

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

**Substantive Hearing
8 – 15 June 2021**

Virtual Hearing

Name of registrant: Matthew William Keane

NMC PIN: 08D0869E

Part(s) of the register: Nursing – Sub Part 1- Registered Nurse – Adult –
19 December 2008

Area of registered address: Essex

Type of case: Misconduct

Panel members: Yvonne O’Connor (Chair, Registrant member)
Hartness Samushonga (Registrant member)
June Robertson (Lay member)

Legal Assessor: John Donnelly

Panel Secretary: Holly Girven

Nursing and Midwifery Council: Represented by Rachael Culverhouse-Wilson, Case
Presenter

Mr Keane: Not present and not represented

Facts proved by admission: Charges 1b, 1c, 1i, 1j, 1k, 1l in its entirety, 2 and 6

Facts proved: Charges 1a, 1f, 1g, 1h, 3, 4a, 4b, 4c, 4d, 4e and 5

Facts not proved: Charges 1d and 1e

Fitness to practise: Impaired

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 Mr Keane was not in attendance and that the Notice of Hearing letter had been sent to Mr Keane's registered email address on 6 May 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and how to join the virtual hearing and, amongst other things, information about Mr Keane's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Culverhouse-Wilson, 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 Mr Keane 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 Mr Keane

The panel next considered whether it should proceed in the absence of Mr Keane. It had regard to Rule 21 and heard the submissions of Ms Culverhouse-Wilson who invited the panel to continue in the absence of Mr Keane. She submitted that Mr Keane had voluntarily absented himself.

Ms Culverhouse-Wilson referred the panel to the documentation from Mr Keane which included a letter from Mr Keane to the NMC dated 27 May 2021 in which it is stated:

'As you are aware, I have decided to disengage from proceedings, and the RCN representatives have closed the case...'

Naturally, I will not be present to defend myself.'

Ms Culverhouse-Wilson also referred the panel to the Case Management Form (CMF) completed by Mr Keane and sent to the NMC on 27 May 2021, in which Mr Keane indicated he would not be attending or be represented at the hearing.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William) (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Mr Keane. In reaching this decision, the panel has considered the submissions of Ms Culverhouse-Wilson, the documentation from Mr Keane, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* 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:

- No application for an adjournment has been made by Mr Keane;
- Mr Keane has confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Six witnesses are due to attend the virtual hearing to give evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Keane in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered contact details, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Keane's decision to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Culverhouse-Wilson, on behalf of the NMC, to amend the wording of charges 2, 3, 5 and 6.

The proposed amendment was to correct the year specified in the charges. It was submitted by Ms Culverhouse-Wilson that the proposed amendment would not cause any injustice to Mr Keane or the proceedings and would not materially change the charges. She submitted that if the charges were not amended it would cause injustice as the charges could fail on a technicality.

Ms Culverhouse-Wilson proposed the following amendments to the charges:

2. On 13 November ~~2019~~ **2018**, you contacted Patient A via social media;
3. On 14 and 15 November ~~2019~~ **2018**, you failed to give an accurate account of events, in that you stated that it was Patient A's decision "to leave the department without

seeing a practitioner” and “This was the patient’s decision, not mine”, when in fact it was your decision;

5. On unknown dates between approximately 2015 to ~~2019~~ **2018**, you have undertaken digital nerve blocks on patients when you were not authorised and/or trained and/or signed off as competent to carry the procedure out;
6. On 18 November ~~2019~~ **2018**, you acted contrary to restrictions placed on your practice in that you triaged a patient when you knew you were restricted from doing so;

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Keane and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to correct the error of the year specified in the charges.

Details of charge, as amended

That you, a registered nurse:

1. On or around 12 November 2018, you:
 - a. Undertook a digital nerve block on Patient A when you were not authorised and/or trained and/or signed off as competent to carry the procedure out;
(Found proved)
 - b. Carried out a digital nerve block on Patient A incorrectly; **(Found proved by admission)**

- c. Administered lignocaine to Patient A without a prescription; (**Found proved by admission**)
- d. Did not clean/disinfect the area of Patient A's thumb and/or hand before administering the injection; (**Found not proved**)
- e. Prescribed and/or administered ibuprofen to Patient A when you are not qualified and/or authorised to do so; (**Found not proved**)
- f. Did not ensure that Patient A was seen by a medical professional/clinician; (**Found proved**)
- g. Discharged Patient A when you were not authorised to do so; (**Found proved**)
- h. Discharged Patient A without authorisation from a medical professional/clinician; (**Found proved**)
- i. Failed to undertake a risk assessment of Patient A before discharge or alternatively, did not record your risk assessment within the medical records; (**Found proved by admission**)
- j. Did not ensure Patient A signed a release form; (**Found proved by admission**)
- k. Did not provide any and/or sufficient advice to Patient A in respect of follow up and/or safety netting or alternatively, did not record your advice within the medical records; (**Found proved by admission**)
- l. Did not record within Patient A's medical records;
 - i. your initial assessment of Patient A;
 - ii. Patient A's past medical conditions;
 - iii. the procedure you carried out;
 - iv. that you administered lignocaine;

- v. the amount of lignocaine you had administered;
 - vi. any discussion/advice you had with Patient A;
 - vii. the triage details; (**Found proved by admission**)
2. On 13 November 2018, you contacted Patient A via social media; (**Found proved by admission**)
 3. On 14 and 15 November 2018, you failed to give an accurate account of events, in that you stated that it was Patient A's decision "*to leave the department without seeing a practitioner*" and "*This was the patient's decision, not mine*", when in fact it was your decision; (**Found proved**)
 4. Your conduct at charge 3 was dishonest in that you:
 - a. Knew you had told Patient A that '*it was fine to leave and return to work*', or words to that effect; (**Found proved**)
 - b. Knew that you had discharged Patient A; (**Found proved**)
 - c. Knew that it was not Patient A's decision to self-discharge; (**Found proved**)
 - d. sought to minimise and/or conceal your actions, in that you had discharged Patient A when you should not have; (**Found proved**)
 - e. sought to conceal your actions, in that you had not followed Hospital procedures; (**Found proved**)
 5. On unknown dates between approximately 2015 to 2018, you have undertaken digital nerve blocks on patients when you were not authorised and/or trained and/or signed off as competent to carry the procedure out; (**Found proved**)
 6. On 18 November 2018, you acted contrary to restrictions placed on your practice in that you triaged a patient when you knew you were restricted from doing so; (**Found proved by admission**)

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

Request for documentation

Whilst the panel was deliberating on facts, it noted that in a reflective statement dated June 2019 Mr Keane made reference to a purported statement from a former colleague who he alleged had trained him to undertake digital nerve blocks. The panel requested to have sight of this purported statement in order to consider whether it was admissible.

Ms Culverhouse-Wilson provided a copy of the purported statement and made submissions as to the weight the panel should attach to it. She stated that the panel should not place any weight on the purported statement as it is not signed or dated and it is not possible to verify its authenticity. She submitted that it is not clear if the author was aware of the NMC investigation and it does not state that Mr Keane was competent to carry out digital nerve blocks without supervision.

The panel accepted the advice of the legal assessor, which included reference to Rule 31 of the Rules and *Thornerycroft v NMC* [2014] EWHC 1565, *White v NMC* [2014] Med LR 205 and *Ogbonna v NMC* [2010] EWCA Civ 1216.

The panel determined that the copy of the purported statement from Mr Keane's former colleague was admissible. The panel considered the relevance and fairness of admitting the purported statement, and considered that as Mr Keane was not present it was fair to admit the purported statement into evidence as he had previously provided it to the NMC in support of his case.

However, the panel placed no weight on the purported statement. The panel considered that the purported statement was not signed nor dated and there was no way to verify its authenticity. The panel considered that the purported statement was hearsay and Mr Keane had not provided a formal witness statement from his former colleague that would confirm the accuracy of the purported statement.

Decision and reasons on facts

At the outset of the hearing, Ms Culverhouse-Wilson referred the panel to the CMF completed by Mr Keane, in which he indicated he admitted to charges 1b, 1c, 1i, 1j, 1k, 1l, 2 and 6 in their entirety. She invited the panel to find those charges proved by admission. She stated that charge 1d was not included in the CMF and as such Mr Keane had not made a response to that charge, but that the charge was included in the notice of hearing.

The panel considered the CMF, in which Mr Keane made admissions. The panel further considered the documentation from Mr Keane, including his reflective statements, which were consistent with the admissions made in the CMF. The panel therefore finds charges 1b, 1c, 1i, 1j, 1k, 1l, 2 and 6 proved in their entirety, by way of Mr Keane's admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the oral submissions made by Ms Culverhouse-Wilson.

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

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 heard evidence from the following witnesses called on behalf of the NMC:

- Ms 1: Flow Co-ordinator at Southend
University Hospital in the Emergency
Department;

- Ms 2: Modern Matron at Southend University Hospital in the Emergency Department and Mr Keane's line manager;
- Dr 3: Clinical Lead and Consultant in Emergency Medicine at Southend University Hospital at the time of the incident;
- Ms 4: Emergency Nurse Practitioner at Southend University Hospital in the Emergency Department at the time of the incident;
- Ms 5: Associate Director and Head of Nursing at Southend University Hospital in the Emergency Department at the time of the incident;
- Patient A: Patient whom Mr Keane treated and administered a digital nerve block to.

Background

The charges arose whilst Mr Keane was employed as a registered nurse by Southend University Hospital NHS Foundation Trust (the Trust). Mr Keane worked as a Band 6 Staff Nurse at Southend University Hospital (the Hospital) in the Emergency Department (the Department). He worked for the Trust from 2014.

On 12 November 2018 Patient A attended the Department as two rings had become stuck, one on each thumb. Mr Keane was working in triage when Patient A attended and treated Patient A in the triage room of the Department, Ms 1 was also present. Mr Keane removed

the ring from Patient A's left thumb using a ring remover but was unable to remove the ring from Patient A's right thumb.

It is alleged that Mr Keane administered a digital nerve block to Patient A by injecting Patient A's right thumb area in two places with lignocaine. It is alleged that Mr Keane was not qualified or competent to administer a digital nerve block and was not qualified to prescribe the lignocaine. Mr Keane then used the ring remover to remove the ring. It is alleged that Mr Keane provided Patient A with two ibuprofen tablets for pain relief.

It is alleged that Mr Keane subsequently discharged Patient A and confirmed that the patient could return to work. It is alleged that Mr Keane did not consult a medical professional or doctor prior to discharging Patient A and failed to ask a doctor to prescribe the lignocaine he administered. It is further alleged that Mr Keane failed to record the digital nerve block procedure or the discharge in Patient A's notes.

Patient A attended the Department again on 12 November 2018 and was seen by Dr 3 and referred to the orthopaedic department at the Hospital, as Patient A had continued to experience pain and numbness in their right thumb. This was due to Mr Keane allegedly incorrectly administering the digital nerve block. It is alleged that Mr Keane contacted Patient A on social media on 13 November 2018.

During a meeting with Ms 2 on 14 November 2018, Mr Keane stated that he was able to competently administer a digital nerve block and accepted that he had performed the procedure on Patient A. Mr Keane stated that Ms 4 had trained him on how to administer digital nerve blocks and he had performed the procedure many times before in the Department.

Following the meeting on 14 November 2018, Mr Keane was restricted to only working in the Majors section of the Department but it is alleged that on 18 November 2018 Ms 2 witnessed Mr Keane working in triage. This was outside of the restrictions that had been placed on his practice.

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

The panel considered the evidence of the witnesses and made the following conclusions:

Ms 1: The panel considered that Ms 1 tried to assist the panel as much as possible and acknowledged when she did not know the answer. However, the panel were concerned that Ms 1 stated in her oral evidence that she had received support from colleagues, including other witnesses, to write her witness statement. The panel also noted that there were some inconsistencies between Ms 1's evidence and that of Patient A and in addition Ms 1's witness statement mentioned details that had not been included at an earlier stage of the investigation. The panel therefore placed limited weight on the evidence of Ms 1.

Ms 2: The panel considered the evidence of Ms 2 to be credible. The panel considered that Ms 2 acknowledged when she could not remember something and that her oral evidence was consistent with her witness statement. The panel noted that there were some inconsistencies between the evidence of Ms 2 and other witnesses in relation to the training that was necessary to perform a digital nerve block.

Dr 3: The panel considered the evidence of Dr 3 to be credible. The panel considered that Dr 3's evidence was reliable and consistent, and was fair and balanced towards Mr Keane. The panel noted that Dr 3 acknowledged when she was not best placed to answer a question.

Ms 4: The panel considered the evidence of Ms 4 to be credible. The panel considered that Ms 4 tried to assist the panel, and acknowledged when her evidence was hearsay. The panel noted that Ms 4 did not specifically remember the alleged interaction with Mr Keane, and instead provided evidence about her usual practice when demonstrating digital nerve blocks.

Ms 5: The panel considered the evidence of Ms 5 to be credible. The panel considered that Ms 5's oral evidence was consistent with her witness statement and she was open when she did not know the answer to a question.

Patient A: The panel considered the evidence of Patient A to be credible. The panel considered that Patient A's oral evidence was consistent with their witness statement, and Patient A acknowledged when they could be mistaken or did not remember. The panel considered that Patient A was fair and balanced towards Mr Keane during their oral evidence.

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

Charge 1a

1. On or around 12 November 2018, you:
 - a. Undertook a digital nerve block on Patient A when you were not authorised and/or trained and/or signed off as competent to carry the procedure out;

This charge is found proved.

In reaching this decision, the panel took into account that Mr Keane does not deny undertaking a digital nerve block on Patient A, but states that he was competent to do so. The panel considered that the evidence of Patient A, Ms 1 and Dr 3 is consistent with Mr Keane's admission that he performed a digital nerve block.

The panel considered that Dr 3 states in her witness statement that only Doctors, Emergency Nurse Practitioners or Advanced Clinical Practitioners should carry out a digital nerve block, and that Mr Keane was not employed in any of these roles, and that she confirmed this during her oral evidence. The panel considered that this was consistent with Ms 2's evidence that Mr Keane was not employed in a role that would include undertaking nerve blocks and that he was not competent to do so.

The panel also considered that Mr Keane has provided inconsistent accounts of why he was competent to undertake the digital nerve block. The panel considered that the records from a meeting on 14 November 2018 record Mr Keane as saying '*he had been trained by an EMP to do it*' but that in a subsequent meeting on 21 December 2018 Mr Keane is recorded as saying '*he hadn't received formal training for it but that [Ms 4] had shown him.*' The panel

noted that in an email dated 15 January 2019, Mr Keane confirmed that the notes from the meeting were an accurate record. The panel further considered that in a reflective statement dated June 2019, Mr Keane states he was trained to perform a digital nerve block in 2012 in a previous role at a different Trust by a colleague.

The panel considered that Ms 4 has consistently stated that whilst she may have shown Mr Keane how to undertake a digital nerve block, she would not have told Mr Keane that he was competent to undertake one and had not assessed Mr Keane. The panel considered that Ms 4 stated that showing someone how to perform a digital nerve block once could not be considered formal training that would be sufficient to be deemed competent.

The panel considered that it has not seen any evidence that would indicate that Mr Keane was competent to undertake a digital nerve block. The panel considered that whilst there were some inconsistencies between the evidence of the witnesses as to how competence to perform a digital nerve block could be achieved, the evidence of Ms 2, Dr 3, Ms 4 and Ms 5 was consistent in that Mr Keane was not competent to perform the procedure and would not be authorised to do so in his role at the Hospital. As such, the panel found this charge proved.

Charge 1d

1. On or around 12 November 2018, you:
 - d. Did not clean/disinfect the area of Patient A's thumb and/or hand before administering the injection;

This charge is found not proved.

In reaching this decision, the panel considered the evidence of Ms 1 and Patient A, as well as the documentary evidence provided.

The panel considered that whilst Ms 1 stated in her witness statement and in her oral evidence that Mr Keane had not cleaned Patient A's thumb, in her email dated 9 January 2019 she makes no reference to Mr Keane cleaning Patient A's thumb area. The panel noted

that Ms 1 stated she had assistance when writing her witness statement, which it considered lessened the weight that could be placed on her evidence in relation to this charge.

The panel considered that Patient A stated in her oral evidence that she did not remember Mr Keane cleaning her thumb area, but that she acknowledged she was in pain at the time and that it was possible Mr Keane had done so and they had not been aware of this.

The panel noted that Mr Keane stated in a statement dated 15 November 2018 that he cleansed the area with chlorhexidine and in a reflective statement dated 10 June 2019 that he appropriately cleaned the area before undertaking the digital nerve block.

The panel considered that it could not be satisfied on the balance of probabilities that Mr Keane had not cleaned/disinfected Patient A's thumb. As such, the panel found this charge not proved.

Charge 1e

1. On or around 12 November 2018, you:
 - e. Prescribed and/or administered ibuprofen to Patient A when you are not qualified and/or authorised to do so;

This charge is found not proved.

In reaching this decision, the panel considered that during her oral evidence Ms 2 stated that Mr Keane was authorised under a Patient Group Directive (PGD) process to administer ibuprofen. The panel considered that it had not been provided with any evidence that would suggest Mr Keane was not authorised to give ibuprofen.

The panel considered that the drug chart for Patient A indicates that Mr Keane gave Patient A ibuprofen under the PGD.

As such, the panel find this charge not proved as Mr Keane was authorised to administer ibuprofen as a result of the PGD.

Charge 1f

1. On or around 12 November 2018, you:
 - f. Did not ensure that Patient A was seen by a medical professional/clinician;

This charge is found proved.

In reaching this decision, the panel considered that Patient A and Ms 1 both stated during their oral evidence that they were sure that Patient A was not seen or treated by anyone other than Mr Keane. The panel further considered that in Patient A's notes there is no record that Mr Keane consulted anyone else regarding Patient A.

The panel considered that in his reflective statement dated 10 June 2019, Mr Keane stated that he should have found a doctor to review Patient A and that he had failed to do so. The panel considered that Mr Keane has never stated that he consulted a medical professional or clinician regarding Patient A's treatment.

The panel determined that it is more likely than not that Mr Keane did not ensure that Patient A was seen by a medical professional/clinician and as such, the panel finds this charge proved.

Charge 1g

1. On or around 12 November 2018, you:
 - g. Discharged Patient A when you were not authorised to do so

This charge is found proved.

In reaching this decision, the panel considered that Mr Keane has provided an inconsistent account as to how Patient A was discharged. The panel considered that in a meeting on 14 November 2018, it is recorded that Mr Keane stated he performed a '*nurse discharge*' but in a statement dated 10 June 2019, Mr Keane had stated '*I did not discharge her from the department*'.

The panel considered that the evidence of Patient A was clear and consistent that Mr Keane had told them they could leave the Department and Patient A was very clear that they had not discharged themselves. The panel determined that Mr Keane had discharged Patient A.

The panel considered the evidence of Dr 3 that had Mr Keane not administered an injection of lignocaine as a digital nerve block to Patient A, it would be '*forgivable*' for him to have discharged Patient A from triage. However, the panel considered the evidence of Ms 2 and Ms 5 that Mr Keane was not an autonomous practitioner and was not authorised to discharge Patient A or any other patients. The panel considered that Ms 2 and Ms 5's oral evidence was consistent with their witness statements regarding Mr Keane's lack of authority to discharge patients.

As such, the panel was satisfied that Mr Keane had discharged Patient A despite not being authorised to do so and as such the panel finds this charge proved.

Charge 1h

1. On or around 12 November 2018, you:
 - h. Discharged Patient A without authorisation from a medical professional/clinician;

This charge is found proved.

In reaching this decision, the panel considered that Mr Keane has provided an inconsistent account as to how Patient A was discharged. The panel considered that in a meeting on 14 November 2018, it is recorded that Mr Keane stated he performed a '*nurse discharge*' but in a

statement dated 10 June 2019, Mr Keane had stated '*I did not discharge her from the department*'.

The panel considered that the evidence of Patient A was clear and consistent that Mr Keane had told them they could leave the Department and that they had not discharged themselves.

The panel determined that Mr Keane had discharged Patient A.

The panel considered that in Patient A's notes there is no record that Mr Keane consulted or sought authorisation from anyone else to discharge Patient A.

The panel considered that in his reflective statement dated 10 June 2019, Mr Keane stated that he should have found a doctor to review Patient A and that he had failed to do so. The panel considered that Mr Keane has never stated that he sought authorisation from a medical professional or clinician before discharging Patient A.

The panel determined that it is more likely than not that Mr Keane discharged Patient A without authorisation by a medical professional/clinician and as such, the panel finds this charge proved.

Charge 3

3. On 14 and 15 November 2018, you failed to give an accurate account of events, in that you stated that it was Patient A's decision "*to leave the department without seeing a practitioner*" and "*This was the patient's decision, not mine*", when in fact it was your decision

This charge is found proved.

In reaching this decision, the panel considered that Patient A had provided clear and consistent evidence that Mr Keane had discharged them and that they had not discharged themselves. The panel considered that Patient A stated they were sure that Mr Keane had

told them that they could leave and return to work and that he had not told Patient A to wait in the Department.

The panel considered that Mr Keane had provided inconsistent accounts as to the nature of the discharge. The panel considered that in a meeting on 14 November 2018, it is recorded that Mr Keane stated he performed a '*nurse discharge*' but in a statement dated 15 November 2018 and signed on the 16 November 2019, Mr Keane stated that '*the patient was happy to leave the department without seeing a practitioner. This was the patient's decision, not mine*'. The panel noted that in a reflective piece dated 10 June 2019, Mr Keane stated '*I naturally assumed she was then waiting for a clinician to see her*'.

The panel determined that it was Mr Keane's decision to allow Patient A to leave the department, that he had advised Patient A to do so, and that Patient A had not discharged themselves.

The panel considered that Mr Keane had provided the statement dated 15 November 2018 that contained the statements outlined in the charge and Mr Keane has not denied that he provided the statement.

As such, the panel finds the charge proved.

Charge 4

4. Your conduct at charge 3 was dishonest in that you:
 - a. Knew you had told Patient A that '*it was fine to leave and return to work*', or words to that effect;
 - b. Knew that you had discharged Patient A;
 - c. Knew that it was not Patient A's decision to self-discharge;
 - d. sought to minimise and/or conceal your actions, in that you had discharged Patient A when you should not have;
 - e. sought to conceal your actions, in that you had not followed Hospital procedures;

This charge is found proved in its entirety.

In reaching this decision, the panel had regard to the test for dishonesty set out by Lord Hughes in paragraph 74 of *Ivey v Genting Casinos UK Ltd t/a Crockfords* [2017] UKSC 67:

‘When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts.... When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

The panel first considered Mr Keane’s state of knowledge at the time of stating that it was Patient A’s decision to be discharged. The panel considered that in a meeting the day before providing the statement, Mr Keane had stated he had performed a ‘*nurse discharge*’ and had not stated that Patient A had discharged themselves.

The panel further considered the evidence of Patient A as to what Mr Keane had said when discharging them, and that Patient A stated they were sure there had not been a misunderstanding when Mr Keane discharged them. The panel considered that Patient A stated they only left the Department because Mr Keane had discharged them and they would not have left of their own accord.

The panel therefore determined that Mr Keane did know that he had told Patient A they could leave the department and that they hadn’t discharged themselves.

The panel further considered the evidence of Ms 2 and Ms 5 that Mr Keane would have known that he was not authorised to discharge patients, and that he would never have been permitted to do so.

The panel determined that applying the objective standards of ordinary, decent people, Mr Keane had acted dishonestly. The panel considered that making inaccurate comments during an investigation and in a formal, signed statement would be considered dishonest by the standards of ordinary people.

The panel considered whether there was any alternative explanations for the inconsistencies in Mr Keane's accounts and between his account and that of Patient A. However, the panel considered that the comments had been made in a formal, signed statement, and Mr Keane had failed to provide an explanation for the inconsistencies.

As such, this charge is found proved in its entirety.

Charge 5

5. On unknown dates between approximately 2015 to 2018, you have undertaken digital nerve blocks on patients when you were not authorised and/or trained and/or signed off as competent to carry the procedure out;

This charge is found proved.

In reaching this decision, the panel determined that when considering whether charge 1a was found proved, it had determined that Mr Keane was not authorised and/or trained and/or signed off as competent to carry a nerve block out at any time he was working at the Trust.

The panel considered that in a meeting on 14 November 2018, Mr Keane stated he had carried out between 10 and 20 ring blocks and that in a statement dated 15 November 2018, Mr Keane stated '*I have been undertaking digital nerve blocks in the department for a number of years*'. Further, in a statement dated 10 June 2019 Mr Keane states '*I have been performing digital nerve blocks since 2012*'.

As such, the panel determined that it could be satisfied that on the balance of probabilities Mr Keane undertook digital nerve blocks when not authorised and/or trained and/or signed off as competent to carry the procedure out. As such, the panel finds this charge proved.

Fitness to practise

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

Admissibility of evidence

Prior to making submissions on misconduct, Ms Culverhouse-Wilson requested that further documentation relating to findings made against Mr Keane by the Conduct and Competence Committee in 2016, and further concerns raised by the Trust, be admitted into evidence. She submitted that the documentation was relevant as it indicated ongoing concerns about Mr Keane's practice and provided information that should be available when considering Mr Keane's reflective statements. She submitted it was fair for the evidence to be admitted as Mr Keane, and his legal representative at the time, had been sent the documentation and had not indicated any objection to it being admitted.

The panel accepted the advice of the legal assessor, which included reference to Rule 31 of the Rules.

The panel determined that the further documentation was admissible. The panel considered the relevance and fairness of admitting the documentation. The panel considered that the documentation was relevant when determining whether Mr Keane is currently impaired, and that it would enable the panel to better assess Mr Keane's statements. The panel determined that it was fair to admit the documentation as Mr Keane had been sent the documents and been given the opportunity to respond. As such, the panel admitted the documentation into evidence.

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.*'

Ms Culverhouse-Wilson 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.

Ms Culverhouse-Wilson identified the specific, relevant standards where Mr Keane's actions amounted to misconduct. She submitted that the facts found proved raise serious concerns about Mr Keane's practice and professionalism. She stated that Mr Keane's actions caused Patient A to experience harm, and further harm could have been caused due to Mr Keane's failure to properly record the procedure. She submitted that the finding of dishonesty is serious and amounts to misconduct. She submitted that the charges found proved amount to misconduct, both individually and cumulatively.

Submissions on impairment

Ms Culverhouse-Wilson 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2007] EWHC 581 (Admin).

Ms Culverhouse-Wilson submitted that a finding of impairment was necessary to protect the public and was also in the public interest. She submitted that all four limbs of the *Grant* test were engaged. She stated that Mr Keane's actions had caused Patient A to experience harm, and there was risk to the public if Mr Keane continued to practise outside of his scope and failed to act in line with restrictions placed on his practice. She submitted that Mr Keane had breached fundamental tenets of the profession and brought it into disrepute.

Ms Culverhouse-Wilson submitted that there would be a continuing risk to the public if the misconduct was not addressed. She submitted that Mr Keane has not remediated his misconduct and has not demonstrated insight, particularly in relation to the charges he denied. She stated that Mr Keane has failed to recognise the impact of his actions on Patient A, has sought to place the blame on Patient A and his colleagues, and has not explained how he would act differently to avoid such an incident again. Ms Culverhouse-Wilson drew the panel's attention to Mr Keane's letter dated 27 May 2021 and submitted this was misleading as Mr Keane knew he had been found to be dishonest in the past.

Ms Culverhouse-Wilson referred the panel to the testimonials provided by Mr Keane. She submitted that some of these testimonials are not signed nor dated and do not state if the authors are aware of the allegations. She stated that the previous findings regarding Mr Keane's fitness to practise suggest a pattern of misconduct since 2015, and as such there is a high risk of repetition. She submitted that Mr Keane's lack of insight and repeated misconduct indicate an attitudinal issue.

Ms Culverhouse-Wilson further submitted that a finding of impairment was necessary to uphold the public interest. She submitted that the public would be concerned if Mr Keane were permitted to practise without restriction.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance*, *Grant* and *Cohen*.

Decision and reasons on misconduct

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

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

8 Work co-operatively

To achieve this, you must:

8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate

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

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.

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.2 make a timely referral to another practitioner when any action, care or treatment is required

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

13.5 complete the necessary training before carrying out a new role

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

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

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

20.10 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. However, the panel was of the view that the charges found proved are serious and that Mr Keane fell seriously below the standard expected. The panel considered that Mr Keane had caused Patient A harm. The panel further noted that Mr Keane had acted outside his competence on several occasions and considered there was a pattern of repeated, dishonest behaviour motivated by a need to justify his persistently acting beyond the scope of his practice and experience, and that this amounted to a risk of further harm.

The panel considered each of the charges individually and determined that performing a nerve block on Patient A and other patients outside of his competence, undertaking this procedure incorrectly, administering lignocaine without a prescription and acting dishonestly was deplorable and amounted to serious misconduct. The panel considered that patients were put at risk of serious harm due to Mr Keane's actions. The panel concluded that whilst some of the charges individually would not amount to misconduct, the range of issues found proved in relation to the discharge of Patient A amounted to misconduct when taken together.

The panel found that Mr Keane'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, Mr Keane'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, act within the limits of their competence 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 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 were put at risk and that Patient A was caused physical and long standing harm as a result of Mr Keane's misconduct. Mr Keane'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 did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that whilst Mr Keane has provided a number of reflective statements, he has demonstrated very limited insight and his statements focus on the impact on himself rather than the public or the profession. The panel considered that Mr Keane has sought to place blame on other people, including Patient A. The panel noted that Mr Keane stated in a letter dated 27 May 2021 that *'I believe you have more than enough evidence to obtain a striking off order without tarnishing my reputation with a charge of dishonesty.'* The panel considered that this statement was misleading as there had already

been a previous finding of dishonesty by the Conduct and Competence Committee in 2016. The panel further considered that Mr Keane has continued to assert that he was competent to undertake the digital nerve block, despite there being no evidence to support that he was appropriately trained. The panel determined this indicated a lack of insight. The panel further noted that at no time has Mr Keane acknowledged the harm he caused Patient A or offered an apology.

The panel was satisfied that the misconduct in this case was capable of remediation. On careful consideration of the evidence before it the panel determined that Mr Keane had not remediated his practice, particularly in light of the similar finding of dishonesty by the Conduct and Competence Committee in 2016. The panel is of the view that there is a risk of repetition based on Mr Keane's lack of insight, or any evidence of efforts to remediate his misconduct. The panel noted that Mr Keane raised concerns about the Trust's treatment of him. However the panel considered that it had been provided with evidence that indicates a pattern of misconduct by Mr Keane, rather than any concerns with the Trust's treatment of Mr Keane. Given this pattern of misconduct, the panel determined that there was a high risk of repetition and the panel therefore decided that a finding of impairment is necessary on the grounds of public protection. The panel accepted the oral evidence of Ms 5 who stated that Mr Keane had a '*blasé*' attitude and considered that this, alongside the documentation, is indicative of an attitudinal issue.

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

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

Submissions on sanction

Ms Culverhouse-Wilson informed the panel that in the Notice of Hearing, dated 6 May 2021, the NMC had advised Mr Keane that it would seek the imposition of a striking-off order if it found Mr Keane's fitness to practise currently impaired. She submitted that the only appropriate sanction is a striking-off order. She submitted that there were no mitigating features and outlined the aggravating features, including the harm caused to Patient A, the serious nature of Mr Keane's dishonesty and his lack of insight or remorse.

Ms Culverhouse-Wilson submitted that taking no action or imposing a caution order was not appropriate as the concerns were too serious and such an outcome would not address the concerns about public protection or the public interest. She submitted that it was not possible to formulate conditions of practice that would address Mr Keane's dishonesty and attitudinal issue. She submitted that a suspension order was not appropriate due to the serious and repeated nature of Mr Keane's misconduct. She further submitted that this was not a single instance of misconduct.

Ms Culverhouse-Wilson invited the panel to impose a striking-off order. She submitted that Mr Keane's misconduct is fundamentally incompatible with remaining on the register and that a

striking-off order is the only order that would protect the public and uphold public confidence in the nursing profession. She submitted that Mr Keane's dishonesty is serious as he deliberately breached the duty of candour, and his dishonesty put patients at risk. She further stated that there is nothing to suggest that anything less than a striking-off order would serve any useful purpose due to Mr Keane's indication that he no longer wishes to practise as a nurse.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Mr Keane's misconduct caused Patient A harm and poses a risk of harm to others;
- There was a pattern of repeated misconduct;
- Mr Keane had previously been suspended by the Conduct and Competence Committee in 2016;
- He sought to apportion blame on other people, including Patient A;
- The dishonesty found proved was serious as Mr Keane sought to deliberately cover-up his misconduct;
- There is evidence of an attitudinal issue;
- He has demonstrated very limited insight, no remorse for the harm caused to Patient A and no remediation of his practice; and
- He abused a position of trust as a senior member of the nursing team.

The panel also took into account the following mitigating features:

- Mr Keane made early admissions to some of the charges;
- He provided reflective statements; and
- The incident has had a significant personal impact on Mr Keane in regard to his health.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Keane's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Keane's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Keane'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, in light of the serious concerns about Mr Keane's dishonesty and his confirmation that he no longer wishes to practise as a registered nurse or engage with the NMC. Furthermore, the panel concluded that the placing of conditions on Mr Keane's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that Mr Keane's misconduct was repeated and of a serious nature. The panel further noted that Mr Keane had previously been subject to a suspension order imposed in 2016 following a finding of misconduct of a similar nature. The panel determined that this demonstrated that this indicated an inability on the part of Mr Keane to effectively remediate his misconduct. The panel further considered that Mr Keane has demonstrated very limited insight and determined that there is a high risk of Mr Keane repeating the misconduct found proved.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at 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?*

Mr Keane's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Keane's actions were serious and to allow him to continue practising would place patients at significant risk of harm and undermine public confidence in the profession and in the NMC as a regulatory body. The

panel determined that any other order would serve no useful purpose as Mr Keane has only demonstrated very limited insight, has not demonstrated any remorse for the harm caused to Patient A, has not demonstrated any remediation, has stated that he does not wish to engage with the NMC and that he no longer wishes to practise as a registered nurse.

Balancing all of these factors 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. Having regard to the effect of Mr Keane's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Keane 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 Mr Keane'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 Ms Culverhouse-Wilson. She submitted that an interim suspension order was necessary in order to protect the public and was in the public interest due to the seriousness of the case. She submitted that the interim order should be imposed for a period of 18 months 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 to cover any appeal period.

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

That concludes this determination.