

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

**Substantive Hearing  
Monday 30 October 2023 – Thursday 2 November 2023  
Wednesday 29 November 2023**

Virtual Hearing

**Name of Registrant:** Camila Andre

**NMC PIN** 12K0017N

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – (February 2013)

**Relevant Location:** Armagh City, Banbridge and Craigavon

**Type of case:** Misconduct / Caution

**Panel members:** David Crompton (Chair, Lay member)  
Susan Field (Registrant member)  
Christopher Reeves (Lay member)

**Legal Assessor:** Graeme Henderson

**Hearings Coordinator:** Jessie Miller (30 October – 2 November 2023)  
Sharmilla Nanan (29 November 2023)

**Nursing and Midwifery Council:** Represented by Ashraf Khan, Case Presenter

**Miss Andre:** Not present and represented by Gerard McGettigan, instructed by the Royal College of Nursing (RCN)

**Facts proved by admission:** Charges 1a, 4, 5 & 6

**Facts found proved:** Charges 1b 3a and 3b

**Facts not proved:** Charge 2

**Fitness to practise:** Impaired

**Sanction:**

**Striking-off order**

**Interim order:**

**Interim suspension order (18 months)**

Mr Khan appeared for the Nursing and Midwifery Council (NMC) and Mr McGettigan for Miss Andre. Mr McGettigan explained that although he was instructed to represent Miss Andre she would not be attending [PRIVATE].

### **Decision and reasons on application for hearing to be held in private**

At the outset of the hearing, Mr McGettigan, on Miss Andre's behalf, made a request that this case be held partly in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Khan, on behalf of the NMC, indicated that he supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to [PRIVATE], the panel determined to go into private session as and when [PRIVATE].

### **Details of charge**

That you, a Registered Nurse, whilst working at Hamilton Court Care Home:

1. On 21 February 2022:

- a) did not make an entry in the Drug Disposal book concerning 62 Co-codamol tablets being removed from stock
- b) wrote on the Homes' 'Daily Stock Checklist for Restricted Medications' that you had destroyed 62 Co-codamol tablets when you had not done so

2. Your conduct in charge 1a) was dishonest in that you knew you deliberately omitted to make an entry in the Drug Disposal book in order to conceal your intentions and/or take the tablets
3. Your conduct in charge 1b) was dishonest in that you:
  - a) knew you had not destroyed the 62 Co-codamol tablets;
  - b) made the entry in order to conceal your intentions and/or take the tablets
4. At a meeting with your employer on 8 March 2022 which started at approximately 14.55, stated incorrectly that you knew nothing about 8 missing codeine tablets
5. Your conduct in charge 4 was dishonest in that you knew you had taken the 8 missing codeine tablets
6. On 18 June 2022, received a police caution for theft and possession of class B controlled substances

AND in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of charges 1 – 5 and by reason of your caution in respect of charge 6.

## **Background**

The charges arose whilst Miss Andre was employed as a registered nurse by Hamilton Court Care Home (the Home).

It is alleged that in February or March 2022, a manager of the Home completed a resident medication audit and noted that Miss Andre had recorded the destruction of 62 Co-codamol tablets on the Daily Stock Check List for Restricted Medication. When questioned about why she had disposed of the tablets, Miss Andre stated that she had

destroyed these for counting purposes because they were over-stocked, and to minimise discrepancies. When questioned about missing 8x30mg Codeine tablets, she denied any knowledge of this. Miss Andre failed to make a note of the destruction of the tablets in the Drug Disposal Book. This action does not comply with the Home's policy of medication disposals.

It is further alleged that on 8 March 2022, after further investigations into the disposal of medications, the manager of the Home noticed discrepancies in what was recorded and what had been disposed of. Miss Andre was further questions about this, but denied knowing anything more.

Later that day, it is said that Miss Andre requested her manager meet her outside in the carpark where she admitted to taking the Co-codamol and Codeine tablets. [PRIVATE]

Miss Andre no longer works for the Home.

### **Admissions on facts**

At the outset of the hearing, the panel heard from Mr McGettigan, who informed the panel that Miss Andre made full admissions to charges 1a, 4, 5 and 6.

The chair therefore announced charges 1a, 4, 5 and 6 having been proved by way of Miss Andre's admissions.

### **Disputed Facts**

The panel heard live evidence from the following witness called on behalf of the NMC:

- Mr 1: Home Manager

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Khan and Mr McGettigan.

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.

Before making any findings on the facts, the panel accepted the advice of the legal assessor, which included reference to the legal test for dishonesty as per *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*. It considered the witness and documentary evidence provided by Mr Khan and Mr McGettigan.

### **Prejudicial Material**

At the start of the hearing the panel were informed that the NMC had included charge 6 in clear contravention of Rule 29 (2) which states that:

*‘The Fitness to Practise Committee may consider one or more categories of allegation against a registrant provided always that an allegation relating to conviction and caution is heard after any allegation of misconduct has been heard and determined.’*

The panel was advised that proper and normal practise would have been to exclude charge 6 from the charges that were before the panel and introduce it as a new charge after the issue of misconduct (if any) had been determined.

The panel was further advised that despite the potential consequence of providing the panel with prejudicial material the representatives agreed that this issue could be resolved with directions.

Accordingly, the panel was advised that it should remove from its mind the existence of charge 6 when deliberating on this stage and the misconduct stage.

These directions were made at the start of the hearing and were reiterated in legal advice prior to determining facts.

In addition, the panel was presented with further prejudicial material prior to Mr 1 concluding his evidence.

Although questioning had finished the witness indicated that he wished to say a little more and did so without objection.

The witness began by stating that, as a registered nurse himself, he would not wish to see any nurse lose their registration and commented upon the consequent loss of income and status. That aspect of his observation was unobjectionable.

However, he went on to say that he knew that Miss Andre had been the subject of previous adverse regulatory concerns of a similar nature.

At this point the chair intervened and thanked the witness for his attendance.

The panel accepted the legal advice that, whilst this information would be of relevance at the impairment stage it ought not to be considered at this stage. Again, the panel was asked to disregard this information in considering both the disputed charges and misconduct.

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

### **Charge 1b**

*‘That you, a Registered Nurse, whilst working at Hamilton Court Care Home:*

1. *On 21 February 2022:*

*b) wrote on the Homes’ ‘Daily Stock Checklist for Restricted Medications’ that you had destroyed 62 Co-codamol tablets when you had not done so’*

**This charge is found proved.**

In reaching this decision, the panel took into account the submissions made and information before it. It considered that much of the background evidence was not controversial and of great assistance in determining the factual conflict.

The Home was a 40 bedded unit. Miss Andre worked nights and was the only registered nurse on duty. She was assisted by three care staff. The drugs in issue were regarded as controlled drugs and access to them was restricted to registered nurses.

It is not in dispute that on 8 March 2022 Miss Andre admitted to Mr 1 that she had in her possession Co-codamol tablets as well as a strip of eight codeine tablets. She then handed him a bag of 53 loose tablets and the strip of eight codeine tablets.

Miss Andre recorded the fact that she had removed 62 tablets from the Home’s stock. This is confirmed by the Home records of drug counts. There is a factual dispute over whether or not Miss Andre placed 62 Co-codamol tablets in the bin which was used for the disposal of medicines. It is her position that they were placed in the bin due to overstocking. [PRIVATE]

This position was contradicted by the evidence of Mr 1. He noted that Miss Andre had made an entry stating that 62 tablets had been removed but there was no corresponding entry in the drug disposal book. Home policy required an entry in that book to be



countersigned by a nurse, which had not happened. In practice, Miss Andre would have had to wait until handover at the end of her shift to do this as she was the only nurse on duty on that shift.

The panel considered that, on the balance of probabilities, it was more likely than not that Miss Andre removed 62 tablets and did not dispose of them in the bin. [PRIVATE]. The panel considered her explanation to be inherently unlikely. She would have had to gain access to a secure bin which has a small opening which is not easily accessible, in order to search through in excess of 300 disposed tablets as documented on the Home's disposal record, to then identify and extract the Co-codamol tablets. The amount of medication retrieved is significantly in excess of what would be appropriate for [PRIVATE].

The panel considered that it was also unlikely that she would have removed exactly the same number of tablets she supposedly put in the bin, in this case 62, given they were loose and mixed with a number of other tablets in the bin.

[PRIVATE]. The panel therefore concluded that Miss Andre's stated reason for taking the tablets from the Home was implausible in the circumstances.

## **Charge 2**

*'That you, a Registered Nurse, whilst working at Hamilton Court Care Home:*

- 2. Your conduct in charge 1a) was dishonest in that you knew you deliberately omitted to make an entry in the Drug Disposal book in order to conceal your intentions and/or take the tablets'*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the submissions made and the information before it.

The panel noted that the failure by Miss Andre to make an entry in the Drugs Disposal Book was a reason for Mr 1 being suspicious of Miss Andre's removal of 62 tablets from stock. In these circumstances the panel did not accept the contention that her omission to record was motivated by a desire to conceal her removal of the tablets. In any event the panel were unable to form any view as to what Miss Andre's state of mind was at the material time. There could have been any number of reasons for her not making an entry, such as forgetfulness or that she had been distracted by a sudden emergency. The panel was not persuaded that the omission was a deliberate and/or dishonest act.

### **Charge 3**

*'That you, a Registered Nurse, whilst working at Hamilton Court Care Home:*

*3. Your conduct in charge 1b) was dishonest in that you:*

- a) knew you had not destroyed the 62 Co-codamol tablets;*
- b) made the entry in order to conceal your intentions and/or take the tablets'*

**This charge is found proved.**

In reaching this decision, the panel took into account submissions made and the information before it.

The panel had already determined that Miss Andre made a false entry to cover up the fact that she had removed 62 tablets from the home's stock. It considered what her genuine state of mind would have been at the time of her making the entry and determined she would have known that what she was doing was dishonest because she was trying to

conceal the fact she had taken the tablets by making it look as if they had been disposed of. The panel was also of the view that this act would have been regarded as dishonest in the eyes of ordinary decent people.

In light of the foregoing the panel directed that the next stage should involve considering whether or not there was misconduct in respect of the charges found proved (except charge 6).

The panel was aware that it had the power to order this in terms of the preamble to Rule 24.

## **Misconduct**

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.

## **Submissions on misconduct**

Mr Khan invited the panel to take the view that the facts found proved amount to misconduct. He submitted that the panel had to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Mr Khan identified the specific, relevant standards where Miss Andre's actions amounted to misconduct. He noted that the circumstances of this case in relation to charges found proved, demonstrate a serious departure from the expected standards of a registered nurse which can be properly characterised as misconduct.

In relation to misconduct and dishonesty, Mr Khan made reference to the cases of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, *Remedy UK Ltd v General*

*Medical Council* [2010] EWHC 1245 (Admin), *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and *Lawrence v General Medical Council* [2015] EWHC 586.

Mr McGettigan submitted that he was in agreement with Mr Khan's submission in relation to the law and principals outlined. However, he submitted that the facts found proved in respect of charges 1a and 1b did not amount to misconduct as they were administrative errors and ought not to be regarded as serious issues. Mr McGettigan concluded by stating that he accepted that the remaining charges could amount to misconduct.

The panel heard and accepted the advice of the legal assessor who referred to *Roylance v General Medical Council*.

### **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 Miss Andre's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Andre's actions amounted to a breach of the Code. Specifically:

#### **'10 Keep clear and accurate records relevant to your practice**

*This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*

*To achieve this, you must:*

*10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event*

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

*10.4 attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation*

**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.***

*To achieve this, you must:*

*18.4 take all steps to keep medicines stored securely*

**20 *Uphold the reputation of your profession at all times***

*To achieve this, you must:*

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

### **Charges 1b, 3, 4 and 5**

The panel was of the view that, in these circumstances, given the seriousness of the charges found proved that relate to dishonesty, Miss Andre's actions did fall seriously short of the conduct and standards expected of a nurse.

In respect charges 1b and 3, the panel determined that Miss Andre's actions amounted to misconduct. It noted that dishonesty when documenting the status of medication, including its destruction can undermine trust within the nursing profession, potentially leading to errors in patient care, inventory management and compromising the overall integrity of the profession.

In respect of charges 4 and 5, the panel determined that Miss Andre's actions amounted to misconduct. The panel determined that this behaviour undermines the principles of honesty, integrity and trustworthiness that are expected in the nursing profession. The panel also noted that her actions undermine the foundation of trust between Miss Andre and her employer. The panel noted that in health care settings, accurate documentation and open communication are critical for effective patient care.

### **Charge 1a**

The panel was of the view that the accurate recording of drug disposal is an important and prevalent aspect of Miss Andre's role. The panel was also of the view that there were a significant number of tablets which were not accounted for. Nevertheless, the panel determined that on this occasion, it was unclear why the recording errors had been made. It was therefore of the view, that this omission, taken on its own, does not amount to misconduct.

### **New Material**

Following the finding of misconduct, the panel had regard to material relating to charge 6 as well as new material supplied by the NMC.

The panel was made aware of the fact that there had been two prior adverse regulatory findings made against Miss Andre. On 11 November 2016 she was the subject of a substantive suspension order for a year. On 7 December 2016 she was the subject of a two year caution order.

The panel noted that, in accepting the police caution in relation to charge 6, Miss Andre admitted to the theft and possession of class B drugs. She had admitted that she had stolen 62 tablets and a further strip of eight tablets.

On 11 November 2016, Miss Andre was the subject of suspension order for the maximum period of one year. The facts found proved involved a number of drug administration errors in 2014 and one charge of dishonesty relating to the cover up of an error.

On 7 December 2017, Miss Andre received a two year caution order for dishonesty as a result of not declaring her previous employment history when applying for a job as a care worker (a non-nursing role).

In commenting on her insight, the latter panel said:

*'[PRIVATE]. You told the panel that you have reflected on your actions and appreciated the negative impact it had on the nursing profession, your colleagues and the trust patients had in nurses as outlined in your reflective statement. You explained how you would act if faced with similar situations in the future and told the panel that you have learned from your past mistakes. [PRIVATE]. You assured the panel that there would be no repeat of your dishonesty and apologised for your actions.'*

The panel noted that, in her relatively short career there were regular incidents of dishonesty, repeated drug errors and falsification of documents. The panel was concerned that the assurances provided to the previous panel were similar in nature to those provided to it in this hearing.

### **Submissions on impairment**

Mr Khan submitted that the panel should make a finding 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).

Mr Khan provided written submissions on impairment to supplement his oral submissions. He told the panel that it should consider the issue of impairment involving misconduct and the caution for the criminal offence in the round. He invited the panel to find that all four limbs in the *Grant* test were engaged with regard to both the past and the future. He submitted that Miss Andre:

*'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.'*

He further submitted that the risk of repetition was high in light of the fact that there were previous adverse disciplinary findings.

Mr McGettigan provided written submissions on impairment to supplement his oral submissions. He emphasised that whilst the issue of misconduct involves the examination of past behaviour the issue of impairment involved an examination of whether or not Miss Andre was impaired now. He reminded the panel that a finding of misconduct does not lead inexorably to a finding that the registrant's fitness to practice is impaired.

It was submitted that Miss Andre's misconduct and caution could be regarded as being at the lower end of the scale and that, taking into account her references and reflective statements it would be possible to conclude that there was no impairment.



It was submitted that Miss Andre's actions entailed an unfortunate error of judgment, which is unlikely to recur, and the misconduct is not so serious as to render a finding of impairment plainly necessary. It was contended that the misconduct is not so egregious that, whatever mitigatory factors arise in respect of insight, remediation, unlikelihood of repetition, and the like, a reasonable person would conclude that the registrant should not be allowed to practise on an unrestricted basis, or at all. [PRIVATE]. In all the circumstances, it was submitted that Miss Andre's insight levels were high. It is contended that it seems highly unlikely that the same or similar situations would ever occur again. It is submitted that there is no risk to the public of Miss Andre's continued practice.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments including *Grant* and *PSA v HCPC and Doree [2017] EWCA Civ 319*.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct found in respect of charges 1b, 3, 4, 5 and the caution in respect of charge 6, Miss Andre's fitness to practise is currently impaired.

In this regard the panel considered the test of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 76, she said:

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

*b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

*c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

*d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel considered that limbs a, b, c and d were engaged by Miss Andre's past actions.

Miss Andre's actions put patients at unwarranted risk of harm, as her misconduct occurred while she was fulfilling her duties as a registered nurse. Specifically, her misconduct included falsely documenting the destruction of 62 Co-codamol tablets on the Homes' Daily stock Checklist for Restricted Medications, despite not actually disposing of them. Miss Andre's dishonesty, breach of trust and concealment of the tablet's whereabouts breached fundamental tenets that underpin the nursing Code, bringing the profession into disrepute.

The panel acknowledged that charges pertaining to dishonesty carry significant weight, as they have the potential to undermine the public's trust in the nursing profession.

Having regard to *Cohen v GMC* [2008] EWHC 581 (Admin), the panel determined that whilst Miss Andre's misconduct and caution can be considered to be of a serious nature, it has the potential to be remedied. It went on to note that there have been previous regulatory findings relating to dishonesty, which limits her ability to demonstrate remediation and genuine improvement in these areas.

The panel considered Miss Andre's level of insight, particularly her personal reflective pieces which demonstrated some understanding of how her actions affected the profession, colleagues and the wider public. In these reflections, she attributed her actions

to [PRIVATE] and claimed to have taken measures to ensure that she would not end up in a position like this again, therefore stating that there is no risk of repetition.

The panel noted Miss Andre's most recent reflective piece in which she demonstrated limited insight in relation to taking the tablets, in that she stated:

*'At the time I never thought anything of it, as it seemed acceptable to get medications from the destruction bucket as I had witnessed other nurses do the same thing. I believed that it was ok as they were going to be destroyed anyway...'*

Whilst the panel acknowledge her seemingly genuine remorse for these actions, it also notes that this was not an isolated incident, but rather forms part of a pattern of behaviour that has recurred over a period of 10 years. The panel did not accept the reasons provided and maintained by Miss Andre in relation to why she acted in the way she did because they appeared implausible in the circumstances.

The panel also considered Miss Andre's reflective piece in which she states that she has undergone various courses and read materials relating to dishonesty remediation. The panel have no supporting evidence of such courses being completed. Additionally, Mr McGettigan submitted that Miss Andre had complied with the conditions imposed on her practice by the simple fact that she had not breached any of these conditions. However, the panel was of the view that given Miss Andre was not practising during this time, she was unable to actually comply with the conditions, nor provide any evidence of a strengthening of practice and remediation of her actions.

The panel also considered the testimonials submitted on behalf of Miss Andre, which highlighted her reputation as a caring nurse with good practice. However, they did not attest to her honesty or integrity. The panel also noted that these testimonials were not provided by registered nurses. Consequently, the panel assigned little weight to this evidence as it did not directly address the primary issues at hand.

After careful consideration of the aforementioned factors, the panel determined that Miss Andre has not demonstrated adequate insight or evidence of strengthened practice. It noted that the history of regulatory findings revealed a pattern of dishonesty that emerged early in her career. This prolonged pattern of behaviour raises serious concerns regarding the likelihood of recurrence. The panel therefore could not be convincingly reassured that similar conduct would not be repeated in the future. As a result, it concluded that there remains a real risk of repetition which poses a risk to patient safety. It therefore determined that a finding of impairment on public protection grounds is required.

The panel bore in mind 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 was also of the view that public confidence in the nursing profession would be severely undermined if Miss Andre was allowed to continue to practise without restriction. It therefore determined that a finding of current impairment on public interest grounds was also required to uphold public confidence in the profession.

Having regard to all of the above, the panel was satisfied that Miss Andre's fitness to practise is currently impaired on both public protection and public interest grounds.

**This case was adjourned part heard on 2 November 2023 and resumed on 29 November 2023.**

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Andre off the register. The effect of this order is that the NMC register will show that Miss Andre 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 Khan informed the panel the SG states '*allegations of dishonesty will always be serious and a nurse... who has acted dishonestly will always be at some risk of being removed from the register.*' He submitted the panel should consider the kind of dishonest conduct which has taken place and that the NMC considers honesty of central importance to nursing. He submitted that this is not the first time that Miss Andre has demonstrated dishonest behaviour and outlined the findings of previous Fitness to Practice Committee panels. He outlined the aggravating and mitigating features of this case. He referred the panel to the judgments in the cases of *Bolton v Law Society* [1994] 1 W.L.R. 512, *General Medical Council v Theodoropolous* [2017] EWHC 1984 (Admin), *Solicitors Regulation Authority v Imran* [2015] EWHC 3058 (Admin) and *Professional Standards Authority v General Dental Council and AB* [2016] EWHC 1539. He submitted that the nature and seriousness of Miss Andre's misconduct and police caution, call into question her integrity and professionalism. Further, trust and confidence in the profession can only be maintained by the imposition of a striking-off order. He submitted that in all the circumstances, a striking-off order is the only appropriate and proportionate order.

The panel also bore in mind Mr McGettigan's submissions both oral and in writing. He outlined the aggravating and mitigating features of this case. He also provided information regarding [PRIVATE] and the impact of any such sanction on her nursing registration. He submitted that Miss Andre's conduct falls into the '*less serious*' category. He addressed the panel on Miss Andre's insight, remorse and progression. He took the panel through

the sanctions available to it and submitted that Miss Andre's behaviour in the facts proved could be marked by the imposition of a caution order. He submitted that in the alternative, a short conditions of practice order would address any perceived risks identified by the panel. He submitted if the panel was not persuaded these sanctions were appropriate and determined that a suspension order is appropriate, it should consider imposing a suspension order for a short period of time. He submitted that a striking off order would be wholly disproportionate in the circumstances.

### **Decision and reasons on sanction**

Having found Miss Andre'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:

- Miss Andre abused her position of trust.
- Miss Andre's misconduct was premeditated and took place on more than one occasion over a period of time.
- Miss Andre falsified records and documentation which placed vulnerable patients at risk of suffering harm.
- Miss Andre breached her professional duty of candour as she did not own up when initially questioned.
- Miss Andre's dishonesty underlying the charges found proved suggests attitudinal concerns.
- Previous regulatory findings involved dishonesty, which suggests a pattern of misconduct.

- Three regulatory findings have now been made against Miss Andre in the span of a short 10-year nursing career.
- Miss Andre has previously provided assurances to past Fitness to Practise Committee panels that her dishonest actions would not be repeated. However, Miss Andre's conduct in this case does not appear to demonstrate that lessons have been learnt from previous regulatory findings.

The panel also took into account the following mitigating features:

- [PRIVATE].

The panel had regard to the NMC's guidance on making decisions on dishonesty charges. It considered the facts found proved. It took into consideration that Miss Andre had stolen 62 Co-codamol tablets from the Home's stock and then on another separate occasion had taken eight codeine tablets from the Home. The panel considered that Miss Andre's conduct was premeditated and it determined that her conduct outlined in the charges was not spontaneous or opportunistic. It therefore found that Miss Andre's dishonesty was at the higher end of the dishonesty scale.

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 Miss Andre'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 Miss Andre's misconduct and dishonesty 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 rejected

the submissions put forward on behalf of Miss Andre. 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 Miss Andre's registration would be a sufficient and appropriate response. The panel considered that the misconduct and dishonesty found proved in this case are not things that can be addressed through retraining. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges found proved. Furthermore, the panel concluded that the placing of conditions on Miss Andre'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 panel had regard to the SG which states the factors of when a suspension order should be imposed. The panel considered these factors. It noted that this was not a single instance of misconduct. The panel took into consideration that there is evidence to suggest Miss Andre has a harmful deep-seated personality or attitudinal problems in light of her repeated misconduct in this case and in relation to her past regulatory findings for dishonesty and falsifying documents. The panel noted that Miss Andre has not repeated her misconduct since this case as she has not been working as a registered nurse, but it had regard to her previous conduct before this incident came to light in that the misconduct has been repeated for a third time. The panel had regard to Miss Andre's insight, but considered that it was undermined by similar assurances she had given to previous Fitness to Practise Committee panels. The panel was not persuaded that Miss Andre had learnt lessons from her experiences which led to her previous regulatory proceedings given the findings of this panel. The panel concluded that there is a real risk of Miss Andre repeating the conduct found proved at this hearing.

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 Miss Andre's actions is fundamentally incompatible with Miss Andre remaining on the register.

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?*

Miss Andre's actions were a significant departure from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel took into account that this was the third regulatory finding, in under 10 years, against Miss Andre which included findings of dishonesty. The panel considered that Miss Andre had not acted with integrity on a number of occasions and that her conduct had breached fundamental tenets of the nursing profession namely, honesty and integrity. The panel was of the view that the findings in this particular case demonstrate that Miss Andre'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 effect of Miss Andre'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 considered the judgment in the case of *Bolton v Law Society* [1994] 1 W.L.R. 512, which states ‘...*the reputation of the profession is more important than the fortunes of any individual member.*’ The panel considered that a fully informed member of the public would be concerned to learn that a registered nurse, [PRIVATE], was allowed to continue to practise given the regulatory history identified along with the findings made at this hearing.

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 Miss Andre in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Andre’s own interests until the striking-off order 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 Mr Khan. He submitted that an interim suspension order is necessary on the grounds of public protection and public interest for a period of 18 months. He submitted that this interim order would cover any potential appeal period.

Mr McGettigan indicated that he had no submissions to make in relation to the interim order and stated that any interim order imposed is a matter for the panel.

### **Decision and reasons on interim order**

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

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

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

That concludes this determination.