

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

**Substantive Meeting  
22 - 23 February 2021 & 16 - 18 June 2021**

**Virtual Meeting**

**Name of registrant:** Jose Gabriel Ortega Rodriguez

**NMC PIN:** 16F0797C

**Part(s) of the register:** Registered Adult Nurse - RN1  
(June 2016)

**Area of registered address:** Spain

**Type of case:** Misconduct / Lack of competence / Lack of knowledge of English Language

**Panel members:** Avril O'Meara (Chair, Lay member)  
Anne Grauberg (Registrant member)  
Sadia Zouq (Lay member)

**Legal Assessor:** Sean Hammond

**Panel Secretary:** Christine Iraguha

**Facts proved:** Charges 1) a, 2) a, 3, 4) a, b, 5, 7, 9) a, b, 10) a, b, c, e, f, g (ii)(iii)(iv), 11, 14) a, c, 16) a, b, c, 17) a, b, 18, 19, 20, 21) a (i)(ii)(iii), b, 22) a, 23) a, b (i)(ii,) 24, 25) a, b, c (i)(ii)(iii)(iv), e, f, 26) a, b, 27) a, b, c, d, 28) a, b, 29) a, b, c, d, e, f, 30) a, b, 31) a, b (i)(ii)(iii)(iv)(v), c, 32) a, b, 33, 34, 35, 36) a, b, c, d, 38, 39, 40

**Facts not proved:** Charges 1) b, 2) b, 6, 8) a, b, c, 10) d, g (i), 12) a, b, 13) a, b, 14) b, 15) (i) (ii), 25) d (i) (ii), 27) e, 32) c, 37

**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 the Notice of Meeting had been sent to Mr Rodriguez's registered email address on 21 January 2021. The panel noted that Mr Rodriguez had corresponded using the same email address.

As of 31 March 2020 a number of temporary amendments to The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (the Rules) came into force, in response to the current Covid-19 pandemic. This Statutory Instrument in place allows for electronic service of the Notice of Hearing in the current circumstances, involving Covid-19.

The panel took into account that the Notice of Meeting provided details of the allegation and confirmation that the meeting would be taking place on or after 22 February 2021. Mr Rodriguez was also asked to provide any comment before 18 February 2021 by using the response form attached to the Notice of Meeting, if he had anything that he wanted the panel to take account of in considering this matter.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Rodriguez 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).

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

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*'.

The panel has decided to proceed in the absence of Mr Rodriguez. In reaching this decision, the panel has considered the Nursing and Midwifery Council (NMC)

documentation 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 to the overall interests of justice and fairness to all parties. It noted that the allegations date back to 2016, that Mr Rodriguez in his last email to the NMC dated 20 February 2018 indicated that he had no intention of engaging with the NMC process. The panel was not satisfied that adjourning would secure his attendance at some future date and bore in mind that there is a public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Rodriguez.

### **Details of charge**

*‘That you, whilst employed at Blackpool Victoria Hospital;*

*1) On 11 April 2016;*

*a) Shouted at a patient words to the effect ‘Get up for a wash’. . [Proved]*

*b) On one or more occasion stared at patients during the provision of personal care. . [Not Proved]*

*2) On or around 13 April 2016;*

*a) Stared at a patient during the provision of personal care. [Proved]*

*b) Harassed Colleague 1 to go out on a date with you. [Not Proved]*

*3) Between 13 April 2016 and 20 June 2016 refused to take Patient A’s temperature 3 times after being instructed to do so by Colleague 2. [Proved]*

*4) On 5 July 2016;*

*a) Touched Colleague 3 from behind on her bra strap. [Proved]*

*b) Inappropriately rubbed the front of your body on the back of Colleague 4’s body.*

**[Proved]**

*5) Your actions in charge 4 above were sexually motivated in that you sought sexual gratification from such contact. [Proved]*

6) *Between 1 July 2016 & 24 July 2016 you burst into a Patient I's room and shouted words to the effect "I do blood pressure."* **[Not Proved]**

7) *On or around 30/31 July 2016 you ignored the request from Patient D's family member to increase Loperamide as per the gastro plan.* **[Proved]**

8) *On or around 11 October 2016 following Patient R passing stool on scales;*  
a) *Shouted at Patient R words to the effect "No what are you doing."* **[Not Proved]**  
b) *Left the room.* **[Not Proved]**  
c) *Placed the scales in the antechamber without cleaning them.* **[Not Proved]**

9) *On 22 November 2016;*  
a) *You failed to conduct observations for 5 patients after being instructed to do so.* **[Proved]**  
b) *You left duty without informing your colleagues that you were unable to conduct the observations.* **[Proved]**

10) *On or around 1 February 2017;*  
a) *Asked/allowed Patient G's daughter to obtain a stool sample.* **[Proved]**  
b) *Did not remove Patient G's bedpan from their room.* **[Proved]**  
c) *Took the sample pot into Patient G's room.* **[Proved]**  
d) *Took a fluid input/output chart into Patient G's room.* **[Not Proved]**  
e) *Asked Patient G's daughter to complete the fluid input/output chart.* **[Proved]**  
f) *Shouted at Colleague 5.* **[Proved]**  
g) *Said to colleague 5 words to the effect;*  
(i) *"I am a staff nurse, you do as you are told, I am above you."* **[Not Proved]**  
(ii) *"You would be the type of person I would like to meet in a dark alley."* **[Proved]**  
(iii) *"I like your eyes and hair"* **[Proved]**  
(iv) *That colleague 5 should "Go on a night out" with you.* **[Proved]**

11) *Your actions in charges 10) g) (ii)-(iv) were sexually motivated in that you had said these words in order to pursue a sexual relationship with Colleague 5.* **[Proved]**

12) *In or around August 2016, on one or more occasion sent Colleague 1;*

- a) *An inappropriate text message about her 'sexy knickers.'* **[Not Proved]**
- b) *Inappropriate text messages about being girlfriend and boyfriend.* **[Not Proved]**

13) *Between 10 December 2016 & 20 December 2016;*

- a) *Countersigned for controlled drugs when instructed not to.* **[Not Proved]**
- b) *Countersigned for intravenous medication when instructed not to.* **[Not Proved]**

14) *On 16 November 2016;*

- a) *Refused to take Patient M's dressings down after being instructed to do so by Dr* **[Proved]**
- b) *Did not check if Patient M had dressings.* **[Not Proved]**
- c) *Took approximately 7.5 hours to conduct 8 set of patient observations.* **[Proved]**

15) *On or around 17 November 2016 after discovering that Patient H had vomited down her night dress/herself;*

- i) *Did not initially assist Patient H.* **[Not Proved]**
- ii) *Said words to the effect 'it's not my responsibility, it's the HCAs'.* **[Not Proved]**

16) *On or around 16 November 2016 following Patient L's stoma bag bursting;*

- a) *Delayed cleaning Patient L.* **[Proved]**
- b) *Delayed replacing Patient L's stoma bag.* **[Proved]**
- c) *Placed a new stoma bag on Patient L's bed instead of replacing the old bag.* **[Proved]**

17) *On 21 November 2016 during night handover;*

- a) *Sent personal texts from your mobile telephone.* **[Proved]**
- b) *In response to being asked whether you were listening to handover said words to the effect of 'in a minute'.* **[Proved]**

18) *On 23 November 2016 refused to provide Patient J with a bedpan.* **[Proved]**

19) *In or around December 2016 administered Chlorphenamine without knowing its correct medical/clinical purpose.* **[Proved]**

20) On or around 12 December 2016 failed to obtain a commode for Patient K after being instructed to do so by the Nurse in Charge Colleague 6. **[Proved]**

21) On 13 December 2016;

a) Spoke to colleague 5 using words to the effect;

i) 'Well, that's not my job. I'm not here to do Healthcare Assistant jobs'. **[Proved]**

ii) 'This is my punishment for messing up with medication'. **[Proved]**

iii) 'I'm a nurse, not a Healthcare Assistant, it's not my job'. **[Proved]**

b) You pointed at your uniform and stated words to the effect "Look, Staff Nurse"  
**[Proved]**

22. Failed to co-operate with your regulator, the Nursing and Midwifery Council between 7 December 2017 and 27 February 2018 as you;

a) Did not co-operate with a direction to take a language assessment. **[Proved]**

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

AND

That you, between 11 January 2016 and 3 May 2017 failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 5 nurse, in that you:

23) On or around the night shift of 21/22 June 2016;

a) On Patient B's Night Care Plan incorrectly recorded "Settled Night, Care as Plan."  
**[Proved]**

b) Failed to demonstrate an understanding of Patient B's condition, namely that Patient B was suffering from;

(i) Chest pains; **[Proved]**

(ii) Hypoglycaemia **[Proved]**

24) Between 5 July 2016 & 20 July 2016 stated that Patient Z's blood pressure was normal when it had increased from 97/43 to 134/85. **[Proved]**

25) *On or around the night shift of 20/21 July 2016;*

a) *Ticked boxes on the skin and safety tool chart outside one or more Patients' rooms without conducting adequate hourly checks. [Proved]*

b) *Had to be reminded to go into Patients rooms to conduct hourly observations.*

**[Proved]**

c) *In relation to Patient Y in room 5;*

(i) *Were unable to identify what condition Patient Y was suffering from. [Proved]*

(ii) *Did not understand why blood glucose levels needed to be taken for Patient Y who was deteriorating. [Proved]*

(iii) *Did not understand why 15 minute observations needed to be taken. [Proved]*

(iv) *Did not understand that Patient Y required an MRI scan. [Proved]*

d) *In relation to Patient W in Room 1;*

(i) *Did not understand that the Patient W was being monitored by a CTG machine.*

**[Not Proved]**

(ii) *Were unable to conduct lying and standing blood pressure readings. [Not*

**Proved]**

e) *Were unable to demonstrate an understanding of the activities of daily living ('ADOL') model to write in Patient notes. [Proved]*

f) *Were unable to understand that the Patient V in room 5 required a sigmoidoscopy.*

**[Proved]**

26) *On or around the shift of 30/31 July 2016 following receipt of a call from Public Health England, you did not disclose;*

a) *That Public Health England had called the ward. [Proved]*

b) *That Patient C suffered from/tested positive for campylobacter. [Proved]*

27) *Between 31 July 2016 & 4 October 2016;*

a) *Did not demonstrate an understanding of the medication you were administering to Patient E. [Proved]*

b) *Incorrectly dispensed 10ml of Oramorph instead of 10mg of Oramorph to a Patient U. [Proved]*



- c) *Did not check Patient U's wristband. [Proved]*
- d) *Did not check Patient U's date of birth. [Proved]*
- e) *Did not check if Patient U suffered from any allergies. [Not Proved]*

28) *On or around the night shift of 3 and 4 October 2016;*

- a) *Did not hand over that Patient T had a NEWS of 4 [Proved]*
- b) *Did not hand over that Patient T had a blood pressure reading of 87/54 [Proved]*

29) *On or around 11 October 2016;*

- a) *Admitted Patient S onto the ward without wearing gloves. [Proved]*
- b) *Admitted Patient S onto the ward without wearing an apron. [Proved]*
- c) *Did not wash your hands after leaving Patient S's room [Proved]*
- d) *Did not complete a skin and safety chart [Proved]*
- e) *Did not check what medication Patient S required. [Proved]*
- f) *Were unable to communicate information to Dr 1 regarding Patient Q's diet plan. [Proved]*

30) *On or around 2 October 2016;*

- a) *Incorrectly recorded a code as '6' instead of '5' on Patient F's prescription chart. [Proved]*
- b) *Did not inform the pharmacy to supply Patient F with their medication. [Proved]*

31) *On 11 October 2016 during the lunch time medication round;*

- a) *Dispensed medication for Patient N into your hand instead of directly into the medication pot. [Proved]*
- b) *Prior to administration of medication to Patient N you did not check;*
  - i) *The strip for the name of the medication [Proved]*
  - ii) *The Dose [Proved]*
  - iii) *The expiration date [Proved]*
  - iv) *Patient N's wristband [Proved]*
  - v) *Patient N's allergies [Proved]*
- c) *Signed your name on the medication chart prior to the administration of medication to Patient N. [Proved]*

32) On or around 18/19 October 2016 during a supervised medication round, you;  
a) Did not check the strip of medication to confirm it was paracetamol. **[Proved]**  
b) Did not check the expiration date of the medication. **[Proved]**  
c) Did not demonstrate knowledge of medication being administered **[Not Proved]**

33) On 9 December 2016 took 3 hours to complete a supervised medication round on Ward 8. **[Proved]**

34) On or around 14 November 2016 after being instructed twice, failed to obtain a non-breath mask for Patient H. **[Proved]**

35) On or around 9/10 December 2016 administered Warfarin to Patient O without signing Patient O's MAR chart. **[Proved]**

36) Between 11 January 2016 & 14 July 2016 you were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

(a) Basic fundamentals of care **[Proved]**

(b) Basic skills **[Proved]**

(c) Communication with peers and patients **[Proved]**

(d) Ward routing and hospital procedures. **[Proved]**

37) Between 11 January 2016 and 1 February 2017 you worked in a supernumerary capacity. **[Not Proved]**

38) Did not complete your preceptorship programme following its commencement on 7 August 2016. **[Proved]**

39) Did not complete your preceptorship programme following its commencement on 22 October 2016. **[Proved]**

And in light of the above your fitness to practise is impaired by reason of your lack of competence.

AND

*40) That you, a registered nurse, do not have the necessary knowledge of English to practise safely and effectively and in light of the above your fitness to practise is impaired by reason of your lack of knowledge of the English language'. [Proved]*

## **Background**

The Nursing and Midwifery Council (NMC) state that a number of the concerns occurred prior to Mr Rodriguez receiving his PIN on 23 June 2016. However, Article 22(3) of the Nursing and Midwifery Order states that, '*This article is not prevented from applying because the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered.*'

The NMC received a referral on 28 July 2017 from the Clinical Matron of Blackpool Teaching Hospital NHS Foundation Trust (the Trust). The referral raised concerns around Mr Rodriguez's conduct, competence and knowledge of the English Language.

Mr Rodriguez worked at the Trust from 11 January 2016 to 3 May 2017. He initially worked on Ward 24 (an acute respiratory ward) as a Healthcare Assistant (HCA) while awaiting his Personal Identification Number (PIN).

On 18 April 2016, Mr Rodriguez was moved from Ward 24 to Ward 8, (an isolation ward), which is an infectious diseases ward which provides barrier nursing for patients suffering from infections. Following the receipt of his PIN, on 23 June 2016, he was employed as a band 5 staff nurse and was required to undertake his preceptorship at the Trust.

Several areas of concerns from (Ward 24 and Ward 8), came to light which are wide ranging and serious. These include Mr Rodriguez; failing to demonstrate the necessary knowledge of English to practise safely, effectively and without supervision across multiple areas of clinical practice.

Several incidents of misconduct, the most serious being inappropriate and sexually

motivated behaviour towards three separate colleagues, shouting at patients, communicating with colleagues in a demeaning manner, ignoring reasonable requests from patient's family members, ignoring clinical instructions from senior members of staff, neglecting patients whilst providing poor personal care, failing to conduct observations and failing to co-operate with directions from his regulator, the NMC.

Mr Rodriguez failed to demonstrate competency in areas of medication administration, management and knowledge of drugs, communication with colleagues during handover, escalating deteriorating patients, record keeping, admission and discharge of patients, infection control, managing workloads, patient care and ward routine and procedures.

Mr Rodriguez as a result of the above failed to complete his preceptorship programme on two separate occasions. He commenced his first preceptorship in July 2016 and a further preceptorship on 22 October 2016. He never completed his preceptorship and worked within a supernumerary capacity throughout his employment at the Trust.

On 3 May 2017, a disciplinary hearing was held at the Trust and Mr Rodriguez was dismissed. On 24 July 2017, he appealed the decision and an Appeal Hearing was held. The decision to dismiss was upheld. Mr Rodriguez's current employment status is unknown and it appears (from his communication with the NMC in 2018) that he has now left the United Kingdom.

#### Areas of Regulatory Concerns Investigated

1. Mr Rodriguez does not have the necessary knowledge of English to practise safely effectively.
2. Mr Rodriguez acted in an inappropriate manner towards patients, relatives and colleagues.
3. Mr Rodriguez failed to demonstrate the standards of knowledge, skill, and judgment required to practise without supervision as a band 5 nurse.

#### **Decision and reasons on facts**

The panel noted that Mr Rodriguez made no formal response to the charges.

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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:

- Ms 1: Band 6 Sister on Ward 8
- Ms 2: Clinical Matron
- Ms 3: Ward Manager on Ward 2
- Ms 4: Senior Registered Nurse on Ward 8
- Ms 5: Healthcare Assistant on Ward 8
- Ms 6: Ward Sister on Ward 2
- Ms 7: Housekeeper on Ward 8
- Dr 8: Training Doctor on Ward 8
- Mr 9: NMC Case Coordinator

The panel accepted the advice of the legal assessor.

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

### **Charge 1**

That you, whilst employed at Blackpool Victoria Hospital;

On 11 April 2016;

- a) Shouted at a patient words to the effect “*Get up for a wash.*”

### **This sub charge is found proved**

In reaching this decision, the panel took into account the statement of Ms 1, who confirmed that on the first shift with Mr Rodriguez on 11 April 2016, she heard him shout at a patient, saying ‘*get up for a wash*’. Ms 1 explained to Mr Rodriguez that he was coming

across as quite aggressive and that this behaviour was unacceptable, and that he should not shout at patients. The panel noted that, although shouting can be subjective, the fact that she took him aside and addressed the inappropriate manner in which he had spoken can be proved. The panel noted that a contemporaneous note was made at the time, and taking account of all of the above, the panel was satisfied on the balance of probabilities this evidence can be relied on. Accordingly, the panel finds this sub charge proved.

- b) On one or more occasion stared at patients during the provision of personal care.

**This sub charge is found NOT proved.**

The panel considered the witness statement of Ms 1. The panel noted that there was some evidence that could support the charge but observed that there was a lack of context to the incident. The panel considered that Ms 1's statement lacked sufficient detail and that this was the first shift that Ms 1 had worked with Mr Rodriguez. The panel observed that staring can be subjective and misinterpreted, and that Ms 1 did not provide sufficient detail in her witness statement. On the balance of probabilities the panel finds insufficient evidence to support this charge. Accordingly, the panel finds this sub charge not proved.

## **Charge 2**

On or around 13 April 2016;

- a) Stared at a patient during the provision of personal care.

**This sub charge is found proved.**

The panel considered the witness statement of Ms 1. On this occasion she made contemporaneous notes of the incident that were detailed and supported by her witness statement. Therefore, the panel is satisfied that it is more likely than not that this incident occurred. Accordingly, the panel finds this sub charge proved.

- b) Harassed Colleague 1 to go out on a date with you.

**This sub charge is found NOT proved.**

In reaching this decision, the panel took into account the statement of Ms 1. The panel noted that although the record of this incident was based on Ms 1's statement, it was not a direct record of the incident (as Ms 1 was not a witness), but was reported to Ms 1 by another colleague. The panel considered that Mr Rodriguez was never asked and was not given an opportunity to explain his actions. The panel observed that it did not have a direct account from Colleague 1, and noted that the information provided could be hearsay evidence. The panel was not satisfied that based on the evidence before it that this charge can be made out. Accordingly, the panel finds this sub charge not proved.

### **Charge 3**

Between 13 April 2016 and 20 June 2016 refused to take Patient A's temperature 3 times after being instructed to do so by Colleague 2.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1. Ms 1 witnessed this event and also made a contemporaneous note at the time which explained this incident and further states that Mr Rodriguez refused to take Patient A's temperature as he had been asked. The panel observed that there was sufficient evidence in the contemporaneous note and Ms 1's statement that clearly explains the circumstances that Mr Rodriguez refused to take the temperature three times. It concluded that there was reliable and credible evidence to prove this charge. Accordingly, the panel finds this charge proved.

### **Charge 4**

4) On 5 July 2016;

a) Touched Colleague 3 from behind on her bra strap

**This sub charge is found proved.**

In reaching this decision, the panel took into account Ms 1's statement, within which she confirmed this incident and a contemporaneous note was kept at the time. Ms 1 confirms that Colleague 3 went to her crying and explained the incident. Ms 1's statement is

corroborated by a healthcare assistant present at the time of the incident. The panel considered that given that Colleague 3 approached Ms 1 and a note was made at the time, there is sufficient evidence that can support this charge. Accordingly, the panel finds this sub charge proved.

b) Inappropriately rubbed the front of your body on the back of Colleague 4's body.

**This sub charge is found proved.**

In reaching this decision, the panel took into account the statement of Ms 1. She was a direct witness and observed this incident. Ms 1 made a contemporaneous note of the incident on 5 July 2016 which is supported by her witness statement. She explains that Mr Rodriguez was laughing when he rubbed the front of his body on the back of Colleague 4's body and he looked quite embarrassed after Colleague 4 screamed. Taking this evidence into account, the panel was satisfied on the balance of probabilities that this evidence can be relied on. Accordingly, the panel finds this sub charge proved.

### **Charge 5**

5) Your actions in charge 4 above were sexually motivated in that you sought sexual gratification from such contact.

**This charge is found proved.**

In reaching this decision, the panel considered a lay person's interpretation of sexual gratification based on the conduct described. It noted that it was a matter for the panel's own judgement. The panel considered this to be inappropriate conduct for a registered nurse and that Mr Rodriguez's actions appeared to be sexually motivated and he must have known what he was doing. The description of the piece of clothing as a bra strap which is an intimate part of clothing, and his actions in charge 4(a) and (b) inferred sexual gratification. Ms 1 stated that she saw Mr Rodriguez laughing when he was inappropriately rubbing the front of his body on the back of Colleague 4's body. The panel was satisfied that Mr Rodriguez's actions were sexually motivated. Accordingly, the panel finds this charge proved.



### **Charge 6**

6) Between 1 July 2016 & 24 July 2016 you burst into a Patient I's room and shouted words to the effect '*I do blood pressure*'.

**This charge is found NOT proved.**

In reaching this decision, the panel noted that the NMC relies on Ms 1's statement to support this charge. It observed that Ms 1's statement is based on a discussion that she had with another nurse some two weeks later, and Ms 1 did not actually witness this incident, and no contemporaneous note was kept. The panel considered that the evidence and explanation given is vague and the statement is based on someone else's recollection. The panel noted that there was no evidence to explain or clarify the tone of voice that Mr Rodriguez is alleged to have used or what was accepted. The panel placed limited weight on the evidence provided. Accordingly, the panel finds this charge not proved.

### **Charge 7**

7) On or around 30/31 July 2016 you ignored the request from Patient D's family member to increase Loperamide as per the gastro plan.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1 and noted that Ms 1 was a direct witness of this incident and kept a contemporaneous note at the time. Ms 1's statement is supported by her note. The panel considered that the evidence was strong and accordingly, the panel finds this charge proved.

### **Charge 8**

8) On or around 11 October 2016 following Patient R passing stool on scales;

- a) Shouted at Patient R words to the effect "*No what are you doing.*"
- b) Left the room.
- c) Placed the scales in the antechamber without cleaning them.

**This charge is found NOT proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 1 which is the only evidence the NMC seeks to support this charge. The panel considered that Ms 1 was not a direct witness to this incident and was informed on this incident by a student nurse. Ms 1's statement is not detailed and sufficient enough to support this charge and therefore, the panel placed limited weight on Ms 1's statement. The panel noted that there was no evidence from the student nurse to support this charge. Taking account of the evidence provided, the panel finds this charge not proved.

### **Charge 9**

9) On 22 November 2016;

- a) You failed to conduct observations for 5 patients after being instructed to do so.
- b) You left duty without informing your colleagues that you were unable to conduct the observations.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 1, who directly witnessed this incident. Ms 1 confirms that she asked Mr Rodriguez to conduct observations on five patients and that he later left the shift without informing her or other colleagues that he was not able to conduct the observations. Ms 1 kept a contemporaneous note of this incident which she signed and dated. The panel was satisfied that this evidence is reliable and finds this charge proved.

### **Charge 10**

10) On or around 1 February 2017;

- a) Asked/allowed Patient G's daughter to obtain a stool sample.

**This sub charge is found proved**

In reaching this decision, the panel took into account the witness statement of Ms 1 and Ms 5. Ms 1 provided a hand written account dated 1 February 2017 which is also supported by her witness statement. In her statement and handwritten account, Ms 1 confirms that Patient G's daughter had informed her that Mr Rodriguez had asked the

daughter to obtain the stool sample. The investigation meetings dated 9 March 2017 and 21 March 2017 provide details of this incident. Ms 5 also confirms in her handwritten account dated 1 February 2017 that Patient G's daughter had told her that Mr Rodriguez had asked her to obtain the stool sample. Mr Rodriguez made admissions during the investigative meeting dated 21 March 2017. The panel finds that there is sufficient evidence to support the sub charge and accordingly, the panel finds this sub charge proved.

b) Did not remove Patient G's bedpan from their room.

**This sub charge is found proved**

The panel took into account the witness statement and handwritten account of Ms 5. Ms 5 confirmed that she took Patient G's bedpan from the room. The panel finds that there is sufficient evidence to support this charge. Accordingly, the panel finds this sub charge proved.

c) Took the sample pot into Patient G's room.

**This sub charge is found proved**

In reaching this decision, the panel took into account Ms 1's witness statement and handwritten account of the incident dated 1 February 2017. She confirmed that she took the sample pot out of Patient G's room because Mr Rodriguez had left it there. Mr Rodriguez admits in the investigation interview on 21 March 2017 that he had taken the sample pot into Patient G's room and had forgotten to remove it because he was talking to a healthcare assistant. The panel find that there is sufficient evidence to support this charge. Accordingly, the panel finds this sub charge proved.

d) Took a fluid input/output chart into Patient G's room.

**This sub charge is found NOT proved**

In reaching this decision, the panel took into account the witness statement of Ms 5. The panel considered that there was no evidence in her statement to specifically indicate that Mr Rodriguez had in fact taken the input/output chart into Patient G's room. Ms 5 states: *'I saw the charts of the table when I entered the patients room'*. However, her statement does not specify who took the charts into the room. The panel decided that there was insufficient evidence to satisfy it that Mr Rodriguez had brought the input/output chart into Patient G's room. Accordingly, the panel finds this sub charge not proved.

e) Asked Patient G's daughter to complete the fluid input/output chart.

**This sub charge is found proved**

In reaching this decision, the panel took into account all of the evidence before it, particularly the witness statement of Ms 5. She confirms in her statement that Patient G's daughter had told her that Mr Rodriguez had asked the daughter to complete the fluid input/output chart every time Patient G had a drink or passed urine. This is also confirmed in the investigation meetings on 24 April 2017, 6 April 2017 and also at the disciplinary hearing on 3 May 2017. The panel noted that the minutes of the investigation are contemporaneous and support this charge. Accordingly, the panel finds this sub charge proved.

f) Shouted at Colleague 5.

**This sub charge is found proved**

In reaching this decision, the panel took into account the witness statements of Ms 1 and Ms 5. Ms 1 was a direct witness to this incident and confirmed that she saw Mr Rodriguez shout at Colleague 5. Ms 5 in a note dated 1 February 2017 confirms that she also saw Mr Rodriguez shout at Colleague 5. Ms 1 and Ms 5 were direct witnesses and gave an account of this incident at the time. The panel was satisfied that the evidence of Ms 1 and Ms 5 supports this sub charge and accordingly finds it proved.

g) Said to colleague 5 words to the effect;

(i) "I am a staff nurse, you do as you are told, I am above you."

**This sub charge is found NOT proved**

In reaching this decision, the panel took into account all of the evidence before it and determined that there was no direct evidence to support that Mr Rodriguez said these words to colleague 5. Accordingly, the panel finds this sub charge not proved.

(ii) "You would be the type of person I would like to meet in a dark alley."

(iii) "I like your eyes and hair"

(iv) That colleague 5 should "Go on a night out" with you.

**These sub charges (ii), (iii) and (iv) are found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 5. In her statement she confirms that while in room 3 assisting a patient, Mr Rodriguez said; '*you would be the type of person I would like to meet in a dark alley*', '*I like your eyes and hair*' and '*Go on a night out*'. Her statement is supported by the contemporaneous note dated 1 February 2017 as well as the disciplinary meeting held on 3 May 2017. The panel was satisfied that on the balance of probabilities there is sufficient evidence to support this charge. Accordingly, the panel finds sub charges (ii), (iii) and (iv) proved.

**Charge 11**

11) Your actions in charges 10) g) (ii)-(iv) were sexually motivated in that you had said these words in order to pursue a sexual relationship with Colleague 5.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence that supports charge 10 g) (ii), (iii), (iv) above, and having found it proved, the panel considered that according to the standards of ordinary decent people there would be no other plausible reason for Mr Rodriguez to say words of that nature. On the balance of probabilities, the panel decided

that Mr Rodriguez's actions were more likely than not sexually motivated, it therefore finds this charge proved.

### **Charge 12**

12) In or around August 2016, on one or more occasion sent Colleague 1;

- a) An inappropriate text message about her 'sexy knickers.'
- b) Inappropriate text messages about being girlfriend and boyfriend.

**This charge is found NOT proved in its entirety.**

The panel noted that there was insufficient evidence provided to indicate that Mr Rodriguez had sent inappropriate text messages on one or more one occasion to Colleague 1. The panel noted that there was no direct evidence from Colleague 1 to clearly explain the text messages allegedly sent and also noted that the text messages were not produced by the NMC. The only account provided to support this charge is from a third party. The panel was satisfied that on the balance of probabilities there was insufficient evidence to support this charge. The panel therefore finds this charge not proved.

### **Charge 13**

13) Between 10 December 2016 & 20 December 2016,

- a) Countersigned for controlled drugs when instructed not to.
- b) Countersigned for intravenous medication when instructed not to.

**This charge is found NOT proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 3 and the letter she wrote dated 20 December 2016 addressing the medication error by Mr Rodriguez on 10 December 2016. The letter states: '*you were not to have contact with medication of any kind*'. The panel noted that there were no clear instructions for Mr Rodriguez in relation to medication administration and countersigning. The panel further noted that the instructions given in the letter dated 12 December 2016 were not sufficiently explicit for Mr Rodriguez to know what was expected of him in relation to restrictions

regarding medication administration and countersigning. The panel was satisfied that there was insufficient evidence to support this charge. The panel therefore finds this charge not proved.

#### **Charge 14**

14) On 16 November 2016;

a) Refused to take Patient M's dressings down after being instructed to do so by Dr 2.

**This sub charge is found proved.**

The panel considered the witness statement of Ms 4. Ms 4 confirms that she was standing near Mr Rodriguez, when Dr 2 asked him to take Patient M's dressings down. Mr Rodriguez answered 'no' and stated that he had a course to attend. The panel considered that Ms 4's statement is a direct account that supports this charge. The panel therefore finds this sub charge proved.

b) Did not check if Patient M had dressings.

**This sub charge is found NOT proved.**

In reaching this decision, the panel took into account all of the evidence before it, and in particular, Ms 5's witness statement. It observed that there was no evidence in Ms 5's witness statement which specifically indicated that it was Mr Rodriguez's sole responsibility to check Patient M's dressings and that he had failed to do so. The panel was satisfied there was insufficient evidence to support this sub charge. The panel therefore finds this sub charge not proved.

c) Took approximately 7.5 hours to conduct 8 set of patient observations.

**This sub charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 2 and Ms 4. Both witnesses provided information to support this charge. Ms 2 stated that it took Mr Rodriguez 'the whole afternoon' to complete the observations. Ms 4 stated that it took

him 'until 19:30 to complete 8 sets of observations which he was allocated at 12:00'. The panel therefore finds this sub charge proved. However, the panel noted that Ms 4 confirmed that it was an extremely busy ward and it was unclear to the panel what other tasks Mr Rodriguez was required to perform that afternoon.

### **Charge 15**

15) On or around 17 November 2016 after discovering that Patient H had vomited down her night dress/herself;

i) Did not initially assist Patient H

**This sub charge is found NOT proved.**

In reaching this decision, the panel considered the witness statements of Ms 2, Ms 4 and Ms 5. The panel observed that the accounts given do not corroborate, differ in detail and sequence of events. It would appear from Ms 4's statement that Mr Rodriguez helped Patient H. In Ms 2 and Ms 5's statement, there is no evidence to show that Mr Rodriguez initially failed to assist Patient H. The panel considered the evidence before it to be inconsistent and was not satisfied that the evidence supports this charge. The panel therefore finds this sub charge not proved.

ii) Said words to the effect "it's not my responsibility, it's the HCAs."

**This sub charge is found NOT proved.**

In reaching this decision, the panel took into account the witness statement of Ms 4, which describes a different set of circumstances. The panel was not satisfied that the events described related to the incident with Patient H. Therefore, the panel determined that there is insufficient evidence to support this charge. The panel therefore finds this sub charge not proved.

### **Charge 16**

16) On or around 16 November 2016 following Patient L's stoma bag bursting;

a) Delayed cleaning Patient L

b) Delayed replacing Patient L's stoma bag



c) Placed a new stoma bag on Patient L's bed instead of replacing the old bag.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 7 and Ms 2. Ms 7 was a direct witness to the incident and made a contemporaneous note dated 16 November 2016 which is also corroborated with a letter written by Ms 2 on 26 November 2016. The panel found both accounts credible and detailed to support this incident. The panel therefore finds this charge proved.

### **Charge 17**

17) On 21 November 2016 during night handover;

a) Sent personal texts from your mobile telephone.

b) In response to being asked whether you were listening to handover said words to the effect of "in a minute."

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statements of Ms 2 and Ms 7. Ms 2's statement reflects the contemporaneous note written on 25 November 2016 and also confirms that Mr Rodriguez was using his mobile telephone during the handover. Ms 7's account confirms this incident and it is also reflected in her note written on 21 November 2016, Ms 7 also confirms that Mr Rodriguez admitted to using his mobile telephone during the handover. The panel considered both accounts to be credible and sufficient to support this charge. The panel therefore finds this charge proved.

### **Charge 18**

18) On 23 November 2016 refused to provide Patient J with a bedpan.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 2 and Ms 7. Ms 2 recorded this incident on 28 November 2016. This account is supported by Ms 7 who confirmed that Patient J told her that Mr Rodriguez had refused to provide the

bedpan. Ms 7's contemporaneous note on 23 November 2016 and Ms 2's note on 28 November 2016, corroborates this account. The panel finds both accounts credible and sufficient to support this charge. The panel therefore finds this charge proved.

### **Charge 19**

19) In or around December 2016 administered Chlorphenamine without knowing its correct medical/clinical purpose.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 4. In her statement Ms 4 confirms this incident occurred in or around December 2016 and it is supported by her written account recorded at the time. The panel was satisfied that the evidence was credible and can support this charge. The panel therefore finds this charge proved.

### **Charge 20**

20) On or around 12 December 2016 failed to obtain a commode for Patient K after being instructed to do so by the Nurse in Charge Colleague 6.

**This charge is found proved.**

In reaching this decision, the panel took into account Ms 6's email dated 15 December 2016 which explained the incident. It states: '*...At one point I asked him to attend to a patient who needed a commode — 10 minutes later I passed the patient who was trying to get out of bed on her own as she needed the commode — in the process pulling out her cannula...*' The panel found this email to be credible evidence which explained the incident in greater detail. The panel was satisfied that this evidence supports this charge and finds it proved.

### **Charge 21**

21) On 13 December 2016;

a) Spoke to colleague 5 using words to the effect;

- i) 'Well, that's not my job. I'm not here to do Healthcare Assistant jobs'.
  - ii) 'This is my punishment for messing up with medication'.
  - iii) I'm a nurse, not a Healthcare Assistant, it's not my job',
- b) You pointed at your uniform and stated words to the effect 'Look, Staff Nurse'.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 5 and her handwritten note dated 13 December 2016. The panel noted that Ms 5 was on the same shift as Mr Rodriguez and a direct witness of this his spoken words. The panel was satisfied that Ms 5's account is reliable and can support this charge. The panel therefore finds this charge proved.

**Charge 22**

22) Failed to co-operate with your regulator, the Nursing and Midwifery Council between 7 December 2017 and 27 February 2018 as you;

- a) Did not co-operate with a direction to take a language assessment.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Mr 9. Mr 9 confirmed that a Notice of Direction to take a language assessment was given by the NMC to Mr Rodriguez and letters were sent to him on; 7 December 2017 and 25 January 2018, and emails were sent on 26 January 2018, and on 9 February 2018. This was followed by another letter on 13 February 2018. On 26 February 2018, Mr Rodriguez responded stating that he had the '*appropriate certifications*' and on 20 February 2018 he stated, '*I would like to notify you that I am not interested in the subject of English language assessment and the IELTS*'. The panel considered that Mr Rodriguez had a duty as a registered nurse to cooperate with his regulator and that he had failed to comply after several reminders. The panel determined that there was sufficient and credible evidence to support this charge. The panel therefore finds this charge proved.

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

AND

That you, between 11 January 2016 and 3 May 2017 failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 5 nurse, in that you:

**Charge 23**

23) On or around the night shift of 21/22 June 2016;

a) On Patient B's Night Care Plan incorrectly recorded "Settled Night, Care as Plan."

**This sub charge is found proved**

In reaching this decision, the panel had regard to the witness statement of Ms 1. In her statement she confirms that on the night of 22 June 2016, Mr Rodriguez had incorrectly recorded '*Settled Night*' in Patient B's Night Care Plan. This is reflected in her handwritten note on, 21 June 2016, as well as in Patient B's night care plan. The panel was satisfied that the contemporaneous note is credible and the Patient's night plan is an official account which is reliable and can support this charge. The panel finds this sub charge proved.

b) Failed to demonstrate an understanding of Patient B's condition, namely that Patient B was suffering from;

(i) Chest pains;

(ii) Hypoglycaemia

**This sub charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1. Ms 1 was on the same shift with Mr Rodriguez and had provided a dated and signed handwritten note detailing this incident. The panel was satisfied that Ms 1's statement and contemporaneous note are credible and can support this charge. The panel therefore finds this sub charge proved.

### **Charge 24**

24) Between 5 July 2016 & 20 July 2016 stated that Patient Z's blood pressure was normal when it had increased from 97/43 to 134/85.

**This charge is found proved.**

In reaching this decision, the panel took into account the handwritten note of Ms 1, she was on the same shift with Mr Rodriguez and had discussed this concern with him. The panel noted that the handwritten note was a contemporaneous note, confirms that Patient Z's blood pressure had increased significantly, and gives an account of what had occurred at the time. Ms 1 was a direct witness, and the panel was satisfied that on the balance of probabilities this incident occurred, accordingly the panel finds this charge proved.

### **Charge 25**

25) On or around the night shift of 20/21 July 2016;

a) Ticked boxes on the skin and safety tool chart outside one or more Patients' rooms without conducting adequate hourly checks.

b) Had to be reminded to go into Patients rooms to conduct hourly observations.

c) In relation to Patient Y in room 5;

(i) Were unable to identify what condition Patient Y was suffering from.

(ii) Did not understand why blood glucose levels needed to be taken for Patient Y who was deteriorating.

(iii) Did not understand why 15 minute observations needed to be taken.

(iv) Did not understand that Patient Y required an MRI scan.

**These sub charges a), b), c), (i), (ii), (iii) and (iv) are found proved.**

In reaching this decision, the panel took into account the witness statement and handwritten note of Ms 1. Ms 1 was on the same shift on 20/21 July 2016 with Mr Rodriguez and had addressed her concerns to him. The panel was satisfied that the

handwritten notes were a contemporaneous record and sufficient evidence to find these sub charges proved.

d) In relation to Patient W in Room 1;

(i) Did not understand that the Patient W was being monitored by a CTG machine.

**This sub charge is found NOT proved.**

In reaching this decision the panel took into account the evidence and witness statement of Ms 1 adduced to support this charge. It noted that the witness statement does not contain information that addresses and supports this charge. It observed that there was a lack of clarity in Ms 1's statement as to what the patient should be monitored for. It considered that there was insufficient evidence to support this charge, the panel therefore finds this sub charge not proved.

(ii) Were unable to conduct lying and standing blood pressure readings.

**This sub charge (ii) is found NOT proved.**

The panel took into account the witness statement of Ms 1 and determined that there was insufficient evidence to support this charge. It considered that there was no evidence from the information provided to demonstrate that Mr Rodriguez was unable to conduct lying and standing blood pressure readings. The panel therefore finds this sub charge not proved.

e) Were unable to demonstrate an understanding of the activities of daily living ('ADOL') model to write in Patient notes.

**This sub charge is found proved.**

In reaching this decision, the panel considered the witness statement of Ms 1. In her statement Ms 1 explains the conversation she had with Mr Rodriguez regarding the model used to write patient notes. When asked of his understanding, Ms 1 said that Mr Rodriguez stated that he did not know. Her handwritten note titled '*nightshift Tues/Wed 20/21 July*

2016' confirms that Mr Rodriguez was unable to demonstrate the understanding of the activities of daily living ('ADOL') model to write in Patient notes. The panel finds Ms 1's contemporaneous note reliable and credible, it therefore finds this sub charge proved.

f) Were unable to understand that the Patient V in room 5 required a sigmoidoscopy.

**This sub charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1 and her handwritten note of this incident on 20/21 July 2016. This note was recorded on the same shift and explains that Mr Rodriguez was unable to understand that Patient V in room 5 required a sigmoidoscopy. The panel find the contemporaneous note reliable and sufficient evidence to support this charge. The panel therefore finds this sub charge proved.

### **Charge 26**

26) On or around the shift of 30/31 July 2016 following receipt of a call from Public Health England, you did not disclose;

- a) That Public Health England had called the ward.
- b) That Patient C suffered from/tested positive for campylobacter

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 1. Ms 1 confirmed that Mr Rodriguez had told her that she had received a call from Public Health England (PHE) at the start of the shift but he only informed Ms 1 at the end of the shift. In her handwritten note dated 30/31 July 2016, she explains that Mr Rodriguez did not seem to understand why he needed to report that Patient C suffered from/tested positive for campylobacter. The panel was satisfied that following the telephone call from PHE, Mr Rodriguez did not disclose the matters alleged. The panel therefore finds this charge proved.

### **Charge 27**

27) Between 31 July 2016 & 4 October 2016;

a) Did not demonstrate an understanding of the medication you were administering to Patient E.

**This sub charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1. She stated that at the start of the medication round Ms 1 asked Mr Rodriguez to demonstrate an understanding of the medication that he was administering to Patient E. He was not able to do this and Ms 1 in her contemporaneous note stated that Mr Rodriguez responded and said this is okay because the medication was prescribed by a doctor. The panel therefore considered that there was sufficient evidence to demonstrate that Mr Rodriguez did not have an understanding of the medication that he was administering to Patient E. The panel therefore finds this charge proved.

b) Incorrectly dispensed 10ml of Oramorph instead of 10mg of Oramorph to a Patient U.

c) Did not check Patient U's wristband

d) Did not check Patient U's date of birth.

**These sub charges b), c) and d) are found proved.**

The panel took into account the witness statement of Ms 1 which gives a direct account of this incident. Ms 1 explains in her statement that she had to stop Mr Rodriguez from giving Patient U 10ml of Oramorph instead of 10mg of Oramorph. She also witnessed Mr Rodriguez not checking the patient's wristband or date of birth before administering the medication. Ms 1 made a contemporaneous note which explained this incident. The panel found that there was sufficient evidence to conclude that Mr Rodriguez did not follow the required procedure when administering medication to Patient U. It therefore finds these sub charges proved.

e) Did not check if Patient U suffered from any allergies.



**This sub charge is found NOT proved.**

The panel took into account Ms 1's witness statement and contemporaneous note which details the incident involving Patient U. The panel noted that there was no mention of Patient U suffering from any allergies or what was required of Mr Rodriguez. The panel determined that there is insufficient evidence to support this charge. The panel therefore finds this sub charge not proved.

**Charge 28**

28) On or around the night shift of 3 and 4 October 2016;

- a) Did not hand over that Patient T had a NEWS of 4
- b) Did not hand over that Patient T had a blood pressure reading of 87/54

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement and contemporaneous account of Ms 1. In her witness statement, Ms 1 explains that during the morning medication round she discovered that Mr Rodriguez had carried out observations on Patient T but did not mention during the handover that the patient had a NEWS of 4 or had a blood pressure reading of 87/54. This incident is recorded by Ms 1, in a contemporaneous note titled 'History Sheet', dated 4 October 2016 and 5 October 2016. The panel was satisfied that there is sufficient evidence before it to prove this charge. It therefore finds this charge proved.

**Charge 29**

29) On or around 11 October 2016;

- a) Admitted Patient S onto the ward without wearing gloves.
- b) Admitted Patient S onto the ward without wearing an apron.
- c) Did not wash your hands after leaving Patient S's room
- d) Did not complete a skin and safety chart.
- e) Did not check what medication Patient S required.
- f) Were unable to communicate information to Dr 1 regarding Patient Q's diet plan.

**This charge is found proved in its entirety.**

In reaching this decision, and with respect to charges (a) - (e), the panel took into account the witness statement of Ms 1 and her contemporaneous note dated 11 October 2016. Ms 1 states that Mr Rodriguez explained that he had forgotten to wear gloves and an apron when admitting Patient S, and in addition that he had forgotten to wash his hands. When asked why he did not complete the skin and safety chart, Mr Rodriguez said that he had done the patient's observations only and he did not have the time to complete the skin and safety chart.

With respect to charge (f), the panel took into account the witness statement of Ms 1, Ms 3 and Dr 8. Ms 1 explains that the doctor had informed her that Mr Rodriguez was unable to communicate Patient Q's diet plan as provided by the dietician. This is also recorded in her handwritten note dated 11 October 2016. This is further corroborated by Ms 3, who explained that the doctor had alerted her to this incident. The doctor in question, Dr 8, in a signed and dated letter, 12 October 2016, provides a direct account and explains his concern to Ms 3. The panel found the contemporaneous records to be clear and consistent evidence to support this charge. It therefore finds this charge proved.

**Charge 30**

30) On or around 2 October 2016;

- a) Incorrectly recorded a code as '6' instead of '5' on Patient F's prescription chart.
- b) Did not inform the pharmacy to supply Patient F with their medication.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 2, Ms 4 and Mr Rodriguez's reflective account. Ms 2 confirms that Mr Rodriguez had incorrectly marked Patient F's prescription chart as code 6. Mr Rodriguez in his reflective account admitted to applying the incorrect code and apologised for this error. Ms 4, in her statement explained that she had noticed the recording of the incorrect code when she was conducting the morning rounds on 2 October 2016. Ms 4, also recorded this incident in the 'incident sheet', on 2 October 2016, at 9:00. The panel find that there is sufficient evidence to prove this charge.

### **Charge 31**

31) On 11 October 2016 during the lunch time medication round;

- a) Dispensed medication for Patient N into your hand instead of directly into the medication pot.
- b) Prior to administration of medication to Patient N you did not check;
  - i) The strip for the name of the medication
  - ii) The Dose
  - iii) The expiration date
  - iv) Patient N's wristband
  - v) Patient N's allergies
- c) Signed your name on the medication chart prior to the administration of medication to Patient N.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 3. Ms 3 was the ward manager and a direct witness of this incident. She confirms this incident during the medication rounds, on 11 October 2016 at 12:40pm while supervising Mr Rodriguez. Ms 3, in a contemporaneous letter signed and dated 11 October 2016 detailed this incident involving Patient N. The panel finds that there is sufficient evidence to support this charge. The panel therefore finds this charge proved.

### **Charge 32**

32) On or around 18/19 October 2016 during a supervised medication round, you;

- a) Did not check the strip of medication to confirm it was paracetamol.
- b) Did not check the expiration date of the medication.

**This charge is found proved**

In reaching this decision, the panel took into account the witness statement of Ms 3. Ms 3 confirms that she was informed of this incident by the Practice Development Sister who supervised Mr Rodriguez during the medication round. This is further detailed and confirmed by the Practice Development Sister in an email to Ms 3 dated 19 October 2016.

The panel finds this evidence credible and sufficient to support this charge. It therefore finds this charge proved.

c) Did not demonstrate knowledge of medication being administered

**This sub charge is found NOT proved.**

In reaching this decision, the panel took into account the email dated 19 October 2016 from the Practice Development Sister who supervised Mr Rodriguez during this medication round. The email was a detailed account of her supervision which included some positive feedback and areas where Mr Rodriguez could improve. From the feedback, the panel noted that Mr Rodriguez had demonstrated knowledge of some of the medication. The email stated: *'I gave him feedback on the positive aspects, as there were some, highlighted areas for improvement ...'*

In considering the evidence provided, the panel was satisfied that Mr Rodriguez had demonstrated knowledge of some of the medication that he administered. The panel determined that there was insufficient evidence to determine that Mr Rodriguez did not have the knowledge of the medication he was administering. It therefore finds this sub charge not proved.

### **Charge 33**

33) On 9 December 2016 took 3 hours to complete a supervised medication round on Ward 8.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 3. Ms 3 was the Ward Manager on Ward 8 and confirms that Mr Rodriguez took three hours to complete the supervised medication round on 9 December 2016. The panel had sight of the email dated, 9 December 2016 at 11:50am from the Practice Development Sister charged with supervising Mr Rodriguez. The email stated: *'I have been and done a full morning round with Gabby this am, it did take 3 hours in total, however...'* The panel determined that there is sufficient evidence to support this charge. It therefore, finds this charge proved.

### **Charge 34**

34) On or around 14 November 2016 after being instructed twice, failed to obtain a non-breath mask for Patient H.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement and handwritten detailed record of this incident from Ms 1. Ms 1's handwritten account was signed and dated 14 November 2016. In both accounts Ms 1 confirms that Mr Rodriguez had failed to obtain a non-breath mask for Patient H on more than one occasion. The panel finds that the statement is supportive of the contemporaneous note kept at the time and can be relied on, it therefore finds this charge proved

### **Charge 35**

35) On or around 9/10 December 2016 administered Warfarin to Patient O without signing Patient O's MAR chart.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1. In her statement she confirms that on the shift on or around 9 -10 December 2016, Mr Rodriguez administered Warfarin to Patient O but failed to sign the Patient's MAR chart. The panel considered the 'incident form' dated 9 December 2016 which recorded and detailed this error. Mr Rodriguez in his reflective account admitted this incident, he stated: '*...an error of medication that I had last day 10 December 2016 ... forgot to sign the check box in the prescription chart*'. The panel finds that there is more than one account to support this incident. Accordingly, it determined that there is sufficient evidence to support this charge and finds this charge proved.

### **Charge 36**

36) Between 11 January 2016 & 14 July 2016 you were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

(a) Basic fundamentals of care

- (b) Basic skills
- (c) Communication with peers and patients
- (d) Ward routing and hospital procedures.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the witness statement of Ms 2, who confirmed that Mr Rodriguez had failed to comply with the informal support plan put in place to improve his practice. The statement further confirms meetings held on 1 April 2016 and 5 April 2016 which explain that irrespective of the support given to Mr Rodriguez, he was still underperforming and struggling. Ms 2 also stated that although he was moved to a smaller ward there was no improvement. On 14 July 2016, a further meeting was held which confirmed that Mr Rodriguez had not achieved the standard required as a registered nurse, had failed to take the opportunity to improve his knowledge or skills and demonstrate competency in a number of areas despite receiving support from the Trust. The panel was satisfied that the records of the meetings were contemporaneous and demonstrated that support was provided to Mr Rodriguez to enable him to improve his practice to the required standards of a registered nurse. It therefore finds this charge proved.

### **Charge 37**

Between 11 January 2016 and 1 February 2017 you worked in a supernumerary capacity.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account all the evidence. In particular, it considered, Mr Rodriguez's reflective account which was recorded when addressing an incident that occurred on the 10 December 2016. The reflective account indicated that his supernumerary period had come to end in early December 2016, he records: *'My supernumerary period ended days before and already had been moved to cover attendance of personnel to other areas of the hospital'*. The panel noted that Ms 1 and Ms 4's witness statements did not specify the period of time that Mr Rodriguez worked in a supernumerary capacity. The panel therefore decided that there was insufficient evidence to support this charge and it therefore finds this charge not proved.

### **Charge 38**

Did not complete your preceptorship programme following its commencement on 7 August 2016.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Ms 1, she was the sister on ward 8, responsible for signing off Mr Rodriguez, and she confirms that he started the preceptorship programme on 7 August 2016. The panel had sight of the preceptorship programme which was dated 7 August 2016, it had not been completed nor signed by Mr Rodriguez or by the ward sister, or another manager. It also had sight of the induction checklist that contained sections that were signed off and others that were not signed off or completed. The panel noted that the preceptorship programme and the induction checklist are contemporaneous records which can be relied on, it therefore finds this charge proved.

### **Charge 39**

Did not complete your preceptorship programme following its commencement on 22 October 2016.

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statements of Ms 1 and Ms 2, which confirmed the second preceptorship programme started on 22 October 2016. Ms 2, as Clinical Matron confirms that she was in charge of Mr Rodriguez's supervision. The panel had sight of the preceptorship programme and noted the last meeting recorded was on 20 December 2016. Ms 2 states that Mr Rodriguez failed to complete the programme because he was suspended pending investigation. The panel decided that the preceptorship pack produced was a contemporaneous record which is credible, therefore the panel find this charge proved.

#### **Charge 40**

That you, a registered nurse, do not have the necessary knowledge of English to practise safely and effectively and in light of the above your fitness to practise is impaired by reason of your lack of knowledge of the English language.

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

In reaching this decision, the panel took into account the witness statement of Mr 9 who confirmed that the NMC had requested Mr Rodriguez to undertake an International English Language Testing System (IELTS) assessment on several occasions. Requests were sent by the NMC to Mr Rodriguez on 7 December 2017, 25 January 2018, 26 January 2018, 9 February 2018, and 13 February 2018. The panel had particular regard to the email dated 20 February 2018 from Mr Rodriguez to Mr 9, which stated:

*'I would like to notify you that I am not interested in the subject of English language assessment and the IELTS'.*

*'I have no prospect of showing my level of English through the IELTS, because I do not see myself returning to work there, at least for the moment. Also, I am not available to move to the country and do the exam'.*

In an email dated, 26 February 2018, Mr Rodriguez gave his reasons for not taking the IELTS test in Spain. Mr 9, confirmed in his witness statement dated 13 October 2020, that the NMC to date has not received any assessment. The panel considered that Mr Rodriguez had a duty to cooperate with his regulator and that he had failed to do so. Taking all the above into account, the panel finds that there is sufficient evidence to support this charge. It therefore finds this charge proved.

#### **The substantive meeting resumed on 16 June 2021**

The panel received an email dated 26 March 2021 from the NMC, stating that Mr Rodriguez had been informed of the resuming substantive meeting on 16, 17 and 18 June 2021.



The panel accepted the advice of the legal assessor.

The panel was satisfied that Mr Rodriguez has been served with the Notice of Meeting in accordance with the Rules. The panel noted that Mr Rodriguez did not provide any response. In the circumstances the panel was satisfied that it was appropriate to resume the meeting on the same grounds as set out earlier in this determination.

### **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, lack of competence, lack of knowledge of the English language and, if so, whether Mr Rodriguez'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, lack of competence, and lack of the necessary knowledge of the English Language. Secondly, only if the facts found proved amount to misconduct, lack of competence, lack of the necessary knowledge of the English Language, the panel must decide whether, in all the circumstances, Mr Rodriguez's fitness to practise is currently impaired as a result of that misconduct, lack of competence, and lack of the necessary knowledge of the English Language.

### **NMC written representations on misconduct, lack of competence, lack of the necessary knowledge of the English Language and impairment**

The panel had regard to the following written submissions contained within the NMC's statement of case:

*'The NMC submits that whether the facts found proved amount to misconduct, lack of competence, lack of knowledge of the English language is a matter entirely for the panel's professional judgment. There is no burden or standard of proof (per Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas [2006] EWHC 464 (Admin)).*

*The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct: '[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nursing] practitioner in the particular circumstances'.*

*As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively. '[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

*And, 'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*

*The NMC Code of Conduct sets out the professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professionals. On the basis of the charges found proved, it is submitted, that the following parts of the Code are engaged in this case:*

**1. Treat people as individuals and uphold their dignity**

*To achieve this, you must;*

*1.1 Treat people with kindness, respect and compassion.*

*1.2 Make sure you deliver the fundamentals of care effectively.*

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

**2. Listen to people and respond to their preferences and concerns.**

*To achieve this, you must;*

*2.1 Work in partnership with people to make sure you deliver care effectively.*

*2.3 Encourage and empower people to share in decisions about their treatment and care.*

*2.6 Respect, support and document a person's right to accept or refuse care and treatment.*

*2.6 Recognise when people are anxious or in distress and respond compassionately and politely.*

**4. Act in the best interest of people at all times**

*To achieve this, you must;*

*4.2 Make sure that you get properly informed consent and document it before carrying out any action.*

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

*To achieve this, you must:*

*Maintain the knowledge and skills you need for safe and effective practice.*

**7. Communicate clearly**

*To achieve this, you must:*

*7.4 Check people's understanding from time to time to keep misunderstandings or mistakes to a minimum.*

*7.5 Be able to communicate clearly and effectively in English*

**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*

*8.2 maintain effective communication with colleagues*

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

*8.4 work with colleagues to evaluate the quality of your work and that of the team*

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

*8.6 share information to identify and reduce risk*

**9. Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues**

*To achieve this, you must:*

*9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance*

*9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

**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:*

*10.1 Complete records at the time or as soon as possible after an event.*

*10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need.*

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

*To achieve this, you must, as appropriate*

*13.1 Accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

*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.*

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

*To achieve this, you must, as appropriate;*

*18.1 Provide medicines or treatment including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs.*

**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*

*19.2 take account of current evidence, knowledge and developments in reducing mistakes and the effect of them and the impact of human factors and system failures*

*19.3 Keep to and promote recommended practice in relation to controlling and preventing infection.*

*19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public.*

**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 without discrimination, bullying or harassment.*

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

*20.6 Stay objective and have clear professional boundaries at all times with people in your care, their families and carers.*

*20.8 Act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.*

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

*The panel will be aware that in deciding whether a Registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English the panel may draw such inferences as seems appropriate to it, where a Registrant has failed to provide evidence of a language assessment (The Nursing and Midwifery Council (Fitness to Practise) Rules 2004, Rule 31 (6A)).*

*The NMC defines lack of competence as a lack of knowledge, skill or judgment of such a nature that the nurse or midwife is unfit to practise safely and effectively in any field in which they claim to be qualified or seek to practice.*

*It is submitted that nurses who are competent should have the skills, experience and qualification relevant to the part of the register they have joined, demonstrate a commitment to keeping those skills up to date and deliver a service that is capable, safe, knowledgeable, understanding and completely focused on the needs of the people in their care. It is also submitted that in reaching its decision, the Registrant should be judged by the standards of the reasonably competent registered nurse and not by any higher or more demanding standard.*

*The panel may be assisted when defining lack of competence by the guidance in R (on application of Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) where it was said: 'Deficient professional performance ...is conceptually separate both from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work'.*

*It is submitted that the conduct contained in charges 1-22 are clearly that of misconduct as Mr Rodriguez should be expected to comply with a reasonable request of his regulator, should not sexually harass, demean, shout at colleagues or shout at patients. Mr Rodriguez should also be expected to follow reasonable instructions from senior staff members, not pass on nursing responsibilities to family members of patients or staff members he considers are beneath him. Mr Rodriguez would also be expected to actively address concerns raised with his clinical practice and behavior within a clinical environment.*

*Charge 40, if found proved, is a clear lack of the necessary knowledge of English.*

*It is the NMC's submission that Charges 23-39 primarily demonstrate a lack of competence but that a lack of English may have played a role. Charges 23-39 demonstrate basic competency issues during Mr Rodriguez's time at the Trust despite receiving extensive support and guidance from a number of senior staff members and whilst working within a supernumerary capacity throughout his employment.*

*It is submitted that the charges set out, provide a fair sample of Mr Rodriguez's work which in turn demonstrate that his practice at the Trust was unacceptably low in basic nursing skills. It is submitted that both individually and collectively charges 23-39 amount to a lack of competence.*

*The Code is relevant to the consideration of whether the charges amount to lack of competence/misconduct in that it is the mechanism by which the Council sets out the standards of professional performance expected of nurses; consistent or widespread departure from the Code is, it is submitted, indicative of an unacceptably low standard of professional performance'.*

### **NMC written representations on impairment**

The panel had regard to the following written submissions contained within the NMC's statement of case:

*'The NMC assert that the Mr Rodriguez is currently impaired on the grounds of public protection and it otherwise being in the public interest to maintain confidence in the professions and the NMC as regulator.*

*If the panel are satisfied that the matters they have found proved do amount to misconduct and/or lack of competence (as submitted or otherwise) the next matter the panel must consider is whether Mr Rodriguez's fitness to practise is currently impaired by reason of that misconduct and/or lack of competence and/or lack of knowledge of English.*

*Impairment is conceptually forward looking and therefore the question for the panel is whether Mr Rodriguez is impaired as at today's date (per Cohen (see above) also Zgymunt v General Medical Council [2008] EWHC 2643 (Admin)).*

*The panel should note that, in line with rule 31(7)(b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, a departure from the Code is not of itself sufficient to establish impairment of fitness to practise, that question, like lack of competence and misconduct, is a matter for the panel's professional judgment.*

*The panel is likely to find the questions outlined by Dame Janet Smith in the 5th 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)) instructive. Those questions are:*

- a. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 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, and/or is she liable in the future to breach one of the fundamental tenets of the professions;*
- d. Has [the Registrant] in the past, and/or is she liable in the future to act dishonestly."*

*The NMC propose that in this case limbs a – c are engaged.*

*With regard to past conduct, it is submitted, that where it is found that a nurse lacked competence at the time to which the allegation relates his fitness to practise will have been impaired at that time and that his practice will have placed patients at an unwarranted risk of harm. Furthermore, in relation to this case, the allegations of misconduct do include instances where Mr Rodriguez has caused physical and psychological harm to patients and colleagues. For example failing to provide a bedpan to Patient J resulted in them soiling themselves causing them to suffer a lack of dignity, Mr Rodriguez's conduct of sexually harassing and abusing his colleagues has caused them to suffer actual harm due to his misconduct.*



*The public rightly expects that nurses will be safe and competent practitioners. Whilst, no doubt, the public would accept that everyone makes mistakes from time to time, it is submitted that in this case, where Mr Rodriguez's practice fell significantly short of the minimum standard expected in basic nursing skills on more than one occasion, the nursing profession has been brought into disrepute.*

*Furthermore, where misconduct is found on behalf of a nurse, it is submitted self-evident that the profession would be brought into disrepute to some degree. In addition, Mr Rodriguez's lack of the necessary knowledge of English engages limbs a), b) and c). Mr Rodriguez's lack of the necessary knowledge of English to practise safely and effectively has the potential to put patients at an unwarranted risk of harm and is likely to do so in the future. Moreover, it is a fundamental tenant of the profession for all nurses to be able to communicate effectively with service users and colleagues.*

*Current impairment can be found either on the basis that there is a continuing risk or that the public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding were not made.*

*With regard to future risk, it is submitted that the panel will likely find assistance in the questions asked by Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin):*

*'... It must be highly relevant in determining if a [nurse's] fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated.' namely, whether the lack of competence is easily remediable, whether it had in fact been remedied and whether it is highly unlikely to be repeated'.*

*With regard to lack of competence and the necessary knowledge of English it is submitted that it is self-evident that there is a risk to the public where a nurse lacks the requisite competence. Similarly, should a nurse be allowed to practice without restriction in circumstances whereby he lacks competence this would inevitably serve to undermine public trust in the profession.*

*It is an accepted point of principle that lack of competence and lack of English concerns are generally remediable. On the basis that there is a lack of competence in Mr Rodriguez's clinical practice, the panel must determine whether the areas identified as deficient have been remedied.*

*Insight is an important concept when considering remediation and impairment more generally. The Panel must assess the quality of any insight shown by Mr Rodriguez. It is submitted in this case that Mr Rodriguez has shown no insight or remorse into events which occurred and are charged above.*

*In terms of sufficient remedial steps Mr Rodriguez has not demonstrated any willingness to learn or train. He has provided the panel with no evidence of remediation in terms of the clinical concerns and indeed has not completed the IELTS test, or indeed any equivalent test, to demonstrate his level of knowledge of English.*

*The risk of repetition is clearly a matter for the panel but it is submitted that in this case there is a high risk of repetition. Mr Rodriguez has provided no evidence to suggest he has taken steps to remediate his practice, be it clinical or in terms of his English language. Furthermore, there is no evidence of insight or remediation into the misconduct displayed by Mr Rodriguez during his time at the Trust.*

*Given the high risk or repetition it is submitted that Mr Rodriguez's fitness to practice is currently impaired on the grounds of public protection.*

*When considering fitness to practise, the panel will also have to consider the 'fundamental public interest considerations' in any assessment of a registrant's impairment, as outlined by Mrs Justice Cox in the case of CHRE v Nursing and Midwifery Council and Grant [2011] EWHC 927 (Admin), that must be factored in at this stage:*

*'However, it is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations emphasised at the outset of this section of his judgement at paragraph 62, namely the need to protect the public and the need to declare and uphold proper standards of professional conduct and behaviour so as to maintain public confidence in the profession'. (para 71)*

*In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should 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'. (para 74)'.*

*It is submitted that a finding of impairment is in the public interest as public confidence in the nursing profession would be undermined if a finding of impairment was not made. Nurses are expected to carry out their duty to a minimum standard. It is submitted that the public, being aware of the circumstances of this case would be concerned, that a nurse who behaved in a sexual, demeaning and intimidating manner towards patients and colleagues and was unable to demonstrate the minimum level of English language as well as basic nursing skills, was not found to be impaired.*

*For this reason, a finding of impairment is necessary because it is in the public interest. It is further submitted that the need to uphold proper professional standards and public confidence in the nursing profession would be undermined if a finding of impairment were not made in the particular circumstances of Mr Rodriguez's case.*

*It is submitted that for the reasons given above Mr Rodriguez is impaired on grounds of both public protection and public interest'.*

### **Decision and reasons on a lack of knowledge of English**

In relation to a lack of knowledge of English, the panel bore in mind the Nursing and Midwifery Order 2001 (the Order), which states:

*'...knowledge of English... is necessary for the safe and effective practice of nursing and midwifery within the United Kingdom'.*

The panel had regard to the 'Nursing and Midwifery Council's Language Impairment Guidance' and in particular the section on 'Allegations of insufficient knowledge of English'

document. It states in this document that the NMC can investigate an allegation that a nurse or midwife does not have the necessary knowledge of English to practise safely in the United Kingdom by directing that nurse to take a language assessment, namely the ‘International English Language Testing System (IELTS)’. The assessment has four different components which are “listening, reading, writing and speaking’. The IELTS scores are graded between 1 (the lowest) to 9 (the highest). The NMC ‘expect all nurses and midwives on the register to achieve a minimum score of 7.00 in each of the four components’.

The panel followed the advice of the legal assessor in relation to Rule 31 (6) (a), which states:

*‘In determining whether a registrant’s fitness to practise is impaired by reason of not having the necessary knowledge of English, the Fitness to Practise Committee may draw inferences as seem appropriate to it if a registrant fails to undertake an examination or other assessment or to provide evidence of that assessment in accordance with direction made pursuant to these Rules.’*

The panel relied on this Rule, which invites the panel to draw inferences.

The panel noted that the Trust had raised a number of concerns regarding Mr Rodriguez’s understanding of the knowledge of English language. The panel considered the letter of the 23 February 2016 which referred to a meeting with Mr Rodriguez on 18 February 2016.

That letter from Ms 2 stated:

*‘I explained to you the importance of ensuring that you understand what is being said to you by patients, relatives and staff. It is your responsibility that if you do not understand, to voice this ...’ ‘... the importance for you to attend all the English lessons that are provided to you and to ensure the ... we also discussed how it is important to speak English at every available opportunity, both in and out of work, as this will assist you in improving your communication and understanding’.*

On 29 July 2016, Ms 2 sent a further letter to Mr Rodriguez which referred to a meeting on 14 July 2016 to discuss his progress and concerns raised. That letter from Ms 2 stated:

*'... we discussed that your spoken English has not improved as expected since you started at the Trust. Patients and Staff have reported that they find it difficult to understand you and also at times you appear to struggle to understand what is said. I advised that it is important to speak as much English as possible both at work and at home to help improve your English speaking skills. It is also important to attend the English lessons that are provided by the Trust.'*

On 20 October 2016, Ms 2 sent another letter following the meeting with Mr Rodriguez on the 18 October 2016 to discuss his progress and concerns raised. In the letter Ms 2 stated:

*'We discussed your communication skills and that your spoken English has only improved slightly since commencing with the Trust. This is impacting your role and at times patients and staff do find it difficult to understand you & also at times you appear to struggle to understand what is said to you.'*

Ms 1, in her witness statement also expressed concerns that Mr Rodriguez had difficulty in understanding information given during handovers on shifts in June/July 2016.

The panel noted that the NMC had requested Mr Rodriguez to undertake an IELTS assessment on several occasions, namely on; 7 December 2017, 25 January 2018, 26 January 2018, 9 February 2018, and 13 February 2018 but Mr Rodriguez failed to comply.

Mr Rodriguez responded in an email to the NMC on 20 February 20218 stating; *'I would like to notify you that I am not interested in the subject of English language assessment and the IELTS' ... 'I have no prospect of showing my level of English through the IELTS, because I do not see myself returning to work there, at least for the moment. Also, I am not available to move to the country and do the exam.'*

When determining whether the facts found proved amount to lack of knowledge of English the panel had regard to 7.5 of The Code: Professional standards of practice and behaviour for nurses and midwives (2015).

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel took into account that the Registrar directed Mr Rodriguez to undertake an IELTS assessment following concerns having been raised that he may not have the necessary knowledge of English to practise safely and effectively. The Registrar's powers to direct such assessments exist in order to protect patients. The Panel determined that Mr Rodriguez's failure to cooperate with the Registrar's direction means that important patient safety concerns have not been addressed.

The panel bore in mind that adequate knowledge of the English language is an essential part of safe nursing practice and that the public expect registered nurses to be able to communicate safely and effectively.

Having carefully considered all the evidence, the panel concluded that Mr Rodriguez's current level of English language does not meet the required level and therefore does not have the necessary knowledge of English to practise safely and effectively.

### **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. Professional standards of practice and behaviour for nurses and midwives (2015). It accepted the advice of the legal assessor who referred the panel to *Roylance v GMC (No 2)* [2000] 1 A.C. 311, *Nandi v GMC* [2004] EWHC 2317 (Admin) and *GMC v Meadow* [2007] QB 462 (Admin).

The panel looked at each of the charges found proved which related to misconduct individually and cumulatively. The panel considered that although charges 3, 14) a, and c were found proved, they did not amount to misconduct. Even though, Mr Rodriguez refused to take the patient's temperature, the panel concluded that there was insufficient information to determine whether his actions amounted to misconduct. Similarly, in relation to charge 14) a, the panel noted that Mr Rodriguez had provided a reasonable explanation as to why Patient M's dressings were not taken down. In relation to Charge 14) c, the panel noted that insufficient evidence was provided to contextualise the concern.

In relation to the remaining panel's findings of fact in this section, the panel determined that Mr Rodriguez's actions did fall significantly short of the standards expected of a registered nurse and amounted to misconduct (at charges 1) a, 2) a, 4) a, b, 5, 7, 9) a, b, 10) a, b, c, e, f, g (ii), (iii), (iv), 11, 16) a, b, c, 17) a, b, 18, 19, 20, 21) a (i),(ii),(iii), b, 22) a).

Mr Rodriguez's actions amounted to the following breaches of the 'Code: Professional standards of practice and behaviour for nurses and midwives' (2015). 1.1, 1.2, 1.4, 2.1, 2.6, 7.4, 7.5, 8, 19.3, 19.4, 20.1, 20.2, 20.3, 20.5, 20.6 and 20.8.

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 Mr Rodriguez's failures were serious, wide ranging and involved basic nursing skills required by a registered nurse. The concerns occurred despite extensive support through the informal improvement plan including a transfer to another ward. The panel noted that Mr Rodriguez failed to meet the required standard in patient care, record keeping, communicating effectively, following instructions from senior staff members, passing nursing responsibilities to family members of patients, and failing to adhere to the Trust's policy in preventing cross contamination and failing to maintain professional boundaries. The panel considered that Mr Rodriguez's actions in charges 4 a, b, and 5 were inappropriate and amounted to sexual misconduct. The panel was of the view that the misconduct had the potential to cause harm and did cause distress to patients and their relatives.

The panel considered that Mr Rodriguez's misconduct breached fundamental tenets of the profession, including trust and integrity. These are qualities of the nursing profession that must be adhered to at all times. His failure to adhere to these fundamental tenets is likely to result in members of the public losing confidence in the profession and the NMC as its regulator. The panel considered that a well-informed member of the public, and members of the profession, would be extremely concerned about Mr Rodriguez's misconduct.

Taking all the information into account, the panel concluded that Mr Rodriguez's actions (at charges 1) a, 2) a, 4) a, b, 5, 7, 9) a, b, 10) a, b, c, e, f, g (ii), (iii), (iv), 11, 16) a, b, c, 17) a, b, 18, 19, 20, 21) a (i),(ii),(iii), b, 22) a) did fall significantly short of the conduct and

standards expected of a registered nurse and amounted to serious professional misconduct.

### **Decision and reasons on lack of competence**

The panel then moved on to consider whether the facts found proved amount to a lack of competence. The panel accepted the advice of the legal assessor, who referred the panel to the NMC's guidance regarding lack of competence, derived from the case of *R (Calhaem) v GMC* [2007] EWHC 2606 (Admin), it was said:

*'Deficient professional performance ...is conceptually separate both from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work'.*

The NMC defines lack of competence as a lack of knowledge, skill or judgment of such a nature that the nurse or midwife is unfit to practise safely and effectively in any field in which they claim to be qualified or seek to practise.

In reaching its decision on lack of competence, the panel had regard to the guidance that a single clinical mistake or error will not generally indicate a lack of competence.

The panel bore in mind, when reaching its decision, that Mr Rodriguez should be judged by the standards of the reasonable band 5 registered nurse and not by any higher standard. The panel noted that Mr Rodriguez had been employed by the Trust from 11 January 2016 to 3 May 2017, first as a health care assistant, then as a registered nurse on 23 June 2016.

The panel considered that although charges 24, 25, c (iv), e and f were found proved, it determined that these charges, either individually or cumulatively, did not amount to a lack of competence.



The panel had regard to the remaining charges it found proved in this section, namely; 23) a, b (i),(ii,), 25) a, b, c (i), (ii), (iii), 26) a, b, 27) a, b, c, d, 28) a, b, 29) a, b, c, d, e, f, 30) a, b, 31) a, b (i),(ii),(iii),(iv),(v), c, 32) a, b, 33, 34, 35, 36) a, b, c, d, 38, 39. It determined that these demonstrated that Mr Rodriguez showed a lack of competence relating to fundamental basic nursing skills such as not knowing the normal temperature range, conducting observations, medicine administration and management, understanding handovers, and identifying deteriorating patients. The panel considered that Mr Rodriguez's failings in this regard demonstrated an unacceptably low standard of professional competence.

When determining whether the facts found proved in relation to these charges amount to a lack of competence, the panel had regard to the terms of the Code: Professional standards of practice and behaviour for nurses and midwives (2015). It decided that Mr Rodriguez's had breached the following standards of the Code 7.4, 10.1, 10.2, 13.1, 13.2, 13.3, 18.1, 19.1, 19.2, 19.3, and 19.4.

The panel noted that concerns about Mr Rodriguez's failings occurred during a time when he had the benefit of additional support from the Trust, specifically designed to address and improve his standard of performance in these areas, in the form of the informal improvement plan between 11 January 2016 and 14 July 2016. However, despite this additional and specific support, Mr Rodriguez's performance did not improve sufficiently.

The panel bore in mind that Mr Rodriguez did not complete his first and second preceptorship programmes which started on 7 August 2016 and 22 October 2016, respectively. Mr Rodriguez worked in a supernumerary capacity throughout his employment with the Trust.

The panel also bore in mind as submitted by the NMC that Mr Rodriguez's lack of knowledge in the English language may have contributed to his lack of competence.

Having regard to all of the above, the panel concluded that Mr Rodriguez's practice fell significantly below the standard expected of a reasonably competent band 5 nurse.

## Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, lack of competence and lack of knowledge of English Language, Mr Rodriguez's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be 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) ...'*

The panel determined that the first three limbs of the test are engaged in Mr Rodriguez's case. The panel finds that patients were put at a real risk of physical and emotional harm as a result of Mr Rodriguez's misconduct. Mr Rodriguez's misconduct had breached the NMC Code and fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession and the regulator would be undermined if the panel did not find these charges to be extremely serious.

The panel noted that there are several and wide-ranging clinical errors identified. It considered that the misconduct, lack of competence and lack of knowledge of English in this case is capable of remediation. However, the panel determined that there is little or no evidence to indicate that Mr Rodriguez had remedied his practice or is willing to engage with his regulator and address the concerns raised. Further, Mr Rodriguez has not worked in the UK as a nurse for some time now, there are no references from any current employer or details of any training undertaken, and as such he has not demonstrated that he has in anyway remediated his practice or conduct.

The panel was concerned that there is no evidence from Mr Rodriguez to demonstrate any remorse or insight into his actions. The panel also noted that Mr Rodriguez has not engaged with the NMC regarding these proceedings. It acknowledged that Mr Rodriguez in his local disciplinary had provided a reflective statement dated 1 February 2017, but the panel determined that it was insufficient to address any of the regulatory concerns identified.

Mr Rodriguez has not admitted any of the concerns nor recognised his shortcomings. The panel noted that Mr Rodriguez had a tendency to blame others, did not accept his

behaviour was unsafe. Mr Rodriguez has not demonstrated remorse for his actions. The panel considered that Mr Rodriguez's actions put patients at risk of harm. Further, Mr Rodriguez did not show any recognition of the impact of his behaviour or lack of competence on patients, his colleagues or the reputation of the profession.

The panel determined that there were some attitudinal concerns that have not been addressed by Mr Rodriguez. These are reflected in Mr Rodriguez's sexually motivated behaviour, shouting at patients, communicating with colleagues in a demeaning manner, ignoring reasonable requests from patient's family members, ignoring clinical instructions from senior members of staff and breaching of professional boundaries on several occasions. Mr Rodriguez's failure to take the IELTS assessment despite several requests from the NMC results in a lack of evidence to show that Mr Rodriguez has the required standard of the English language to demonstrate safe and effective practice

The panel is of the view that given Mr Rodriguez's lack of insight, lack of remediation and lack of engagement with the NMC, indicates that there remains a real risk of repetition of the concerns raised. On the basis of all the information before it, the panel decided that there is a risk to the public if Mr Rodriguez was allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel also found that Mr Rodriguez's actions had brought the profession into disrepute and breached fundamental tenets of the profession. It considered Mr Rodriguez's actions to have fallen significantly short of the standards expected of a registered nurse. The panel considered that a member of the public would be deeply troubled to hear of a nurse making repeated and serious errors, as well as seeking to blame colleagues and patients for some of these errors. The panel determined that a finding of impairment on public interest grounds is required to maintain the reputation in the profession and to uphold the proper standards of conduct.

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.

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

## **NMC written representations on sanction**

The panel had regard to the following written submissions contained within the NMC's statement of case:

The panel noted that the NMC's sanction bid, as set out in the Notice of Hearing is for a striking-off order.

*'The NMC proposes the aggravating factors in this case are:*

- *Multiple regulatory concerns spanning over a lengthy period of time.*
- *A lack of insight remorse or remediation.*
- *Attitudinal & Behavioural issues.*
- *Mr Rodriguez has declined to co-operate with requests from his regulatory to take IELTS exams.*
- *Sexually motivated/intimidating comments to colleagues.*
- *Failed to demonstrate competency in a wide range of clinical areas despite being provided with support.*

*In terms of mitigating factors, the NMC acknowledges that there have been no previous regulatory referrals for Mr Rodriguez.*

*Since the regulatory concerns relate to Mr Rodriguez's misconduct, lack of competency and lack of knowledge of English, which have not been addressed, they are too serious to take no further action.*

*A caution order would not be appropriate, the misconduct in this case is on the higher end of the spectrum. The lack of competency concerns identify a failure to demonstrate skill knowledge and judgment regarding a wide range of fundamental nursing practices. The lack of necessary knowledge of the English language has not been addressed. A caution order would not address the risks surrounding Mr Rodriguez's practise.*

*A conditions of practice order would not be appropriate in this matter, this is due to the fact that they would not be suitable to address the wide range of regulatory concerns. Although there are a number of concerns relating to Mr Rodriguez's clinical practice, when taking into consideration the serious misconduct in this case and as Mr Rodriguez has demonstrated a failure to address the lack of competence and lack of knowledge of English, there are no workable conditions which could be imposed to address the regulatory concerns.*

*A suspension order could be considered in line with the regulatory concerns in this matter. The seriousness of this case does warrant a temporary removal from the register. However, a period of suspension would be insufficient to protect patients and maintain public confidence in the profession. Mr Rodriguez's lack of competence and language difficulties render him to be an unsafe practitioner. His lack of engagement and lack of remediation would attract a 12 month suspension. However, when considering the misconduct elements in this case, a suspension order is not the appropriate sanction to consider.*

*With reference to the guidance on striking-off orders, it is submitted that the extensive misconduct in this case including attitudinal concerns, and sexually inappropriate comments, and behaviour raise fundamental questions about Mr Rodriguez's*

*professionalism. It is submitted that Mr Rodriguez's misconduct is incompatible with continued registration and Mr Rodriguez should be removed from the register to uphold the public interest and protect patients and colleagues.*

*However, as the panel will know, it is a matter for the panel, and it is vital that the panel should consider sanctions in ascending order starting with the least restrictive and only move to a more serious sanction if it needs to'.*

## **Decision and reasons on sanction**

Having found Mr Rodriguez'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. 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 considered the following to be aggravating features:

- Multiple regulatory concerns spanning over a lengthy period of time;
- A lack of insight and remediation into the failings;
- Attitudinal and behavioural issues which resulted in actual harm and/or distress to patients and colleagues;
- Mr Rodriguez declined to co-operate with requests from his regulator to take the IELTS exams;
- Sexually inappropriate behaviour towards colleagues;
- Failure to demonstrate competency in a wide range of clinical areas despite being provided with support in particular, a failure to complete his preceptorship programme on two occasions;
- No apology or remorse for his actions;
- Failure to engage with his regulator in these proceedings.

The panel considered the following to be mitigating features:

- No previous regulatory referrals for Mr Rodriguez (although the panel noted that he was a newly qualified nurse when the regulatory concerns were raised).

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Rodriguez'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 Rodriguez's misconduct, lack of competence, lack of knowledge of English Language was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Rodriguez's registration would be a sufficient and appropriate response. The misconduct, lack of competence, and lack of knowledge of English Language identified in this case are remediable but the panel noted that there has been no engagement with these proceedings. The panel noted that Mr Rodriguez is not working in the UK and has indicated he will not return to the UK in the foreseeable future. In his last communication with the NMC, an email dated 20 February 2018, Mr Rodriguez stated:

*'Currently I only intend to forget that ill-fated experience, with the support of my family and trying to rebuild my life in another culture and another professional healthcare system such as my country. In fact, I would like to express to you with this email that I wish to voluntarily renounce my PIN Number, today I am not psychologically prepared to return to work there'... because I do not see myself returning to work there, ...'*



The panel concluded that the placing of conditions on Mr Rodriguez's registration in these circumstances would not be workable or practicable and would not adequately protect the public or address the public interest concerns in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It considered that this could have been the available sanction, if the concerns related only to a lack of competence and lack of knowledge of English language. However, the misconduct identified was repeated, serious, wide ranging and involved attitudinal concerns, inappropriate sexual comments and behaviour. Furthermore, it raised fundamental questions about Mr Rodriguez's professionalism. Mr Rodriguez's misconduct was a significant departure from the standards expected of a registered nurse. The panel has found that Mr Rodriguez breached multiple standards of the NMC Code and has breached fundamental tenets of the nursing profession. Having regard to SG, the panel concluded that a suspension order would not be a sufficient, appropriate or proportionate sanction.

The panel considered the imposition of 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 determined that Mr Rodriguez'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 has found that Mr Rodriguez's misconduct was serious, wide ranging, and involved breaches of professional boundaries, sexually motivated behaviour and deep-seated attitudinal concerns. In view of his lack of professionalism, to allow Mr Rodriguez to continue practising would not protect the public and would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order.

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

### **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 Rodriguez's own interest until the striking-off sanction takes effect.

### **NMC written representations on interim order**

The panel had regard to the following written submissions contained within the NMC's statement of case:

*'If the panel imposes a sanction of strike off, then the panel is invited to make an interim suspension order to cover the 28 days before the substantive sanction takes effect. Any interim order will also cover a period should Mr Rodriguez appeal the panel's decision'.*

### **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 accepted the advice of the legal assessor.

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, it determined that this was appropriate due to its decision in the substantive order.

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

That concludes this determination.