleague A and confirmed during her oral evidence that '*He followed her. She walked towards the exit and he was behind her. He was like shouting'.*

The panel noted that this aspect of the incident was consistently described across two witness accounts. The fact that two witnesses observed and reported the same behaviour strengthened the panel's confidence in the accuracy and reliability of the evidence.

On the basis of this consistent and corroborated evidence, the panel was satisfied, on the balance of probabilities, that Mr Vergara did pursue Colleague A after she left his office.

Accordingly, the panel found Charge 1(d) proved.

Charge 1(e)

"That you, a registered nurse:

1.On 12 August 2021 you:

(e) Shouted "Watch what will happen today" or words to that effect, to Colleague A"

This charge is found proved.

The panel considered the evidence of Colleague A, who described in her local statement, made on the day of the events, that Mr Vergara continued shouting at her in front of the day staff and kitchen staff and said, *'Watch what will happen today'.* When asked during the hearing what she understood this to mean, she explained that she interpreted it as a threat that he would either get her sacked or take some other form of action against her.

The panel noted the level of detail and clarity with which Colleague A was able to recall this statement, despite the passage of time. The panel considered this to be indicative of the impact the words had on her, and it added to the credibility of her evidence.

While there was no direct corroboration of this specific phrase by other witnesses, the panel was satisfied that Colleague A's evidence was sufficient to prove the charge. The panel found her to be a credible and reliable witness. Her account was

consistent and aligned with the wider description of Mr Vergara's conduct on the day in question.

On the balance of probabilities, the panel was satisfied that Mr Vergara did shout words to the effect of *'Watch what will happen today'* to Colleague A.

Accordingly, the panel found Charge 1(e) proved.

Charge 1(f)

"That you, a registered nurse:

1.On 12 August 2021 you:

(f) Stared at Colleague A*"*

This charge is found proved.

The panel again relied on the evidence of Colleague A, who described a further incident following the main confrontation. In her local statement, made contemporaneously on the day of the incident, she stated: '[Mr Vergara] *came outside the building again, on his way to the cabin and gave me a stare which was so uncomfortable and [PRIVATE].'*

The panel accepted that this was the only direct account of the alleged stare, and that no other witness referred specifically to this moment. Notwithstanding, the panel found Colleague A to be a credible and reliable witness.

The panel noted the impact this particular action had on Colleague A, as demonstrated by her clear recollection of it despite the incident having taken place four years earlier. The panel considered this to support the credibility of her account and to be consistent with the overall pattern of behaviour exhibited by Mr Vergara that day.

On the balance of probabilities, and for the same reasons as given in relation to other individual allegations supported solely by Colleague A's evidence, the panel was satisfied that Mr Vergara did stare at Colleague A.

Accordingly, the panel found Charge 1(f) proved.

Charge 1(g)

"That you, a registered nurse:

1.On 12 August 2021 you:

(g) Called Colleague A "stupid""

This charge is found proved.

In reaching this decision, the panel took into account the evidence from both Colleague A and witness 1, each of whom gave accounts of Mr Vergara calling Colleague A *'stupid'* during or shortly after the incident.

In her local statement, Colleague A recorded *that* '[Mr Vergara] *proceeded to call me 'stupid' as he walked away.'* She confirmed this in her oral evidence, stating clearly that the registrant did call her *'stupid'.*

This was corroborated by Witness 1, who, in her local statement, recalled hearing Mr Vergara say that *'I know what you are like. You are stupid*.' Although part of the phrase was described as incoherent, Witness 1 was clear in confirming that the word 'stupid' was used and directed toward Colleague A. The panel found that Witness 1's independent recollection supported and strengthened Colleague A's account.

Both witnesses were found to be credible and reliable. Colleague A's account remained consistent across her written and oral evidence and Witness 1's corroboration of this detail added significant weight to the panel's finding.

On the balance of probabilities, the panel was satisfied that Mr Vergara did call Colleague A '*stupid'*.

Accordingly, the panel found Charge 1(g) proved.

Charge 1(h)

"That you, a registered nurse:

1.On 12 August 2021 you:

(h) Shouted that you "will not deal with uneducated idiots" or words to that effect"

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, who gave a clear and direct account of Mr Vergara shouting words to the effect *of 'You uneducated people'* during the incident. In her oral evidence, she recalled that the statement was made while Mr Vergara was looking directly at her as he left the dining room.

Colleague A's account was corroborated by Witness 2, who, in her contemporaneous local statement, stated that Mr Vergara was shouting that he *'will not deal with uneducated idiots',* and that he repeated this phrase multiple times. Witness 2 also confirmed this in her oral evidence before the panel.

The panel found both witnesses to be credible and consistent in their accounts. Colleague A's first-hand recollection was detailed and specific, and the corroboration from Witness 2 further strengthened the reliability of the evidence.

On the balance of probabilities, the panel was satisfied that Mr Vergara did shout words to the effect that he *'will not deal with uneducated idiots'* during the incident.

Accordingly, the panel found Charge 1(h) proved.

Charge 1(i)

"That you, a registered nurse:

1.On 12 August 2021 you:

(i) Called Colleague A "an idiot""

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence provided, which consisted primarily of a reference in the local statement of Witness 2. In her account, Witness 2 stated that after Mr Vergara returned to the building and walked past Colleague A, who was sitting outside with two other staff members, she was told that Mr Vergara had called her '*an idiot'*.

The panel noted, however, that Witness 2 did not hear this alleged comment herself. The panel placed limited weight on this evidence, as it was effectively hearsay.

Colleague A, when asked directly by the panel whether Mr Vergara had called her *'an idiot'*, stated that she could not recall him saying that. Furthermore, there was no mention of this specific phrase in her local statement, which was otherwise detailed and contemporaneous.

In the absence of any first-hand account or direct recollection from Colleague A herself and given the hearsay nature of the only supporting evidence, the panel concluded that there was insufficient reliable evidence to support this charge.

Accordingly, on the balance of probabilities, the panel found Charge 1(i) not proved.

Charge 2

> "Your actions at one or more of Charges 1(a) to (i) created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more of your colleagues."

This charge is found proved.

In considering this charge, the panel took into account its findings in relation to Charges 1(a) to 1(h), which established Mr Vergara's behaviour towards Colleague A on the day of the incident. The panel also noted the oral and written evidence from multiple witnesses which gave a clear and consistent picture of Mr Vergara's behaviour having a significant impact on those present. The panel considered separately each of the allegations concerning the environment he had created for his colleagues.

Intimidating

The panel found that the conduct displayed by Mr Vergara was clearly intimidating. Colleague A stated that she felt '*[PRIVATE]'.* In her oral evidence, she recalled how upsetting the encounter had been. Witness 3 described Mr Vergara's behaviour as *'[PRIVATE]'*, while Witness 2, in both her local and NMC statements, said that his shouting and body language were *'very intimidating and aggressive'.* These consistent descriptions demonstrated that the environment created by Mr Vergara's actions was intimidating.

Hostile

The panel was satisfied that the overall tone and context of Mr Vergara's behaviour also created a hostile environment. Witness 2 described his behaviour on the day of the incident as aggressive and intimidating, she said she became worried about returning to work and stated '*[PRIVATE]'*. This demonstrated a workplace atmosphere consistent with a hostile environment.

Degrading

The panel found that Mr Vergara's words and actions were degrading. Colleague A stated she felt *'[PRIVATE]'* as a result of the incident. She described being '*[PRIVATE]'* in front of others. These feelings were not only supported by her contemporaneous statement but also by the oral evidence she gave to the panel. Witness 2 also stated that the behaviour was '*demeaning and insulting towards all staff*'.

Mr Vergara's conduct, particularly the comments referred to in Charge 1(h), which the panel has found proved, were themselves degrading.

Accordingly, the panel found that Mr Vergara's conduct served to create a degrading environment for his colleagues.

Humiliating

Colleague A described her experience as '*[PRIVATE]'*, and said she was humiliated in front of colleagues. The panel accepted her evidence as credible and consistent. The nature of the language used and the public manner in which the incident unfolded further reinforced the panel's conclusion that the environment was also humiliating.

Having considered all the evidence and the findings on the earlier charges, the panel was satisfied, on the balance of probabilities, that Mr Vergara's actions created an intimidating, hostile, degrading and humiliating environment for Colleague A and others who witnessed the incident.

Accordingly, the panel found Charge 2 proved in its entirety.

Charge 3

> "Your actions at one or more of Charges 1(a) to (i) were racially motivated."

This charge is found NOT proved.

In reaching this decision, the panel carefully reviewed the evidence from Colleague A, who was the only person to suggest that Mr Vergara's conduct may have been racially motivated.

In her evidence, Colleague A stated that she believed the behaviour was linked to the colour of her skin. When asked by the panel to explain this belief, she responded that most of the rehabilitation assistants were *'people of colour'* and therefore, in her view, the phrase '*uneducated idiots'*, as used by Mr Vergara, was intended to refer specifically to that group. The panel asked Colleague A directly whether Mr Vergara had ever mentioned her race or skin colour. She confirmed that he had not.

The panel recognised that Colleague A might have had a perception of the intent behind Mr Vergara's words, but this did not constitute evidence of explicit racial motivation.

The panel noted in Colleague A's witness statement that she said Mr Vergara was Filipino and particularly liked and favoured two Filipino nurses with whom he could gossip in their language, but the panel considered this did not constitute racially motivated behaviour.

The panel also considered the wider evidence, including the perceptions of other colleagues who witnessed the incident or had experience working with Mr Vergara. Witness 4 and Witness 2 both indicated that Mr Vergara tended to treat staff without clinical qualifications, as less worthy of respect. Witness 4, who was Mr Vergara's manager, referred to this dynamic in her oral evidence, suggesting that his behaviour was more reflective of a hierarchical attitude.

Witness 2, in her oral evidence, also expressed the view that Mr Vergara's comments were targeted at staff without clinical qualifications. She said he *'didn't want to deal with anyone without a clinical qualification'* or those in junior roles. The panel found this to be consistent with the views expressed by other witnesses.

The panel also took into account Mr Vergara's written response in his response bundle, where he stated,

> *'In my view* [Colleague A's] *behaviour was clearly an example of insubordination. I was the Head of Nursing, part of the management team. It was unacceptable for her to approach me in that manner when I was dealing with an information governance issue'.*

The panel found this language revealing, and concerning in its tone, but consistent with an attitude of hierarchical superiority rather than one motivated by race.

Ultimately, the panel found no evidence that any of Mr Vergara's actions or comments were racially motivated. While it recognised that Colleague A may have felt the conduct may have been linked to her race, the evidence did not support that conclusion. On the balance of probabilities, the panel was not satisfied that Mr Vergara's actions were racially motivated.

Accordingly, the panel found Charge 3 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 Mr Vergara'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, Mr Vergara's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

The panel was advised to have 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 Maqboul 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.

Ms Maqboul identified the specific, relevant standards where Mr Vergara's actions amounted to misconduct, namely: 1, 2, 4, 7, 8, 9, 11, 20, 21, 23, 25.

Ms Maqboul referred the panel to *Calhaem v GMC* [2007] EWHC 2606 (Admin), submitting that a single act or omission, if particularly grave, could be categorised as misconduct. She submitted that the 30-minute tirade, including name-calling and sustained aggression towards a junior colleague, amounted to serious misconduct and would be found deplorable by fellow practitioners.

Ms Maqboul highlighted Charge 2 as particularly serious, in that Mr Vergara had created an intimidating, hostile, humiliating environment. She invited the panel to

consider not only Colleague A's evidence but also evidence from Witness 3 and Witness 4 about Mr Vergara's general temperament and leadership style.

Submissions on impairment

Ms Maqboul 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 Maqboul submitted that Mr Vergara's fitness to practise is currently impaired on public interest grounds, due to the serious nature of the misconduct. While no clinical concerns were raised, the NMC submits that Mr Vergara cannot be said to practise kindly or professionally.

She submitted that the limbs b and c of the test set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant* were engaged in this case:

a) *"…*
b) *has in the past brought and/or is liable in the future to bring the profession into disrepute;*
c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
d) *…"*

Ms Maqboul highlighted Mr Vergara's lack of insight, referring to his written response where he minimised the incident and focused on its impact on himself. There has been no evidence of remediation, despite a leadership course taken shortly before the incident and informal supervision already in place at the time.

The NMC submits these are attitudinal issues, which are difficult to remediate. There has been no engagement and no acknowledgment that the behaviour was unacceptable in a professional setting.

Ms Maqboul therefore submitted that a finding of current impairment is necessary in the public interest to uphold professional standards.

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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (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 Mr Vergara's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Vergara's actions amounted to a breach of the Code. Specifically:

*'**8 Work co-operatively***

8.2 maintain effective communication with colleagues'

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times

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

16.6 protect anyone you have management responsibility for from any harm, detriment, victimisation or unwarranted treatment after a concern is raised

20 Uphold the reputation of your profession at all times

20.1 keep to and uphold the standards and values set out in the Code

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

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 firstly noted that there were no concerns raised regarding Mr Vergara's clinical skills. However, the panel was of the view that the incident represented a serious departure from expected professional behaviour, particularly given that Mr Vergara was in a leadership role at the time. As a nurse in a position of authority, he was expected to model professional standards and communicate effectively, particularly when approached by junior staff.

The panel noted that Colleague A, a junior member of staff, approached Mr Vergara with a clinical question, which was in its view a reasonable and expected interaction. Instead of responding appropriately, Mr Vergara engaged in behaviour that was aggressive, hostile, demeaning and degrading. His actions of shouting, name calling, banging his fist on a table and following Colleague A through the Home was unacceptable. Mr Vergara continued this behaviour in the presence of other colleagues, who also attempted to calm the situation, but were unsuccessful. This incident had a significant impact on Colleague A and other Colleagues present.

The panel noted that the proven finding of charge 2 in that Mr Vergara created an intimidating, hostile, degrading and humiliating environment was a significant factor in its decision. Such conduct breaches fundamental tenets of the nursing profession, particularly the duty to treat colleagues with respect and uphold the dignity of others.

The panel found that this behaviour was not only unprofessional, but deplorable when viewed objectively and through the lens of fellow professionals or appropriately informed members of the public.

Accordingly, the panel found that Mr Vergara'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, Mr Vergara's fitness to practise is currently impaired.

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

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

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

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

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

The panel determined that the last two limbs in the above test were engaged in this case.

The panel found that Mr Vergara demonstrated very limited insight into his behaviour on the day in question. In his reflective piece, he did not meaningfully acknowledge the impact of his behaviour on his colleagues, particularly Colleague A. Instead, the panel found the tone of the statement to be defensive, with emphasis placed on the impact the incident had on him personally. There was no evidence of reflection on how his actions affected his colleagues, nor any genuine understanding of why his behaviour was unacceptable or how this impacted negatively on the reputation of the nursing profession. The panel was concerned that Mr Vergara approached the interaction with Colleague A as one involving a subordinate, rather than as a colleague deserving of respect.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Vergara has taken steps to strengthen his practice. It was noted that, in the light of some leadership issues before the incident on 12 August 2021, he had been instructed to undertake a 'Compassionate Leadership in Healthcare Course'. The incident occurred after this training, raising questions about his engagement with the course.

The panel also noted that leadership and communication concerns had been raised during his probation, with regular supervision meetings put in place, as described by Witness 4.

The panel noted in Witness 4's NMC witness statement that:

> '[Mr Vergara] *wasn't very approachable and didn't always speak with staff or acknowledge them. Immediately, I realised that there were issues with his style of leadership. Right from his probation, I implemented supervision to ensure that he was developing well in his leadership as I noticed that this was a problem area for him.'*

Despite this support, Mr Vergara's behaviour reportedly deteriorated, with ongoing complaints from colleagues. Witness 4 described in her statement that Mr Vergara was *'dismissing people, walking past them, not speaking to people and belittling people.*'

Moreover, there was no evidence before the panel that Mr Vergara had taken meaningful steps to reflect, learn, or improve his professional conduct in the years since the incident. Although he stated he experienced [PRIVATE] at the time, the panel gave limited weight to this mitigation, as no supporting evidence was provided.

In light of the lack of meaningful insight and the absence of remediation, the panel concluded that there remains a real risk of repetition. While the misconduct related to a single incident, it was serious and occurred in the context of wider leadership concerns identified during his employment.

The panel also noted that after Mr Vergara's left his employment at the Home, he stated in his response to the NMC regulatory concerns he had moved into a Band 5 role, and while this may suggest he recognised his leadership shortcomings, the panel saw no evidence to confirm this.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Mr Vergara's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Vergara'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 9 months. The effect of this order is that the NMC register will show that Mr Vergara'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.

Submissions on sanction

Ms Maqboul submitted that a striking-off order is the only appropriate sanction in this case, on the basis that Mr Vergara's conduct is fundamentally incompatible with remaining on the register.

She acknowledged that Mr Vergara has no previous regulatory findings, and the panel had heard evidence from his line manager regarding his clinical capability. However, the NMC's position is that these factors are outweighed by the seriousness of the misconduct.

It was submitted that Mr Vergara, while in a leadership position, responded to a reasonable query from a junior colleague with a completely inappropriate outburst, amounting to an abuse of trust. Ms Maqboul submitted that this behaviour raises concerns about Mr Vergara's ability to manage his emotions, even when there was a simple query.

Further, it was submitted that Mr Vergara has demonstrated a lack of insight, with limited recognition of the impact of his actions on others, and no evidence of remediation or meaningful reflection.

Ms Maqboul submitted that there remain ongoing concerns regarding Mr Vergara's professionalism and communication, and that the public confidence in the profession would be undermined if he were to remain on the register. Accordingly, she submitted that a striking-off order is the only sanction capable of maintaining public confidence and upholding professional standards.

Decision and reasons on sanction

Having found Mr Vergara'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
- Lack of insight into failings
- No meaningful reflection
- No evidence of remediation

The panel also took into account the following mitigating features:

- Previous good character
- Isolated incident
- Claimed personal mitigation of [PRIVATE] (although this was not backed up with evidence)
- No concerns with respect to clinical care

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 nature of the case, and the need to uphold the reputation of the profession, an order that does not restrict Mr Vergara'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 Mr Vergara's misconduct risks to undermine public trust in nurses and the maintenance of professional standards 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 Mr Vergara's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable, in

accordance with the SG. However, the panel noted the presence of deep-seated attitudinal concerns and a demonstrated lack of engagement with the NMC.

The panel considered whether the identified misconduct could be addressed through conditions of retraining, restricting Mr Vergara's practise so that he could not act as nurse in charge and requiring close supervision at all times by a more senior nurse. However, the panel was not satisfied that Mr Vergara would be willing or prepared to comply with such conditions and to undertake any remediation at this time. Given the statement he provided to the panel in the context of these proceedings continuing in his absence.

In light of the absence of meaningful insight and Mr Vergara's unwillingness to engage, the panel concluded that there are no practical or workable conditions that could be formulated.

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.*

In making this decision, the panel carefully considered the submissions of Ms Maqboul in relation to the sanction that the NMC was seeking in this case. However, the panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel considered that Mr Vergara does have attitudinal problems and does pose a risk of repeating his behaviour. However, it judged that this is not one of those serious cases as set out in the SG, since it does not relate to dishonesty, sexual misconduct or criminal convictions and discrimination had not been found proved. The panel noted that this was a single incident of misconduct and that there had been no evidence of repetition of the behaviour since the incident.

Accordingly, having balanced all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction.
The panel considered that a striking-off order would be disproportionate, taking account of all the information before it, and of the mitigation identified, the panel concluded that it would be unduly punitive to impose a striking-off order.

The panel noted the hardship a suspension order might cause Mr Vergara. 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 9 months is appropriate in this case to mark the seriousness of the misconduct, and to allow Mr Vergara to engage with the NMC, develop his insight and undertake relevant training.

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:

- Evidence of engagement with the NMC
- A reflective statement demonstrating genuine insight into the impact of Mr Vergara's actions on colleagues, service users, and public confidence in the profession;
- Evidence of relevant training and/or courses, which may include but is not limited to:
    - Conflict resolution and de-escalation
    - Effective communication
    - Emotional regulation or anger management
    - Leadership and professional relationships;
- Testimonials or references from any employment or voluntary work undertaken during the period of suspension.

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 Mr Vergara's own interests until the suspension 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 Maqboul. She submitted that an interim suspension order would be appropriate for a period of 18 months.

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 allow time for any appeal to be resolved.

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

That concludes this determination.