

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

**Substantive Meeting
Wednesday 29 – Friday 31 December 2021**

Nursing and Midwifery Council
Virtual Meeting

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| Name of registrant: | Joanne Barker |
| NMC PIN: | 00C0739E |
| Part(s) of the register: | Registered Nurse Adult Nursing - April 2003 |
| Area of registered address: | Cheshire |
| Type of case: | Misconduct |
| Panel members: | Debbie Hill (Chair, Lay member) Donna Hart (Registrant member) Manjit Darby (Registrant member) |
| Legal Assessor: | Ian Ashford-Thom |
| Panel Secretary: | Elena Nicolaou |
| Facts proved: | Charges 1b, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 |
| Facts not proved: | Charge 1a |
| Fitness to practise: | Impaired |
| Sanction: | Striking-off order |
| Interim order: | Interim suspension order (18 months) |

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mrs Barker was not in attendance and that the Notice of Meeting had been sent to Mrs Barker's email on 3 November 2021.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

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

Details of charge

That you, a Registered Nurse:

- 1) On the following dates checked out full boxes of codeine phosphate on the controlled drugs register without getting your entry counter signed by another registered nurse:
 - a) 26 March 2019
 - b) 5 April 2019

- 2) On 1 June 2019, falsified records in the controlled drugs register for one or more of the following patients who were not prescribed Codeine Phosphate:
 - a) Patient E
 - b) Patient F

- c) Patient G
 - d) Patient H
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- 3) On or around the 21 June 2019 falsified an entry within the controlled drugs register by entering the details 60 mg of Codeine for a fictional patient.
 - 4) On or around the 30 June 2019 falsified an entry within the controlled drugs register by entering the details Patient I 30mg of codeine.
 - 5) On or around the 30 June 2019 made a falsified record within the controlled drugs register by entering the details, Patient J 60 mg of Codeine.
 - 6) On one or more occasions before 8 July 2019 took Codeine Phosphate from the controlled for your own personal use.
 - 7) On one or more occasions before the 8 July 2019 falsified records in the controlled drug book in order to sign out Codeine Phosphate for your own personal use.
 - 8) On 8 July 2019 took Codeine Phosphate from the controlled drugs cabinet for your own personal use.
 - 9) On 8 July 2019 you self-administered Codeine Phosphate whilst on work premises.
 - 10) On 8 July 2019, falsified entries in the controlled drugs register for one or more of the following patients who were not prescribed Codeine Phosphate:
 - a) Patient A
 - b) Patient B
 - c) Patient C
 - d) Patient D

- 11) On 8 July 2019 asked Colleague A to countersign in the controlled drug book for codeine phosphate without clinical justification.
- 12) Your actions in charges 6 and 8 were dishonest in that you knew you had no clinical justification for possessing this medication but took it for your own use
- 13) Your actions in charges 2, 3, 4, 5, 7 and 10 were dishonest in that you knew you had no clinical justification for making these entries within the controlled drugs register.
- 14) Your action in charge 11 was dishonest as you knew you had no clinical justification for asking Colleague A to countersign in the controlled drug book.
- 15) [PRIVATE]

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

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the Nursing and Midwifery Council (NMC) in writing.

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

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Aintree University Hospital, Unit Manager
- Witness 2: Aintree University Hospital, Pharmacist
- Witness 3: Aintree University Hospital, Matron
- Witness 4: Aintree University Hospital, Lead Nurse
- Witness 5: Aintree University Hospital, Deputy Matron and Investigation Officer

Background

The charges arose whilst Mrs Barker was employed as a registered nurse by Aintree University Hospital NHS Foundation Trust (the Hospital) where you worked as a Staff Nurse in the Acute Medical Unit (the Ward).

It is alleged that Mrs Barker stole Codeine Phosphate (Codeine) from her place of work at the Hospital. It is also alleged that Mrs Barker falsified records in the controlled-drug (CD) book in order to sign out Codeine.

It is alleged Mrs Barker signed the medication out for patients on numerous occasions when the patient had not been prescribed this medication. Additionally, it is alleged that Mrs Barker had signed out Codeine for fictional patients who had never been on the Ward. Further, it is alleged Mrs Barker signed out Codeine for patients who had been on the Ward, but left several years previously.

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

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

Charge 1a)

1) *On the following dates checked out full boxes of codeine phosphate on the controlled drugs register without getting your entry counter signed by another registered nurse:*

a) *26 March 2019*

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence before it which included the witness statement of Witness 2 and extracts from the CD book. Witness 2 describes how there was a practice for nurses to sign out boxes of Codeine for other units. Such transactions should have been countersigned by another registered nurse. However, Mrs Barker in her statement noted that because they were so busy, nurses did not in practice always comply with this requirement.

The panel noted the entry in the CD book dated 26 March 2019. Mrs Barker has signed this entry which states that one box of Codeine was transferred to the Ward. However, the panel took into account that there appears to be another signature next to Mrs Barker's signature in the column headed 'Witnessed by'. From its position on the page and the surrounding jumble of other signatures, it was not wholly clear whether this countersignature related to Mrs Barker's entry on 26 March 2019.

The panel also noted that there did not appear to be any other evidence which had a specific bearing on this charge.

The panel concluded that there was insufficient evidence to discharge the burden of proof and finds this charge not proved on the balance of probabilities.

Charge 1b)

1) *On the following dates checked out full boxes of codeine phosphate on the controlled drugs register without getting your entry counter signed by another registered nurse:*

b) *5 April 2019*

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's statement relating to the April 2019 incident, in which they stated that they had exhibited a page of the CD book. The panel found that the 5 April 2019 entry had been highlighted in yellow on the relevant extract from the CD book (which is out of sequential date order). It considered that the entry clearly shows Mrs Barker's signature, however the witness column is blank.

The panel therefore found that a second witness signature had not been obtained.

The panel therefore finds this charge proved.

Charge 2

2) *On 1 June 2019, falsified records in the controlled drugs register for one or more of the following patients who were not prescribed Codeine Phosphate:*

a) *Patient E*

b) *Patient F*

c) *Patient G*

d) *Patient H*

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's statement in which they stated that they had checked and confirmed on the Hospital system that the patients had not been prescribed the medication. This also corresponded with Witness 1's statement.

The panel considered the CD book in which it had highlighted what patients had been given Codeine and patients that had not been prescribed Codeine. It also took into account the medication profiles of Patient E, F, G and H in which they had not been prescribed Codeine, although the CD book had indicated that they were given it.

The panel therefore found that Mrs Barker had falsified records in the CD book for the patients in question who had not been prescribed Codeine.

The panel therefore finds charge 2 proved.

Charge 3

- 3) *On or around the 21 June 2019 falsified an entry within the controlled drugs register by entering the details 60 mg of Codeine for a fictional patient.*

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's statement in which they stated that they had checked the CD book and an entry for a patient had been made, which they confirmed had been fabricated. This had been cross checked against the Hospital system and confirmed that there had been no patient with that name admitted to the Ward.

The panel therefore found clear evidence that Mrs Barker had made an entry for a fictional patient.

The panel therefore finds charge 3 proved.

Charge 4

- 4) *On or around the 30 June 2019 falsified an entry within the controlled drugs register by entering the details Patient I 30mg of codeine.*

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's statement in which they state that an entry for another patient has been made, on 30 June 2019, and they confirmed that this patient had been admitted before to the Hospital but not on that particular date. This was checked against the Hospital's system and two patients with that particular name had shown; one had not been admitted since 2013 and the other had not been admitted since 2017.

The panel therefore found clear evidence that Mrs Barker had falsified an entry in the CD book for Patient I.

The panel therefore finds charge 4 proved.

Charge 5

- 5) *On or around the 30 June 2019 made a falsified record within the controlled drugs register by entering the details, Patient J 60 mg of Codeine.*

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's statement in which they stated that an entry had been made for another patient that had not been admitted to the Hospital since 2016, when checked on the Hospital's system.

The panel therefore found clear evidence that Mrs Barker had falsified an entry in the CD book for Patient J.

The panel therefore finds charge 5 proved.

Charge 6

6) *On one or more occasions before 8 July 2019 took Codeine Phosphate from the controlled for your own personal use.*

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's statement in which they stated that Mrs Barker had demonstrated poor practice as she had not been getting some of the entries countersigned by another registered nurse.

The panel considered the investigation interview with Witness 1 who stated that they believed Mrs Barker was trying to distract them by '*constantly talking and asking questions*' and felt that something was wrong. Witness 1 also stated that Mrs Barker would not have had time to administer the medication as she was present at the nurse's station within a minute of Witness 1 leaving the clinic room. It was for this reason that Witness 1 had checked the hospital system and found that the patient in question had not been prescribed Codeine.

The panel considered Witness 2's statement in which they stated that they had checked and realised on the Hospital system that the patient had not been prescribed the medication. This also corresponded with Witness 1's statement.

The panel considered the investigation report had indicated that Mrs Barker had made an admission but could not state the exact dates. It took into account where it stated Mrs Barker had been asked if she took the medication from the Hospital prior to June 2019, and she stated that she had taken them on a few occasions before but could not

remember the exact dates. The report continues to state Mrs Barker's reasons as to why she took the medication.

The panel considered the investigation meeting with Mrs Barker and noted that when she was asked whether she was taking Co-Codamol/Codeine from the Hospital between March and July 2019, she had stated that she had taken medication prior to 8 July 2019 a few times but could not remember the exact dates.

The panel considered that Mrs Barker, when questioned about the events on 8 July 2019, had stated that she had signed the medication out a few times in the morning for a patient that had not been prescribed it. It also considered that Mrs Barker had made an admission in relation to taking the medication whilst on duty in the staff toilets.

The panel therefore finds clear evidence that Mrs Barker had taken the medication for her own personal use.

The panel therefore finds charge 6 found proved.

Charge 7

7) On one or more occasions before the 8 July 2019 falsified records in the controlled drug book in order to sign out Codeine Phosphate for your own personal use.

This charge is found proved.

In reaching this decision, the panel took into account the information within the investigation report as previously referenced within Charge 6. There had been clear evidence that Mrs Barker had falsified records in the CD book and taken the medication before 8 July 2019, taking into account the information from Witness 2's statement and the investigation report. It considered that Mrs Barker could not remember the exact dates within the investigation report. Further, Mrs Barker confirmed to the investigating officer

that she had signed out Codeine for patients who were not prescribed it at the beginning of June, but was unable to recollect the exact dates.

The panel therefore finds clear evidence that Mrs Barker had falsified records in the CD book in order to sign out Codeine for her own personal use.

The panel therefore finds charge 7 found proved.

Charge 8

8) On 8 July 2019 took Codeine Phosphate from the controlled drugs cabinet for your own personal use.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's statement which stated that they had been alerted to the incident and checked the prescribing system, and Witness 2's statement which stated that they had also escalated this concern once it had been found. The panel noted there is cross reference between both witness statements. Witness 1's statement also cross references with information found in the investigation report.

The panel also considered Patient E, F, G and H's prescribing forms which show that they had not been prescribed Codeine. The panel also considered Witness 2's investigation statement where they state that the patients had not been prescribed Codeine and that Mrs Barker had taken medication from the CD cupboard four times on that shift.

The panel considered that Mrs Barker had made some admissions, including the letter sent by her to Witness 5 in which she stated that she took Codeine throughout the day from the CD cupboard and referenced the date of 8 July 2019. It considered that within the investigation meeting, Mrs Barker has admitted to taking Codeine on 8 July 2019. It also considered that Mrs Barker had admitted to taking the medication in the staff toilets.

The panel therefore finds clear evidence that Mrs Barker had taken the medication on 8 July 2019 for her own personal use.

The panel therefore finds charge 8 found proved.

Charge 9

9) On 8 July 2019 you self-administered Codeine Phosphate whilst on work premises.

This charge is found proved.

In reaching this decision, the panel took into account Mrs Barker's admission to taking the medication in the staff toilets on all four occasions, during her investigation interview. The panel also noted that Mrs Barker makes an admission to this within her letter to Witness 5.

The panel therefore finds clear evidence that Mrs Barker took the medication whilst on work premises.

The panel therefore finds charge 9 proved.

Charge 10

10) On 8 July 2019, falsified entries in the controlled drugs register for one or more of the following patients who were not prescribed Codeine Phosphate:

- a) Patient A*
- b) Patient B*
- c) Patient C*
- d) Patient D*

This charge is found proved.

In reaching this decision, the panel took into account Witness 1 and 2's statements, as well as the Hospital's correspondence, roster, CD log and patient profile chart.

The panel considered Witness 1's investigation statement in which they stated that they had checked whether Patient A had been prescribed Codeine Phosphate and they had not been. During the investigation, Witness 1 stated that Witness 2 had checked the CD book for the other patients of which Mrs Barker had asked for Codeine and the medication charts for these patients had shown that they had not been prescribed it, although Mrs Barker had signed out the medication for them. There is also cross reference from Witness 2's statement and the investigation report that these patients had not been prescribed the medication.

The panel also noted Mrs Barker's admission in her letter dated 8 August 2019 to Witness 5 that she had on several occasions threw out the day on 8 July 2019 taken Codeine out of the CD cupboard [PRIVATE].

The panel also considered the roster, showing that Mrs Barker was on duty that day.

The panel therefore finds clear evidence that Mrs Barker had falsified entries in the CD book for all four patients who had not been prescribed Codeine.

The panel therefore finds charge 10 proved.

Charge 11

11) On 8 July 2019 asked Colleague A to countersign in the controlled drug book for codeine phosphate without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's statement in which they stated that Mrs Barker had approached them at 17:05 and asked them to check out Codeine with her. Witness 2's statement confirms that the patient in question had not been prescribed Codeine so there was no clinical justification or reason for Mrs Barker to be taking it out.

Witness 1's statement that they had been to the CD cupboard with Mrs Barker to carry out the correct CD policy and they stated that following this, Mrs Barker had left the treatment room with the Codeine and Witness 1 then checked on the system whether the patient had been prescribed this medication.

The panel therefore finds clear evidence that Mrs Barker had asked Colleague A (Witness 1) to countersign in the CD book for Codeine without any clinical justification for doing so.

The panel therefore finds charge 11 proved.

Charge 12

12) Your actions in charges 6 and 8 were dishonest in that you knew you had no clinical justification for possessing this medication but took it for your own use

This charge is found proved.

In reaching this decision, the panel took into account Mrs Barker's admissions to taking the medication for her own personal use within her letter to Witness 5 and in the investigation meeting, when she clearly knew that this medication had not been prescribed to any patients.

When considering the allegations of dishonesty in this and subsequent charges, the panel applied the principles set out in *Ivey v Genting Casinos UK Limited* [2017] UKSC 67. The panel first ascertained, subjectively, Mrs Barker's actual state of knowledge or belief as to

the facts. Second, the panel considered whether the conduct in question was honest or dishonest by applying the objective standards of ordinary decent people.

[PRIVATE]

Mrs Barker had made admissions and stated that she knew taking the medication for her own personal use was wrong [PRIVATE]. When questioned during the investigation, she states *'I know if I told someone I had done it, I knew what the repercussions would be'*.

The panel considered Witness 4's statement which stated that Mrs Barker had taken the medication out of the cupboard and that she did not immediately admit to it. The panel considered Witness 1's statement in which they stated that Mrs Barker was trying to distract them which then led them to check the system, which would indicate deliberate evidence of dishonesty.

The panel considered the investigation interview with Mrs Barker in which she stated that she was familiar with the Hospital's medication policy and that her behaviour was wrong. Mrs Barker confirmed that she understood what her duties were as a registered nurse and that she had acted outside of these.

The panel was satisfied that Mrs Barker intended to misappropriate Codeine for her own use when she knew full well that this was prohibited. The panel were unable to find any alternative explanations to explain her behaviour.

The panel was also satisfied that Mrs Barker's conduct in this regard was dishonest by the objective standards of ordinary decent people.

The panel therefore found clear evidence that Mrs Barker's actions were dishonest in that she knew she had no clinical justification for possessing the medication.

The panel therefore finds charge 12 proved.

Charge 13

13) Your actions in charges 2, 3, 4, 5, 7 and 10 were dishonest in that you knew you had no clinical justification for making these entries within the controlled drugs register.

This charge is found proved.

In reaching this decision, the panel took into account that there were a repeated number of incidents when it was clear that Mrs Barker knew the patients in question had not been prescribed Codeine. In Mrs Barker's statement she said stated that she fully expected to lose her job, which indicates that she was aware of the consequences of her actions. The panel considered the investigation interview, in which Mrs Barker had stated that she was not making excuses, which would also indicate that she understood her actions were wrong. The panel also considered that Mrs Barker had stated she knew the Hospital's medication policy and admitted on four occasions on 8 July 2019 to signing the medication out, and on other occasions prior to this date.

The panel therefore finds clear evidence that Mrs Barker's actions in charges 2, 3, 4, 5, 7 and 10 were motivated by the intention to deceive anyone checking the CD book into believing that the medication had been used for patients whereas it had in fact been dishonestly misappropriated for her own use and accordingly, that she knew she had no clinical justification for making the entries in the CD book.

The panel was also satisfied that Mrs Barker's conduct in this regard was dishonest by the objective standards of ordinary decent people.

The panel therefore finds charge 13 proved.

Charge 14

14) *Your action in charge 11 was dishonest as you knew you had no clinical justification for asking Colleague A to countersign in the controlled drug book.*

This charge is found proved.

In reaching this decision, the panel took into account that Mrs Barker had made admissions in relation to taking medication out without patients having a prescription. The panel considered Witness 1's statement where they had clearly stated the events that occurred and that Mrs Barker had been trying to distract her, which was also stated in the investigation report. Witness 1 had clearly stated that they had checked the system and the patient in question had not been prescribed Codeine.

The panel considered that Mrs Barker was aware of the Hospital's medication policy, which involved two nurses having to sign the CD book and give the medication by the patient's bedside. Mrs Barker had stated that *'no one ever checks for a prescription or goes to the patient's bedside as it is too busy'*. The panel concluded that this deliberate and calculated risk indicated dishonesty by Mrs Barker as she knew that it was very unlikely that she would be accompanied to administer Codeine to a patient.

The panel considered the investigation report in which Mrs Barker had stated that if she thought about her actions, she would never have done it.

The panel therefore finds clear evidence that Mrs Barker's actions in charge 11 were motivated by dishonesty as she knew she had no clinical justification to ask Colleague A (Witness 1) to countersign the CD book.

The panel was also satisfied that Mrs Barker's conduct in this regard was dishonest by the objective standards of ordinary decent people.

The panel therefore finds charge 14 proved.

Charge 15

15) [PRIVATE]

This charge is found proved.

[PRIVATE]

The panel therefore finds charge 15 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Barker'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, Mrs Barker's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

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

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

The NMC, in their written submissions, identified the specific, relevant standards where Mrs Barker’s actions amounted to misconduct.

The NMC made reference to breaches of the Code which included 10.3, 18.2, 20.1 and 23.1. The NMC also made reference to the Fifth Shipman report (as endorsed in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)), including:

- ‘*a... b. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- *c. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future*
- *d. has [the Registrant] in past acted dishonestly and/or is liable to act dishonestly in the future’.*

The NMC’s written submissions on misconduct and impairment stated:

‘The conduct in question relates to falsified entries and removing medication, which are dishonest actions. The Registrant has also self-administered Codeine Phosphate whilst on work premises. The Registrant’s actions demonstrate a flagrant departure from the standards expected of a registered nurse.

As such, the Registrant's conduct has brought the profession into disrepute. The failings in this case are serious. The public has the right to expect high standards of registered professionals. The provisions of the Code constitute fundamental tenets of the profession and the Registrant's actions have clearly breached these in so far as they relate to upholding the reputation of the profession and the Registrant upholding her position as a registered nurse.

The fact that the actions occurred at the Registrant's place of work and involved removing drugs from the cabinet, making dishonest entries in the controlled drugs register and involving colleagues in her deception, makes the concerns particularly serious.

The Registrant has in the past brought the profession into disrepute. [PRIVATE]. This case involved the Registrant taking Co-Codamol medication from her employer, St Helen's Walk-In Centre. Within the internal investigation, conducted by her previous employer she admitted taking 80 Co-Codamol tablets. [PRIVATE] Within the internal investigation hearing she stated that she took 8 tablets over two nights and destroyed the rest by putting them down the toilet. She also informed the investigation that she did not know where the other 320 missing tablets were. On the 17 April 2012 a Conduct and Competence Committee gave the Registrant a one year caution order.

On 25 October 2012, the Registrant was referred to the NMC by The Royal Bolton NHS Foundation Trust. The Registrant was employed by the Trust on 22 August 2011 and failed to disclose during the recruitment process information relating to her dismissal from St Helen's Walk-In Centre and facts around the theft of medication from her previous employer. She also failed to disclose that she was subject to a fitness to practice hearing with the NMC on her application form.

On the 17 September 2014 the Conduct and Competence Committee gave the Registrant a five year caution order. Which expired in October 2019. Therefore the Registrant was still subject to an NMC caution order when she carried out the

actions in this current case. The Registrant's regulatory history is part of a highly relevant, prolonged continuum of behaviour.

With regard to future risk it may assist to consider the comments of Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin) namely, whether the concerns are easily remediable, whether they have in fact been remedied and whether they are highly unlikely to be repeated.

[PRIVATE] Therefore at present the NMC is unable to ascertain if the concerns can be easily remediable. The NMC guidance entitled: "Is the concern remediable?" is likely to be of assistance:

Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be remedied. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious.

The first question is whether the concerns can be remedied. That is, are there steps that the nurse or midwife can take to remedy the identified problem in their practice? It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient. However, rather than focusing on whether the outcome can be put right, decision makers should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be remedied.

Decision makers need to be aware of our role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse or midwife can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse or midwife's attitude, it is less likely the nurse or midwife will be able to remedy their conduct.

Examples of conduct which may not be possible to remedy, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- *Dishonesty, particularly where serious and sustained over a period of time and / or linked to the nurse's or midwife's practice*

The Registrant has not demonstrated significant insight into her failings, nor any understanding of how her actions impacted upon Patient A, her colleagues, the reputation of the profession and the wider public interest. As such, there is no evidence that the concerns in this case have been remediated, which give rise to the risk of repetition. Should such conduct be repeated, there is the risk of (further) damage to the reputation of the profession.

Also relevant are the comments of Cox J in Grant at paragraph [101]:

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the regulator and in the profession would be undermined if a finding of impairment of fitness to practice were not made in the circumstances of this case.”

With regard to the public interest, it is submitted that a member of the public appraised of the facts, would be shocked to hear that a registered nurse was entitled to practice without restriction. The concerns in this case are of such a serious nature that the need to protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession, and the regulator would be seriously undermined.

Accordingly, this is a matter in which a finding of impairment is required on public interest grounds.'

The NMC reminds the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Grant*.

The NMC invited the panel to find Mrs Barker's fitness to practise impaired on the grounds of public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance* and *Cohen v General Medical Council [2008] EWHC 581 (Admin)*.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mrs Barker's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Barker's actions amounted to a breach of the Code. Specifically:

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

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

To achieve this, you must:

10.3 *complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

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

To achieve this, you must:

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

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

To achieve this, you must:

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

[PRIVATE]

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

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

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel satisfied that Mrs Barker’s actions in respect of the charges found proved involved a range of behaviour which involved numerous breaches of the Code. Although there were no issues raised with regard to her clinical competence, Mrs Barker had systematically and repeatedly over a significant period of time, in breach of the trust placed in her as a registered nurse, exploited weaknesses in the Hospital’s policies and practices relating to medication, in order dishonestly to obtain Codeine for her own use. The panel had no doubt that fellow registered nurses would regard such conduct as deplorable. It considered that Mrs Barker’s behaviour fell far short of what the public would expect of a registered nurse. [PRIVATE]. The panel concluded that Mrs Barker’s conduct in respect of the range of the charges found proved met the threshold for serious misconduct.

The panel therefore found that Mrs Barker’s actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Barker’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. 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 paragraph 74, she said:

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

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

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

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

The panel finds that patients could have been put at potential risk due to Mrs Barker's actions. Mrs Barker's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that

confidence in the nursing profession would be undermined if its regulator regarded charges relating to dishonesty as anything other than extremely serious.

The panel took into account that all four limbs of the above test from *Grant* were engaged in this case. It considered the NMC's submissions of the public interest issues although it would also consider that there are public protection issues present.[PRIVATE]. It was of the view that patients would have also been at risk if they had been deprived of required medication which had been misappropriated by Mrs Barker.

In relation to the public interest, the panel was satisfied that Mrs Barker's actions brought her profession into disrepute. The panel had no doubt that any registered nurse or member of the public would be extremely concerned to learn that a registered nurse had repeatedly falsified records, removed medication without clinical justification to do so and self-administered whilst on work premises. The panel was also satisfied that Mrs Barker's misconduct was compounded by her deceiving colleagues into countersigning the CD book and thereby assisting her to obtain the medication for her own use. The panel was of the view that Mrs Barker's behaviour had breached a fundamental tenet of the profession, namely the requirement for registered nurses to be trustworthy.

The panel was of the view that whilst Mrs Barker had made admissions in the investigation interview and recognised the impacts her actions would have had on her nursing registration, there had been no other information presented before the panel today to suggest Mrs Barker had shown insight. It considered Mrs Barker's statement:

'I was so ashamed and so frightened.

[...]

I can't even tell you how bad I feel.'

However, apart from the above the panel found that there has been little, if any, evidence of insight or remorse from Mrs Barker in relation to the severity of her actions and the impact it could have had on her colleagues and patients.

In relation to the risk of repetition, the panel was of the view that these actions were a series of events where Mrs Barker had behaved dishonestly over a significant period of time. It considered that the risk of repetition is high and there has been no evidence of reflection or remorse from Mrs Barker in relation to the impact her actions could have had on others. It took into account the information in the NMC's submissions that Mrs Barker's actions have also brought her profession into disrepute previously [PRIVATE], from which she was referred to the NMC and given a one year caution in 2012. In 2014, she was given a further NMC caution for five years for failing to disclose her earlier referral in her application to her employer for employment as a registered nurse.

[PRIVATE]

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

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

The panel determined that a finding of impairment on public interest grounds was also required in view of the seriousness of the case, which involves multiple breaches of the Code and breach of a fundamental tenet of the nursing profession. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case.

The panel therefore also finds Mrs Barker's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Barker'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 Mrs Barker off the register. The effect of this order is that the NMC register will show that Mrs Barker 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.

The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that in the Notice of Meeting, dated 3 November 2021, the NMC had advised Mrs Barker that it would seek the imposition of a striking-off order if the panel found Mrs Barker's fitness to practise currently impaired.

The NMC's written submissions on sanction are as follows:

'The proportionate sanction in this matter, which has been communicated to the Registrant as part of the sanction bid process in this matter is that of a striking off order.

The aggravating features of this case are as follows:

- a) Dishonest misappropriation of codeine.*
- b) Falsification of the controlled drugs register.*

- c) *Took advantage of colleagues trust by causing them to inadvertently be part of her deception.*
- d) *Created false records.*
- e) *Breach of trust as the Registrant stole from her employer.*
- f) *Repeated dishonest conduct over a prolonged period of time.*
- g) *Risk of repetition as the Registrant has a relevant history in regard to taking medication from her place of work.*
- h) *During the process we have received no real evidence of insight or remediation.*

The mitigating factors of this case are as follows:

- a) *While there is a deception in misappropriating codeine, there doesn't appear there was a significant risk of clinical decisions about a patient's ongoing treatment or care to be made based on any false records that the Registrant created.*
- b) *Some admissions were made locally and to the NMC.*

*The panel will be assisted by the considering the Sanctions Guidance and the guidance entitled: “**Considering sanctions for serious cases – Cases involving dishonesty**”*

However, because of the importance of honesty to a nurse, midwife or nursing associate's practice, dishonesty will always be serious.

In every case the Fitness to Practice Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *Misuse of power*
- *Premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in case of:

- *No risk to patients*

The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk being removed from the register.'

*The panel will also be assisted by the specific guidance concerning **“making decisions on dishonesty charges”** which provides:*

‘When making decisions on charges involving dishonesty, panels of the Fitness to Practise Committee must decide whether or not the conduct took place, and if so, what was the nurse, midwife or nursing associate’s state of mind at the time.

Any dispute over whether a nurse, midwife or nursing associate behaved dishonestly usually means that the panel’s findings will depend on what conclusions they can draw about the nurse, midwife or nursing associate’s state or mind from the basic facts.

To help the panel focus on the central issues and be able to express this in their reasoning, it needs to consider the following.

- *What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time.*
- *Whether the panel considers that the nurse, midwife or nursing associates actions*
- *were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely’.*

None of this means that the Fitness to Practise Committee only has choice between suspending a nurse or midwife or removing them from the register in cases about dishonesty. It's vital that, like any other case, the Fitness to Practise Committee should start by considering the sanction with the least impact on the nurse or midwife's practice, and work upwards to the next most serious sanctions if it needs to.

The Registrant was previously subject to caution orders imposed by the Conduct and Competence Committee in relation to related matters. At the time of the incident in the present case the Registrant was subject to a Caution Order.

The allegations are too serious to take no further action or to impose a caution order. Such sanctions would not restrict the Registrant's practice, nor would it adequately mark the seriousness of the conduct. Particularly when one considers that there has been no demonstrable insight in this case.

A conditions of practice order would not be appropriate, in that there are no identifiable areas of retraining required or any workable conditions to meet the concerns in this case. Such an order would also not mark the seriousness of the conduct and would not be sufficient to maintain trust and confidence in the profession. Additionally, the lack of engagement from the Registrant would suggest that a sanction would not be appropriate and workable.

A suspension order would restrict the Registrant's practice and uphold the public interest. However, such an order would not mark the seriousness of the conduct in question and would not be sufficient to uphold trust and confidence in the profession and the regulatory process.

A striking off order would uphold trust and confidence in the profession. The Registrant's conduct is fundamentally incompatible with being a registered professional.

Having regard to the NMC Sanctions Guidance, the regulatory concerns raise fundamental questions about the Registrant's professionalism. Public confidence in profession would be undermined by any lesser sanction and a striking off order is the only sanction which will be sufficient to maintain professional standards and to protect the reputation of the profession.'

Decision and reasons on sanction

Having found Mrs Barker'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. Whilst taking careful note of the NMC's sanction bid referred to above, the decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- A repeated pattern of misconduct/dishonesty over a significant period of time;
- Previous regulatory findings by the NMC;
- A lack of insight from Mrs Barker;
- An abuse of a position of trust;
- A lack of cooperation with the NMC.

The panel also took into account the following mitigating features:

- [PRIVATE]

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, nor would it provide the necessary public protection.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict Mrs Barker'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 Mrs Barker'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 having also considered the previous caution order's that had been imposed.

The panel next considered whether placing conditions of practice on Mrs Barker's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the issues of dishonesty. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Barker's registration would not adequately address the seriousness of this case, nor would they be sufficient to protect the public or to uphold the public interest.

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;*

- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct in this case, as highlighted by the facts found proved, was not limited to a single instance, but involved a pattern of dishonest behaviour over a significant period of time. The prolonged pattern of the behaviour, together with Mrs Barker's previous history of referrals to the NMC outlined above, pointed towards the existence of harmful, deep-seated personality or attitudinal problem. Whilst there was no evidence of repetition since the incidents giving rise to the charges, this may simply have been due to the lack of opportunity once the incidents had been detected. In view of the lack of evidence of insight, or any steps taken by Mrs Barker to address the impairment of her fitness to practise, including her dishonesty, the panel found that the risk of repetition was high.

In the light of these considerations, the panel concluded that, whilst a suspension order would restrict Mrs Barker's practice and protect the public for a limited period, such a sanction would not be sufficient, appropriate or proportionate, having regard to the seriousness of the case and the importance of maintaining public confidence in the nursing profession and in the NMC as its regulator.

Finally, the panel considered whether to make 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?*

The panel was satisfied that Mrs Barker's misconduct involved significant departures from the standards expected of a registered nurse, and that her actions were fundamentally incompatible with her remaining on the register. The nature of the dishonesty in this case, which consisted of a premeditated, systematic and longstanding course of deception, lay towards the top end of the scale in the level of seriousness. There was also the past history of dishonesty as an aggravating factor.

The panel was also satisfied that public confidence in nurses and the reputation of the profession could not be upheld if Mrs Barker were not removed from the register.

A striking-off order was, in the panel's judgment, the only sanction which would be sufficient to protect patients and the public and maintain professional standards. The panel was satisfied that such an order is necessary send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel recognised the likely adverse impact, both financial and personal, of such an order on Mrs Barker. In this regard the panel noted Mrs Barker's letter of 8 August 2019. However, the panel was satisfied that the need to protect the public and uphold the public interest outweighed Mrs Barker's own interests.

Accordingly, the panel concluded that a striking-off order was both appropriate and proportionate in the circumstances of the case.

This decision will be confirmed to Mrs Barker 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 Mrs Barker's own interest until the striking-off sanction takes effect.

The panel heard and accepted the advice of the legal assessor who referred to the case of *Sheikh v General Dental Council* [2007] EWHC 2972 (Admin).

Representations on interim order

The panel took account of the written representations made by the NMC that stated:

'In the event that a sanction resulting in the restriction of the Registrant's practice is imposed, an interim suspension order of 18 months will be necessary to cover the appeal period. Such an order will be in the public interest'.

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 due to the public protection and public interest issues identified.

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

That concludes this determination.