

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

**Substantive Meeting  
Tuesday, 20 – Wednesday, 21 February 2024**

Virtual Meeting

**Name of Registrant:** Rajesh Malagithi

**NMC PIN** 02G07900

**Part(s) of the register:** RN1: Adult nurse, level 1 (23 July 2002)

**Relevant Location:** Norwich

**Type of case:** Misconduct

**Panel members:** Janet Fisher (Chair, lay member)  
Emily Davies (Registrant member)  
Mary Golden (Lay member)

**Legal Assessor:** Nigel Pascoe KC

**Hearings Coordinator:** Catherine Acevedo

**Facts proved:** Charges 1a, 1b

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** Suspension order (12 months)

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

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Malagithi's registered email address by secure email on 15 January 2024.

The panel accepted the advice of the legal assessor.

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

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

## **Details of charge**

That you, a registered nurse,

1. On 16 June 2022:
  - a) Attended work when you were unfit to carry out your duties as a nurse safely in that you were under the influence of alcohol.
  - b) Attempted to administer medication to residents in your care whilst under the influence of alcohol.

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

## **Background**

Mr Malagithi is a Registered Adult Nurse, who entered the Applicant's register of nurses, midwives and nursing associates on 23 July 2002 after qualifying in 1997 in India.

Initially the NMC contacted Mr Malagithi's listed employers on 17 June 2022 in relation to an unrelated referral and received a response from Roster Healthcare Agency ('the Agency'). The Agency advised that on 16 June 2022, Mr Malagithi had reportedly attended Woodland Care Home ('the Home') for a day shift as an agency nurse whilst under the influence of alcohol.

Witness 1 was the night shift nurse on duty preparing to hand over to Mr Malagithi on the day shift. Mr Malagithi called the Home at 07:25 to advise that he had fallen down the stairs, is unwell, and cannot attend his shift. The Agency also called to inform the Home that he was unavailable. Around 08:00 Mr Malagithi called again and said he was on his way to the Home to work. This was then reiterated by the Agency. He arrived 50 minutes late. When Witness 1 began the hand over with Mr Malagithi, Witness 1 stated that she could smell alcohol on his breath when he spoke. Witness 1 also reported that Mr Malagithi was distracted and appeared vacant. Mr Malagithi then covered himself in a large amount of aftershave.

Due to Mr Malagithi's behaviour and her belief that he was intoxicated, Witness 1 directed Mr Malagithi to stay in the office. Witness 1 decided to stay at the Home until her manager arrived. Witness 1 then started the morning medication round.

Against the direction of Witness 1, Mr Malagithi opened the medication trolley and began dispensing medication. Witness 1 intervened to stop this, locked the trolley and sent Mr Malagithi back to the staff area. No medication had been administered.

Mr Malagithi then told Witness 1 that he was leaving the Home. He was at the Home for approximately 1 hour. Mr Malagithi did not work at the Home again.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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 had regard to the written statement of the following witness on behalf of the NMC:

- Witness 1: Registered Nurse on night shift at the Home.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

### **Charge 1a**

On 16 June 2022:

- a) Attended work when you were unfit to carry out your duties as a nurse safely in that you were under the influence of alcohol.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 1.

The panel had not received any response to the charges from Mr Malagithi.

Witness 1 said in her witness statement to the NMC *“At approximately 8:20am, [Mr Malagithi] arrived at the home. I instantly knew he was not himself, he looked dishevelled and was holding his shoulder...I began giving [Mr Malagithi] a handover of care but he appeared very distracted and vacant, as if he was not listening to anything I was saying. When [Mr Malagithi] spoke I could smell alcohol on his breath and I was concerned that he*

*was intoxicated. [Mr Malagithi] must have realised that I could smell the alcohol as he took a bottle of aftershave from his bag and covered himself with it”.*

The panel found Witness 1’s written evidence of the incident to be credible and reliable. She provided a sufficiently detailed account of how Mr Malagithi had presented at work for his morning shift and that, in her opinion he was not capable of working. The panel accepted her evidence in relation to this incident.

The panel determined, on the balance of probabilities, that Mr Malagithi had attended work whilst under the influence of alcohol. The panel concluded that by being under the influence of alcohol and presenting as he did to his colleague, Mr Malagithi was unfit to work and carry out his duties as a nurse safely. The panel therefore found charge 1a proved.

### **Charge 1b**

On 16 June 2022:

- b) Attempted to administer medication to residents in your care whilst under the influence of alcohol.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 1.

Witness 1 said in her witness statement to the NMC:

*“Due to [Mr Malagithi]’s behaviour and the smell of alcohol I was not happy for [Mr Malagithi] to have any resident interaction and decided to stay at the Home until the Home Manager arrived. I told [Mr Malagithi] to make himself a cup of tea and I would do the residents morning medication round. [Mr Malagithi] kept commenting that he was fine but I knew he was not capable of working. [Mr Malagithi] went to the staff area and I began the residents medications with the assistance of one of our Care Practitioners. We both took control of medication trolleys and began the round.*

*At some stage, an emergency alarm was activated and the Care Practitioner went to assist. I noticed that they had locked the trolley but the keys had been left on top. [Mr Malagithi] appeared and opened the Trolley and began dispensing medication. I immediately stopped him, told him to go back and sit down in the staff area and locked the trolley. [Mr Malagithi] commented that he would go and sit in his car. When the Cre Practitioner returned, we checked the trolley and confirmed that [Mr Malagithi] had prepared the correct medication and had not administered medication to any residents”.*

The panel considered that Witness 1 provided a sufficiently detailed account of how Mr Malagithi had unlocked the medication trolley and began dispensing medication after she had noticed his behaviour and that his breath smelled of alcohol. Having already found Witness 1 to be a credible and reliable witness to the incident, the panel accepted her evidence.

The panel determined, on the balance of probabilities, that Mr Malagithi attempted to administer medication to residents in his care whilst under the influence of alcohol. The panel therefore found charge 1b 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 Malagithi'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 Malagithi's fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

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

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

The NMC identified the specific, relevant standards where Mr Malagithi's actions amounted to misconduct. The NMC considers that Mr Malagithi's conduct at both charges 1a and 1b fell seriously short of the standards expected of a registered nurse. Mr Malagithi's conduct is serious as ensuring patient safety and effective care are fundamental tenets of the profession. It is submitted that his actions amount to misconduct. Mr Malagithi's conduct would be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession.

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC consider that as Mr Malagithi has not provided a response, and in the absence of any evidence that he has addressed the concerns, there remains a risk to the health,

safety or wellbeing of the public. A finding of impairment is therefore required for the protection of the public.

The NMC consider that a finding of impairment on public interest grounds is also required to declare and uphold proper standards and to maintain confidence in the profession and the NMC as a regulator. If no such finding of impairment is made this is likely to undermine confidence in the profession. The NMC considers there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour.

The NMC therefore invited the panel to find Mr Malagithi's fitness to practise impaired on both public protection grounds and in the wider public interest.

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

### **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 Malagithi's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Malagithi's actions amounted to a breach of the Code. Specifically:

*"8 Work co-operatively*

*To achieve this, you must*

*8.4 work with colleagues to evaluate the quality of your work and that of the team.*

*8.5 work with colleagues to preserve the safety of those receiving care*

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



*To achieve this, you must:*

*19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

*19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care 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*

*20.2 act with honesty and integrity at all times*

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

*20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to”*

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

In relation to charge 1a the panel considered that Mr Malagithi’s conduct in attending work whilst under the influence of alcohol, therefore was unfit to carry out his duties as a nurse safely, and falls seriously short of the standards expected of a registered nurse. His conduct was serious and put patients at risk of harm as his judgement would have been affected. The panel noted that actual harm was not caused because Witness 1 intervened and stopped Mr Malagithi from interacting with patients.

In relation to charge 1b the panel considered that Mr Malagithi’s conduct in attempting to administer medication whilst intoxicated falls seriously short of the standards expected of a registered nurse. The panel considered that Mr Malagithi’s conduct is serious as ensuring patient safety and providing effective care are fundamental tenets of the profession. His conduct put patients at risk of harm as his judgement would have been affected. The panel

note that actual harm was not caused because Witness 1 intervened and stopped Mr Malagithi from administering any medication to patients.

The panel was of the view that Mr Malagithi's conduct would be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession. The panel therefore found that Mr Malagithi's actions at charge 1a and 1b fell 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 Malagithi's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

*'The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 at all times justifies both their patients' and the public's trust in the profession.

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

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only*

*whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

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

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

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

The panel found limbs a, b and c engaged in the *Grant* test. The panel found that patients were put at risk of harm as a result of Mr Malagithi's misconduct. Mr Malagithi's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mr Malagithi had made no responses to the charges. It therefore had no evidence before it that Mr Malagithi had reflected on this incident or expressed remorse for his actions. The panel also had no evidence that Mr Malagithi had taken steps to address the concerns.

The panel was satisfied that the misconduct in this case is capable of being addressed. However, the panel is of the view that there is a risk of repetition based on the absence of evidence of insight or steps taken by Mr Malagithi to address the concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

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

Having regard to all of the above, the panel was satisfied that Mr Malagithi'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 12 months. The effect of this order is that the NMC register will show that Mr Malagithi's registration has been suspended.

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

## **Representations on sanction**

The NMC consider that a suspension order for a period of 12 months with a review is proportionate in this case. The NMC outlined what they consider to be aggravating and mitigating features in this case.

Taking the least serious sanctions first, the NMC submitted that taking no action or imposing a caution order would not be appropriate in this case in view of the seriousness and would not address the public protection and public interest concerns.

In relation to a conditions of practice order, the NMC referred the panel to correspondence from Mr Malagithi where he has stated that he is not working in a healthcare setting and does not plan to in the future. The NMC therefore submitted that suitable and workable conditions cannot be formulated. A conditions of practice order would not be sufficient to mark the seriousness of the concerns.

The NMC submitted that, taking into account the nature and seriousness of the conduct, temporary suspension from the register with a review at the end of the 12 months would be sufficient to protect patients, public confidence in nurses, the NMC as its regulator and professional standards. Furthermore, a suspension order would adequately protect the public given the nature of the conduct.

The NMC submitted that the conduct displayed by Mr Malagithi is not incompatible with him remaining on the register and therefore to impose a striking-off order would be disproportionate at this time.

### **Decision and reasons on sanction**

Having found Mr Malagithi'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:

- Mr Malagithi's conduct was directly linked to clinical practice and put patients at risk of suffering harm.
- Lack of evidence of insight into misconduct.

The panel considered there was no evidence of mitigation.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Malagithi'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 Malagithi's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Malagithi's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel noted that Mr Malagithi has indicated that he is not currently working as a nurse and does not intend to in the future. Mr Malagithi has expressed no willingness to comply with conditions and, considering his lack of engagement with these proceedings, the panel was not satisfied that he would adhere to a conditions of practice order. The panel concluded that the placing of conditions on Mr Malagithi's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that although there was no evidence that Mr Malagithi had repeated the behaviour, in the absence of evidence of insight, there is a risk of repetition. However, the panel considered that Mr Malagithi's misconduct involved a single incident and there was no evidence of harmful deep-seated personality or attitudinal problems. The panel was therefore satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Malagithi's case to impose a striking-off order.

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

The panel noted the hardship such an order will inevitably cause Mr Malagithi. However, he has informed the panel that he is not currently seeking to work as a nurse, and in any event 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 12 months was appropriate in this case to mark the seriousness of the misconduct. The panel also considered that this would allow sufficient time for Mr Malagithi to demonstrate that he can begin to address the concerns.

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:

- A personal statement that reflects:
  - The circumstances which led to the conduct in the charges.
  - The impact of the misconduct on patients, colleagues and the profession.
  - Details of any steps taken to address the concerns.
- Testimonials from a line manager or supervisor that address your conduct and behaviour at work.

This decision will be confirmed to Mr Malagithi in writing.

### **Interim order**

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Malagithi's own interests until the suspension order takes effect. The panel heard and accepted the advice of the legal assessor.

### **Representations on interim order**



The panel took account of the representations made by the NMC, that an interim order is necessary on the grounds of public protection and is otherwise in the public interest. An interim suspension order of 18 months is required to cover any possible appeal period.

### **Decision and reasons on interim order**

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period.

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

That concludes this determination.