Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
3-5 February 2020

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

Name of registrant:	Susan Elizabeth Greene
NMC PIN:	08H0851E
Part(s) of the register:	Registered Nurse - Sub Part 1 Adult Nurse (November 2008)
Area of registered address:	England
Type of case:	Misconduct
Panel members:	John Weeden (Chair, Lay member) Diane Gow (Registrant member) Michael Glickman (Lay member)
Legal Assessor:	William Hoskins
Panel Secretary:	Alison Martin
Nursing and Midwifery Council:	Represented by Neil Jeffs, Case Presenter
Miss Greene:	Not present and unrepresented at the hearing
Facts proved by admission:	All
Fitness to practise:	Impaired in respect of charges 2 and 3
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Greene was not in attendance and that the Notice of Hearing letter had been sent to Miss Greene's registered address by recorded delivery and by first class post on 3 January 2020.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Greene's registered address on 4 January 2020. It was signed for at 12:14pm in the name of "GREENE".

Further, the panel noted that the Notice of Hearing was also sent to Miss Greene's representative at the Royal College of Nursing (RCN) on 3 January 2020.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Greene's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

The panel accepted the advice of the legal assessor.

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

Decision and reasons on proceeding in the absence of Miss Greene

The panel next considered whether it should proceed in the absence of Miss Greene. The panel had regard to Rule 21(2), which states:

> *'**21.**— (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 Jeffs invited the panel to continue in the absence of Miss Greene on the basis that she had voluntarily absented herself.

Mr Jeffs referred the panel to the documentation from Miss Greene's representative at the RCN which included an email dated 30 January 2020 and a letter dated 31 January 2020 as well as a redacted copy of the case management form signed by the RCN on behalf of Miss Greene on 9 October 2019. Mr Jeffs told the panel that all of the documents state Miss Greene is content for the hearing to proceed in her absence. Mr Jeffs told the panel that Miss Greene has been represented throughout these proceedings by the RCN and no request for a postponement has been made.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of Miss Greene under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'*. Fairness to the registrant is a cardinal consideration but the panel is also required to have regard to the public interest in disposing of allegations expeditiously and to all the circumstances of the particular case.

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

- there were some apparent contradictions between the case management form signed on behalf of Miss Greene by the RCN and the letter dated 31 January 2020 from the RCN, but the panel noted that Miss Greene is keen to engage with the proceedings;
- no application for an adjournment has been made by Miss Greene;
- Miss Greene has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- one witness has attended today to give live evidence;
- not proceeding will inconvenience the witness and her employer;
- the charges relate to events that occurred in 2018 and 2019; and
- there is a strong public interest in the expeditious disposal of the case.

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

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Jeffs drew the panel's attention to a letter dated 31 January 2020 from the RCN in which they make a submission that in respect to charge 2 these matters be held in private on the basis that proper exploration of Miss Greene's case in respect of this charge involves personal matters. The application was made pursuant to Rule 19 of 'NMC (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Jeffs indicated that he supported the application to the extent that any reference to personal matters should be heard in private. Mr Jeffs further submitted that the reading of the charge itself did not fall under Rule 19.

Rule 19 states:

> *'**19.**— (1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.*
>
> *(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.*
>
> *(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—*
>
> *(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and*

(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, "in private" *means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.'*

The legal assessor reminded the panel that Rule 19(1) provides, as a starting point, that hearings shall be conducted in public. He advised the panel that Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest. The legal assessor advised the panel that this was not a case which fell within the scope of Rule 19(2) which was directed at cases in which the registrant's physical or mental health was the sole concern.

Having heard that there will be reference to personal matters, the panel determined to hold those parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with personal matters in Miss Greene's case as and when such issues are raised.

Having considered the evidence in exhibit four (originally referenced KM9) the panel directed the redaction of the face of Patient A where it occurred in that exhibit to ensure that his identity was protected.

Details of charge

"That you, a registered nurse:

At Whittle Hall Nursing Home:

1. On 9 September 2018 you administered resident A Metformin 500mg and~~/or~~ Risperidone 1mg that should have been administered to a different resident. **Proved by admission**

While employed by Lloyds Pharmacy Clinical Homecare:

2. You failed to maintain professional boundaries in that sometime between January 2018 and July 2018 you entered into a personal relationship with patient A. **Proved by admission**

At Oak Grange care Home:

3. On 10 and***/or*** 11 February 2019 you failed to administer resident B's 6:00PM Tinzaparin Injections. **Proved by admission**

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

Facts

At the outset of the hearing, the panel noted the RCN's written submission that Miss Greene made full admissions to charges 1, 2 and 3. Mr Jeffs invited the panel to find the facts proved in respect of charges 1, 2, and 3.

The panel accepted the advice of the legal assessor.

The panel noted that admissions had been made by Miss Greene to all three charges but determined that it would not find the charges proved at this stage, as it was not entirely clear whether Miss Greene was admitting each and every aspect of each charge.

In respect of charge 1, Mr Jeffs submitted that this was a straightforward medication error. Mr Jeffs drew the panel's attention to an email dated 8 April 2019 from Ms 1, the Home Manager at Whittle Hall. He told the panel that Miss Greene admitted the mistake at the time and he drew the panel's attention to "Reflection 1" written by Miss Greene.

In respect of charge 2, Mr Jeffs told the panel that Miss Greene accepted she had entered into an unprofessional relationship with Patient A. He drew the panel's attention to Ms 2's NMC statement dated 28 May 2019 and to Miss Greene's own admissions made in her "Reflection 3" and on the case management form.

In respect of charge 3, Mr Jeffs drew the panel's attention to a letter dated 12 February 2019 from Ms 3, the Deputy Manager at Oak Grange Care Home, as well as a MAR chart for Resident B and a local statement made by Miss Greene to the agency dated 21 February 2019. He submitted that the stock checks provide evidence that the medication had not been administered. Mr Jeffs also drew the panel's attention to Miss

Green's "Reflection 2" in which she does appear to accept that she did not administer the medications.

Mr Jeffs told the panel that when looking at the documents as a whole and Miss Greene's admissions, and in light of the fact that she has been provided with professional legal advice by the RCN, the panel can safely conclude that on the balance of probabilities Miss Greene has admitted the charges.

Mr Jeffs confirmed to the panel that the NMC relies solely on the documents put before the panel today and the admissions made by Miss Greene.

After a break to allow the panel to consider the documentation, Mr Jeffs informed the panel that he had contacted the solicitor at the RCN to seek clarification and was able to offer some further information to the panel. He drew the panel's attention to an email just received from the RCN in which Miss Greene's representative stated:

> *"I have spoken with the registrant who has confirmed the following in relation to charges 1 and 3.*
>
> *Charge 1*
> *The registrant confirms that the patient received both medications set out in the charge.*
>
> *Charge 3*
> *The registrant says that this was not brought to her attention for a couple of weeks after the incident so she cannot recall each resident. However, because the medication count was showing she hadn't given the medication she has assumed that she didn't."*

Mr Jeffs told the panel that this communication was of more importance than the local statement provided by Miss Greene soon after the event in which she had said that she

could not remember details in respect of charge 3. Mr Jeffs informed the panel that her admission is supported by the MAR chart and the email dated 3 February 2020 from the RCN.

Mr Jeffs submitted that at all times Miss Greene has been represented by experienced lawyers at the RCN who continue to represent her. He submitted that there has been no suggestion that Miss Greene is stepping back from any of these admissions and on this basis he invited the panel to find the charges found proved.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. He advised the panel that there are now unequivocal admissions on three charges whereas there had been earlier some ambiguity.

The panel accepted the advice of the legal assessor and found the facts of charges 1, 2 and 3 proved in their entirety, by way of Miss Greene's admissions. The panel considered that in respect of charge 1 and charge 2 the words **"/or"** within the charge be removed. Therefore the charges read:

"That you, a registered nurse:

At Whittle Hall Nursing Home:

1. On 9 September 2018 you administered resident A Metformin 500mg and~~/or~~ Risperidone 1mg that should have been administered to a different resident.

While employed by Lloyds Pharmacy Clinical Homecare:

2. You failed to maintain professional boundaries in that sometime between January 2018 and July 2018 you entered into a personal relationship with patient A.

At Oak Grange care Home:

3. On 10 and~~/or~~ 11 February 2019 you failed to administer resident B's 6:00PM Tinzaparin Injections.

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

Background

Miss Greene first came onto the NMC register in November 2008. Charge 2 arose while Miss Greene was employed as a registered nurse by Lloyds Pharmacy Clinical Homecare ("LPC"). LPC provides nursing care to approximately 80,000 patients in their own homes, workplace or community. The care provided includes home parenteral nutrition; IV antibiotic therapy; immunoglobulin therapies and a wide range of biologic drugs and cancer treatments. Miss Greene was employed by LPC from 14 February 2011 until June/July 2018 when she resigned. Charges 1 and 3 arose while Miss Greene was employed as an agency nurse by Hamilton Cross.

Ms 2, a qualified nurse, was a Nursing Services Manager at LPC at the material time and although she was responsible for a team of nurses, Ms Greene did not report to her.

In her NMC statement dated 28 May 2019 Ms 2 alleges that on 20 June 2018 it was brought to her attention that Miss Greene was in a personal relationship with Patient A. Ms 2 contacted Miss Greene that evening and alleges that Miss Greene denied having seen Patient A. Ms 2 contacted Miss Greene's line manager who went onto Facebook and found photographs of Miss Greene and Patient A together.

On 21 June 2018 Miss Greene was suspended from duty. Ms 2 alleges that following Miss Greene's suspension from LPC Miss Greene removed all the posts from her Facebook account.

On 5 July 2018 Ms 2 called an investigatory meeting with Miss Greene and her line manager. Ms 2 alleges that at this meeting she discussed the allegations with Miss Greene who initially denied the allegations [PRIVATE]. Ms 2 states that following a short break in the meeting Miss Greene returned and admitted that she had breached boundaries and entered into a personal relationship with Patient A. Miss Greene did not disclose details about the nature and length of the relationship but it is alleged by Ms 2 that she admitted that he had moved into her house.

In her statement Ms 2 also states that she had no concerns about Miss Greene's clinical knowledge. In her oral evidence Ms 2 also said she had no concerns about Miss Greene's clinical practice.

In an email, Ms 1 the Home Manager at Whittle Hall Care Home, alleges that Miss Greene brought to her attention a medication error she had made on 9 September 2018 involving administration of the wrong medication to the wrong patient. Ms 1 states that Miss Greene reported the error immediately. Ms 1 raised the error with Hamilton Cross, the agency Miss Greene worked for. Ms 1 confirms that no harm had come to the resident.

In a letter dated 12 February 2019 to Hamilton Cross Agency, Ms 3, Deputy Manager at Oak Grange Care Home, states that Miss Greene, while working two 8am to 8pm shifts on 10 and 11 February 2019, omitted to administer Tinzaparin injections due to one patient at 18:00 hours. Ms 3 further states that the omission was confirmed by a full stock check of the medication and that this correlates with the MAR chart in which the boxes for the 6:00PM medication for Resident B on both the 10 and 11 February 2019 have not been completed.

Miss Greene provided a statement dated 21 February 2019 to the agency in which she states that during both shifts she was repeatedly interrupted by care staff.

Misconduct and Impairment

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Greene's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

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

Ms 2:	Regional Operational Manager with Lloyds Pharmacy Clinical Homecare (LPC). At the time of the allegations Ms 2 was a Nursing Services Manager.

The panel found Ms 2 to be an honest, reliable and helpful witness although she had not worked directly with Miss Greene. Ms 2 told the panel that a safeguarding

investigation had to be instigated in respect of Patient A to establish what had taken place when he had disengaged from the relevant Trust. Ms 2 conducted the investigatory meeting with Miss Greene on 5 July 2018 and in her oral evidence she told the panel that Miss Greene's demeanour was confident and self-assured, unlike her usual demeanour. She was surprised by this.

Submissions on misconduct

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

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

Mr Jeffs identified the specific, relevant standards where he submitted that Miss Greene's actions amounted to misconduct. Mr Jeffs submitted that Miss Greene's conduct as set out in charge 2 also breached local standards including clauses 5.4.1, 5.4.2.6, 5.4.2.7 and 7 of LPC's *"Professional Behaviour and Conduct Policy*". Further, Miss Greene's misconduct breached the guidance on sexual boundaries produced by the Council for Healthcare Regulatory Excellence (CHRE).

Mr Jeffs also submitted that the conduct referred to in all charges was serious. The relationship in charge 2 was highly inappropriate and the seriousness of the clinical errors was exacerbated by the fact that they were not isolated in nature.

Submissions on impairment

Mr Jeffs moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

In relation to charge 2, Mr Jeffs drew the panel's attention to Miss Greene's reflection that "*I agreed assuming this would be for two days. I did not intend for him to stay permanently, and, at this point, I had not entered into a sexual relationship with him"*. Mr Jeffs submitted that the implication from these words was that there was a later sexual relationship which continued until around March 2019. Miss Greene in her reflection refers to the breach of professional boundaries and the damage caused. Mr Jeffs reminded the panel that Miss Greene has recently undertaken training on "professional boundaries".

Mr Jeffs told the panel that in respect of charges 1 and 3, it is not uncommon for agency nurses to be in unfamiliar surroundings. He submitted that a nurse is responsible for their own practice. Mr Jeffs told the panel that Miss Greene has undertaken some online training to remediate her clinical failings. Mr Jeffs submitted that there was more than one medication error which occurred in different locations and that the medication errors related to basic nursing practice.

The panel accepted the advice of the legal assessor.

In response to an enquiry from the panel, Mr Jeffs stated that Miss Greene's practice has not been subject to the imposition of an interim order. Mr Jeffs was unable to tell the panel whether Miss Greene has been working as a registered nurse since March 2019 but he said that it appears from Miss Greene's reflective piece and the RCN's submissions that she has not practised since March 2019.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the LPC's *"Professional Behaviour and Conduct Policy"*. Specifically

Paragraph 5.4.1:

As an employee or colleague within LPCH you should always behave in a manner that will promote trust and confidence of patients, their families, customers and other stakeholders. At all times your actions both inside and outside the workplace should be beyond reproach. You should avoid any activities, whether connected with your official duties or outside of work, which might bring LPCH into disrepute, or jeopardise its relationships with clients, patients or their families and the general public.

5.4.2 *You **must not** under any circumstances:*

Paragraph 5.4.2.6

D*iscuss personal problems/information or childcare arrangements with patients.*

Paragraph 7 - Avoidance of Conflicts of Interest or Integrity

7.1

Operating with integrity means we avoid activities, relationships, or situations that can create an actual or potential conflict of interest, or the appearance of one. A conflict of interest arises when a personal interest, relationship or activity may interfere with our business objectivity or loyalty to our employer. When performing our jobs, we should always put LPCH's best interests before any personal interest.

The panel had regard to the guidance on sexual boundaries produced by the CHRE in 2008 entitled "*Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals".*

The panel also had regard to the terms of the Code and in particular found breaches of the following provisions. Specifically:

1 Treat people as individuals and uphold their dignity

1.2 make sure you deliver the fundamentals of care effectively

8 Work cooperatively

8.2 maintain effective communication with colleagues

8.3 keep colleagues informed when you are sharing the care of individuals with other healthcare professionals and staff

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

8.6 share information to identify and reduce risk.

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

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

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

20 Uphold the reputation of your profession at all times

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.

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

Charge 1 – misconduct

The panel noted Miss Greene's written submissions in respect of charge 1, that she apologised and described how she would handle the situation differently in the future. The panel had regard to Miss Greene's account which stated that a carer had misidentified the patient to whom Miss Greene was to administer medication. In the absence of any other evidence the panel accepted that this was a genuine mistake by Miss Greene in a situation in which she was working as an agency nurse in an unfamiliar environment. As soon as Miss Greene realised her error she dealt with it appropriately, notifying the relevant clinician and completing the correct paperwork. The panel had regard to Miss Greene's reflection that the residents at Whittle Hall Nursing Home did not have wrist bands with their names on and it was difficult to confidently identify a resident from their photograph on the MAR chart.

The panel noted that there was no patient harm as a consequence of the drug administration error and that Miss Greene had been open and transparent when she realised her mistake. The panel considered that it was an understandable if unfortunate error in the circumstances. Consequently the panel was of the view that this error was not in itself sufficiently serious given all the circumstances to be categorised as misconduct.

Charge 2 – misconduct

The panel had regard to the investigatory meeting notes dated 5 July 2018 in which Miss Greene admitted that she had entered into and was in a personal relationship with Patient A and that she had breached professional boundaries. Miss Greene has now admitted in her reflective piece that her relationship with Patient A lasted for at least nine months during which time he was living with her. Miss Greene in her written reflection also notes that Patient A fell out with his family because of his relationship with her.

Miss Greene had met Patient A because she was directly responsible for his care which involved parenteral nutrition. As a result of entering into a relationship with him, she invited him to live in her home with her three children and became directly responsible for his care. She did not alert the relevant trust that this was the case. This led Patient A to disengage from his healthcare provider and potentially put him at risk.

The panel considered that this was a serious breach of both the Code and the CHRE guidance *"Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals".* In particular, the panel had regard to paragraphs 20.5 and 20.6 of the Code:

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

The panel also had regard to the LPC's *"Professional Behaviour and Conduct Policy",* and the panel was of the view that Miss Green's actions amount to a breach of LPC's policy.

Specifically

Paragraph 5.4.1:

As an employee or colleague within LPCH you should always behave in a manner that will promote trust and confidence of patients, their families, customers and other stakeholders. At all times your actions both inside and outside the workplace should be beyond reproach. You should avoid any activities, whether connected with your official duties or outside of work, which might bring LPCH into disrepute, or jeopardies its relationships with clients, patients or their families and the general public.

5.4.2 *You* ***must not*** *under any circumstances:*

Paragraph 5.4.2.6

D*iscuss personal problems/information or childcare arrangements with patients.*

Paragraph 7 - Avoidance of Conflicts of Interest or Integrity

7.1

Operating with integrity means we avoid activities, relationships, or situations that can create an actual or potential conflict of interest, or the appearance of one. A conflict of interest arises when a personal interest, relationship or activity may interfere with our business objectivity or loyalty to our employer. When performing our jobs, we should always put LPCH's best interests before any personal interest.

The panel found that Miss Greene's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct in respect of charge 2.

Charge 3 – misconduct

The panel had regard to Miss Greene's "Reflection 2" in which she cites multiple interruptions by carers and family members during the drugs round. Miss Greene describes in her reflection how she would handle the situation differently in the future. She also states that she became reliant on the colour coding used on the MAR chart rather than reading the MAR chart in detail, and she accepts this was an error.

The panel had regard to Ms 2's oral evidence that *'Miss Greene was a very safe practitioner.'*

The panel noted that the error occurred on two successive days. Further it noted that there were two occasions on the day prior to those mentioned in charge 3 when medication was not administered to Patient B by, presumably, another registered nurse, but the panel had no further information on this other than the MAR chart. The panel was of the view that it is possible that this may be indicative of a systematic problem with the way the MAR chart was set out at the Home. The panel noted that it took a week and a half for the drug administration error to be investigated by the Home and for the Home to notify Miss Greene who by this time was unable to recall what happened.

It was the panel's view that Miss Greene, as the only registered nurse on duty on the 10 and 11 February 2019, had the responsibility for administering medication to all of the patients at the Home. The panel noted that while there was no actual patient harm there had been the potential for patient harm if a patient does not receive Tinzaparin medication on two consecutive days.

The panel also noted that Miss Greene had made a medicines administration error five months earlier (charge 1) and it was the panel's view that consequently a responsible nurse should have been much more diligent and vigilant when administering medication. The panel considered that, while Miss Greene was busy, it had been her responsibility to administer the medication safely to the patients.

The panel found that Miss Greene's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct in respect of charge 3.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct found in respect of charges 2 and 3, Miss Greene's fitness to practise is currently impaired.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision in respect of charge 2 and charge 3. In paragraph 74, she said:

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

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *…*

The panel considered that limbs a), b) and c) in the test of Grant are engaged in this case.

The panel finds that Patient A was put at risk and that there was the potential for physical and emotional harm as a result of Miss Greene's misconduct. The panel noted that Patient A had disengaged with the Trust in relation to his treatment as a consequence of his relationship with Miss Greene. This resulted in LPC initiating a safeguarding investigation. The investigation found that Patient A had continued to receive parenteral nutrition administered by Miss Greene and there was no evidence that he suffered harm. However the panel considered that there was the potential for the loss of objective clinical judgement which could place him at risk. The panel was further of the view that the imbalance of power in the clinician/patient relationship was significant. The panel also noted that as a consequence of his relationship with Miss Greene, Patient A appears to have become estranged from his family.

The panel was concerned about the late development of insight in relation to charge 2. Miss Greene has made admissions and has submitted a reflective piece indicating that she now has an understanding of her misconduct and the way in which this impacted negatively on the reputation of the nursing profession. Miss Greene has apologised to this panel for her misconduct. At the time of the events with which the panel is concerned, Miss Greene was an experienced nurse and must have been aware that she was breaching a number of sections of the Code. The panel noted that she did not immediately report matters to her employer. Additionally, the panel considered that there has been no acknowledgement or recognition by Miss Greene of the inherent vulnerability of Patient A although she accepts that Patient A fell out with his family as a result of their relationship.

The panel had regard to Miss Greene's detailed reflection. The panel acknowledged that it is difficult to demonstrate that this type of misconduct has been remediated, and noted that it is less than a year since Miss Greene ended her relationship with Patient A. The panel was not satisfied that Miss Greene had yet acquired full insight into the implications of this misconduct.

Regarding insight in respect of charge 3, Miss Greene made admissions and she has demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. Miss Greene has apologised to this panel for her misconduct. Miss Greene has outlined to the panel the problems with being interrupted and the panel was of the view that she has sufficiently demonstrated how she would handle the situation differently in the future. The panel was satisfied that the misconduct in this case is capable of remediation. The panel noted that there is no evidence that Miss Greene has practised as a nurse since March 2019 and therefore she has not demonstrated that she is capable of safe practice. The panel noted that Miss Greene is working towards remediation through undertaking an online training course on Safe Administration of Medicines, and through her written reflection. Nevertheless, the panel considered that there is not sufficient evidence before it today that she has remediated her practice and consequently a real risk of repetition remains.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that in respect of charge 2 a finding of impairment on public interest grounds is required where a nurse has breached professional boundaries in this way. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Miss Greene's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Greene's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the Registrar to strike Miss Greene off the register. The effect of this order is that the NMC register will show that Miss Greene has been struck-off the register.

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

Submissions on sanction

Mr Jeffs informed the panel that in the Notice of Hearing, dated 3 January 2020, the NMC had advised Miss Greene that it would seek the imposition of a striking-off order if the panel found Miss Greene's fitness to practise currently impaired. Mr Jeffs drew the panel's attention to the NMC's guidance entitled *"How we determine seriousness"* and *"Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels"* and "*Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals",* issued by the Professional Standards Authority (PSA) (formerly the CHRE) dated January 2008.

The panel also bore in mind the written submissions made by Miss Greene's representative at the RCN that a suspension order for 12 months is the appropriate sanction. The RCN in their letter dated 31 January 2020 submitted that remediation has been demonstrated by Miss Greene through her updated training and reflection, and they drew the panel's attention to Miss Greene's personal mitigation.

Decision and reasons on sanction

Having found Miss Greene's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel also had regard to the NMC's guidance *"How we determine seriousness"* and the PSA (formerly the CHRE) guidance on *"Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels"* and "*Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals",* January 2008.

The panel accepted the advice of the legal assessor. He advised the panel that a breach of professional boundaries is always a most serious matter even though, inevitably, some cases will be at the higher end and others at the lower end of this particular spectrum.

The panel considered charge 3 to be a matter which could have been resolved locally.

The panel considered charge 2 to be much more serious.

The panel took into account the following aggravating features in relation to charge 2:

- The abuse of a position of trust due to the imbalance of power between the clinician and patient.
- The vulnerability of Patient A, who had a long term condition that required twice daily medical interventions.
- The repeated lack of insight demonstrated by Miss Greene. For example:

    - a nurse already on a performance improvement plan, which Miss Greene was at this point, should have been extremely vigilant in her professional conduct;
    - allowing the relationship with Patient A to continue for at least nine months and bringing Patient A into her family home; and
    - the absence of appreciation of the risks of harm that her conduct posed to Patient A.

- Miss Greene denied the relationship with Patient A until the very end of the investigatory meeting on 5 July 2018 despite being confronted by compelling documentary evidence.

The panel also took into account the following mitigating features in relation to charge 2:

- There was no evidence of actual patient harm.
- Miss Greene made admissions to all of the charges.
- Miss Greene has provided some evidence of insight, completed reflective pieces and undertaken training in the relevant areas. She has shown remorse and apologised for her misconduct.
- The relationship with Patient A appears to have been initiated at the request of Patient A.
- Miss Greene's difficult personal circumstances at the time.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Miss Greene's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower*

end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Miss Greene's misconduct was not at the lower end of the spectrum 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 conditions of practice on Miss Greene's registration would be a sufficient and appropriate response in respect of charge 2. The panel is of the view that there are no practical or workable conditions that could be formulated given the attitudinal nature of charge 2. The misconduct identified in charge 2 was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Greene's registration would not adequately address the seriousness of this case.

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

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

The conduct, as highlighted by the facts found proved in charge 2, was a significant departure from the standards expected of a registered nurse. Although it could be described as a single instance of misconduct, it was prolonged. The panel also had concerns that Miss Greene's behaviour, in the circumstances, was a reflection of attitudinal problems which could be hard to resolve. The panel noted that Miss Greene had a number of opportunities to attempt to rectify the situation which she did not take.

In this particular case the panel found only limited insight and this in itself gives rise to a worrying risk of repetition. It therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

In considering a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Although on the evidence it appears that Patient A initiated the relationship on social media, the panel were in no doubt that Miss Greene breached her obligation to maintain professional boundaries by allowing herself to be contacted in this way by Patient A and agreeing to meet him. The matter is made even more serious because Miss Greene allowed the relationship to develop into a sexual one and allowed Patient A to live for some period of time in her family home [PRIVATE].

It is the panel's opinion that, following the guidance for healthcare professionals and fitness to practise panels from the CHRE, there was a potential risk of harm to Patient A. The panel was of the view that by moving Patient A into her family home and taking over the responsibilities of administering parenteral nutrition, Miss Greene was placing at risk of harm a vulnerable patient who had a long term condition that required twice daily interventions. The panel has no evidence of a risk assessment having been undertaken when Patient A moved in, and no evidence that she discussed this with Patient A's existing care providers, from whom he disengaged for at least two weeks. Although there is no evidence that Patient A suffered any immediate harm, research

outlined in the CHRE guidance *"Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels"* states:

The importance of setting and maintaining clear sexual boundaries

> *Research literature demonstrates a widespread acknowledgment that sexual boundary transgressions are damaging to patients and carers. A number of qualitative[3] studies have been carried out to explore the impact of such transgressions. These show that patients can experience considerable and long-lived harm…*
>
> [3] A summary of key research findings can be found at Appendix A. For further information see Halter, M, Brown, H, Stone, J, (2007) *Sexual Boundary Violations by Health Professionals – an overview of the published empirical literature*. Council for Healthcare Regulatory Excellence, London – available from www.chre.org.uk

Miss Greene's actions were significant departures from the standards expected of a registered nurse, and in the panel's view are fundamentally incompatible with her remaining on the register. In addition to the identified risk of repetition, the panel considered that her actions were so serious that to allow her to remain on the register would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of the factors mentioned above, and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Miss Greene's actions have brought the nursing profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, and the panel has concluded that nothing short of striking-off would be sufficient in this case. The panel considered that this order was also necessary to protect the public from a risk of repetition and to send to the public

and the profession a clear message about the standard of behaviour required of a registered nurse.

This determination will be confirmed to Miss Greene in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Jeffs. He submitted that an interim suspension order for a period of 18 months is required to cover any appeal period.

Decision and reasons on interim order

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

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

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

That concludes this determination.