Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
12-13 April 2022

Virtual Hearing

Name of registrant:	Elisabeth Atori
NMC PIN:	09B2139E
Part(s) of the register:	Nurses part of the register Sub part 1 RNA: Adult nurse, level 1 (25 February 2010)
Area of registered address:	Buckinghamshire
Type of case:	Misconduct
Panel members:	Lucy Watson (Chair, Registrant member) Frances Clarke (Registrant member) Chris Thornton (Lay member)
Legal Assessor:	Mark Piercy
Panel Secretary:	Roshani Wanigasinghe
Nursing and Midwifery Council:	Represented by Sally Denholm, Case Presenter
Ms Atori:	Present and represented by Penny Maudsley
Facts proved by admission:	All
Fitness to practise:	Impaired
Sanction:	Suspension order (two months) without review
Interim order:	n/a

Details of charge

That you, a Registered Nurse, on 27 September 2018, while employed as an agency nurse by First Option Health Care:

1) Accepted a nursing shift in respect of care for Patient A without reading Patient A's Care Plan

a) at all; or

b) in sufficient detail to recognise his care involved ITU and tracheostomy care, areas of practice in which you were not competent.

2) Accepted a nursing shift for care of Patient A when you were not ITU and tracheostomy trained and therefore were not competent to provide all the care that Patient A needed.

3) Knew when you commenced the shift referred to at charges 1 and 2 above, that you were not competent to care for Patient A.

4) Attempted to perform suction on Patient A when you were not competent to do so.

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

Agreed Facts

Prior to this hearing, the NMC and you agreed on the following facts as stated below:

1. *Mrs Atori appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse – Adult. She joined the register on 26 March 2010.*

2. *Patient A is a tetraplegic patient and has a permanent tracheostomy, a Percutaneous Endoscopic Gastric (PEG) tube and an indwelling catheter. As such, Patient A requires tracheostomy care and respiratory management for their enduring tracheostomy.*

3. *Patient A is also unable to cough independently and therefore requires regular suctioning via the tracheostomy. Due to Patient A's complex and specialised needs, he requires to be cared for by a nurse skilled in tracheostomy care*

4. *At the material time, Mrs Atori was employed by First Option Healthcare ("the Agency), as an Agency Nurse.*

5. *At the material time, Mrs Atori was not ITU or tracheostomy trained, and it was not within her competence to perform suction.*

6. *Mrs Atori received an email from the Agency offering her a day shift to care for Patient A, who was under a care package provided by Interserve Healthcare ('the Care Provider'). The email contained Patient A's care plan.*

7. *It was Mrs Atori's responsibility to review the care plan and ensure the care Patient A required was within her sphere of competence. Mrs. Atori either did not so at all or did not do so in sufficient detail to recognise that the care required by Patient A was outside her competence.*

8. *Mrs Atori accepted the shift for care of Patient A on 27 September 2018.*

9. *On 27 September 2018, Mrs Atori should have started her day shift at 08:00am but arrived at 09:00am after attending to Patient's A former address, which was the address provided to her by the Agency.*

10. *Another nurse, Nurse A, had carried out the preceding night shift. As part of the handover from Nurse A to Mrs Atori, Nurse A suctioned Patient A and showed Mrs Atori how to perform Patient A's bowel care and morning routine. This was to assist Mrs Atori familiarise herself with the process of performing Patient A's morning routine.*

11. *Mrs Atori assumed the care for Patient A and relieved Nurse A. At the time of assuming that care, Mrs Atori knew that she was not competent to carry out the care required during the shift.*

12. *Around 2:40pm, during the shift, Mrs Atori disconnected Patient A's ventilator for approximately 1 minute and 55 seconds, in order to perform suction.*

13. *At the time, Mrs. Atori knew that performing suction on a patient was outside her competence. The length of time for which Patient A was disconnected from the ventilator compromised their safety.*

14. *Patient A's carer alerted Patient A's wife of the matter, who then bagged Patient A for a short time until Patient A was reconnected to the ventilator.*

15. *This incident caused Patient A to desaturate up to 55%.*

16. *On 28 September 2019, the Care Provider created an incident report and raised a safeguarding alert. The incident was also reported to the Agency and the Care Quality Commission.*

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Denholm, on behalf of the NMC, who confirmed that the agreed statement of facts had been signed by you and incorporated into the hearing. Ms Maudsley, your representative, confirmed with you that in your reflective statement that you made full admissions to charges 1, 2, 3 and 4.

The panel therefore finds charges 1, 2, 3 and 4 proved in their entirety, by way of your admissions.

Fitness to practise

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

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

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

You provided evidence to the panel under oath.

Submissions on misconduct and impairment

In her submissions Ms Denholm invited the panel to take the view that your actions amounted to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code). She then directed the panel to specific paragraphs and identified where, in the NMC's view, your actions amounted to misconduct.

Ms Denholm submitted that although breaches of the Code will not be conclusive as to the issue of misconduct, the breaches of the Code by you are serious. Ms Denholm submitted that your failings are clear examples of misconduct, falling far short of what is deemed proper conduct of a professional. She submitted that your conduct resulted in actual patient harm and had the potential to cause further harm had others not intervened. She

submitted that you had agreed to care for Patient A when you were not qualified to do so and that you did not read Patient A's detailed care plan fully prior to accepting your duties. Although you informed the agency when you realised Patient A needed complex care for which you were not trained, you remained on shift. She submitted that you failed in your role to provide safe and effective care to Patient A and failed to practise within your competencies.

Ms Denholm submitted that your actions fell below the standards expected of a registered nurse and as such have brought the nursing profession into disrepute, and that the breaches of the Code were so serious, that your actions amounted to misconduct.

Ms Maudsley invited the panel to consider whether your conduct was serious misconduct. She referred to the cases of *Roylance v GMC* [1999] UKPC 16, *Remedy UK Ltd v GMC* [2010] EWHC 1245 (Admin) and *Johnson v Maggs v NMC* [2015] EWHC 2140 (Admin).

Ms Maudsley reminded the panel that you have provided evidence to the panel in the form of a reflective statement and testimonials, and accepted the facts. She submitted that you did not set out to cause harm to Patient A. She submitted that you had looked after Patient A satisfactorily for the substantive part of the shift, however, it was just this one incident during the shift where you failed him. Ms Maudsley submitted that you were persuaded by your agency and the outgoing nurse that you would be capable of caring for Patient A, even though your instincts had told you not to carry on. Ms Maudsley invited the panel to consider that there was a certain amount of pressure put on you not to abandon Patient A. She submitted however that this is not an excuse or justification but the reality of what happened that day.

Ms Maudsley submitted that it was a matter for the panel's consideration to decide whether your actions amounts to serious professional misconduct.

Submissions on impairment

Ms Denholm moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin) amongst others.

Ms Denholm submitted you had in the past acted and/or are liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and you had in the past brought and/or are liable in the future to bring the nursing profession into disrepute; and/or have in the past breached and/or are liable in the future to breach one of the fundamental tenets of the nursing profession.

Ms Denholm submitted that through your misconduct, you put Patient A's safety at risk. She submitted that by acting outside the scope of your practice you caused actual harm to Patient A and there was potential for further harm had Patient A's wife not intervened. Ms Denholm submitted that this clearly shows that in the past, you have acted so as to place patients at unwarranted risk of harm.

Ms Denholm invited the panel to consider your level of insight. She submitted that you accept you breached fundamental tenets of the profession. You have provided a reflective piece and testimonials as well as made early admissions and acknowledged why and how your actions were wrong. Ms Denholm submitted that although you have demonstrated insight and had raised concerns and provided explanations as to why you continued to stay on shift, Ms Denholm submitted that these reasons do not mitigate fully why you continued to stay and care for Patient A when you knew you were not competent to do so, thereby acting outside of your scope of practice, which ultimately cased harm to Patient A.

In relation to the reputation of the profession, Ms Denholm submitted that the public should feel assured that their needs will be met. If they cannot be confident in registered

nurses' abilities to keep them safe, this undermines the reputation of the profession. Likewise, the public is reliant upon the Regulator to uphold appropriate standards.

Ms Denholm submitted in these circumstances your actions and omissions were serious and submitted that your practice is impaired on both public protection and public interest grounds.

Ms Maudsley urged the panel to accept that you are genuinely remorseful for your actions. She reminded the panel that you offered your sincere apologies to Patient A and his wife. She submitted that you have reflected on the incident and, looking back, you accept that you should have read the care plan more carefully, in advance of the shift and turned down the shift then. Ms Maudsley submitted that you accept that you should have been more assertive and said 'no' to the agency, the outgoing nurse, Patient A and his wife and should have gone home.

Ms Maudsley said that you knew you were not ITU trained and that looking after a patient with a tracheostomy was outside of your area of competence. She submitted that you are fully aware of the risks to Patient A and accept that had Patient A's wife not been there to assist you when you attempted to apply suction to his tracheostomy tube, the repercussions could have been catastrophic for Patient A.

Ms Maudsley submitted that you are also fully aware of the impact your actions had on the public interest. You are aware that the public expect you, as a nurse, to be competent to look after your patients. You also realise that Patient A and his wife must have been disappointed and angry at your level of competence. You accept that you have damaged the reputation of the profession by taking on a Patient A's care when you were not competent to do so. Ms Maudsley submitted that you remain shocked by this experience and that these proceedings have been a salutary lesson, one that you will never forget or repeat.

Ms Maudsley further informed the panel that since this incident in 2018, you have not worked in the community through your agency. You have declined any community work to avoid there being any risk of a similar incident happening in the future. You only work in hospital, in A&E, medical and surgical wards where you are competent.

It was submitted that as a result of this incident, you have learned to become more assertive and feel more able to say 'no' if you are not comfortable with caring for a patient. Ms Maudsley submitted that in order to remedy your failings you have undertaken training in ventilation and care of a patient with a tracheostomy. However, as you do not work in ITU, you have not had to put your training into practice.

Ms Maudsley submitted that you have been a nurse since 2010 and that this is the first time you have appeared before the NMC. She also referred the panel to the positive testimonials provided on your behalf, which attest to your good character.

Ms Maudsley submitted, if the public were aware of the all the circumstances, the reputation of the profession would not be undermined if there was no finding of current impairment. She therefore invited the panel to find that you pose no risk to the public and therefore to find your fitness to practise not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

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

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

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

> *"1.2 make sure you deliver the fundamentals of care effectively*
>
> ***4 Act in the best interests of people at all times***
>
> *13.5 complete the necessary training before carrying out a new role*
>
> *16.2 raise your concerns immediately if you are being asked to practise beyond your role, experience and training*
>
> ***20 Uphold the reputation of your profession at all times***
>
> *20.1 keep to and uphold the standards and values set out in the Code"*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered them individually and collectively. It took account of all the evidence before it and the circumstances of the case as a whole. However, the panel was of the view that your failings fell into a number significant categories: not reading Patient A's care plan in sufficient detail before accepting a nursing shift, you were not trained in the areas of care required by Patient A and attempting to perform suction on Patient A when you were not competent to do so.

The panel determined that these failures resulted in actual harm to Patient A and placed him at further unwarranted risk of harm. The panel bore in mind that by failing to read Patient A's care plan adequately and by acting outside the scope of your practice, there

could have been serious and catastrophic consequences to Patient A's health and wellbeing. It bore in mind your explanations for why you remained on shift and how you had raised concerns about your lack of experience in this area to the outgoing nurse and the agency. It also bore in mind that you were persuaded by your agency and the outgoing nurse that you would be capable of caring for Patient A, and that a certain amount of pressure was placed on you. However, the panel was of the view that it was your responsibility to ensure that you had the necessary knowledge and experience to care for patients' needs and to be assertive and say 'no' when asked to do something outside of your scope of practice. Taking account of your departures from the Code, the panel decided that your actions in each of the charges found proved fell significantly short of the conduct and standards expected of a registered nurse, and were serious enough to amount to misconduct. To characterise your actions as other than misconduct would fail to declare and uphold proper standards of conduct and behaviour on the part of a nurse and fail to maintain public confidence in the NMC as a regulator.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. Nurses 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 *(Admin)* 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 formulation in the Fifth Shipman Report 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 found that the first three limbs of the Shipman test to be engaged in this case.

The panel found that you have in the past placed Patient A at unwarranted risk of harm and had caused actual harm to Patient A. Your failings encompassed acting outside the scope of your competence, as such; the panel found that you did breach fundamental tenets of the nursing profession in failing to ensure safe care. The panel found that your serious failings brought the nursing profession into disrepute.

Regarding insight, the panel considered your reflective piece dated 23 March 2022 in which you said:

> *"I take full responsibility for my actions on that day. I went to apply suction to the airways of Patient A without turning on the oxygen and that caused him to desaturate. I do not dispute what happened that day. I admit that I worked outside my area of competence. Looking back, I should not have accepted responsibility for the patient's care. I should have told my Agency that I was not taking the shift and gone home. I should have told them that I was not capable of looking after Patient A due to his complex needs which I was not trained for. I failed to preserve safety of Patient A.*
>
> *Looking back, it would have been preferable if the Agency had given me a shadow shift first and I would have made my decision based on the shadow shift. I would have realised then that I would not be capable of caring for Patient A. I should not have carried on with the shift because the NMC states in the Code of Conduct, Professional Standard 13, 'Preserve safety, Recognise and work within the limits of your competence.' I failed to work within my competence, resulting in putting Patient A's life at risk. Professional Standard 20, states, 'Uphold the reputation of your profession at all times. 'I recognise that due to this incident, Patient A and his family were highly likely to have lost trust in me as their nurse and this could also have had the same effect on other experienced nurses that looked after Patient A. Professional Standard 4,' Act in the best interest of people at all times. 'I feel I did not act in the best interests of Patient A by accepting his care, knowing that I was not fully trained to look after patients that were on ventilators. I should have been more assertive when I told the night nurse and my Agency that I was not ITU trained. On reflection, I wish I had just gone back home and not jeopardised Patient A's safety. I really regret it and apologise for my actions. If I had not asked the carer to call Patient A's wife when Patient A had started desaturating it could have turned out to be a catastrophic situation. Patient A could have had a respiratory arrest due to lack of oxygen and he could have died. I apologise to Patient A and his wife and*

his family for the distress that I caused, I am deeply sorry. I know as a nurse I have the duty of care to my patients. I understand the family's anxiety and their lack of confidence in me. I panicked when I heard the alarms and I called for help. Given the circumstances at the time, I feel it was the right thing to do to ensure Patient A's safety was met. I agree that it was not Patient A's wife's responsibility, it was my responsibility to keep Patient A safe. If the public were to hear about this incident, they would not have any faith in me and they would regard me as an incompetent nurse. I really think this incident had an impact on my colleagues, they can be easily judged because of my actions, which is not fair on them or their reputation. I would like to apologise to all my fellow nurses. I would also like to reassure them that I will not make another poor decision in the future. I am aware at all times of how my behaviour can affect and influence the behaviour of other people. I'm also aware that this incident had an impact on my employer because it also put the Agency's name in a questionable position. An incident like this can tarnish their reputation. I admit that I failed to uphold the reputation of my profession. I did not meet the high standards of care expected of me as a registered nurse. The Code states, 'you must not be given unsafe care or treatment or to be put at risk of harm that could be avoided.' Since this incident I have stopped working in the community looking after patients who are nursed at home. I am not competent to look after them if they have complex needs. I work in the wards where I am competent. I am very aware of my skills and competences. In an attempt to remedy my failings, I have completed a Non-Invasive and Invasive Ventilation and Tracheostomy course."

The panel noted that you made admissions to all charges at the outset of this hearing. You have demonstrated both in your reflective piece and in your oral evidence an understanding of how your actions put Patient A at a risk of harm, why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel further took account that this was a one off incident and of your genuine remorse. It was satisfied that you were able to sufficiently demonstrate how you would handle a similar situation differently in the future.

The panel was satisfied that the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not you have strengthened your practice. The panel took into account the additional, relevant training you have undertaken/the reflective piece written by you addressing the concerns and your decision not to be involved in working outside of a hospital setting without further training. It further bore in mind the testimonials provided on your behalf from your current employer and from colleagues with whom you have worked, which attest to you being a good and competent nurse. The panel was satisfied from the information before it that you have taken steps to strengthen your practice and address the concerns identified. The panel was therefore satisfied that the risk of repetition of the conduct found proved is low. The panel therefore decided that a finding of current impairment is not necessary on the grounds of public protection as these concerns have been met by your insight and remediation.

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 profession and upholding the proper professional standards for members of the profession. It noted that the threshold to find current impairment on the public interest grounds alone was high. However, the panel was of the view that the concerns in this case are very serious. It bore in mind the highly complex needs of Patient A and your lack of preparation and reading of his care plan on your part prior to accepting and undertaking the shift. It also considered that by failing to identify Patient A's needs were outside of your competencies, and continuing to provide care for him, you seriously misjudged the potential seriousness of the repercussions for the health and well-being of Patient A.

The panel appreciated that this was one incident, and that the risk of repetition was low; however, the panel determined that the high bar for finding current impairment on the grounds of public interest alone is met and a finding of impairment on this ground alone is

required due to the catastrophic harm that could have been caused. It was of the view that public confidence in the profession would be undermined if a finding of impairment were not made in this case to mark the seriousness of your misconduct.

The panel therefore finds your fitness to practise impaired on the ground of public interest alone.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of two months without review. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Ms Denholm informed the panel that in the Notice of Hearing, dated 21 February 2022, the NMC had advised you that it would seek the imposition of a suspension order for a period of six months if the panel found your fitness to practise currently impaired. Ms Denholm submitted that the position has not changed. She outlined the aggravating and the mitigating factors in this case.

Ms Denholm, whilst recognising that the decision and sanction was for the panel alone, submitted that the NMC considered a suspension order for a period of six months, to be the appropriate sanction.

She took the panel through each of the sanctions available and set out the view of the NMC. She submitted that these were serious breaches, which caused actual harm to

Patient A and the potential for further risk of harm. She submitted that given the seriousness of the concerns identified and the public interest, taking no action or imposing a caution order would not be appropriate. Ms Denholm submitted that a conditions of practice order would not be appropriate in this case. She accepted that although the issues arose in a clinical setting, in the NMC's view there appears to be an attitudinal concern as you continued to care for Patient A when you knew you were not competent to do so, and therefore a conditions of practice order would not be workable.

Therefore Ms Denholm submitted that a short suspension order of six months would be the most appropriate and proportionate sanction in your case.

Ms Maudsley submitted that these proceedings have had a salutary effect on you and therefore a caution order would be adequate to mark your misconduct. She reminded the panel that you agreed and accepted the charges at the outset and have demonstrated good insight and genuine remorse. She submitted that this was an isolated incident in an otherwise unblemished career, and that you have been working without any repetition or any further concerns since this incident. She told the panel that you do not work with patients in the community, you do not provide care for patients who are ventilated and you do not accept shifts which you are not competent to undertake. She submitted that if you were to undertake such work, you would ensure that you are trained in those specific areas. Ms Maudsley submitted that at the time of the incident, you felt pressured into accepting the role as you did not want to say 'no' to Patient A, his wife, the outgoing nurse or the agency. However, Ms Maudsley submitted that you now know the importance of being assertive. Ms Maudsley submitted that a caution order of up to five years would be appropriate as there was no risk to public protection and this case was at the lower end of impaired fitness to practise. If the panel considered that this was not sufficient, then a conditions of practice order would be appropriate with areas of re-training. She informed the panel of your personal and financial circumstances. She submitted that a suspension order would be wholly disproportionate in your case.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Patient A was an extremely vulnerable patient with complex needs and was unable to communicate verbally or to gesticulate;
- As an Agency nurse you did not assure yourself of your competence to care for this patient before accepting the allocation; and
- Patient A suffered actual harm and was placed at further risk of harm as a result of your misconduct.

The panel also took into account the following mitigating features:

- You made full and frank admissions at the outset of the hearing; and
- Demonstrated remorse, evidence of insight and steps taken to address the concerns; and
- This was a one off incident in an otherwise unblemished career.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not

restrict your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that although the incident occurred in a clinical capacity, you have already strengthened your practice so there are no public protection concerns and there were no practical or workable conditions that could be formulated which would address the seriousness of public interest concerns.

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

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

The panel considered that the misconduct in this case is so serious that it requires temporary removal from the register. This is required to address the public interest in this

case which is to maintain public confidence and trust in the profession and to protect the reputation of the nursing profession and its regulator.

Whilst this was a single incident, the panel noted that the charges found proved related to a very vulnerable patient with complex needs who was caused actual harm and was placed at further risk of harm as a result of your actions. The panel took into account that there had been no concerns raised about your clinical practice since the incident nor any repetition of the misconduct found proved. The panel considered that there is no evidence of harmful, deep-seated attitudinal problems incapable of remediation. However, given the public interest concerns in this case, the panel determined that a suspension order restricting your practice for a short period of time is the most appropriate sanction to mark the seriousness of your misconduct.

The panel did go on to consider whether a striking-off order would be appropriate. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register, therefore the panel concluded that a striking-off order would be disproportionate.

Balancing all of these factors the panel has concluded that a suspension order is the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to 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 practice required of a registered nurse.

The panel determined that a suspension order for a period of two months was appropriate in this case to mark the seriousness of the misconduct.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the suspension order having found your fitness to practise currently impaired on public interest grounds only. The panel was satisfied that the suspension order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards. Accordingly, the current suspension order will expire, without review, in two months' period.

This will be confirmed to you in writing.

Interim order

As the suspension 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 your own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Denholm. She submitted that an interim order was required on public interest grounds for the same reasons given for the substantive suspension order. Ms Denholm invited the panel to make an interim suspension order for a period of 18 months to cover any appeal period until the substantive suspension order takes effect.

Ms Maudsley submitted that as there is no risk to patient safety, it would not be appropriate to impose any interim order and submitted that the public interest would be

appropriately managed by the substantive suspension order alone. She therefore submitted that an interim order is unnecessary in this case.

Decision and reasons on interim order

The panel considered the application for an interim order. As it had not found impairment on public protection grounds, a two months substantive suspension order would mark the seriousness and satisfy the public interest concerns it identified. The imposition of an interim suspension order would increase the total period of suspension by a further month, which in the panel's view was disproportionate to mark the public interest.

The panel therefore did not impose an interim order.

That concludes this determination.