

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

**Substantive Hearing  
Monday 8 January 2024 – Friday 12 January 2024  
Tuesday 20 February 2024**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Flavia Nunes</b>
<b>NMC PIN</b>	13G0417C
<b>Part(s) of the register:</b>	Registered Nurse – sub part 1 RN1: Adult nurse (level 1) – 30 July 2013
<b>Relevant Location:</b>	Leicestershire
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Wayne Miller (Chair, lay member) Sharon Peat (Registrant member) Melanie Swinnerton (Lay member)
<b>Legal Assessor:</b>	Nigel Mitchell (8 – 12 January 2024) Alain Gogarty (20 February 2024)
<b>Hearings Coordinator:</b>	Catherine Blake (8 – 12 January 2024) Shela Begum (20 February 2024)
<b>Nursing and Midwifery Council:</b>	Represented by Tom Lambert, Case Presenter
<b>Mrs Nunes:</b>	Present and not represented at hearing.
<b>Facts proved:</b>	Charges 2b, 3a, and 3b.
<b>Facts not proved:</b>	Charges 1 and 2a.
<b>Fitness to practise:</b>	Impaired.
<b>Sanction:</b>	<b>Caution order (2 years)</b>
<b>Interim order:</b>	<b>N/A</b>

## Decision and reasons on application to amend the charge

The panel heard an application made by Mr Lambert, on behalf of the nursing and midwifery council (NMC), to amend the wording of charge 1.

The proposed amendment was to replace the word 'nurse' with 'authorised person'. It was submitted by Mr Lambert that the proposed amendment would provide clarity and more accurately reflect the evidence.

### Original working of charge 1:

*'That you, a registered nurse, whilst working as the Deputy Manager of Cedar Court Care Home:*

- 1. On or around 27 November 2020 failed to ensure that a nurse was involved in the booking in and/or storage of controlled drugs.'*

### Proposes amendment of charge 1:

*'That you, a registered nurse, whilst working as the Deputy Manager of Cedar Court Care Home:*

- 1. On or around 27 November 2020 failed to ensure that ~~a nurse~~ **an authorised person** was involved in the booking in and/or storage of controlled drugs*

You submitted that you agreed with the proposed amendment.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice to more accurately reflect the evidence. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

**Details of charge (as amended)**

*'That you, a registered nurse, whilst working as the Deputy Manager of Cedar Court Care Home:*

1. *On or around 27 November 2020 failed to ensure that an authorised person was involved in the booking in and/or storage of controlled drugs*
  
2. *Between 31 October 2020 and 1 January 2021*
  - a. *Failed to ensure that the contents of the controlled drugs cupboard were checked at the start and/or at the end of every shift*
  - b. *On one or more occasions signed the controlled drugs book to say that you had checked the stock of controlled drugs when you had not done so.*
  
3. *And your actions as specified in charge 2b were dishonest in that:*
  - a. *You knew that you had not checked the stock of controlled drugs on this/these occasions*
  - b. *You intended for anyone reading the controlled drugs book to believe that the stock had been so checked*

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

## **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Mr Lambert under Rule 31 to allow the written statement of Witness 2 into evidence. Witness 2 was not present at this hearing and, Mr Lambert submitted that whilst the NMC had made sufficient efforts to ensure that this witness was present, the NMC was unable to contact them. Mr Lambert submitted that despite their non-attendance, the evidence is highly relevant in this case. He further stated that there would be no injustice to you by admitting the hearsay evidence of Witness 2, as the panel would be able to test some of the evidence that concurs with other witness evidence who will be attending.

You told the panel that although you do not object to Witness 2's statement being admitted, you do not agree with parts of it.

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. It also included reference to the principles in the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*.

The panel gave the application in regard to Witness 2 serious consideration and considered it with particular care as you are not legally represented. The panel determined that the content of the hearsay evidence was relevant and not sole or decisive. It determined to admit the statement of Witness 2 but acknowledged that it will not be able to fairly test Witness 2 on their evidence. It agreed that the NMC had made sufficient efforts to contact the witness for whom the panel had no information with which to question their credibility or reliability.

In these circumstances, the panel determined that Witness 2's evidence is relevant, and it is fair to admit it into evidence, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

## **Background**

The charges arose whilst you were employed by Cedar Court Care Home (the Home), on probation, as Deputy Manager from July 2020.

Between 2 November 2020 and 1 December 2020, the home manager was on sick leave, and you were left in charge of the Home.

During this time, it was alleged by the Home that you failed to ensure the required controlled drugs ('CDs') checks took place, resulting in an apparent discrepancy. It is alleged that you allowed a nursing assistant and a senior carer to 'book in' a new delivery of CDs (a prescription for Morphine Sulphate ('MST' tablets), which was in contravention of the Home's internal Controlled Drugs Procedure November 2020 (CDP). Both the nursing assistant and the senior carer have stated that they had done this at your request, but only because the Care Quality Commission ('the CQC') was present on site and they did not want to leave the drugs lying around.

On 27 November 2020 an agency nurse identified 20 missing MST tablets (CDs) and escalated this to you. When the home manager returned to the Home, she began an internal investigation and reports were made to the police, safeguarding and to the CQC.

[PRIVATE] You were dismissed shortly after your return in January 2021.

## 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 Mr Lambert on behalf of the NMC and by you.

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

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

- Witness 1: Senior Care Assistant at the Home at the time of the incident.
- Witness 3: Registered Home Manager at the Home at the time of the incident.

The panel saw written evidence from the following witness on behalf of the NMC:

- Witness 2: Nursing Assistant at the Home at the time of the incident.

The panel heard live evidence from the following witness called by you:

- Witness 4: Care Assistant at the Home at the time of the incident.

The panel also heard evidence from you under affirmation.

During witness evidence, it became apparent that there may be reference to [PRIVATE] and private matters. Having sought submissions from Mr Lambert and yourself, and taking the advice of the legal assessor, the panel determined to go into private session as and when matters pertaining to [PRIVATE] personal matters were raised. The decision was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and by you.

The panel took into account your good character and that there have been no previous concerns in respect of your practice.

The panel determined that the context in which these charges arose was relevant and indicated a situation which would be detrimental to any nurse's ability to provide kind, safe and effective care.

At the time in question, it was at the height of the COVID-19 pandemic, and you had dealt with the deaths of elderly residents in your previous employment. Staff were in short supply as they dealt with the pandemic and shielded themselves and their families as needed. The Home had no contracted registered nurses other than you and the home manager, who went on sick leave at the beginning of November 2020. You were left to deputise for the home manager, undertake your own duties as deputy manager, and work scheduled and short notice shifts. Due to the pandemic General Practitioners (GP) and district nurses were not coming into the Home and communicating with them fell to you as well as performing the additional associated tasks such as dressings. Being new to the Home, you stated you faced some resistance from the long-standing staff to your proposed changes and instructions. The quality manager and directors of the company running the Home did not provide you with any effective support. [PRIVATE]

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

### **Charge 1**

*“That you, a registered nurse, whilst working as the Deputy Manager of Cedar Court Care Home on or around 27 November 2020 failed to ensure that an authorised person was involved in the booking in and/or storage of controlled drugs”*

### **This charge is found not proved.**

In reaching this decision, the panel took into account the oral evidence from you, the written and oral evidence from Witnesses 1 and 3, and the hearsay evidence of Witness 2.

The panel bore in mind the circumstances of this incident, and that there were several unusual and specific circumstances that made providing optimal care and maintaining a safe environment difficult. Namely:

- A senior care assistant had taken receipt of CDs which needed to be booked in immediately as they could not be left unattended.
- A resident was very unwell and needed urgent review by medical staff; this needed to be by telephone as COVID-19 restrictions meant GPs were not attending the Home and contact with them by phone was problematic at the time.
- The cordless phone that you were using was prone to losing signal when taken out of the room you were in (the nurse’s station).
- The door/lock on the door of the nurse’s station was being repaired, leaving the room unsecured and needing to be kept under observation until secured once more.

The panel noted that the CDP in force at the time specifically denotes that CDs can only be checked in by ‘a Colleague with designated medicines management responsibilities’ and makes no reference to the term ‘authorised person’:



***'b. Receiving/Booking In***

*Controlled Drugs should be delivered to the Home in a separate bag/box, and these must be checked and signed for at the point of delivery by a Colleague with designated medicines management responsibilities, with a second Colleague present as a witness.*

...

*The date of receipt, quantity received and source of the CDs should be entered into the controlled drugs register and signed by the receiving nurse or authorised Colleague, with a second person as a witness.'*

The term 'authorised person' is not defined anywhere in the CDP. The panel noted the opinion of Witness 3, who said that the CDP should be interpreted so that 'authorised person' means a registered nurse.

The panel noted that this opinion was not consistent with the evidence of Witness 1, who appeared confused by the CDP. Witness 1 initially stated that as a Senior Care Assistant, they were not able to book in the CDs as they were not a registered nurse. However, after being shown the CDP for the first time during the hearing, Witness 1 reasoned that they could have been an authorised person as they had passed a medications competency assessment. The panel concluded that Witness 1's uncertainty is indicative that the CDP is confusing, vague and unclear as to the correct procedure for booking in and/or storage of CDs.

Further, there was no documentary evidence about the detail of the medications competency assessments which you and Witnesses 1 and 2 have completed. The panel had no information to satisfy it that these medication competency assessments included specific training and/or direction about which staff members were 'authorised persons'.

The panel noted that the policy does not require that a registered nurse book in the CDs and have interpreted this to mean that while a registered nurse may be preferable, the wording of the policy is ambiguous to allow for employees other than nurses to take receipt of CDs.

The panel concluded that the NMC has not satisfied the burden of proof. It is not satisfied, on the balance of probabilities, that Witnesses 1 and 2 were not 'authorised persons'. Therefore, the panel found that the charge is not proved.

### **Charge 2a)**

*“That you, a registered nurse, whilst working as the Deputy Manager of Cedar Court Care Home, between 31 October 2020 and 1 January 2021, failed to ensure that the contents of the controlled drugs cupboard were checked at the start and/or at the end of every shift”*

### **This charge is found not proved.**

In reaching this decision, the panel took into account your evidence, the written and oral evidence of Witnesses 1 and 3, as well exhibits in the bundle.

Having reviewed the relevant policies, in particular the CDP (version 5) and the Stock Control of Medicines Procedure (version 4), the panel could not find evidence that you had a duty to ensure that the contents of the CD cupboard was checked at the beginning and/or end of shift.

The procedure in the CDP (version 5) is as follows:

*‘Balances of each Controlled Drug should be checked and recorded once daily; it is recommended that this check is carried out at the end of each shift after the handover between Colleagues with responsibility for medicines management in the Home.’*

The panel noted the use of the word 'should' instead of the word 'must', which indicates that professional judgement is involved. The panel noted that within the same section of the CDP 'Stock Checks' other instructions use the word 'must'.

The Stock Control of Medicines Procedure (version 4) states:

*'Stock balance checks of each CD should be checked and recorded every time a CD is administered, received or destroyed and also at the end of each shift upon handover to the next shift. There should be a minimum of two CD stock checks carried out daily and they should be recorded in the CD Register.'*

Having regard to these two policies, the panel could not identify a duty on you to complete a check of the CD cupboard at either the beginning or end of each shift.

The panel also noted the oral evidence of Witness 1, who was not clear as to the policy.

Due to the ambiguity of the policies, the panel was not satisfied that there was sufficient evidence to meet the balance of probabilities. The charge is found not proved.

### **Charge 2b)**

*"That you, a registered nurse, whilst working as the Deputy Manager of Cedar Court Care Home, between 31 October 2020 and 1 January 2021, on one or more occasions signed the controlled drugs book to say that you had checked the stock of controlled drugs when you had not done so."*

**This charge is found proved.**

In reaching this decision, the panel took into account your live evidence, your fact-finding interview, and the CD record. There was no evidence at all from the agency nurse who

regularly checked and signed the CD record at the same time as you and at the handover of the morning and night shifts.

The panel considered the CD record on which you signed to confirm that you had checked the stock levels on 26 November 2020, both when administering patient medication and when checking stock balances at shift handovers. Examining the record, it can be seen that the stock balance was incorrect from 26 November 2020 at 9:00am when the page was turned, and the stock balance brought forward.

However, you and the checker of the CDs during that day failed to identify this error despite multiple signed checking episodes. The panel noted that the error in the stock levels was only noticed in the evening of 27 November 2020 by the night shift nurse. The panel did not hear from the night nurse in oral or documentary evidence.

The panel determined that the existence of these errors indicate you either did not count the drugs properly or did not count the drugs at all. The panel concluded, on the balance of probabilities, that the stock levels were not checked before you signed to say they had been.

The panel determined that the only dates between 31 October 2020 and 1 January 2021 when it was more likely than not that you signed the CD record to say that you had checked the stock of CDs when you had not done so, were 26 November 2020 and 27 November 2020. The panel determined that the NMC has not satisfied the burden of proof for any of the other dates in this period. [PRIVATE]. Further, the CD record produced by the NMC only covers the period 19 November 2020 to 30 November 2020, and on some of these dates you were not the signatory.

### **Charge 3a)**

*“Your actions as specified in charge 2b were dishonest in that knew that you had not checked the stock of controlled drugs on this/these occasions”*

**This charge is found proved.**

In reaching this decision, the panel took into account your evidence, and the CD record.

The panel noted the pressures you were under at the Home and considered that you likely filled in the CD record believing the stock level to be accurate at that time. However, the panel concluded that you must have known that you did not check the stock levels when you signed off the CDs on 26 November 2020 and 27 November 2020. Therefore, on the balance of probabilities, the panel determined that this charge is found proved.

**Charge 3b)**

*“Your actions as specified in charge 2b were dishonest in that you intended for anyone reading the controlled drugs book to believe that the stock had been so checked.”*

**This charge is found proved.**

In reaching this decision, the panel took into account your evidence, and the CD record.

Again, the panel decided on the balance of probabilities that you likely filled in the CD records believing the stock levels to be accurate. However, the panel considered the purpose of the CD record, and that it is used to confirm stock levels and to account for the use and disposal of each and every item of medication. The panel concluded that by the very act of signing off each entry you intended for the next person to regard the record as accurate. Therefore, on the balance of probabilities, the panel determined that this charge is found proved.

## **Fitness to practise**

You gave evidence under affirmation at the impairment stage.

You told the panel that you remained committed to nursing. You informed the panel that you made a lot of progress while working at Aspen Manor Care Home (Aspen), even though you were only there for four months from 12 April 2022, as you had a lot of support and mentoring from your manager.

In response to questions from Mr Lambert, you confirmed that you only worked at Aspen for four months [PRIVATE] and were still in probation at that time. You informed the panel that [PRIVATE] you were invited to step up as clinical lead so you expect you would have passed your probationary period. You told the panel that your manager is anticipating your return to work with fewer or no restrictions. You also confirmed that you had completed additional one to one drug training with your manager at Aspen.

The panel asked you about the drugs training you received at Aspen and what you would do to ensure that you do not repeat your conduct. You informed the panel that everyone who had medication training at Aspen is allowed to deal with CDs.

The panel noted that your conduct at charge 2b led to a discrepancy in reporting the stock levels of CDs and asked how you would avoid this in future. You said that you had learned from previous errors and where you used to estimate the time and anticipate the stock levels in advance, now you are only writing in the record at the same time as you complete the checks, are careful to record the exact time, and take all the medication out of the boxes to count everything. You told the panel that you do this at the beginning and end of each shift. You also told the panel that while you were initially supervised by your manager, you have since been assessed as competent to do this independently.

The panel asked what you have learned through this experience. You informed the panel that when you took on the added responsibilities of other workers at the Home, such as

the district nurses and filling in additional shifts as a nurse, it overloaded an already busy workplan and was more than you were able to do. You said that you had not wanted to say no to your manager at the time, but you have learned that you need to go at your own pace to ensure that you are doing everything correctly. You said that you are keeping up to date with relevant policy updates from Aspen, which are emailed to you every week, and signing online to indicate that you have read the update. You told the panel that Aspen is a smaller company, that the training is more thorough and that you are more supported.

The panel then asked how likely you are to repeat the behaviours found proved. You said that you will not put yourself in this position again and will make sure you can do everything you can to make sure you never face such allegations again.

[PRIVATE]

Mr Lambert then asked how much more responsibility you would be taking on if promoted to clinical lead. You clarified that, at the time your manager suggested the promotion, she wanted you to be freer from your nursing role to train more staff. You informed the panel that Aspen is a nursing home that does not have nursing patients at the moment but wants to ensure that all the staff are training accordingly so that when there are nursing patients everyone is trained properly to care for them. You said that while the role of clinical lead has more responsibility, it is not more work.

### **Submissions on misconduct**

Mr Lambert invited the panel to take the view that the facts found proved amount to misconduct. He submitted that the charges found proved are serious and do amount to misconduct and give rise to a real concern regarding your conduct.

Mr Lambert submitted that your conduct amounted to serious breaches of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the

Code) which constituted misconduct. He submitted that you had breached paragraphs 10 and 10.3 in your failure to keep accurate records. Mr Lambert further submitted that you had breached paragraphs 18, 18.2 and 18.4 in your mismanagement of CDs. Mr Lambert finally submitted that you did not comply with your duty of candour, and in doing so breached paragraphs 20, 20.1, and 20.2. He submitted that you breached a fundamental tenet of nursing by acting dishonestly, and that complacency by a registrant in completing the CD record is serious as this is a legal document.

### **Submissions on impairment**

Mr Lambert 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), and *Cohen v GMC* [2008] EWHC 581 (Admin).

Mr Lambert submitted that your practice is currently impaired and that all four limbs of the test in *Grant* are engaged. He submitted that, though there is no evidence of direct harm to patients, your conduct at charge 2b led to an investigation in the Home which suggests there was a real risk of harm to patients. He further submitted that the charges of dishonesty at 3a and 3b could cause the public real concern, which is not diminished by any contextual factors at the time.

Regarding the questions in *Cohen*, and whether the misconduct is remediable, Mr Lambert submitted that the first step is genuine insight and an understanding not only of why signing the record accurately is so important, or why counting the drugs at the end of the day is important, but also why honesty in doing those things is so important.

Mr Lambert submitted that there is a real prospect that the misconduct is remediable and noted that you have taken steps towards remedying the misconduct. However, he



submitted that it has not yet been fully remedied and that more evidence of insight and additional training is necessary to demonstrate that your practice is not impaired.

Mr Lambert submitted that impairment is made out at this stage, noting that the finding of dishonesty is particularly concerning. He submitted that it would undermine public confidence in the profession if you were not found to be currently impaired.

You are unrepresented and did not make formal submissions. However, in your oral evidence and despite not having formally admitted the charges, you indicated that you accept that the charges found proved, including the finding of dishonesty, amounted to misconduct that was serious. You said that the public would be concerned when a panel finds a nurse dishonest.

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; *PSA v GMC and Uppal* (2015) EWHC 1947 (Admin); and *GMC v Chaudhary* (2017) EWHC 2561 (Admin).

### **Decision and reasons on misconduct**

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.

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.*’

The panel had regard to the terms of the Code in making its decision.

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 breaches of the Code. Specifically:

***‘10 Keep clear and accurate records relevant to your practice***

***This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.***

*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.’*

***Promote professionalism and trust***

*You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.*

***20 Uphold the reputation of your profession at all times.***

*To achieve this, you must:*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

### **Charge 2b**

The panel considered that your conduct in relation to charge 2b constituted a significant breach of a fundamental tenet of the profession. Despite there being no evidence that actual harm was caused, the panel was of the view that accurate record keeping is a fundamental requirement for the profession and that an inaccurate record, particularly a CD record which suggests something happened which did not, can create a risk of harm. The panel therefore determined that your actions at charge 2b were serious and fell short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Charges 3a and 3b**

Honesty is a fundamental tenet of the nursing profession. The panel concluded that your actions at charges 3a and 3b fell short of the conduct and standards expected of a nurse and amounted to serious 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.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct always 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 found all four limbs of *Grant* are engaged in this case.

The panel found that patients were put at risk of harm as a result of your misconduct. It found that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its Regulator did not consider charges relating to dishonesty as serious.

Having regard to the charge of inaccurate record keeping at 2b, the panel considered that this is a discrete area of clinical practice and should be able to be addressed and remediated through practical learning. The panel asked and heard from you that you have completed more training on the management of CDs at Aspen, and that you were supervised through this additional training before being signed off as competent with CDs. It noted that this was corroborated by the written reference from the home manager of Aspen. The panel is satisfied that your misconduct at charge 2b has been remedied. Regarding the risk of repetition, the panel bore in mind that your misconduct at charge 2b was at a time of great stress, [PRIVATE], during COVID-19, where you were performing a number of roles and had no meaningful support in place, and this was during your probationary period. The panel also acknowledged that you have been registered with the NMC for over ten years and have never had any issues raised against your practice before now.

The panel considered that you were impaired with regard to public protection at the time of the incident which led to the charge. However, you have developed full insight into your conduct, have reflected and apologised for your errors, and the panel considered that this behaviour was out of character and therefore it is highly unlikely to be repeated.

Throughout the hearing you have demonstrated that you now clearly understand the principle of always putting the needs of patients first and the panel considered that you will encompass this in your practice going forward. The panel noted that the breaches of the Code and your conduct provided no personal gain for yourself and there was no

premeditation involved. The panel therefore concluded that a finding of current impairment is not necessary on the grounds of public protection.

The panel next considered whether a finding of current impairment in relation to public interest is necessary for charge 2b. The panel determined that a fully informed member of the public, with full knowledge of the circumstances of this case and the matters set out above, would not think that a finding of current impairment on public interest grounds was necessary to uphold proper professional standards and public confidence in the profession. Accordingly, the panel concluded that a finding of current impairment on public interest grounds is not required.

The panel next considered the charges of dishonesty at 3a and 3b. It noted that while remediating dishonesty is hard, it is not impossible. The panel noted that your dishonesty occurred during exceptional circumstances and was completely out of character. However, the panel was of the view that a reasonable and properly informed member of the public would know that the CD record was an important legal document and would be concerned that there were several instances of dishonest recording.

The panel noted that although you did not admit to the charges of dishonesty, you were not represented, your English is strong but is not your first language, and that during the hearing you demonstrated a clear understanding of why your actions were wrong. You also accepted the panel's findings and understood the impact of your actions on residents and colleagues. The panel has had opportunity to observe you over the five days of this hearing as you continue to engage fully with NMC proceedings and are satisfied that you are generally of good character. The panel ultimately concluded that you have shown full remorse and have learned from your mistakes. The panel has determined that this was an isolated incident in particularly challenging circumstances and is highly unlikely to be repeated. The panel found you to be a caring nurse and in all the circumstances a finding of current impairment on public protection grounds for your dishonesty is not required.

The panel bore in mind 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 your dishonesty was not premeditated, was not done for any personal gain, and was out of character for you and not at the most serious end of the scale. However, the panel determined that a finding of impairment is necessary on the ground of public interest to assure the public and the profession that honesty and accuracy must be maintained when checking CD stock and record keeping must be meticulous.

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

## **Sanction**

The panel considered this case very carefully and decided to make a caution order for a period of two years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

## **Submissions on sanction**

The panel had regard to the Notice of Hearing, dated 6 December 2023, in which the NMC had advised you that it would seek the imposition of a striking off order if the panel found your fitness to practise currently impaired. During the course of the hearing, the NMC revised its proposal and submits today that a caution order is more appropriate in light of the panel's findings.

Mr Lambert invited the panel to review its findings in relation to the facts of the case and its decision in relation to impairment. He acknowledged that your fitness to practise was found impaired on a very limited basis, namely on the public interest grounds specifically to mark that allegations of dishonesty are taken seriously.

Mr Lambert reminded the panel of the positive reports relating to your nursing practice which addressed your dedication to your practice.

Mr Lambert submitted that given the panels factual findings have been addressed by you, the NMCs position is that a caution order should be the sanction imposed in this case for a period of three years.

Mr Lambert submitted that the NMC's position is that a caution order would be sufficient to meet the public interest and to reassure the public that there is some cautionary effect on your registration.



The panel also bore in mind submissions from you. You stated that you understand the NMC's position that a caution order is necessary and might be for a period of three years. You stated that you are unsure of when you will be returning to nursing practice, but you hope that it will be by the end of this year.

### **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 identified the following as an aggravating feature in this case:

- Conduct which in the past put patients at a risk of harm

Whilst the panel identified the risk to patients as an aggravating feature in this case, it was satisfied that this was not a present feature.

The panel determined that the aggravating feature is far outweighed by the mitigating features in this case. The panel identified the mitigating features as follows:

- Full remorse and insight into conduct
- Evidence of reflection into failures
- Apologies made by you for the errors
- A discrete area (albeit over a two-day period) in exceptionally difficult working circumstances
- Previous history of good character
- Personal mitigation

- Evidence of steps taken to strengthen practice, which included evidence of successful completion of medication management and administration including CDs.

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

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 is satisfied that you have shown full insight into your conduct. The panel noted that you have apologised to this panel for your misconduct, showing evidence of genuine remorse. You have engaged with the NMC since referral. The panel has been told that there have been no adverse findings in relation to your practice either before or since the time of these concerns.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted that these concerns arose in the exceptional circumstances set out above where you were faced with difficult decisions to make within the workplace. The panel has taken into account the level of insight, remorse and reflections you have evidenced and that given it has determined that there are no public protection issues identified in your nursing practice, a conditions of practice order is not necessary.

The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist your return to nursing practice. Further, the panel concluded that a conditions of practice order would not be

appropriate as there are no identifiable areas of your practice which require retraining. The panel further considered that a suspension order would be wholly disproportionate in this case.

For all the reasons above, the panel has decided to impose a caution order. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of two years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse. For the next two years your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

The panel was satisfied that the imposition of a caution order for a period of two years addresses the overarching objectives of protecting the public and maintaining public confidence in the nursing profession and its regulator.

This decision will be confirmed to you in writing.

That concludes this determination.