

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

**Monday, 7 October 2019 – Thursday, 10 October 2019**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of registrant:</b>	Ian Arfon Evans
<b>NMC PIN:</b>	88F0069W
<b>Part(s) of the register:</b>	Registered Nurse – Sub-part 1 Adult Nursing – 23 December 1992  Registered Nurse – Sub-part 2 Adult Nursing – 28 February 1992
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Nicholas Cook (Chair, Lay member) Donna Green (Registrant member) Tricia Breslin (Lay member)
<b>Legal Assessor:</b>	Adrienne Morgan
<b>Panel Secretary:</b>	Philip Austin
<b>Mr Evans:</b>	Not present and not represented in absence
<b>Nursing and Midwifery Council:</b>	Represented by David Claydon, Case Presenter
<b>Facts proved:</b>	Charges 2 and 3 in their entirety
<b>Facts proved by admission:</b>	Charge 1
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Currently impaired
<b>Sanction:</b>	Striking-off order
<b>Interim Order:</b>	Interim suspension order – 18 months

## **Details of charge: (Before amendments)**

That you, a registered nurse:

- 1) Prescribed medication to patients when you had not passed the relevant Nurse Prescribing Course
  
- 2) Failed to show the required level of integrity in that you:
  - a) Did not make enquires with the university regarding your qualification status and / or overall result on the Nurse Practitioners Course
  - b) Did not inform your employer of your failure of the Nurse Practitioners Course
  - c) Prescribed medication without the relevant NMC PIN
  - d) Failed to undertake continuing professional development (CPD) as required
  
- 3) Were dishonest in your actions in Charge 1 above in that you:
  - a) Actively held out to the Trust that you had passed the course and were entitled to prescribe medication
  - b) Misled the Trust that you could and / or would provide the course certificate showing you had passed the course
  - c) Denied to the Trust that you had prescribed medication when you had
  - d) Misled the Trust that the course documents would be on the T drive of your work computer

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Evans was not in attendance and that written notice of this hearing had been sent to Mr Evans' registered address by recorded delivery and by first class post on 6 September 2019. The 'Royal Mail Signed For' service confirmed that the notice of this hearing had been collected by someone who had signed for it with the name of 'EVANS' at a designated pick-up point on 9 September 2019. Further, the panel noted that notice of this hearing was also sent to Mr Evans' representative at the Royal College of Nursing ("RCN") on 6 September 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Evans' right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Claydon submitted the NMC 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.

In the light of all of the information available, the panel was satisfied that Mr Evans has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

## **Decision on proceeding in the absence of the Registrant**

The panel next considered whether it should proceed in the absence of Mr Evans.

The panel had regard to Rule 21 (2) which states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

(a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

(b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or

(c) may adjourn the hearing and issue directions.

Mr Claydon invited the panel to continue in the absence of Mr Evans on the basis that he had voluntarily absented himself. Mr Claydon referred the panel to the letter from the RCN dated 4 October 2019, in which it is stated “Our member will not be attending the hearing nor will he be represented. No disrespect is intended by his non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in his absence. He is keen to engage with the proceedings. We set out below our member’s representations and ask that this letter be placed before the panel at the hearing.”. As a consequence, Mr Claydon submitted that there was no reason to believe that an adjournment would secure Mr Evans’ attendance on some future occasion.

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*” as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. The panel took account of the guidance given in the case of *General medical Council v Adeogba [2016] EWCA Civ 162*.

The panel took account of the RCN letter dated 4 October 2019 which contained written submissions from the RCN on behalf of Mr Evans. Attached to this letter was an undated reflective piece submitted by Mr Evans.

The panel has decided to proceed in the absence of Mr Evans. In reaching this decision, the panel has considered the submissions of Mr Claydon, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of Jones. It has had regard to the overall interests of justice and fairness to all parties. The panel noted that:

- The RCN informed the panel that Mr Evans does not wish to attend or be represented and was happy for the hearing to proceed in his absence;
- no application for an adjournment has been made by Mr Evans;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- The RCN has provided written submissions on behalf of Mr Evans, and he has also provided an undated reflective piece;
- 3 witnesses have been requested to attend today to give live evidence, others are due to attend;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred in 2015 to 2018, and further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Evans in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he will not be able to challenge the live evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel's judgment, this can be mitigated. The panel can take into account 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, any disadvantage is the consequence of Mr Evans' decisions to absent himself from the hearing, waive his rights to attend and/or be represented and to not provide evidence.

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

## **Decision and reasons on application to amend the charge**

The panel heard an application made by Mr Claydon to amend the wording of charges 2a and 2b, by replacing the word 'Practitioners' with the word 'Prescribing'. He submitted that these were typographical errors to both charges which do not change the scope of the allegations that Mr Evans faces.

Mr Claydon submitted that it is clear from the evidence that has been sent to Mr Evans that the regulatory concerns are in respect of his failures regarding the Nurse Prescribing Course and not a Nurse Practitioners Course.

Mr Claydon submitted that there is no prejudice or disadvantage to Mr Evans in having this amendment made. He submitted that the proposed amendments would provide clarity and more accurately reflect the evidence before the NMC.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

- (a) the charge set out in the notice of hearing; or
- (b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such amendments, as applied for, were in the interest of justice.

The panel was satisfied that the regulatory concerns related to Mr Evans' failures regarding a Nurse Prescribers Course and not a Nurse Practitioners Course. It concluded that the RCN and Mr Evans would be aware of this given the considerable amount of evidence that had been provided to them in order for them to present their case.

As such, the panel was of the view that Mr Evans would not be prejudiced or disadvantaged in any way by the panel allowing the amendment.

The panel therefore concluded that the typographical errors contained in charges 2a and 2b were uncontentious and did not change the content of the allegations against Mr Evans.

It decided it was appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.



### **Details of charge: (After amendments)**

That you, a registered nurse:

- 1) Prescribed medication to patients when you had not passed the relevant Nurse Prescribing Course
  
- 2) Failed to show the required level of integrity in that you:
  - a) Did not make enquires with the university regarding your qualification status and / or overall result on the Nurse Prescribing Course.
  - b) Did not inform your employer of your failure of the Nurse Prescribing Course
  - c) Prescribed medication without the relevant NMC PIN
  - d) Failed to undertake continuing professional development (“CPD”) as required
  
- 3) Were dishonest in your actions in Charge 1 above in that you:
  - a) Actively held out to the Trust that you had passed the course and were entitled to prescribe medication
  - b) Misled the Trust that you could and / or would provide the course certificate showing you had passed the course
  - c) Denied to the Trust that you had prescribed medication when you had
  - d) Misled the Trust that the course documents would be on the T: drive of your work computer

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

## **Admissions**

Mr Claydon referred the panel to the letter from the RCN dated 4 October 2019, which sets out Mr Evans' position.

In this letter, the RCN has stated that "Mr Evans accepts the charges against him. He further accepts that due to the nature of the charges, and the seriousness of the conduct identified, that these matters amount to misconduct and his fitness to practise is impaired". However, Mr Evans had stated in his undated reflective piece that "At no time did I intend to mislead anybody or in any way be dishonest".

Mr Claydon submitted that although the RCN have been instructed to represent Mr Evans, these two statements are at odds with one another. He submitted that where there is any doubt, the panel should hear the evidence of the NMC witnesses and make its own findings in respect of the facts of this case.

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

The panel found charge 1 proved by way of admission. It noted that Mr Evans has not contested this charge in his reflective piece.

In respect of charges 2 and 3, the panel decided that it would be appropriate to hear the evidence called by the NMC, in establishing whether the facts are found proved in this case. It noted that charges 2 and 3 may well be linked, as it is alleged that Mr Evans failed to show the required level of integrity, and that his actions were dishonest, therefore relating directly to Mr Evans' professional conduct.

### **Application to hear Mr 4's evidence via video link:**

Mr Claydon invited the panel to hear the evidence of Mr 4 via video link. He submitted that Mr 4 was warned to attend the hearing to give live evidence to the panel, however, due to working commitments, he is unable to attend the hearing centre in person. Mr Claydon informed the panel that Mr 4 is the Senior Lecturer Programme Leader of the Nurse Prescribers Course at Bournemouth University ("the University"), where Mr Evans had claimed to have successfully completed the course.

Mr Claydon submitted that there is no prejudice to Mr Evans in hearing Mr 4's evidence via video link, as there is very little difference in comparison to having him present in person at the hearing centre. He submitted that the panel will still be able to assess Mr 4's demeanour as he will be visible on the television screen, and that Mr Evans is not in attendance, so would not be in a position to cross-examine Mr 4 in any event. The panel noted that Mr 4 was unable to attend the hearing centre due to working commitments. The panel considered Ms 4's evidence to be relevant to the matters it was considering.

The panel noted that neither the RCN, nor Mr Evans, had not been informed that the NMC was planning to call Mr 4 by video link, and as such, neither had provided a response to this application. However, the panel was of the view that, due to Mr Evans voluntarily absenting himself, he had waived his rights in responding to this application at this time. The panel did not believe that there would be any prejudice to Mr Evans if the evidence was given by video link rather than in person.

The panel determined that it was fair and practicable to hear the evidence of Mr 4 by video link in the circumstances of this case.

### **Application to have Ms 5's witness statement tread into the record**

Mr Claydon invited the panel to read the witness statement of Ms 5 into the record.

The panel heard and accepted the advice of the legal assessor

The panel noted that Ms 5's evidence was not contested by Mr Evans. It was supported by the documentary evidence provided by her.

The panel therefore decided to allow Ms 5's witness statement to be read into the record. It considered there to be no prejudice to Mr Evans in doing so.

## **Background**

The NMC received a referral from Somerset Partnership NHS Foundation Trust (“the Trust”) on 15 March 2018 in relation to Mr Evans.

It is alleged that Mr Evans issued 313 prescriptions (including 2 for controlled drugs) for 31 different patients over a period from November 2017 to January 2018, despite not having passed the relevant and required Nurse Prescribers Course.

At the time of these events Mr Evans was employed by the Trust as a consultant nurse for stroke patients at South Petherton Hospital and was recognised as a non-medical prescriber within his staff team.

The Trust became concerned as a result of the implementation of Electronic Prescribing (e-prescribing) at South Petherton Hospital. In December 2017, the Non-Medical Prescribing Lead, Mr 2 undertook an audit of the Trusts database of prescribing practitioners. He noticed that Mr Evans was not on the Trust’s register. The Trust’s Clinical Systems Lead checked the NMC database for evidence of Mr Evans’ qualification but was unable to find any evidence of it. On 22 January 2018, Mr 2 requested that Mr Evans provide evidence of his prescribing qualification and informed him to stop prescribing until such evidence was forthcoming.

It is alleged that Mr Evans claimed that the University where he had attended the V300 course had made a mistake and had not notified the NMC that he had passed the course. It is alleged that he said that he was not aware that he was not recorded as a Non-Medical Prescriber (“NMP”) on the NMC database. He accepted that he had not submitted the required portfolio which was part of the work required for the qualification by the first date of November 2015 but said that he had submitted this by the second date. It is alleged that he claimed that the University must have lost the portfolio but that he must have saved this on his daughter’s computer which he had given to her to take to university but he failed to produce this.

A copy of the letter dated 5 April 2016, which had originally been sent to Mr Evans by the University was then supplied to the Trust by the University. This letter told Mr Evans that he had failed to complete the course requirements and the decision of the Assessment Board was 'Fail. Withdraw No Award'. The University informed the Trust that Mr Evans had passed the numeracy exam and the 2 hour written exam but had failed to take an Objective Structured Clinical Examination ("OCSE") and had failed to submit a portfolio.

It is alleged that Mr Evans initially denied ever writing any prescriptions, but subsequently admitted writing them to the Trust. However, he maintained throughout that he was qualified and it was the University's error that this had not been recorded. It is alleged that he failed to provide documentation relating to this qualification, despite repeated requests from the Trust.

## **Decision on the findings on facts and reasons**

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Claydon, on behalf of the NMC.

The panel heard and accepted the advice of the legal assessor who referred to the case of *Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366* and *Ivey v Genting Casinos[2017] UKSC 67*.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

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

The panel heard oral evidence from five witnesses tendered on behalf of the NMC who, at the time of the events, were employed in the following roles:

Ms 1 – Interim Director of Nursing at the Trust

Mr 2 – Head of Learning and Development and Medical Prescribing Lead at South Petherton Hospital, which forms part of the Trust.

Ms 3 – Interim Head of Nursing at the Trust (part-time)

Mr 4 – Senior Lecturer and Programme Leader at the University

Ms 5 – Senior Registration Officer at the NMC

Ms 5 had adduced a supplementary witness statement for these proceedings for which she attended to give evidence on a minor point of clarification. The panel had previously determined to have her original witness statement read into the record by Mr Claydon.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

Overall, it considered the NMC witnesses to have borne no ill-will towards Mr Evans when giving their evidence, and determined that they had attempted to assist the panel to the best of their knowledge and belief.

The panel found Ms 1 to be a credible and reliable witness who gave a clear account of her involvement with Mr Evans. The panel noted that Ms 1 could only provide limited evidence as she had been concerned at the initial stages with trying to establish the problem and encourage Mr Evans to sort it out. She was balanced and fair to Mr Evans, in that she accepted when she could not recollect certain events due to the passage of time.

The panel found Mr 2 to be a credible, straightforward and reliable witness. It noted that whilst there were some discrepancies relating to the exact parts of the Nurse Prescribing Course that Mr Evans had allegedly not completed successfully, this did not fundamentally impact on Mr 2's credibility. Mr 2 was clear on the interactions he had with Mr Evans which was consistent with his NMC witness statement.

The panel considered Ms 3 to be a fair, balanced and credible witness when giving her oral evidence. It noted that Ms 3 accepted when she was not able to recollect certain events, and that she did not attempt to embellish her evidence. She was straightforward and professional in giving her evidence. Her oral evidence was consistent with her witness statement

The panel found Mr 4 to have been a credible, helpful and straightforward witness. He gave clear evidence and had a strong recollection of events which was consistent with his NMC witness statement.

The panel found Ms 5 to be a credible and straightforward witness. The panel had no reason to doubt the reliability of her evidence.



## **Charge 1**

- 1) Prescribed medication to patients when you had not passed the relevant Nurse Prescribing Course

**The panel found Charge 1 proved by way of admission.**

It decided that it would be fair and appropriate to consider charges 2 and 3 as contested issues, having specific regard to Mr Evans' reflective piece, despite the RCN's assertion that Mr Evan's accepts the charges against him.

The panel therefore went on to consider charges 2 and 3 in their entirety.

The panel considered each charge and made the following findings:

### **Charge 2a:**

- 2) Failed to show the required level of integrity in that you:
  - a) Did not make enquires with the university regarding your qualification status and / or overall result on the Nurse Prescribing Course.

**This charge is found proved.**

In reaching this decision, the panel took account of all the evidence adduced in this case.

In considering whether Mr Evan's had 'failed' to show the required level of integrity, the panel determined the panel must be satisfied that Mr Evans had a duty to make those

enquiries as to whether he had qualified. The panel understood that “integrity connotes adherence to the ethical standards of one’s own profession and that this involves more than mere honesty” and is linked to the manner in which the profession serves the public.

The panel had regard to Mr 4’s witness statement which stated that “At the beginning of the course all students are advised that they are not to prescribe until the qualification is recorded against their PIN on the NMC website, which could be a few months after they pass the course, because doing this would be an offence...Even if he was not present I would expect him to know this because he is a qualified nurse and it is common nursing knowledge that one cannot act as a nurse until it has been recorded against their PIN, even if they passed their university exams some time back”. Mr 4 also stated during his oral evidence that he went over this requirement both on the first and second days of the course which required 100% attendance from students. The panel noted that Mr Evans had confirmed that he had attended the course every day.

The panel also relied on the copy letters referred to in Mr 4’s evidence and sent by the University to Mr Evans dated 27 November 2015 and 5 April 2016 which were before the panel. The letter dated 27 November 2015 read that the decision of the Assessment Board was as follows:-

“Proceed (with Resits/Resubmissions outstanding): Non-submission at first attempt of Independent and Supplementary Prescribing C1 Portfolio”

The letter read that this was required by 20 January 2016. It read that the work would be regarded as a second attempt and a resubmission and that a student who failed an assessment might resubmit on no more than one occasion.

Mr Evans accepts that he failed to submit the portfolio at this time [PRIVATE].

The letter of 6 April 2016 told Mr Evans that he had not met the requirements of the course and the decision of the Assessment Board was

“Fail, withdraw. No Award

Non-submission of CWK1(Portfolia)/Exam2/Practice re-submissions.”

Mr 4’s evidence was that he could confirm that the letters were sent .His evidence was that Mr Evans did not contact the University at any time. However Mr Evans asserted that he visited the University to deliver his portfolio in January 2016 and subsequently, following advice from Ms 1, again in February 2018 to obtain a copy of the certificate.

Mr Evans submits that he did not recall receiving the letter of 6 April 2016.

The panel was of the view that there was a clear duty imposed on Mr Evans to have made enquires with the University regarding his qualification status and/or overall result on the Nurse Prescribing Course before prescribing medication to patients. He should also have registered his qualification with the NMC. It noted that the Nurse Prescribing Course is highly regarded amongst fellow nursing practitioners, and determined that there would have been a clear expectation on Mr Evans to have followed up on the progress he had made in obtaining this qualification even if he had not had this confirmed by the University. The panel has accepted on the balance of probabilities that Mr Evans was informed by the University that he had failed the course.

The panel decided that professional standards required a nurse to ensure that they had the necessary qualifications before treating patients and before prescribing for patients.

In not doing so, the panel concluded that this amounted to a failure to adhere to the ethical standards of the nursing profession and amounted to a lack of integrity.

Therefore, the panel found charge 2a proved.

## **Charge 2b:**

b) Did not inform your employer of your failure of the Nurse Prescribing Course

### **This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Ms 1, Mr 2 and Ms 3.

The panel noted that the Trust supported Mr Evans to undertake the Nurse Prescribing Course which had been publicly funded, and that this qualification was a fundamental requirement in order to prescribe medication. It noted that upon successful completion of this course, the qualification would have been recorded on Mr Evans' entry on the NMC register. Ms 3 had stated during her oral evidence that the Trust had wanted all registered nurses of Mr Evans' level to be qualified to this extent, which would have benefitted both the Trust and Mr Evans professionally.

The panel also took account of Mr 4's witness statement in which it was stated "...I undertook an audit of the Trust database of practitioners that were able to prescribe medication. I noticed that Ian [Mr Evans] was not recorded on the Non-Medical Prescribing ("NMP") database...Ian [Mr Evans] had no recorded prescriber qualification on the NMC database..."

The panel considered there to have been a clear duty imposed on Mr Evans to inform his employer of his failure to successfully complete the Nurse Prescribing Course. It determined that Mr Evans would have been aware of this expectation, as he was a consultant nurse at the time and, as such, would probably have known that his authorisation to prescribe medication would have been revoked by the Trust until he had successfully completed this course. This is compounded by the letter from the

University which informed Mr Evans that he had not successfully completed the Nurse Prescribing Course.

The panel concluded that this amounted to a failure to adhere to the ethical standards of the nursing profession and amounted to a lack of integrity.

Therefore, the panel found charge 2b proved.

### **Charge 2c:**

- c) Prescribed medication without the relevant NMC PIN

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Ms 5.

The panel had regard to Ms 5's witness statement in which it is stated "If the NMC had been notified of an additional qualification it would appear on his record, but would not appear as 'effective' until he took steps to record the qualification. If the NMC had been notified by the University that Mr Evans had successfully passed the course, Mr Evans would have been invited to record his qualification by completing an application form online and paying the application fee of around £25". Ms 5 confirmed that no form registering Mr Evans as having an additional prescribing qualification had ever been received by the NMC, nor is there any evidence to suggest that Mr Evans had paid his application fee.

The panel noted from Ms 5's oral evidence that when an additional qualification is registered with the NMC, an addendum is made to a registrant's PIN number. It is an additional qualification that is added to a registrant's PIN, as opposed to a registrant

being provided with a new PIN number. The University would first inform the NMC that a student had passed the course.

There is no evidence to suggest that Mr Evans had ever successfully completed the Nurse Prescribing Course, yet he prescribed medication to 31 patients on 313 occasions (some of which were found to have been controlled drugs), as evidenced by the MAR charts provided by the Trust.

The panel concluded that this amounted to a failure to adhere to the ethical standards of the nursing profession and amounted to a lack of integrity.

Therefore, the panel found charge 2c proved.

**Charge 2d:**

d) Failed to undertake continuing professional development (“CPD”) as required

**This charge is found proved.**

In reaching this decision, the panel noted that if Mr Evans had successfully completed the Nurse Prescribing Course, he would have been required to undertake CPD on a yearly basis in order to keep his nursing practice up to date. Due to the nature of the qualification, this would have included attending forums, supervised practice with the Director of Nursing, and any updates relating to drug changes.

The panel noted from the evidence before it that there was no information to suggest that Mr Evans had ever successfully completed the Nurse Prescribing Course, and therefore, concluded that he would not have been in a position to undertake CPD in relation to this. However, this would have been additional requirement had Mr Evans qualified as a non-medical prescriber.

The panel found this requirement had not and could not have been met by Mr Evans and therefore found the charge proved.

**Charge 3a:**

3) Were dishonest in your actions in Charge 1 above in that you:

- a) Actively held out to the Trust that you had passed the course and were entitled to prescribe medication

**This charge is found proved.**

In reaching this decision, the panel had regard to the case of Ivey v Genting Casinos in determining whether Mr Evans had been dishonest in his actions. In particular, it noted in paragraph 74:

*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*

The panel took account of its earlier finding that the letter from the University had been clear in outlining to Mr Evans that he had not yet successfully completed all elements of

the Nurse Prescribing Course, and that he would need to resubmit his portfolio before the next deadline in order to pass.

There is no evidence to suggest that Mr Evans did go on to make a further submission regarding his portfolio, however, there is evidence to demonstrate that he continued to prescribe medication.

When issues regarding Mr Evans' Nurse Prescribers qualification were raised by the Trust, Mr Evans initially maintained that he did have the required qualification in order to prescribe medication. Mr 2 stated in his witness statement that "Ian [Mr Evans] explained at the above meeting that he had completed the course in March 2015 at Bournemouth University ("the University") and that it was an error by the university in that they had not provided the NMC with confirmation that he had passed the NMP Course".

However, Mr Evans then appears to backtrack on this at a later date as he informed Mr 2 that "he had not submitted a case study and he was requested to re-submit this as requirement for the course. Ian [Mr Evans] had stated that he had submitted the case study in time for the second submission. He claimed that the University must have lost his portfolio. Ian [Mr Evans] did not have a hard copy or electronic copy of the case study to provide me. He also confirmed that he did not have the work on his T: Drive and that he must have been saved on his daughter's computer who was now at university"[sic]. However, Mr Evans contradicted this account in his discussion with Ms 1, as he had informed her that he did not prescribe any medication.

Mr Evans states in his reflective piece that "I had made an incorrect assumption that I had passed as I do not recall receiving any correspondence to the contrary. I now fully accept that this was very naïve on my part...At no time did I intend to mislead anybody or in any way be dishonest". However, the panel considered Mr Evans to have been inconsistent in the different accounts he had provided to the Trust. The panel rejected this account and decided that Mr Evans knew that he had failed to obtain the Non-



Medical Prescribing qualification. The panel was of the view that by the standards of ordinary and honest people, Mr Evans' conduct would be viewed to be dishonest in the circumstances of this case. It considered Mr Evans' dishonesty to be for a sustained period which was a continuing course of conduct.

This is further supported by the evidence of Ms 3, who stated in her witness statement that "The fact Ian [Mr Evans] never requested a prescription pad is in itself telling – if he was confident that he had the V300 qualification he would have asked for one for clinic use".

If Mr Evans had believed he had successfully passed the Nurse Prescribing Course, he would have kept this qualification up to date by way of CPD on a yearly basis and be able to demonstrate this. Mr Evans embarked on the course in 2015, and prescribed medication in 2017, without having undertaken any CPD.

The panel therefore considered Mr Evans to have been aware of his failure to successfully complete the Nurse Prescribing Course. It was of the view that Mr Evans had actively held out to the Trust for a prolonged period of time that he was permitted to prescribe medication, when he knew that he did not have the required qualification.

Therefore the panel found charge 3a proved.

**Charge 3b:**

- b) Misled the Trust that you could and / or would provide the course certificate showing you had passed the course

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Ms 1, Mr 2 and Ms 3.

The panel had regard to Ms 1's witness statement, in which she states "I was trying to impress the importance of Ian [Mr Evans] getting the certificate from his university for our records; I even urged him to drive to the University and secure a copy...I recall that Ian said that the confusion could have come about because there had been one piece of coursework that he had been delayed in submitting. He said that he had applied for extenuating circumstances and receiving them, leaving me with the impression that he had submitted that late piece of work. There was no indication that he had never completed the course...He was given a final opportunity to produce his University certificate by 27 February 2018 but he failed to do so".

The panel noted from the evidence before it that Mr Evans had insisted that he had passed the Nurse Prescribing Course and that he would be able to provide evidence of this by way of the University certificate. Mr Evans was given more time to adduce this evidence by the Trust but did not do so.

Mr Evans had been inconsistent in his account to different members of staff at the Trust.

In having regard to the above, the panel considered Mr Evans to have misled the Trust into believing that he could and/or would provide the certificate showing successful completion of the Nurse Prescribers Course.

Therefore, the panel found charge 3b proved.

### **Charge 3c:**

c) Denied to the Trust that you had prescribed medication when you had

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Ms 1, Mr 2 and Ms 3.

The panel had regard to Ms 1's witness statement which states "I do not remember categorically asking Ian [Mr Evans] if he had ever prescribed. Ian [Mr Evans] told me he had not...I asked Ian [Mr Evans] to clarify if he had transcribed or prescribed on the electronic system. He told me that all he had done was to push a button on the prescribing software and that this was transcribing, not prescribing".

However, this was contradicted by the MAR charts that had been provided to the NMC in support of this charge. The panel noted that Mr Evans had prescribed medication on a number of occasions for stroke patients in a clinical setting, and that these prescriptions had been signed by him. In particular, the panel noted that on at least two occasions, Mr Evans had signed off on prescribing controlled drugs which required a doctor's level of authorisation according to the Trust's policy, due to the nature of the medication.

The panel accepted the evidence given by the Trust

Therefore, the panel found charge 3c proved.

**Charge 3d:**

- d) Misled the Trust that the course documents would be on the T: drive of your work computer

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Mr 2.

In Mr 2's witness statement, it is stated "Ian [Mr Evans] was invited to a further meeting at Mallard Court on 28 February 2018. However, Ian [Mr Evans] wanted me to attend South Petherton Hospital in order for me to check his computer's T: Drive where he said that the evidence of his qualification was stored".

The panel noted that Mr Evans had asked Mr 2 to attend his location in order to demonstrate that he had received confirmation of his successful completion of the Nurse Prescribing Course.

The panel considered Mr Evans to have been aware of his failure to successfully complete the course and, as such, determined that he was attempting to mislead staff at the Trust into thinking that he was attempting to be forthcoming with the evidence that he had allegedly stored on the T: Drive of his work computer. It considered this to be a further attempt to stall for time by Mr Evans.

When Mr Evans could not then provide evidence of himself having successfully completed the course he provided an alternative explanation, which was contrary to the position that he had provided to Ms 1.

Therefore, the panel found charge 3d proved.

## **Submission on misconduct and impairment:**

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mr Evans' 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 suitability to remain on the register unrestricted.

In his submissions, Mr Claydon invited the panel to take the view that Mr Evans' actions amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). He then directed the panel to specific paragraphs and identified where, in the NMC's view, Mr Evans' actions amounted to misconduct.

Mr Claydon referred the panel 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.*'

Mr Claydon submitted that Mr Evans' conduct fell far below the standards expected of a registered nurse in the circumstances of this case. He submitted that Mr Evans was a consultant nurse at the Trust, who held himself out to be a clinical expert to other members of staff. He submitted that Mr Evans' position of seniority at the Trust is relevant in considering how far he had fallen below the standards expected of a registered nurse given the fundamental nature of the concerns identified.

Specifically in relation to Mr Evans' lack of integrity and dishonest conduct, Mr Claydon submitted that Mr Evans had a prolonged period of time in which he could have sought to rectify the situation by informing the Trust of his failure to successfully complete the Nurse Prescribing Course. However, Mr Evans continued to mislead the Trust, including prescribing to patients for a period without the required qualification.

Mr Claydon then 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. Mr Claydon referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

Mr Claydon submitted that Mr Evans had put patients in his care at a clear risk of harm by prescribing medication without the proper qualification, especially in relation to controlled drugs which only a doctor could prescribe at the Trust. He submitted that whilst there is no evidence of any actual harm caused to patients, Mr Evans' actions had brought the nursing profession into disrepute, and that public confidence in the nursing profession and in the NMC as its regulator would be undermined if a finding of impairment was not made.

Mr Claydon invited the panel to take account of Mr Evans' undated reflective piece and his acceptance through the RCN that his actions amounted to misconduct and that his fitness to practise is currently impaired. Mr Claydon submitted that Mr Evans has stated that "I have always had the patient's best interest first and foremost in any action or decision I have made...", which could be suggestive of a lack of insight on his part given that he prescribed medication to patients for a period of time whilst knowing that he did not have the required qualification.

Mr Claydon submitted that any charges relating to dishonesty are serious and can be more difficult to remediate than clinical nursing issues.

Mr Claydon submitted that Mr Evans has offered little reflection in relation to the impact his actions had on the public's perception of how a registered nurse ought to conduct themselves, and the reputational impact on the nursing profession as a whole. He further submitted that Mr Evans does not appear to have attempted to remediate his

misconduct and, as such, there is a real risk that Mr Evans may repeat his misconduct at some point in the future.

In light of the above, Mr Claydon invited the panel to find that Mr Evans' fitness to practise as a registered nurse is currently impaired on public protection and public interest grounds.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant. These included: *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311*, *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*, *Schodlok v General Medical Council [2015] EWCA Civ 769* and *Cohen v General Medical Council [2008] EWHC 581 (Admin)*.

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. That misconduct must be serious misconduct. Secondly, only if the facts found proved amount to serious misconduct, the panel must decide whether, in all the circumstances, Mr Evans' fitness to practise is currently impaired as a result of that misconduct.

## **Decision on misconduct**

When determining whether 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”).

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Mr Evans’ actions did fall significantly short of the standards expected of a registered nurse, and it considered his actions to have amounted to multiple breaches of the Code. Specifically:

### **6 Always practise in line with the best available evidence**

To achieve this, you must:

6.2 maintain the knowledge and skills you need for safe and effective practice.

### **13 Recognise and work within the limits of your competence**

To achieve this, you must:

13.5 complete the necessary training before carrying out a new role.

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

To achieve this, you must:

18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person’s health and are satisfied that the medicines or treatment serve that person’s health needs



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

## **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, treating people fairly and without discrimination, bullying or harassment

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

## **22 Fulfil all registration requirements**

To achieve this, you must:

22.3 keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance.

## **23 Cooperate with all investigations and audits**

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise”

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges individually in determining whether Mr Evans’ actions were so serious so as to amount to misconduct in the circumstances of this case.

In respect of charge 1, the panel determined that Mr Evans actions in prescribing medication to patients when he had not passed the relevant Nurse Prescribing Course were of the utmost seriousness. It noted that this was not an isolated incident, and that in two instances, Mr Evans had prescribed controlled drugs to patients which required the authorisation of a doctor. The panel considered Mr Evans to have been acting outside the scope of his practice by prescribing medication to patients without the required qualification, which could have had a serious impact on the wellbeing of patients in his care. The panel was of the view that other members of the nursing profession would consider Mr Evans' actions to be deplorable, compounded by the fact that Mr Evans was an experienced and senior registered nurse. Therefore, the panel determined that Mr Evans' actions identified in charge 1 were so serious so as to amount to misconduct.

The panel considered 'trust' and 'integrity' to form part of the bedrock of the nursing profession. It therefore considered Mr Evans' actions to be towards the higher end of the spectrum of seriousness, when determining whether his actions were sufficiently serious to amount to misconduct. The panel had regard to the case of *Wingate*, specifically, paragraph 97, which states "the term 'integrity' is a useful shorthand to express the higher standard which society expects from professional persons and which the professions expect from their own members" and at paragraph 100, which states "integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty".

In respect of charge 2a, the panel noted that Mr Evans had received a letter from the University dated 27 November 2015 informing him that he had not successfully passed the Nurse Prescribing Course, and that he would need to resubmit his portfolio. A further letter dated 6 April 2016 was sent to Mr Evans informing him that he had been withdrawn from the course and that he had not received the qualification. The panel was of the view that it was Mr Evans' responsibility to make enquiries with the University if he disputed any of the information contained within these letters, or if he needed clarification. Mr Evans did not attempt to contact the University until the Trust had raised

this matter with him, but prescribed medication to patients in his care without the required qualification. Therefore, the panel determined that Mr Evans' conduct identified in charge 2a was so serious so as to amount to misconduct.

In respect of charge 2b, the panel reminded itself that Mr Evans knew he had failed the Nurse Prescribing Course. He misled the Trust in not informing it of his failure and was dishonest in this regard. He was also aware that the Trust required him to successfully pass this course as part of his developing role. By not informing the Trust of his failure to successfully complete the course, Mr Evans undertook nursing tasks which he was not qualified to do. Therefore, the panel determined that Mr Evans' actions identified in charge 2b was so serious so as to amount to misconduct.

In respect of charge 2c, the panel noted that the NMC register has procedures in place to provide information regarding a registered nurse's qualifications, thereby ensuring that patient safety is maintained. When the Trust used this mechanism to identify whether Mr Evans was suitably qualified to prescribe medication, they were concerned that the NMC's records did not show that Mr Evans had the V300 qualification. The panel noted that Mr Evans had prescribed a significant amount of medication to multiple patients during this time at the Trust as they believed that Mr Evans had passed the Nurse Prescribing Course. Therefore, the panel determined that Mr Evans' actions identified in charge 2c was so serious so as to amount to misconduct.

In respect of charge 2d, the panel considered it to be a requirement for all registered nurses to undertake CPD in accordance with their nursing roles. It noted that the Nurse Prescribing Course would have had its own CPD requirements, given the nature of the role. The panel determined that Mr Evans would have been aware of the requirement to keep his nursing practice up to date, specifically in regards to a V300 qualification. Pressures on nursing practitioners are always evolving and, in the absence of any CPD in respect of the Nurse Prescribing Course, a registrant runs the risk of being out of date with prescribing practices if this is not undertaken. The panel noted that it would not have been possible for Mr Evans to undertake CPD as he did not have the relevant

qualification to begin with. Therefore, the panel determined that Mr Evans' actions identified in charge 2d was so serious so as to amount to misconduct.

In taking all of the above into account, the panel considered Mr Evans' actions in failing to show the required level of integrity amounted to a serious breach of the standards and values all registered nurses should adhere too, in line with the Code. Therefore, the panel determined that Mr Evans' actions identified individually in charges 2a-d, as well as taken together, were so serious so as to amount to misconduct.

The panel considered 'honesty' and 'trust' to form parts of the bedrock of the nursing profession. The panel was of the view that in being dishonest, Mr Evans had breached a fundamental tenet of the nursing profession.

The panel noted that dishonesty in a regulatory context is often regarded as serious, although there are different levels of seriousness on a spectrum of dishonesty. The panel noted that Mr Evans' dishonesty was for a protracted period of time, and it enabled him to operate at a higher clinical level than what he was qualified to do. The panel considered Mr Evans to be a senior, experienced registered nurse, and considered him to have been aware that he was acting outside the scope of his nursing practice. The panel therefore considered Mr Evans' dishonesty to be at the high end of the spectrum of dishonesty.

In respect of charge 3a, in actively holding out to the Trust that Mr Evans had passed the course and that he was entitled to prescribe medication, was clear dishonesty. Therefore, the panel determined that Mr Evans' actions identified in charge 3a was so serious so as to amount to misconduct.

In respect of charge 3b, Mr Evans also told the Trust that the absence of his qualification showing up on the NMC register was a clerical failure on the part of the University. When Mr Evans was asked to follow this up, he informed Mr 4 that he would be able to provide the certificate to prove that he had successfully passed the Nurse

Prescribing Course. Therefore, the panel determined that Mr Evans' actions identified in charge 3b was so serious so as to amount to misconduct.

In respect of charge 3c, when the Trust began investigating whether Mr Evans had been acting outside the scope of his remit, Mr Evans informed Ms 1 that he had not prescribed any medication to patients. Noticeably, Mr Evans also did not apply for a prescription pad at the Trust, knowing that he would not have been granted access to one without evidence of the required qualification, which may have brought these concerns to light sooner. Instead, Mr Evans prescribed medication to patients on MAR charts, totalling to 313 different occasions, without the required qualification and authorisation to do so. Therefore, the panel determined that Mr Evans' actions identified in charge 3c was so serious so as to amount to misconduct.

In respect of charge 3d, Mr Evans later provided an alternative explanation in an attempt to continue to mislead the Trust by telling Mr 4 that the entirety of his portfolio must not have been received by the University. Mr Evans said that he would be able to provide parts of his portfolio to Mr 4 as they were allegedly located on the T: Drive of his work computer at South Petherton Hospital, but he could not provide evidence of having successfully completed the Nurse Prescribing Course. Therefore, the panel determined that Mr Evans' actions identified in charge 3d was so serious so as to amount to misconduct.

In taking account of the above, the panel determined that Mr Evans' actions identified individually in charges 3a-d, as well as taken together, were so serious so as to amount to misconduct.

The panel found that all of Mr Evans' actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

## Decision on impairment

The panel next went on to decide if, as a result of this misconduct, Mr Evans' 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my

view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 that all of the limbs above are engaged in this case.

The panel noted that the concerns identified in this case solely relate to Mr Evans' professional conduct, albeit linked to his clinical practice. There is no evidence before the panel of any patient suffering actual harm as a result of Mr Evans' actions, although the panel considered there to always have been a serious potential risk of harm.

In assessing Mr Evans' level of insight, the panel had regard to his undated reflective piece. It considered Mr Evans to have limited insight into his misconduct as he does not appear to have reflected beyond his own personal failings, nor does he accept full responsibility for the extent of his actions. The panel reminded itself that it did not find

charges 2 and 3 proved by admission as Mr Evans has stated “At no time did I intend to mislead anybody or in any way be dishonest”. The panel found Mr Evans to have lacked integrity and to have been dishonest in his actions. It therefore considered Mr Evans to have attempted to minimise his conduct and reflected insufficiently, despite him stating “I have had time to fully reflect on my actions and understand why they are deemed as gross misconduct”. Furthermore, Mr Evans has also offered very limited insight on the impact his actions could have had on patients, colleagues, the Trust, and the nursing profession as a whole. He has demonstrated very little remorse for his misconduct.

The panel had regard to the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, and considered whether the concerns identified in Mr Evans’ nursing practice are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of similar concerns occurring at some point in the future.

Whilst the panel noted that concerns relating to a registrant’s professional conduct is often more difficult to remediate than clinical nursing concerns, it considered Mr Evans’ misconduct to be possibly capable of remediation, albeit the misconduct being extremely serious. However, the panel determined that no evidence had been provided by Mr Evans to demonstrate that he had remediated any of the concerns identified or that he was willing to do so. It noted Mr Evans has made the decision to seek employment outside of nursing, and that he does not intend to practice as a health practitioner again in the future.

The panel had not been provided with any recent testimonials by Mr Evans to suggest that he is a safe and effective nursing practitioner.

In light of the above, the panel had no evidence before it to allay its concerns that Mr Evans does not currently pose a risk to patient safety. In absence of any evidence to the contrary, the panel considered there to be a real risk of repetition of Mr Evans’ misconduct and a risk of unwarranted harm to patients in his care should he be permitted to practice as a registered nurse in future without some form of restriction.



Therefore, the panel 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 considered there to be a high public interest in the consideration of this case. It was of the view that a fully informed member of the public would be seriously concerned by Mr Evans' conduct in acting outside the scope of his nursing practice, as well as the findings of dishonesty and lack of integrity. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

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

### **Determination on sanction:**

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

In reaching its decision on sanction, the panel considered all of the evidence before it, along with the submissions of Mr Claydon, on behalf of the NMC.

Mr Claydon invited the panel to impose a striking-off order. He submitted that Mr Evans' actions are serious enough to warrant permanent removal from the NMC register, and that public confidence in the nursing profession would be undermined if this were not done.

Mr Claydon took the panel through the aggravating and mitigating factors he considered to be engaged in this case.

Mr Claydon submitted that there are serious concerns regarding Mr Evans' conduct with the panel having found his actions to have been dishonest and to have lacked integrity. He reminded the panel that it had found that Mr Evans had only offered limited insight into his misconduct, and that he lacked appreciation for the severity of the situation. Mr Claydon further submitted that Mr Evans' conduct could be suggestive of him having a more deep-seated attitudinal issue.

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

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 Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

As regards aggravating factors, the panel has considered the following as relevant:

- Mr Evans was an experienced nursing practitioner.
- Vulnerable patients were exposed to a significant risk of harm, as Mr Evans prescribed medication outside the scope of his nursing practice in a clinically high risk environment.
- Mr Evans had breached his professional duty of candour by being dishonest, and the panel had found that his dishonesty was serious and lasted for a protracted period of time.
- Mr Evans had several opportunities to rectify the situation but continued to attempt to mislead the Trust.

As regards mitigating factors, the panel has considered the following as relevant:

- There are no previous regulatory concerns in an otherwise longstanding career.
- There was no personal financial gain.

The panel had sight of the letter dated 4 October 2019 from the RCN, in which it is stated “It is acknowledged that this is a case that falls at the higher end of the scale of seriousness. A caution order would not be appropriate. We consider it unlikely that conditions of practice could be formulated that would adequately address the accepted failings. As such we do not propose to address the panel on this. In our submission a suspension order could be an appropriate way of resolving this matter. In light of Mr Evans’ admissions and the fact that he will never return to nursing, we submit the public protection concerns in this case are reduced. In terms of the public interest, a suspension order will adequately mark the seriousness of Mr Evans’ conduct. It will

send a message to other professionals and members of the public that the NMC deem this conduct unacceptable”.

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.

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 was of the view that Mr Evans’ misconduct was not at the lower end of the spectrum of fitness to practise and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

The panel considered the misconduct identified to be serious, specifically in respect of the dishonesty and lack of integrity found proved. Whilst the concerns relate to Mr Evans’ conduct and behaviour, they are indirectly linked to his clinical nursing practice.

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. Mr Evans has made no attempt to remediate his misconduct, nor demonstrated a willingness to return to the nursing profession. In taking account of the above, the panel determined that placing a conditions of practice order on Mr Evans’ registration would not adequately address the seriousness of this case, nor would it sufficiently protect the public, or satisfy the public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel noted that this was not a single instance of misconduct. It also had some evidence before it of Mr Evans having demonstrated behaviour which indicated a deep-seated attitudinal concern. Mr Evans had exposed vulnerable patients to a significant risk of harm by acting outside the scope of his remit when he was aware that he did not have the authority to do so. He sought to mislead the Trust when he became aware that his prescribing rights were being investigated.

The panel found that Mr Evans had offered limited insight, remorse and remediation for his misconduct, despite having a substantial amount of time to reflect on his conduct. Whilst Mr Evans has stated that he does not wish to return to the nursing profession, the panel considered there to be a real risk of repetition should Mr Evans change his mind and look to return to nursing practice.

Taking account of the above, the panel determined that Mr Evans' conduct was a significant departure from the standards expected of a registered nurse. His actions, along with the serious breach of fundamental tenets of the nursing profession, were fundamentally incompatible with Mr Evans remaining on the NMC register. The panel was of the view that the findings in this particular case demonstrate that Mr Evans' actions were serious in exposing patients to a significant risk of unwarranted harm, and it considered that in allowing him to maintain ongoing NMC registration would put the public at a continued risk of harm, and undermine public confidence in the profession and in the NMC as a regulatory body.

The panel noted that a registered nurse who has been found to have acted dishonestly runs a risk of being removed from the NMC register. However, this risk is reduced should a registrant demonstrate a high level of insight, remorse, or remediation into their misconduct. None of these have been demonstrated by Mr Evans despite ample

opportunity to do so. The panel noted that there were serious breaches of multiple standards of the Code, a breach of fundamental tenets of the nursing profession, and a breach of Mr Evans' professional duty of candour in this case.

Considering all of these factors, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular, the effect of Mr Evans' actions in bringing the nursing profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

## **Determination on Interim Order**

The panel has considered the submissions made by Mr Claydon that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. He invited the panel to impose an interim suspension order for 18 months.

The panel accepted the advice of the legal assessor.

The panel had regard to the seriousness of the facts found proved, and the reasons set out in its decision for the substantive order. The panel decided that an interim suspension order is necessary for the protection of the public and it is otherwise in the public interest. To conclude otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.