

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

**Substantive Meeting
Thursday 27 – Friday 28 October 2022**

Virtual Meeting

Name of registrant:	Andrea Kane
NMC PIN:	75A0184S
Part(s) of the register:	Registered Nurse - General (Level 2) Nursing
Relevant Location:	Newcastle
Type of case:	Misconduct
Panel members:	Tracy Stephenson (Chair, lay member) John McGrath (Registrant member) David Newsham (Lay member)
Legal Assessor:	Michael Hosford-Tanner
Hearings Coordinator:	Parys Lanlehin-Dobson
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mrs Kane was not in attendance and that the Notice of Meeting had been sent to Mrs Kane's registered email address on 5 September 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations and informed Mrs Kane that the meeting will take place on or after 10 October 2022.

In the light of all of the information available, the panel was satisfied that Mrs Kane 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 email address.

Details of charge

That you, a registered nurse:

1. Failed to maintain professional boundaries with Patient A in that you:
 - a) Provided your mobile telephone number to Patient A;
 - b) Provided your mobile telephone number to Relative A in or around May 2019;
 - c) Sent and received one or more text messages from patient A;

- d) On one or more occasions invited Patient A to attend/stay at your premises;
 - e) Provided a key to your premises to Patient A;
 - f) Visited Patient A on Ward 24 when you were not involved in Patient A's treatment;
 - g) Sent one or more text messages to relative A;
 - h) Informed Patient A that it was not a problem for him to return to work or words to that effect.
2. On one or more occasions in relation to Patient A:
- a) Purchased items for Patient A and/or;
 - b) Laundered his clothes.
3. On or around August 2019 at a time when Patient A was an inpatient you were with Patient A in a public house.
4. Told Patient A to "buy a bottle of vodka and packets of fags" or used a gist of words that were similar.
5. Between 1 January 2020 and 31 October 2020 accessed Patient A's medical records on one or more occasions when Patient A was not in your care.
6. Disclosed clinical information obtained in charge 5 to Patient A.
7. Between 5 October and 8 October 2020 without authority from your employer removed medication namely Zopiclone, from Newcastle upon Tyne Hospital.
8. Sent a text message to Patient A on 5 October 2020 part of which stated

“...I’ve got the gear but not a word....”

9. Between 4 October and 9 October 2020 provided medication to Patient A without a prescription, namely Zopiclone.

10. Allowed your name to be recorded as a personal contact for:

a) Patient A and/or;

b) Patient B.

11. Purported to be Patient A’s relative.

12. Your actions in charge 7 was dishonest as you knew that you had no authority to remove medication, namely Zopiclone, from Newcastle upon Tyne Hospital.

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

Decision and reasons on facts

The panel had regard to the following statement made by Mrs Kane’s brother, in an email dated 31 July 2022, that Mrs Kane *“accepts that her fitness to practise is impaired, admits to the charges against her and would like to give her assurance that she categorically does not wish to return to nursing”*.

The panel considered Mrs Kane’s admissions to all the charges through her representative (her brother) and has borne that in mind in its deliberations. However, in the absence of any formal detailed representations and in the absence of a case management form signed by Mrs Kane or her representative, the panel determined it would still assess all the information and evidence available, before reaching its decision on the facts of this case and whether the charges are found proved.

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:

- Relative A: Mother of Patient A
- Colleague 1: Deputy chief nurse at the Trust
- Colleague 2: Adult congenital nurse specialist
- Colleague 3: Ward sister and line manager to Mrs Kane

Background

“Mrs Kane’s name was first entered on to the NMC register in February 1977. Mrs Kane was employed by Newcastle Upon Tyne Hospitals NHS Trust (the Trust/Hospital) from January 2000 until their resignation on 31 January 2021.

The alleged facts and an overview of the evidence are, as follows:

Patient A was admitted to the Hospital in February 2019. Patient A has congenital heart problems.

Mrs Kane admitted Patient A to the Hospital on or about 25 February 2019.

Between February and August 2019, Patient A was admitted to the Hospital on three separate occasions. In total, Mrs Kane spent approximately five weeks caring for Patient A in 2019.

In November 2019, Patient A underwent a heart transplant. On 8 October 2020, during a routine in-patient appointment, Patient A collapsed. Unfortunately, Patient A died the following day.

On or about 12 November 2020, Patient A's mother notified the Hospital that, having looked at messages on Patient A's mobile telephone, it appeared that Mrs Kane had been in regular contact with Patient A. Text messages from Mrs Kane also suggested that she had been obtaining medication for Patient A that was not prescribed; Patient A's mother also found a strip of Zopiclone medication (not prescribed) in Patient A's belongings.

In addition, Patient A's mother found a key in Patient A's belongings. It transpires that this was a key to Mrs Kane's home address.

The Trust/Hospital undertook an internal investigation. As part of the investigation, Mrs Kane attended interviews on 14, 15 and 22 January 2021.

The unsigned notes of Mrs Kane's investigatory meeting on 22 January 2021 suggest that Mrs Kane admitted that she had allowed an unprofessional and inappropriate relationship to develop between Mrs Kane and Patient A. The notes suggest that Mrs Kane made the following admissions:

- Mrs Kane provided Patient A with her mobile telephone number*
- Mrs Kane regularly sent Patient A private text messages*
- Mrs Kane provided Patient A's mother with her mobile telephone number*
- Mrs Kane undertook shopping errands for Patient A*
- Mrs Kane did ironing for Patient A*
- Mrs Kane gave Patient A the spare key to her home*
- Mrs Kane invited Patient A to stay at her home*
- on one occasion, Mrs Kane allowed Patient A to stay at her home.*

In addition to the above, the documentation from the Trust investigation sets out that Mrs Kane admitted to taking a strip of Zopiclone medication from the Hospital, between 5-8 October 2020. Mrs Kane admitted that she provided this to Patient A on about 8 October 2020. Mrs Kane told the Trust investigation that Patient A had been asking for the medication for a number of months. Mrs Kane also said that she was confident that Patient A had been prescribed Zopiclone in the past.

The evidence from the Trust investigation includes screenshots of text messages between Mrs Kane and Patient A. These appear to support the above concerns. In addition, there is a text message in which Mrs Kane messaged Patient A on 5 October 2020 to arrange meeting to hand over the Zopiclone medication.

The Trust investigation also found that Mrs Kane had accessed Patient A's medical records on 45 separate occasions during 2020. This was at a time when Patient A was no longer in Mrs Kane's care. The Trust investigation documentation suggests that Mrs Kane admitted to this. Mrs Kane told the Trust that she had sometimes accessed Patient A's records of Mrs Kane's own volition because she was worried about Patient A's health.

Colleague 3 was Mrs Kane's line manager. Colleague 3 says that, in June 2019, they were made aware that Mrs Kane had been recorded as the next of kin for two patients, Patient A and Patient B. Colleague 3 met with Mrs Kane about this. Colleague 3 has told us that Mrs Kane admitted that she had allowed both patients to say she was their next of kin.

Colleague 3 says that Mrs Kane admitted that Mrs Kane had falsely stated that she was Patient A's aunty. Colleague 3 says that Patient B was a long-term patient whose mother was abroad and therefore unable to visit Patient B. Colleague 3 says that, when they met with you, Mrs Kane admitted that she had wanted to support Patient B and allowed Mrs Kane's details to be recorded as Patient B's next of kin.

Colleague 3 says that they discussed with Mrs Kane the importance of maintaining professional boundaries. Colleague 3 exhibits a file note they made of the discussion with Mrs Kane. Colleague 3 says that Mrs Kane was "fine" with the discussion and agreed that Mrs Kane "would not have such contact again as it was wrong".

Colleague 3 has told us that, following their transplant, Patient A was cared for by another ward in the Hospital. As such, Colleague 3 "thought it unusual that [you] would have any ongoing contact with Patient A".

Colleague 3 was present at the investigatory meeting with you. Colleague 3 confirms that Mrs Kane admitted sending text messages to Patient A and obtained medication that had not been prescribed for Patient A.

Colleague 3 also provides evidence about the importance of professional boundaries generally.

Colleague 2 provides evidence in relation to Patients A and B. Colleague 2 has also told us about Patient C. Colleague 2 says that Patient C spoke to them and advised that they found Mrs Kane to be "in [their] face" and felt it was too much. Colleague 2 accepts that they didn't document this at the time.

Colleague 2 has also told us about the importance of professional boundaries. Colleague 2 says that Patients A and B “were all very sick, vulnerable, all in hospital where they did not know anyone and quite a distance from home”. Colleague 2 says, It is important that professional boundaries are maintained so that the Nurse can always act independently and in “the best interests of each patient”. Colleague 2 considers that this is a “fundamental tenet of the profession”. However, Colleague 2 does say that they do not think Mrs Kane’s actions were malicious.

Mrs Kane’s brother told the NMC that they continue to assist and support her. [PRIVATE]. In a letter to the NMC, dated 7 November 2021, Mrs Kane’s brother says:

“She knows she made some dreadful errors of judgement in recent months and she wishes she could turn back the clock but unfortunately she cannot and so she has to live with her career ending the way it did. Sadly, Andrea has decided that she really does not want to practice nursing again.”

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

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

Charge 1

1. Failed to maintain professional boundaries with Patient A in that you:
 - a) Provided your mobile telephone number to Patient A

This charge is found proved.

In reaching this decision, the panel took into account the admission made by Mrs Kane in the disciplinary investigation meeting held by the Trust on 22 January 2021. Mrs Kane stated the following: *I gave my number to both [Patient A] and his mother after his first assignment as they were so concerned.*

Having considered the above admission made by Mrs Kane in the disciplinary investigation meeting and in the absence of any other evidence to the contrary, the panel found this charge proved.

Charge 1b)

1. Failed to maintain professional boundaries with Patient A in that you:
 - b) Provided your mobile telephone number to Relative A in or around May 2019;

This charge is found proved.

In reaching this decision, the panel had regard to the same evidence used in its decision above regarding charge 1a and it came to the same conclusion.

Charge 1c)

1. Failed to maintain professional boundaries with Patient A in that you:
 - c) Sent and received one or more text messages from patient A;

This charge is found proved.

In reaching this decision, the panel had sight of the screenshots of the text messages between Mrs Kane and Patient A as mentioned by Colleague's 1, 2 and 3, in their witness statements who all confirm that the Trust had been provided with these screenshots as part of the Trusts investigation.

The panel considered that this evidence is not disputed by Mrs Kane in any of the disciplinary investigation meetings held by the Trust.

Having regard to the evidence available the panel therefore found this charge proved.

Charge 1d)

1. Failed to maintain professional boundaries with Patient A in that you:

d) On one or more occasions invited Patient A to attend/stay at your premises;

This charge is found proved.

In reaching this decision the panel had regard to the admission made by Mrs Kane in the disciplinary investigation meeting held on 15 January 2021. In response to the question “*Is it correct that you gave him your house keys*”, Mrs Kane stated: “*Yes I suggested he stay in a hotel and he said he didn’t think he could afford it so I said he could sit in my house until he could get a train home*”

Having considered the admission made by Mrs Kane the panel therefore found this charge proved.

Charge 1e)

1. Failed to maintain professional boundaries with Patient A in that you:

e) Provided a key to your premises to Patient A

This charge is found proved.

In reaching this decision, the panel had regard to the same evidence used in its decision above regarding charge 1d and it came to the same conclusion.

Charge 1f)

1. Failed to maintain professional boundaries with Patient A in that you:

f) Visited Patient A on Ward 24 when you were not involved in Patient A’s treatment

This charge is found proved.

In reaching this decision the panel took into account the witness statement provided by Relative A dated 9 October 2021. Relative A said “*During [Patient A’s] stay in hospital, I*

knew that the Nurse would go to the shop for him example if he ran out of anything – [Patient A] told me about this. I was there four days a week and would bring [Patient A] washing home for the three days that I returned. ... I am not aware that the Nurse did any washing for [Patient A] but I am aware that she would wait until we left each day and go to Ward 24 to see [Patient A] This was at a time when I understand that the Nurse worked on Ward 27.”

The panel considered the evidence provided by Relative A to be consistent and credible. It considered that Relative A provided clear, honest and descriptive information in her witness statement and in the absence of any evidence to the contrary, it decided it could place weight on this evidence. The panel also noted that this charge is not disputed by Mrs Kane and it therefore determined that this charge is found proved.

Charge 1g)

1. Failed to maintain professional boundaries with Patient A in that you:

g) Sent one or more text messages to relative A;

This charge is found proved.

In reaching this decision the panel had regard to the witness statement provided by Relative A. Relative A stated that:

“The Nurse sent me messages asking why I was in France when Patient A was being admitted to hospital. ... These messages really upset me because I was not just in France enjoying myself. ... I was in tears the Nurse texted me and my other son.... Soon after I received a final text message from the Nurse saying that [Patient A] was dying and we I needed to get back quick. I no longer have a copy of these messages. ... I believe that the Nurse had lied to us to put us in a position where we thought [Patient A] was dying and we were frantically trying to get to the hospital”

Having already determined that Relative A is a credible witness and that it could place weight on the evidence they provided, the panel decided that on the balance of

probabilities, it is more likely than not, that Mrs Kane did send one or more text messages to Relative A.

The panel therefore found this charge proved.

Charge 1h)

1. Failed to maintain professional boundaries with Patient A in that you:

h) Informed Patient A that it was not a problem for him to return to work or words to that effect.

This charge is found proved.

In reaching this decision the panel had regard to the witness statement provided by Relative A which states:

“... I increasingly became concerned when I heard some ridiculous advice the Nurse gave [Patient A]. In March 2019 [Patient A] was discharged from hospital, as a blood clot was found in his heart, meaning the hospital could not take the assessment forward until the clot cleared. ...The hospital were treating the clot so they could then do the test required to assess him for a heart transplant. ... [Patient A] was used to working all hours a shift. ...Both the doctor and consultant had advised [Patient A] not to return to work at that point. ...Patient A told me that he had spoken to the nurse who had told him that she did not think that it was a problem for him to return to work, despite his doctor and consultant both saying otherwise.”

Having already determined that Relative A is a credible witness and that it could place weight on the evidence they provided, the panel decided that Mrs Kane did tell Patient A that it was not a problem for him to return to work.

The panel therefore found this charge proved.

Charge 2

2. On one or more occasions in relation to Patient A:

- a) Purchased items for Patient A and/or;
- b) Laundered his clothes

This charge is found proved.

In reaching this decision the panel had regard to the admissions made by Mrs Kane in the disciplinary investigation interview held on 15 January 2021. Mrs Kane said "... Whatever he asked me to do I did it" In response to being asked what she did for Patient A, Mrs Kane said "*Go shopping. He needed this and that...*"

Having considered the admission made by Mrs Kane the panel therefore found this charge proved.

Charge 3

3. On or around August 2019 at a time when Patient A was an inpatient you were with Patient A in a public house.

This charge is found proved.

In reaching this decision the panel had regard to the witness statement provided by Relative A. Relative A stated that: "*On one particular day, [Patient A] disappeared. It was later found that [Patient A] was at the pub. ... However staff on the ward did not know where [Patient A] had gone. ... It was later found that the Nurse was with [Patient A] in the pub. ... I found this out after [Patient A] passed away from text messages in his phone.*"

Having already determined that Relative A is a credible witness and that it could place weight on the evidence they provided, the panel decided that Mrs Kane was with Patient A in a public house.

Charge 4

4. Told Patient A to “buy a bottle of vodka and packets of fags” or used a gist of words that were similar.

This charge is found proved.

In reaching this decision, the panel had regard to the witness statement provided by Relative A. Relative A said *“Post -transplant, [Patient A] suffered from depression. [Patient A] had a drink problem which he had done very well to control so far. However, the Nurse had told [Patient A] to buy a “bottle of vodka and packet of fags” – saw this on a text message on [Patient A’s] phone after [Patient A] had passed away.*

Having already determined that Relative A is a credible witness and that it could place weight on the evidence they provided, the panel decided that Mrs Kane did send a message to Patient A telling him to *“buy a bottle of vodka and packets of fags”*. The panel therefore found this charge proved.

Charge 5

5. Between 1 January 2020 and 31 October 2020 accessed Patient A’s medical records on one or more occasions when Patient A was not in your care.

This charge is found proved.

In reaching this decision the panel had regard to the electronic print-out that displays the number of times you accessed Patient A’s medical records. The print-out was produced as part of the Trusts investigation and is also referred to in the witness statement provided Colleague 1.

The panel also considered Mrs Kane’s admission in the disciplinary investigation meeting on 22 January 2021. Mrs Kane was asked “did you access his records when he was no longer a patient of yours?” she responded, *“Yes I did”*.

Having regard to the documentary evidence in support of this charge and Mrs Kane's admission the panel found this charge proved.

Charge 6

6. Disclosed clinical information obtained in charge 5 to Patient A.

This charge is found proved.

In reaching this decision the panel had regard to the admission made by Mrs Kane in the disciplinary investigation interview held by the Trust on 22 January 2021. Mrs Kane was asked *"You said in the suspension meeting that he asked you to look in his records when was that"*, Mrs Kane responded *"On several occasions he did ask but only when he felt unwell and hadn't heard any news"*, Mrs Kane was then asked *"Did you agree to do this straight away"*, Mrs Kane responded *"probably"*. Mrs Kane was asked what she looked at within Patient A's record and she responded, *"probably everything"*. She was then asked what information regarding his records did she share with Patient A, Mrs Kane said *"I would advise him to see his GP about his results but I didn't share any specific details"*

The panel determined that based on the information before it and the admission made by Mrs Kane, she did disclose clinical information that she obtained, to Patient A. The panel therefore found this charge proved

Charge 7)

7. Between 5 October and 8 October 2020 without authority from your employer removed medication namely Zopiclone, from Newcastle upon Tyne Hospital.

This charge is found proved.

In reaching this decision the panel had regard to the notes from disciplinary meeting held on 15 January 2021, where Mrs Kane makes admission to taking the Zopiclone from the hospital and then giving the medication to Patient A. Mrs Kane stated that Patient A *"seemed so desperate and [She] was worried he would turn to cocaine"* she took the

Zopiclone “out of the cupboard” and when the patient was on his way to have an X-ray she gave them to him.

This admission was also referred to by Colleagues 1 and 3 in their witness statements.

Having regard to the admission made by Mrs Kane in the disciplinary interview the panel therefore found this charge proved.

Charge 8

8. Sent a text message to Patient A on 5 October 2020 part of which stated “...I've got the gear but not a word....”

This charge is found proved.

In reaching this decision the panel had regard to the screenshot produced as part of the Trust investigation which displays text messages between Patient A and Mrs Kane. The screenshot shows the date as 5 October and displays a message sent by Mrs Kane at 17:21: *“Hi I've got the gear but not a word and promise you'll get a prescription from your GP make sure you're in X-ray.”*

Based on the photographic screenshot evidence of the text message in the bundle the panel determined that Mrs Kane did send this text message and therefore found this charge proved.

Charge 9

9. Between 4 October and 9 October 2020 provided medication to Patient A without a prescription, namely Zopiclone.

This charge is found proved.

In reaching this decision, the panel had regard to the same evidence used in its decision above regarding charge 7 and it came to the same conclusion. Relative A had also

provided photographs of the Zopiclone strip and the photographs are in the bundle. The panel therefore found this charge proved.

Charge 10

10. Allowed your name to be recorded as a personal contact for:

- a) Patient A and/or;
- b) Patient B.

This charge is found proved.

In reaching this decision the panel had regard to the witness statement provided by Colleague 3 dated 26 October 2021. Colleague 3 stated that Mrs Kane admitted that she had allowed Patient A to put her down as next of kin for Patient A and Patient B. This is also confirmed in the file note provided by Colleague 3 dated 3 June 2019 which states:

"I held a discussion with Andrea when she came on duty for night shift as concerns had been raised by staff on Ward 24 and Ward 21 regarding Andrea being contact for transplant patients.

Andrea was down as first contact for a patient who had been on Ward 24 and was then transferred to Ward 27, we discussed that this was not really appropriate as he is a patient and that Andrea was still able to provide support to him in her role as a Staff Nurse but that she should not be down as his contact. This patient's mother was abroad and Andrea had felt that he needed the support.

The second patient had had a transplant and Andrea says that he asked her to be his second visitor or in ITU, his mother being the first visitor. On entering Ward 21 Andrea was asked who she was and she told the staff that she was his Aunty. We talked about this and she realized that it was not an appropriate thing to do on reflection.

We discussed the NMC code of conduct and that she needs to stay objective and have clear professional boundaries with patients and their families."

The panel considered the evidence provided by Colleague 3 and determined it could place substantial weight on it, given that the file note was dated at the time of the incident and the information in her witness statement corroborates this.

The panel determined that Mrs Kane did allow for Patients A and B to record her name as contact. The panel therefore found this charge proved.

Charge 11

11. Purported to be Patient A's relative.

This charge is found proved.

In reaching this decision the panel had regard to the witness statement provided by Colleague 3 dated 26 October 2021. Colleague 3 stated that she met with Mrs Kane and she admitted that she had allowed the patient her as next of kin. She also admitted that she had falsely stated that she was Patient A's aunty.

Having regard to the witness statement provided by Colleague 3 the panel determined that Mrs Kane did purport to be Patient A's relative. The panel therefore found this charge proved.

Charge 12

12. Your actions in charge 7 was dishonest as you knew that you had no authority to remove medication, namely Zopiclone, from Newcastle upon Tyne Hospital

This charge is found proved.

In reaching this decision the panel had regard to the notes from the disciplinary investigation interview held by the Trust on 22 January 2021. Having been asked whether it is acceptable to take medication from the Trust Mrs Kane responded "*No absolutely not*".

Having regard to the statement above made by Mrs Kane the panel determined that she was aware that she had no authority to remove the medication from the Trust and give it to Patient A and was thereby dishonest in doing so. The panel therefore found this charge proved.

Fitness to practise

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

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

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

Representations on misconduct and impairment

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

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

The NMC identified the specific, relevant standards where Mrs Kane’s actions amounted to misconduct. The NMC made the following representation in regard to misconduct:

“We consider the misconduct serious because the maintaining of professional boundaries protects patients, in particular those who are vulnerable, from becoming dependent on the professional nurse for more than their treatment, the potential to ignore independent treatment from other professionals, and vulnerable to a regress from their treatment and wellbeing should that nurse not be available. Further, there is a high risk of either the patient or the nurse being taken advantage of by the other party. Maintaining the professional boundaries also protects the nurse from unwarranted demands on them which could place then [sic] at risk. The above blurs and jeopardises the four themes of a professional nurse that is to prioritise people, practise effectively, preserve safety and promote professionalism and trust.”

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mrs Kane’s fitness to practise impaired on the grounds that:

“We consider the registrant has displayed some insight as demonstrated by her answers to the allegations to the Trust. We take this view because of what is contained in the witness statement of [Colleague 1] at paragraphs 10, 12, 28, and exhibit EH/1. Further, the witness statement of [Colleague 3] paragraphs 8, 9, 10, 18 18, and exhibit RK/1. We consider the registrant has not undertaken relevant training in respect of the issues of concern as the registrant resigned on 31 January 2021 before the letter dated 19 March 2021 was sent to the registrant regarding the outcome of the disciplinary hearing. Therefore, We note the registrant has not worked since the issues of concern.

We consider there is a continuing risk to the public due to the registrant’s lack of full insight, failure to undertake relevant training and by having not had the opportunity to demonstrate strengthened practice through work in the relevant area. We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior [sic]. The registrant’s conduct engages the public interest because nurse[s] are placed in a position of trust regarding access to prescription only medications and honesty forms the bedrock of a professional nurse. Further. A nurse is expected to maintain professional boundaries at all times and maintain the four themes of a professional nurse.”

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*_(No 2) [2000] 1 A.C. 311.

Decision and reasons on misconduct

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

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

5.1 respect a person’s right to privacy in all aspects of their care

6.1 Make sure that any information or advice given is evidence- based, including information relating to using any healthcare products or services, and

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

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

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

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

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

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

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

20.7 Make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the breaches in this case were serious and placed a vulnerable patient a risk of harm. In telling Patient A to return to work despite the advice of his doctor and consultant, Mrs Kane placed Patient A at risk of becoming even more unwell.

In this regard the panel found that Mrs Kane's actions, which included dishonesty did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Kane '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 honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

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

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

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

The panel found that all four limbs were engaged in this case. It considered that patients were put at risk of physical and emotional harm as a result of Mrs Kane's misconduct. Mrs Kane's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that although Mrs Kane made admissions at the disciplinary investigation meetings held by the Trust, Mrs Kane demonstrated limited insight into the impact of her actions on the patient and nursing profession. The panel have not had sight of any further information that shows that Mrs Kane has developed any insight since these incidents or that she has made any attempt to remediate her actions.

The panel was satisfied that some of the misconduct in this case is capable of being addressed. However, it considered that dishonesty is more difficult to address as it is considered an attitudinal issue. In this case the panel considered that Mrs Kane has not demonstrated that she has taken any steps to address the professional concerns raised and strengthen her practice. In this respect the panel acknowledged the statement put forward by Mrs Kane's brother explaining that she does not wish to return to nursing.

The panel is of the view that if Mrs Kane does decide to return to practice there is a risk of repetition based on her limited insight and non-engagement with these proceedings. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because a member of the public would be concerned to learn that finding of impairment had not been found in case involving this kind of misconduct and dishonesty.

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

Having regard to all of the above, the panel was satisfied that Mrs Kane's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Kane's off the register. The effect of this order is that the NMC register will show that Mrs Kane's 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.

Representations on sanction

The NMC made the following representations in relation to sanction:

“We consider the following sanction is proportionate: A 12 month suspension order with a review before the expiry of the order.

It will be noted the context of this case in particular what is contained in the witness statement of [Colleague 3] paragraphs 8

With regard to our sanctions guidance the following aspects have led us to this conclusion:

Taking no action or Caution Order: It is submitted that this would not be an appropriate course of action as the regulatory concerns are serious - there was a breach of the professional relationship with what could be viewed a venerable [sic] patient over a number of months and other vulnerable patients.

It is submitted that the issues in this case are so serious that there are no real conditions that could be appropriate or proportionate. Further, this is not a case where there are a majority of clinical failings, even though there is a breach of the safe management and administration of medication, namely Zopiclone without a prescription. Further, It is difficult for the Registrants to remediate the failings in this case.

There is the further matters of dishonesty – theft of medication, purporting to be related to Patient A, and accessing medical records without authority.

Suspension Order: An appropriate and proportionate sanction would be a suspension order for 9-12 months with a review. The reason why this is considered in this case is that the serious breaches of the professional boundaries may be balanced with the context of this case. The registrant has been a registered nurse for over 45 years without a previous referral to the NMC. Further, the allegations appear to be the RN going beyond the care

she should be providing to the patient and trying to assist them further without a gain for herself.

However, to the above this case does involve dishonesty relating to theft of medication, and purporting to be a relative of a patient in order to gain access as a visitor when the patient is on a ward where the RN was not working.

The guidelines state in whether the RN should be allowed to remain on the register are;

- 1. Deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients.*
- 2. Misuse of power*
- 3. Vulnerable victims*
- 4. personal financial gain from a breach of trust*
- 5. Direct risk to patients*
- 6. Premeditated, systematic or longstanding deception*

The actions of the registrant are contrary to 2, 3, and 6. There is also the consideration that by breaching the professional boundaries there was a risk of harm to the patients as set out in 5 above.

A Striking off order would not be appropriate according to the guidelines on sanction as the actions are not incompatible with the registrant remaining on the register. Further, it would not be proportionate when the RN's length of service is taken into account and the assistance she was attempting to provide.”

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust and misuse of power
- Limited insight into failings and no attempt at remediation
- A pattern of repeated and premeditated misconduct over a significant period of time indicating attitudinal concerns
- Conduct which put a vulnerable patient at risk of suffering harm.
- Dishonesty relating to theft although Mrs Kane did not benefit financially as a result of the theft

The panel considered that there were no mitigating features in this case.

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.

The panel 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 Mrs Kane's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Kane's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Kane's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case, were not clinical or actions that can be addressed through retraining and/or supervision. It also considered that Mrs Kane, through her brother has expressed that she does not want to return to nursing practice, therefore the panel could not be satisfied that any conditions placed on Mrs Kane's practice would be engaged. Furthermore, the panel concluded that the placing of conditions on Mrs Kane's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *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. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Kane's actions is fundamentally incompatible with Mrs Kane remaining on the register. This is also a case involving the theft of a controlled drug albeit not for personal gain.

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?*

Mrs Kane's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Kane's actions were serious and to allow her to continue practising 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 during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Kane's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel has found that there are considerable aggravating features and could identify no mitigating features.

In making this decision, the panel carefully considered the representations in relation to the sanction that the NMC was seeking in this case. It appears that the NMC attaches considerable weight to the long career as a nurse of Mrs Kane where there had been no earlier regulatory concerns when commending her suspension order with a review. The NMC do not ask for no review and so they anticipate that there will be a further hearing. The panel is of the view that Mrs Kane is most unlikely to engage with that review hearing in view of the clear letter from her representative. In any event the misconduct in this case was repeated and over a significant period time including deliberate dishonesty involving the theft of a controlled drug which put a vulnerable patient at risk. The panel considered that all these factors outweigh the long service of Mrs Kane.

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. The panel considered that there was no alternative to a striking-off order in this case.

This will be confirmed to Mrs Kane in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only impose an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Kane's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

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

"If a finding is made that the registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest. If a finding is made that the registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued registrant we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest."

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.