Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
12 August 2020
Virtual Meeting

Name of registrant:	Marriettah Munah Miles
NMC PIN:	08L0058E
Part(s) of the register:	Registered Nurse (Sub Part 1) Mental Health Nursing – January 2009
Area of Registered Address:	Middlesbrough
Type of Case:	Misconduct
Panel Members:	Yvonne O'Connor (Chair, Registrant member) Carole Panteli (Registrant member) Gill Mullen (Lay member)
Legal Assessor:	Breige Gilmore
Panel Secretary:	Caroline Pringle
Facts proved by admission:	1(a), 1(b), 1(c), 1(d), 2(a), 2(b), 2(c), 3, 4, 5, 6 and 7
NMC offered no evidence:	8
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Decision on proof of service

The panel considered whether notice of this meeting has been served in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Rules”).

The panel accepted the advice of the legal assessor. The panel noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a notice of hearing or meeting can be sent to a registrant’s registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel noted that notice of this substantive meeting was sent by email to Ms Miles’ representative at the Royal College of Nursing (RCN) on 6 July 2020. The panel noted that the NMC had not sent notice to Ms Miles herself, but that this was consistent with a letter from Ms Miles, dated 6 November 2019, in which she requested that all correspondence be sent to her RCN representative as receiving communication from the NMC was having a detrimental impact on her.

The notice sent to the RCN set out that a panel of the Fitness to Practise Committee would hold a meeting to consider Ms Miles’ case on or after 27 July 2020. The notice included the charges which the panel would consider at the meeting, as well as setting out that the panel would consider whether Ms Miles’ fitness to practise is currently impaired as a result of those charges and, if so, whether a sanction is required. The RCN was asked to provide any relevant submissions or documents for the panel by 21 July 2020.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this case at a meeting, given that Ms Miles had requested a meeting and detailed written submissions have been provided for this panel’s consideration.

Details of charge

That you, a registered nurse:

1. On the nightshift of 23/24 October 2018 in relation to Patient A:
    a. Did not check the Medical Front Sheet to ensure the patient details were accurate before administering medication;
    b. Did not check the photograph of the patient attached to the Medical Front Sheet to ensure that the correct patient had been identified before administering medication;
    c. Administered to Patient A one or more of the following medications prescribed for Patient B:
        i. Clozapine 100mg x2 tablets
        ii. Amisulpride 100mg x1 tablet
        iii. Paracetamol 500mg x2 capsules
        iv. Procyclidine 5mg x 1 tablet
        v. Ferrous sulphate 200mg x 1 tablet
    d. Indicated to Colleague A that you would start CPR on Patient A when it was inappropriate to do so.

    [Charge 1 found proved in its entirety by way of admission]

2. Upon realising your action at charge 1c you:
    a. Did not immediately report the medication error;
    b. Did not seek medical assistance;
    c. Did not carry out observations on Patient A frequently or at all;

    [Charge 2 found proved in its entirety by way of admission]

3. Your actions at charge 2a above breached the duty of candour;

    [Charge 3 found proved by way of admission]

4. When questioned by colleagues you denied that a medication error had occurred:
   [Charge 4 found proved by way of admission]

5. Your actions at charge 4 above were dishonest in that you represented that you had not made an error when you knew that you had;
   [Charge 5 found proved by way of admission]

6. When paramedics attended you told them that you had only administered clozapine in error to Patient A;
   [Charge 6 found proved by way of admission]

7. Your actions at charge 6 above were dishonest in that you knew you had administered other medication to Patient A but were trying to minimise the extent of your error;
   [Found proved by way of admission]

8. You did not carry out 15 minute observations of Patient A
   [NMC offered no evidence]

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

Background

The NMC received a referral regarding Ms Miles on 21 November 2018 from Ucare Services Limited. At the time of the referral Ms Miles was employed as an agency nurse at Parkville Care Home ("the Home") which is part of the Prestige Group.

On 23 October 2018, at around 21:00, Ms Miles was working her second shift at the Home and was administering medication to the residents. There were two residents with the same first name – Patient A and Patient B. As part of the medicines administration

procedure, and in order to correctly identify residents, Ms Miles was required to check the details contained on the medication front sheet for each resident to assist with identification. The medication front sheet included all of the relevant information including the residents' personal details, details of the medication, any special requirements and additionally, a photograph of the resident. These were measures put in place by the Home to assist with identification.

Despite this, it is alleged that on this shift Ms Miles administered medication to Patient A which was meant for Patient B. A short while after the medication had been administered, concerns were raised by two health care assistants who noticed changes in Patient A's presentation. They approached Ms Miles and queried whether the medication that Patient A had been given was correct. It is alleged that Ms Miles repeatedly denied any medication error. This subsequently delayed Patient A receiving medical assistance. The healthcare assistant remained unhappy with Patient A's condition and sought to escalate this to the registered nurse who had worked the day shift and was still on site. The registered nurse attended Patient A and it was decided an ambulance was required. This was requested and whilst the paramedics were attending to Patient A, Ms Miles allegedly informed them of the medication error, but only in part. Ms Miles allegedly said that she had only administered Clozapine to Patient A which was not correct as, in actual fact, a range of other medications had also been administered at the same time, in error.

As a result of the error, Patient A suffered actual harm and ultimately required admission to hospital.

Application to offer no evidence

Within the documents before the panel was a written application from the NMC to offer no evidence in relation to charge 8. It was submitted by the NMC that the evidential position had changed since the Case Examiners decided that there was a case to answer in respect of charge 8. The following submissions were made:

‘D: Evidential difficulties

9. *Following the CEs decision to refer all four of the regulatory concerns, charges were drafted and the NMC undertook further investigation work. This involved making further contact with staff at Parkville Care Home to clarify areas of concern in relation to RC 3* [not appropriately handling and/or escalating an emergency situation] *and in particular the Registrant’s failure to carry out 15 minute observations of patient A during the night of 23 October 2018 from 22:15 to 07:00 hours on 24 October 2018.*

10. *The CEs determination in respect of RC 3 was as follows: “It is said that you should have attended on [Patient A], monitoring him closely and contacting a doctor or emergency services … We note also in this regard that you have produced a hand written note with a series of frequent observations set out over the period 22:15 23 October 2018 to 07:00 24 October 2018.* ***This is in conflict with the evidence of [Ms 1], who says that “observations were not or only infrequently taken during the night”.*** *It is not for the case examiners, however, to resolve conflicts in the evidence as this is the role of the Fitness to Practise Committee, and after reviewing all of the evidence and noting your acceptance of this regulatory concern, we are of the view that there is sufficient evidence for there to be a case to answer on the facts.”*

11. *The NMC having undertaken further investigation work sought to obtain clarification from [Ms 1]. At paragraph 14 of [Ms 1’s] statement, she suggests, as noted above that “observations were not or only infrequently taken during the night”. The Registrant in her response (exhibit KC/2) produced a hand written document which suggested that observations were conducted every 15 minutes, therefore in direct conflict with [Ms 1’s] evidence. This was the information that was before the CEs when they decided whether there was a case to answer in respect of RC 3.* ***Exhibit KC/2 is contained at Appendix A.***

12. *[Ms 1] responded to the NMC's request for clarification of her evidence twice. On 18 March 2019, she said: "Hi. The nurse gave me records on a piece of paper she said she had completed when I arrived that morning and looked at the service users presentation I asked when he was last checked the nurse said she had not been in that long before I arrived but th4 service user had refused her taking readings this was when emergency services were contacted" (sic). Following on from her email response, further clarification was sought and another email record from [Ms 1] on 19 March 2019. In this email she said: "As I have said the nurse issued me with a piece of paper she said she had taken the readings and I cannot dispute what she is saying as this is factual she took a copy of the piece of paper, when I went to the client that morning he appeared poorly and I asked her when she last checked she had recorded she had checked him".* ***Copy of the email correspondence is contained at Appendix B.***

13. *It is clear from this additional information from [Ms 1] that she is unable to confirm how she reached the conclusion at paragraph 14 of her witness statement. The evidential difficulty for the NMC is that [Ms 1] is unable to contradict the Registrant's account. The additional evidence that has been considered surrounding RC 3 which included consideration of exhibit KC/3 and the Registrant's account exhibited as KC/2, the medication error took place at about 21:00 hours. Paramedics were called at about 22:40 hours and arrived shortly afterwards. They remained with the resident for approximately one hour following which the Registrant was advised to carry out observations every 15 minutes for four hours, and then on an hourly basis. The Registrant's written record at exhibit KC/2 seems to suggest that observations were carried out, broadly, as instructed.*

14. *From the evidence we have considered it is clear that Resident A was stable when the paramedics left and did not require hospitalisation at that point. The resident became very unwell by 8am the next morning on 24 October 2018. The last entry made by the Registrant was at 07:00 hours and states that the resident*

was "lashing out refused observations taken". It was at 08:00 hours when [Ms 1] went to see the resident and she noted that he had "began to cough and vomit". In light of the fact that [Ms 1's] evidence does not explain how she came to the conclusion at paragraph 14, we would be unable to prove that the Registrant's did not carry out 15 minute observations of the resident and that her observations were inadequate.

15. *The Registrant via her representative from the Royal College of Nursing has responded to the draft charges and has admitted all of the charges, including charge 8 and admitted current impairment. The NMC recognises that the evidence has been clarified since this admission was made. On review of the material available, the NMC does not consider it can prove charge 8, and so an application to offer no evidence is made.*

E: CEs' determination

16. *The CEs make the following comment on page 9 of their determination:*

> *"We note also in this regard that you have produced a hand written note with a series of frequent observations set out over the period 22:15 23 October 2018 to 07:00 24 October 2018. This is in conflict with the evidence of [Ms 1], who says that "observations were not or only infrequently taken during the night".*

17. *The CEs made their decision as to which regulatory concerns to put before a FTP based on the evidence that they had considered. New evidence has since come to light. If [Ms 1's] additional comments were made available to them, their decision may have been different as it is clear that the account contained at paragraph 14, and relied upon by the CEs when considering the matter of the observations of resident A during the night, is not supported by the additional information provided by [Ms 1].*

F: Application to offer no evidence

18. The NMC has published guidance on when it may be appropriate to offer no evidence. This makes clear that we keep all cases under review while we prepare them for the Fitness to Practise Committee. Sometimes, as part of that review, it becomes clear that it wouldn't be in the public interest to carry on with all or part of the case.

*19. In limited circumstances it may be appropriate for the NMC to use our power to 'offer no evidence'. This power was identified and confirmed in **PSA v NMC & X [2018] EWHC 20 (Admin)** at paragraphs 55-57. When the NMC decides to apply to offer no evidence it will always provide the evidence which it has gathered during its investigation to assist the Panel in making its decision.*

20. The NMC is of the view that charge 8 does not reduce the overall seriousness of the case.

21. For the reasons set out above, the NMC invites the panel to allow the NMC to offer no evidence in respect of charge 8 only.'

The panel accepted the advice of the legal assessor. It decided to accept the NMC's application to offer no evidence in relation to charge 8. It accepted the NMC's detailed submissions regarding the evidential difficulties for this charge, set out above. It noted that the evidence to support charge 8 had initially come from Ms 1 however, following further enquiries by the NMC, the nature of her evidence has changed. The panel therefore agreed that the NMC no longer had sufficient evidence to prove charge 8. The panel bore in mind its overarching duty to protect the public, but considered that charge 8 did not add to the overall seriousness of the case.

Accordingly, the panel accepted the NMC's application to offer no evidence in relation to charge 8.

Admissions to the charges

The panel had regard to the submissions provided by the RCN on behalf of Ms Miles, dated 21 July 2020:

> *'Mariettah Miles has admitted the regulatory concerns and charges throughout these proceedings. She has sought at every turn to assist the NMC in bringing this matter to a conclusion that protects the public and the reputation of the profession. On 5 July 2019, at the outset of the investigation, she submitted a Regulatory Concerns Response form admitting the regulatory concern. On 19 September 2019, in response to additional concerns being raised, she provided a reflection, in which all concerns were admitted. At the conclusion of the investigation, on 7 November 2019, she repeated her admissions to the Case Examiners, and following their decision, on 1 April 2020, she submitted a Case Management Form indicating admissions to all charges and current impairment and expressing an interest in CPD and VR. Finally, on 28 May 2020, via an email from the RCN to the NMC, she repeated that all charges not subject to an application to offer no evidence and current impairment would be admitted, and she invited the NMC to deal with the case at a meeting rather than a hearing. She has supplied the enclosed response to charges form for the purposes of this meeting.*

Accompanying these submissions was a Case Management Form ("CMF") in which Ms Miles indicated that she admitted charges 1 – 7. In light of this information, the panel was satisfied the Ms Miles unequivocally admits charges 1 – 7.

Accordingly, the panel found charges 1(a), 1(b), 1(c), 1(d), 2(a), 2(b), 2(c), 3, 4, 5, 6 and 7 proved by way of Ms Miles' admissions.

Submission on misconduct and impairment

Having found the facts proved by way of Ms Miles' admissions, the panel moved on to consider whether the facts found proved amount to misconduct and, if so, whether Ms Miles' fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined it as a registrant's suitability to remain on the register unrestricted.

The panel had regard to the NMC's written statement of case, which set out the NMC's position in relation to the facts, misconduct, impairment and sanction. In relation to misconduct, the NMC's statement of case directed the panel to specific paragraphs of the NMC Code of Conduct 2015 which, in the NMC's view, had been breached by Ms Miles.

In relation to impairment, the NMC's statement of case referred the panel to the questions outlined by Dame Janet Smith in the 5th Shipman Report, as endorsed in the case of *CHRE v (1) NMC (2) Grant [2011]* EWHC 927 (Admin). At paragraphs 14 - 20 of the statement of case the NMC submitted that:

14. *In this case, it is submitted that all four of the limbs as identified in the case of Grant are engaged. The Registrant made a medication error which resulted in serious harm to a patient. In this case the resident spent several weeks in hospital and there were real concerns as to his wellbeing. It is accepted that mistaken can and do happen but in this case, when the Registrant became aware of the medication error, she was not immediately honest and open with her colleagues. In fact, she initially denied that the medication error had occurred and therefore delayed emergency assistance to the resident. This subsequent behavior by the Registrant brought the profession into disrepute as the Registrant clearly, by not immediately being open and honest as to the medication error that had occurred, put her own interests above those of the patient in her care.*

15. *In considering whether the Registrant is currently impaired, there are also relevant factors identified in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) that the Panel should consider when deciding on the question of impairment. The Panel should consider whether the conduct which led to the charge is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.*

16. *In the NMC's guidance on remediation, it is noted that there are some regulatory concerns that are serious just by their very nature and are difficult to put right. Dishonesty is one of those concerns. Examples of conduct which may not be possible to remedy, and where steps such as training course or supervision at work are unlikely to address the concerns include dishonesty. In this case, the Registrant by denying the medication error when questioned by colleagues, delayed escalating an emergency situation which ultimately resulted in serious harm to the resident. Having eventually admitted the medication error, the Registrant only did so partially and did not inform paramedics as to the entirety of the medication that she had administered to the resident in error. Given the circumstances of this case, the Registrant's conduct is unlikely to be remediable.*

17. *The Registrant admits the charges and therefore there is some evidence of insight however what is of real concern is that this is not the first time that the Registrant has committed a serious medication error and then sought to conceal that error. The Registrant has previously been the subject of regulatory proceedings. In March 2016 the Registrant was suspended by the NMC for a period of six months following medication errors. The Registrant was found to have been dishonest as she attempted to conceal the fact that medication errors had occurred. The facts of the case from 2016 are very similar and therefore relevant.*

18. *Given the history of previous regulatory findings and the similarities it would appear that the Registrant has not learnt from previous errors and has continued to not only make medication errors but, more significantly, to be dishonest and attempt to conceal the errors. There is therefore a real risk of this conduct and behavior being repeated.*

19. *Therefore the Registrant's fitness to practise is impaired on the ground of public protection.*

20. *It is the submission of the NMC that a reasonable and fully informed member of the public would expect a finding of impairment to follow such a very serious incident and would be shocked and offended if impairment were not found. Any other outcome would undermine confidence in the profession and in its regulation and therefore a finding of current impairment is also necessary on grounds of public interest.*

On the CMF form provided by the RCN, Ms Miles indicated that she admits that her fitness to practise is currently impaired. The RCN also provided the following submissions on her behalf:

> *'We submit that throughout the NMC process, the Registrant has demonstrated developing insight into the consequences of her actions, both immediate and long term. From her local statement to the progressively insightful reflection, we submit there are encouraging signs that our member is able, with time, to remediate the serious concerns in this case. The enclosed training log demonstrates that, despite leaving the nursing profession several months ago, our member continues to improve her knowledge in relevant areas. The enclosed testimonial demonstrates that our member has support to address the issues identified in this case and move forward. Marriettah Miles does not shy away from the seriousness of the situation she created through a series*

of errors. [Patient A] suffered harm as a result of receiving the wrong medication. Our member's response delayed the provision of medical assistance. We submit, however, that there is no evidence this delay further contributed to the harm caused. The Information for Health Care Professionals at page 42 of the NMC bundle, completed by the paramedics who attended the home after the Registrant had admitted her error and had access to the MAR chart, records "Accidental administration of Clozapine x 200mg with no adverse effect". [Patient A] remained at the home under observation, and the document at pages 53 to 56 of the NMC bundle records the observations carried out by our member.

Similarly, whilst not seeking to minimise the misconduct in this case, on behalf of Marriettah Miles, we draw attention to page 113 of the NMC's bundle. The "Progress to date" section of [Patient A's] discharge summary confirms that the reason for his subsequent hospitalisation was that he "vomited and most likely aspirated". [Ms 1] confirms in her statement that a contributing factor to the length of his stay in hospital was the fact he could not return to the home while safeguarding was ongoing and that he was being monitored (i.e. not treated).

We invite the panel to the view, that while cases involving dishonesty and risk to patients are always serious, Mariettah Miles' conduct through the NMC fitness to practise process has demonstrated that there is no fundamental incompatibility with ongoing registration. Our member has retired from nursing and her registration will lapse immediately upon the conclusion of this case. She will never practise again.'

Decision on misconduct

The panel accepted the advice of the legal assessor. 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 Ms Miles' actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

Prioritise people

1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

4 Act in the best interests of people at all times

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm

20 Uphold the reputation of your profession at all times

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

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

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. However, the panel was of the view that Ms Miles' actions constituted serious professional failings which fell significantly below the standards expected of a registered nurse. The panel considered that while Ms Miles' initial failings in charges 1 and 2 were serious in themselves, these were further compounded by her subsequent dishonesty to both colleagues at the Home and the paramedics. The panel bore in mind that honesty and integrity are the bedrocks of the nursing profession and, when mistakes are made, nurses are expected to abide by the duty of candour and be open and honest. The panel considered that the charges found proved represented a complete failure to abide by the duty of candour and breached fundamental tenets of the nursing profession. Rather than prioritising the needs of her patient, Ms Miles put her own interests first and acted dishonestly. The panel considered that fellow members of the nursing profession and the public would find such behaviour deplorable.

Accordingly, the panel decided that Ms Miles' actions at charges 1 – 7 fell significantly below the 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, Ms Miles' fitness to practise is currently impaired. It accepted the advice of the legal assessor in relation to this issue.

The panel considered the test adopted by Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) at paragraph 76:

'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 Ms Miles' actions breached all four limbs of *Grant.* Her initial medication errors and clinical failings put Patient A at unwarranted risk of harm. Her subsequent dishonesty placed him at further risk of harm, as well as breaching fundamental tenets of the nursing profession and bringing the nursing profession into disrepute.

The panel then moved on to consider whether Ms Miles was likely to repeat such misconduct in the future, and whether a finding of current impairment was required to protect the public and/or uphold the public interest.

The panel first considered the issues of insight and remorse. It was of the view that Ms Miles has demonstrated some remorse for the harm and distress caused to Patient A and his family, as well as some limited insight into her medication errors. However, the panel considered that her insight into her dishonesty was under developed and lacking. What insight Ms Miles has shown is self-focused and concentrates on her embarrassment over the incident. She has shown no insight into the harm that her

medication error had on her patient or the impact of her delay in reporting her error and securing a review and an accurate assessment. In addition, the panel could find no evidence of her insight into the impact this incident had on her colleagues and the damage her actions could have had on the reputation of the nursing profession as a whole, or public confidence in the profession.

The panel had regard to the positive testimonials provided on behalf of Ms Miles, including one dated 9 July 2020, which describes Ms Miles as *'a person of great integrity'*, who is open and will work hard to correct mistakes. However, it was not clear from the testimonials in what capacity the authors had worked with or knew Ms Miles, and whether they were aware of the NMC allegations. The panel could therefore attach little weight to these testimonials.

The panel also noted that, while Ms Miles has provided evidence of online training courses, none of these focus on medicines administration. She has also indicated that she has left the profession and intends to allow her registration to lapse, so any further remediation is unlikely.

The panel also bore in mind that this is not the first time Ms Miles has been referred to the NMC. After finding the facts proved, the panel was provided with the decision letter from an NMC fitness to practise hearing which took place in March 2016. At this hearing, Ms Miles admitted to making a number of medication errors and dishonestly attempting to hide her mistake. On this occasion, no patient harm was caused and Ms Miles received a 6 month suspension. However, the panel was concerned that Ms Miles does not appear to have learned from her previous mistakes as, approximately two years later, she went on to repeat very similar medication errors and again acted dishonestly by trying to conceal her mistakes.

Given Ms Miles' lack of remediation, her lack of insight into her dishonesty, and the fact that her dishonesty occurred against a backdrop of a previous suspension for similar concerns, the panel considered that there is a significant risk that Ms Miles would repeat

similar errors and behave dishonesty in the future. If she were to do so, patients could be exposed to unwarranted risk of harm. The panel therefore determined that a finding of current impairment was required on public protection grounds.

The panel also 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 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 acknowledged that mistakes can happen in healthcare. However, when they do, it is important that practitioners are open and honest about this so that patients can receive the correct care and the public do not lose confidence in the healthcare professions. The panel considered that Ms Miles' dishonesty was entirely contrary to the fundamental tenets of honesty and integrity. It was of the view that the public would lose confidence in both the nursing profession, and the NMC as a regulator, if the panel did not make a finding of impairment in a case where a nurse has admitted to repeatedly lying about a medication error, which had serious consequences for the patient. The panel therefore determined that a finding of current impairment was also required on public interest grounds to maintain public confidence and send a message about the standards of behaviour and integrity expected from registered nurses.

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

Determination on sanction

The panel decided to make a striking-off order.

In reaching this decision, the panel had regard to all the evidence that it had read in this case, as well as the Sanctions Guidance published by the NMC. The panel accepted the advice of the legal assessor and bore 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 also had regard to the written submissions put forward by both the NMC and the RCN. The NMC's statement of case outlined a number of aggravating and mitigating factors and proposed that the appropriate and proportionate sanction was that of a striking-off order. The RCN submitted that, as Ms Miles has retired from the profession and does not intend to ever practise again, it would be appropriate to allow her retirement to take effect via a 12 month suspension followed by lapse upon review. However, the panel reminded itself that the decision on sanction was a matter for the panel, exercising its own independent judgement.

The panel considered that the aggravating factors in this case were:

- Ms Miles' dishonesty related to patient care and involved her putting her own interests before those of Patient A;
- Patient A suffered actual and significant harm;
- Ms Miles has previously been suspended by an NMC Fitness to Practise panel for very similar concerns, including dishonesty;
- She has shown very limited insight into the effect of her actions on patients, colleagues and the wider nursing profession.

The panel considered that the mitigating factors in this case were:

- Ms Miles admitted the charges at an early stage;
- She has expressed some remorse for Patient A and his family;
- She has completed some training and made some efforts to remain up-to-date professionally.

The panel first considered whether to take no action but decided that this would be wholly inappropriate. Taking no further action would not restrict Ms Miles' practise and would therefore not protect patients from the identified risk of harm. The panel was also of the view that taking no further action would fail to mark the seriousness of Ms Miles'

misconduct and dishonesty. The panel therefore decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered a caution order but decided that this would be inappropriate for the same reasons. A caution order would not protect the public and would be insufficient to satisfy the public interest. The panel had regard to the NMC's Sanction Guidance 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 considered that Ms Miles' misconduct was not at the lower end of the spectrum of impaired fitness to practise and that a caution order would be wholly insufficient, particularly given her previous NMC suspension order. The panel therefore decided that it would be neither proportionate nor in the public interest to impose a caution.

The panel next considered a conditions of practice order. It was of the view that while it may be possible to formulate conditions to address Ms Miles' clinical failings, it would not be possible to formulate conditions which would address her dishonesty. The panel also considered that conditions would not be workable, given that Ms Miles has indicated that she has retired from the profession. Furthermore, the panel considered that a conditions of practice order would be insufficient to mark the seriousness of the case and satisfy the public interest. For all of these reasons, the panel concluded that a conditions of practice order was not an appropriate sanction.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that a suspension order may be appropriate where:

> *'… the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more*

likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- *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 noted that, while the charges found proved do relate to a single incident, Ms Miles repeatedly denied having made a medication error to colleagues. She has also previously been subject to a suspension order, arising out of very similar circumstances. The panel therefore considered that her misconduct could not be characterised as a single instance and, instead, represented a pattern of behaviour. Despite being suspended in 2016, Ms Miles does not appear to have learned from her previous mistakes. The panel was concerned that Ms Miles' apparent tendency to act dishonestly when she makes mistakes was indicative of an attitudinal problem, which had the potential to put patients at serious risk of harm. The panel accepted that there is no evidence of any repetition since the incident at the Home, but there is evidence of similar misconduct taking place prior. The panel was also not satisfied that Ms Miles has insight into the impact of her dishonesty on her patients, colleagues, or the wider nursing profession.

The panel had regard to the RCN's submissions that Ms Miles has retired from nursing and should be allowed to let her registration expire following a period of suspension. However the panel considered that, given the serious and repeated nature of Ms Miles' dishonesty, and the fact that she has already been subject to a suspension order that

did not appear to produce any lasting change in her behaviour, a suspension order would not be sufficient to mark the public interest in this case.

Honesty and integrity are fundamental tenets of the nursing profession. The public must be able to trust the nurses that care for them and their loved ones. The panel accepted that in healthcare mistakes can, and do, happen. However, it is vitally important that when they do, nurses are open and honest about this to prevent any further harm to their patients, and to maintain the trust and confidence of their colleagues and the public.

Ms Miles has demonstrated, on more than one occasion, that she is unable to live up to these standards. In both this case and her previous case in 2016 she failed to comply with the duty of candour. She put her own interests first and attempted to conceal her mistakes, rather than prioritising the needs of her patient. In the case of Patient A, this included concealing the full extent of her medication errors to the paramedics who were called to assist when Patient A became unwell. She has also demonstrated little insight. The panel considered that this level of dishonesty constituted deplorable, unacceptable and dangerous nursing practice, and is fundamentally incompatible with remaining on the NMC register.

In these circumstances, the panel concluded that the only sanction that would adequately protect the public, satisfy the public interest, and uphold trust and confidence in the nursing profession and the NMC as its regulator, was a striking-off order. It considered that this sanction was required to mark the seriousness of Ms Miles' misconduct and send a message to the public and profession about the standards of honesty, integrity and candour expected of registered nurses when things go wrong.

The panel therefore directs the registrar to strike Ms Miles off the NMC register.

Determination on interim order

Having determined that a striking-off order was the appropriate and proportionate sanction, the panel considered whether to impose an interim order to cover the appeal period.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order was necessary for the protection of the public and was 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. To do 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 striking-off order 28 days after Ms Miles is sent the decision of this hearing in writing.

That concludes this determination.