

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

**Substantive Hearing
Friday 22 July 2022 and Friday 11 November 2022**

Virtual Hearing

Name of registrant: Nathaniel Hwata

NMC PIN: 04I1080E

Part(s) of the register: Registered Mental Health Nurse
Level 1 - September 2004

Relevant Location: Buckinghamshire

Type of case: Conviction

Panel members: Peter Wrench (Chair, Lay member)
Stacey Patel (Lay member)
Claire Clarke (Registrant member)

Legal Assessor: Andrew Lewis

Hearings Coordinator: Margia Patwary - 22 July 2022
Emma Bland - 11 November 2022

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case
Presenter on 22 July 2022

Represented By Yusuf Segovia, Case Presenter
on 11 November 2022

Mr Hwata: Present and represented by Alex Adamou

Facts proved: Charge 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order:

Suspension order (18 months)

Details of charge

“That you, a registered nurse:

1. On 8 June 2021 at Reading Crown Court were convicted of the following offences:

a) sexual activity with a female person with a mental disorder – care worker (no penetration) contrary to section 38 (1) and (4) of the Sexual Offences Act 2003.

b) sexual activity with a female person with a mental disorder – care worker (no penetration), contrary to section 38(1) and (4) of the Sexual Offences Act 2003.

c) sexual activity with a female person with a mental disorder – care worker (no penetration), contrary to section 38(1) and (4) of the Sexual Offences Act 2003.

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

Background

The charges arose whilst you were working for Oxford Health NHS Foundation Trust (‘the Trust’) as a locum registered nurse in the Aylesbury Mental Health Team.

On 8 June 2021, you were convicted in Reading Crown Court on three counts of sexual activity with regards Patients A and B whilst you were working as a mental health nurse.

On 12 July 2021, you were sentenced to a community order for 24 months and required to complete a Horizons accredited programme and 100 hours of unpaid community work. In

addition, your name was entered onto the Sex Offender's Register for a period of five years.

Your conviction relates to the care you provided as a mental health nurse to Patients A and B in 2017 and 2018 when you visited them in their own homes. It was found that you squeezed both patients' buttocks and kissed one of them on the lips.

Decision and reasons on facts

When the charge was read out, Mr Adamou, on your behalf admitted the charge in its entirety. The panel therefore found the facts proved accordance with Rule 24 (4) and (5). Mr Adamou did not admit that your fitness to practice is impaired.

Fitness to practise

Having announced that the facts were proved, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your conviction. There is no statutory definition of fitness to practise. However, the Nursing and Midwifery Council (NMC) has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Submissions on impairment

Mr Kennedy addressed the panel on the issue of impairment and reminded the panel 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. Mr Kennedy made reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB).

Mr Kennedy outlined the background to the case, including the actions that led to your conviction. Mr Kennedy identified the specific, relevant standards from ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015) and (2018) (the Code). He submitted in which you had breached The Code, specifically:

1.1 treat people with kindness, respect and compassion

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

20 Uphold the reputation of your profession at all times

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

20.4 Keep to the laws of the country in which you are practising

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

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

Mr Kennedy submitted that the first three limbs of Dame Janet Smith’s test set out in the case of *Grant* are engaged. He submitted that you had breached fundamental tenets of the profession and your conduct is not easily remediable. He submitted that you are still serving the criminal sentence and have not completed the accredited programme the Court has required. He stated that it was necessary for the panel to make a finding of current impairment.

Mr Kennedy submitted that your criminal behaviour took place when you were working with vulnerable patients whom you sexually assaulted. He stated that you have not remediated nor demonstrated insight into your actions as you had initially denied the

charges brought against you. He stated that you have shown no empathy towards the patients under your care and that you do not recognise the effect this had had on the patients, your colleagues and employers. He further stated that you had breached the bond of trust and caused distress to the two vulnerable patients under your care. He further submitted that due to the nature of your conviction, a finding of impairment is needed to uphold public confidence in the nursing profession and the NMC as its regulator.

The panel heard evidence from you under affirmation. You relied on your written statement. You said that it was not your fault, that you had not yet completed the Horizon accredited programme which is part of your sentence as there is a waiting list for it and that it was the Probation Service's responsibility to arrange this.

Mr Adamou acknowledged the submissions Mr Kennedy had made in relation to impairment but invited the panel to that your fitness to practise is not impaired. He submitted that not every conviction results in a finding of impairment. He referred to parts of your reflection and stated that you accepted the impact that these allegations have had on others. You have also said that the allegations have destroyed your life. He stated that you are developing insight into your conduct as in your written reflection you stated you would do things differently as you *"should never give compliments to a client as a way to motivate if his kinds may misunderstand them and you get into trouble"*. He stated that you accept your interactions with clients in your care could have been different and that there may have been miscommunication and that you have learned that your behaviour was unacceptable. He further stated that you have accepted the convictions for what they are and that developing insight is a continuous process.

Mr Adamou submitted that your conviction does not necessarily give rise to a finding of impairment. He stated that your conviction related to limited, isolated incident and that there have been no other regulatory concerns raised about your practice.

Mr Adamou invited the panel to find that your fitness to practise is not impaired and you are taking steps to remediate your actions. He stated that you have started to develop insight into your conduct and that the risk of repetition is low as the conviction was at the lower end of the spectrum of sexual offences.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB).

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, 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. To justify that trust, nurses must 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)'*

Although this relates to misconduct, it can equally be read across the issue of conviction. The panel found that the behaviour that led to your conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to your conviction extremely serious as you were convicted of sexually assaulting two vulnerable female mental health patients under your care. The panel considered that whilst no physical harm was caused to patients as a result of your actions, there was potential for harm as patients may be reluctant to access medical services if they were aware of your conviction.

Regarding insight, the panel noted that you continue to deny having committed the offences of which you have been convicted and you do not accept that your fitness to practise is currently impaired. The panel noted your reflective piece and determined that your insight is currently limited. The panel considered that you have engaged with the NMC and commended your attendance at this hearing and have demonstrated an understanding of the serious nature of your conviction however you did not reassure the panel that if it was to happen again, how you would behave differently in the future. In its consideration of whether you have remedied your practice, the panel took into account your reflective piece and although you have demonstrated some insight you have not reflected on how members of the public might feel if they were nursed by somebody with your conviction. They went onto consider that as your criminal sentence is ongoing the risk of future harm to the public is still high because the Horizon programme remains outstanding. In addition, you will remain on the Sex Offender Register for another four years.

The panel is of the view that there remains a risk to the public due to the serious nature of your conviction and your ongoing sentence. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection in these circumstances.

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

The panel determined that, in this case, a finding of impairment on public interest grounds was also required. The panel noted that the nature of your conviction is public knowledge, and considered that public trust and confidence in the nursing profession would be undermined if it did not make a finding of impairment.

Having regard to all of the above, the panel was satisfied that your 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 your name off the register. The effect of this order is that the NMC register will show that your name has been struck off the register.

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

Submissions on sanction

Mr Segovia submitted that the only appropriate sanction in the circumstances of this case was the imposition of a striking-off order.

He reminded the panel of the factual background of your conviction for three sexual offences relating to incidents in 2017 and 2018 which involved two patients. He noted that your fitness to practise was found to be impaired on the basis of public protection and public interest.

Mr Segovia submitted that convictions based upon sexual offences mean that it is fundamentally incompatible for a registrant to maintain their registration and stay on the register. He described the conduct that led to your conviction, namely, that you had visited vulnerable patients in their own home and made the decision to engage in sexual activity. He submitted that your conduct was a gross abuse of trust.

Mr Segovia submitted that your conduct and convictions are very serious, and as such, are at the very high end of the fitness to practise spectrum.

He also referred the panel to relevant guidance relating to sanctions for sexual misconduct, which state that '*sexual misconduct will be particularly serious if the nurse or midwife has abused a special position of trust they occupy as a registered caring professional*'. He stated that sexual misconduct is particularly serious and has a particular impact on public confidence if a registrant is required to register as a sex offender. He noted that you are on the sex offenders register for a period of five years commencing from 12 July 2021. He also drew the panels attention to the principle in the case of *Fleischmann*.

Mr Segovia also invited the panel to consider the level of risk you pose to patients. He further reminded the panel of the strong public interest considerations in your case and submitted that your continued registration is likely to seriously undermine public trust in the nursing profession in light of your convictions. He submitted that a reasonable member of the public would be appalled to find a registrant convicted of sexual offences practising as a nurse.

Mr Adamou reminded the panel that its primary concern in considering sanction was not punishment, rather, it is public protection and upholding standards of the profession and maintaining public confidence. He invited the panel to apply the overarching principle of proportionality when considering sanction.

Mr Adamou noted that the NMC were seeking the imposition of the most severe sanction, a striking off order, based on the seriousness of your conviction and public confidence if appropriate action is not taken. He submitted that seriousness alone does not justify the imposition of the most severe sanction available to the panel. In line with a decided case, he submitted that the panel are not obliged to erase an otherwise competent and useful registrant who presents no danger to the public to satisfy a public demand for blame and punishment.

Mr Adamou went on to outline key facts in relation to your conviction for the panel's consideration. Firstly, that the offences took place in 2017 and 2018 and you were sentenced in July 2021. The mandatory elements of your sentence should be completed by February 2023 and you have also completed optional courses in cognitive behavioural therapy (CBT) and risk management. Secondly, he submitted that you are a nurse who is otherwise of good character and invited the panel to view your conviction in the context of your entire nursing practice. Thirdly, Mr Adamou invited the panel to consider the degree and extent of the particular conduct within the incidents of 2017 and 2018 and submitted that this is not deemed the worst type of sexual misconduct. Fourthly, he accepted that you have maintained your innocence throughout. He stated that you are entitled to put forward your version of events. Mr Adamou submitted that, despite your position, you have developed a significant amount of insight.

Mr Adamou invited the panel to consider the appropriate sanction starting from the least restrictive and stated that no further action or a caution order are unlikely to be appropriate. He submitted that a conditions of practice order could be imposed. In the alternative, he invited the panel to consider imposing a suspension order and summarised what he considered are the aggravating and mitigating circumstances.

Mr Adamou submitted that the nursing profession was one which encouraged learning, development and correction of mistakes. He submitted that in the circumstances of your case, a striking off order is not proportionate. Mr Adamou submitted that a lesser sanction, a lengthy suspension order, would allow you to complete your probation-based activities and remediation, paying your debt to society. He further submitted that a suspension order would be the fair and proportionate sanction.

The panel accepted the advice of the legal assessor.

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:

- Your conduct was an abuse of a position of trust;
- Your conduct placed vulnerable patients at risk of suffering harm;
- Your conduct involved vulnerable patients within their own homes;
- There has been repeated misconduct (three separate incidents involving two different patients); and
- Only limited insight with regard to the effect of your behaviour on the patients

The panel also took into account the following mitigating features:

- Some evidence of limited insight into the impact of your convictions

The panel considered the seriousness of your case. The panel deemed your conduct, which resulted in three convictions for sexual offences and your registration as a sex offender for five years, to be very serious.

In reaching this conclusion, the panel considered the following factors in combination:

- That your conduct was sexual;
- Your conduct involved two different patients raising allegations of a similar sexual nature;

- Your conduct involved patients receiving psychiatric care, and as such, they were particularly vulnerable;
- The consequences for patients and patient harm which arose from your breach of sexual boundaries, which include but are not limited to damaging trust and an absence of maintaining the safety and well-being of the patient;
- That the conduct took place in patients' homes;
- That the conduct occurred on three different occasions; and
- The abuse of a position of trust that your conduct entailed

The panel went on to consider the most appropriate form of sanction, starting with the least restrictive first. 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 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 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 your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the convictions in this case. The panel was of the view that any conditions of practice sufficiently restrictive to address the risks in this case would be tantamount to suspension by the back door. It also considered that the misconduct identified in this case was not something that can be addressed through retraining. The panel concluded that the placing

of conditions on your registration would not adequately address the seriousness of this case and would not protect the public, including the wider public interest.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and was not a single incident but was repeated over a significant period of time. The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your name remaining on the register because you abused your position of trust for your own gratification, placed patients at risk of harm and undermined confidence in the nursing profession.

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

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*

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

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register for the reasons set out above. The panel was satisfied that your continued registration would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel determined that the conduct which led to your convictions and registration on the sex offenders register for five years was extremely serious. The panel noted that your conduct was aggravated as it related to two vulnerable patients receiving psychiatric care; breached clear sexual boundaries within patient homes; and occurred on three separate occasions. The panel considered NMC guidance on sexual misconduct and further considered Professional Standards Authority (PSA) guidance on clear sexual boundaries and were particularly mindful of the harmful consequences for patients and public confidence when these boundaries are breached.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

Interim Order

Submissions on interim order

Mr Segovia submitted that an interim suspension order for a period of 18 months is necessary to deal with the possibility of an appeal within the 28-day appeal period. He submitted that this would be in line with the findings made by the panel both on public protection grounds and public interest grounds.

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 public protection and public interest issues identified in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore concluded that the appropriate interim order would be that of a suspension order, as to do otherwise would be incompatible with its earlier findings.

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

That concludes this determination.