

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

**Substantive Meeting
Thursday, 21 September 2023**

Virtual Meeting

Name of Registrant: Luca Gentile

NMC PIN 16A0470C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – Level 1 – January 2016

Relevant Location: Medway

Type of case: Misconduct

Panel members: Museji Ahmed Takolia (Chair, Lay member)
Catherine Devonport (Registrant member)
Stacey Patel (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Xenia Menzl

Facts proved: Charges 1a), 1b), 1d), 2

Facts not proved: Charges 1c)

Fitness to practise: Impaired

Sanction: **Suspension order with review, (9 Months)**

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 that the Notice of Meeting had been sent to Mr Gentile's registered email address by secure email/registered address by recorded delivery and by first class post on 16 August 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, including that this meeting would take place on a date on or after 21 September 2023, and the fact that this meeting was heard virtually.

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

Details of charge

That you, a registered nurse:

1. On an unknown date in or around October 2019:
 - a. Failed to challenge Colleague A when they were taking a video recording and/or photo/s of you whilst using a hoist to lift Patient A; **[proved]**
 - b. Failed to respond adequately or at all to Patient A when they shouted 'ow' on one or more occasions; **[proved]**
 - c. Laughed at Patient A when they were in distress; **[not proved]**
 - d. Remarked or joked that Patient A sounded "like an alarm" or words to that effect. **[proved]**
2. Through your actions at any of charges 1a-1d above failed to preserve Patient A's dignity. **[proved]**

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

Background

Mr Gentile entered onto the Nursing and Midwifery Council (“the NMC”) register on 28 January 2016 as a Registered Nurse, specialising in adult care.

Mr Gentile was first referred to the NMC on 24 December 2019 by the Head of Nursing at Medway NHS Foundation Trust (‘the Trust’). At the time of the referral, Mr Gentile was working as a Band 5 Registered Nurse at Medway Maritime Hospital (‘the Hospital’).

The alleged facts are that Patient A was an elderly and vulnerable patient. He had been admitted to the Hospital with reduced mobility, pressure sores and a chest infection. Patient A was admitted to a frailty unit where all patients are elderly and vulnerable.

In about October 2019, Mr Gentile and Colleague A, a clinical support worker, used an electronic hoist to lift Patient A off the bed so that a weekly weight check could be carried out. Colleague A videoed this using their mobile.

Mr Gentile appears to be aware of Colleague A filming as he looks directly at the camera. The video is 1 minute and 26 seconds long. Mr Gentile is seen smiling and laughing as Patient A is lifted and lowered. Patient A is heard to scream out “ow” 29 times during the procedure and is clearly distressed and crying out. Mr Gentile was aware of Patient A’s distress because he asked the patient to check if he was alright, Patient A replied “no”. Mr Gentile later compared Patient A’s cries of “ow” to an alarm and appeared to mock him.

The Trust received an anonymous complaint that enclosed the video footage of Patient A. Mr Gentile was suspended immediately. Mr Gentile was subsequently dismissed for gross misconduct following the disciplinary hearing held on 2 September 2020.

Decision and reasons on facts

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 and from Mr Gentile.

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 witness on behalf of the NMC:

- Witness 1: Care Group Governance Lead,
Medway Maritime Foundation Trust;

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 Mr Gentile.

The panel was aware that a criminal investigation was started by the police regarding the alleged incident in 2020. However, the panel had no further information regarding the investigation and it is assumed that it is no longer ongoing.

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

Charge 1a)

1. On an unknown date in or around October 2019:
 - a. Failed to challenge Colleague A when they were taking a video recording and/or photo/s of you whilst using a hoist to lift Patient A;

This charge is found proved.

In reaching this decision, the panel took into account the statement of Witness 1, the disciplinary investigation meeting and evidence underlying it as well as Mr Gentile's submissions including written reflections and statement to the NMC, dated 20 January 2020.

The panel first established whether Mr Gentile had a duty to challenge Colleague A when they were taking the video recording/photos. The panel referred to the following policies provided by the Trust:

- Medway NHS Foundation Trust Band 5 Staff Nurse Job Description
- GUCPCM001 – Safeguarding Adult Policy
- POLCPCM099 – Managing Safeguarding Allegations Against Staff Policy
- GUCGR023 – Information Governance – Use of cameras, video and audio recorders on Trust premises (including the use of smart phone and other mobile devices with recording functionality)

The panel in particular considered the policy with regard to use of cameras, video and audio recorders which ensures that patient images remain private and confidential and for the purposes of helping with the clinical assessment and evaluation of a patient's condition through the use of clinical photography. The panel noted that Mr Gentile had received the relevant training by the Trust. The panel therefore concluded that Mr Gentile knew that the use of a mobile device to record videos and/or take photographs whilst caring for a patient constituted a breach of the Trust's policy.

The panel noted references by Mr Gentile to the close working relationship he has with his co-workers and that there seemed to have developed a culture whereby the healthcare workers, including the nurses, took pictures and videos of each other in a 'playful' manner, often posting these on Snapchat. However, until this specific incident this seemed to be limited to photos taken around the nurses' station and away from patients.

The panel further noted that Mr Gentile stated that he was under the impression that Colleague A was taking a picture and only later learned that it was a video. It considered Mr Gentile's reflective statement in which he explains:

'I should have certainly challenged the CSW as soon as I noticed she was using her

phone on duty. I should have ensured that any video she took was immediately deleted.'

He further states:

'When I was called to attend a disciplinary hearing I went there guilty, with my hands up and I approved everything that they said, I took the blame, I did my apologies and I couldn't not retain my tears.'

From this the panel infers from Mr Gentile's reflective piece that he admits some basic facts about the circumstances in which a mobile phone was used to capture images of him with a patient and that he should have challenged Colleague A who was taking the images.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not, that on a date in or around October 2019 Mr Gentile should have, but failed to challenge Colleague A when they were taking a video recording and/or photo/s of him whilst using a hoist to lift Patient A.

Charge 1b)

1. On an unknown date in or around October 2019:
 - b) Failed to respond adequately or at all to Patient A when they shouted 'ow' on one or more occasions;

This charge is found proved.

In reaching this decision, the panel took into account the statement of Witness 1, the disciplinary investigation meeting and evidence underlying it as well as Mr Gentile's submissions including written reflections and statement to the NMC, dated 20 January 2020.

The panel noted that there is an obligation under '*The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*' ("the Code") to ensure that peoples needs are met and to act as an advocate for the vulnerable.

The panel considered the investigatory meeting in which Mr Gentile stated:

'36 [Mr Gentile] - *I thought the quicker the weight is had and he is put back on the bed he would be reassured. If I put him down and try to hoist him again, he would start shouting again. (p26 top)*

[...]

49. [Witness 1] - *That gentleman was clearly distressed, he cried out 29 times. Why didn't you do anything about it?*

50. [Mr Gentile] - *Because he is always like this even in the bay. At one point he calmed down and I wanted to make fun I said "you sound like an alarm". It was not to make a joke of him.'*

The panel noted with some concern the distress caused to Patient A who cried out 29 times during lifting and weighing procedure. The panel accepts Mr Gentile's explanation that sometimes, when carrying out an assessment, for example, weighing a patient, this may cause temporary discomfort. The panel considers that he may have been balancing this against the clinical need in his judgment as a nurse to have this information.

It is the panel's view that during this particular incident Patient A probably experienced being hurt and/or uncomfortable and that it is this that demonstrates that Mr Gentile's assessment of the patient was inadequate.

The panel was of the view that Mr Gentile failed in his duty to ensure that the patient's physical and psychological needs were met and attended to. It noted that this was a vulnerable patient and that Mr Gentile had the duty to undertake reasonable steps to protect him from harm, neglect and abuse.

The panel was of the view that in this instance Mr Gentile failed to respond adequately to Patient A when they were showing clear signs of pain and distress.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Mr Gentile failed to respond adequately to Patient A when they shouted 'ow' on one or more occasions.

Charge 1c)

1. On an unknown date in or around October 2019:
 - c) Laughed at Patient A when they were in distress;

This charge is found NOT proved.

In reaching this decision, the panel took into account the statement of Witness 1, the disciplinary investigation meeting and evidence underlying it as well as Mr Gentile's submissions including written reflections and statement to the NMC, dated 20 January 2020.

The panel was of the view that the phrase 'laughed at patient A' implied that there was an intention of malice or mockery toward the patient.

The disciplinary investigation report states:

'Luca is shown on one of the videos, he is seen laughing and smiling during a patient care episode.'

The panel noted Mr Gentile's statement during the investigatory meeting at which he said the following:

'28. [Mr Gentile] - I was smiling because I looked at the CSW and she was smiling, I smiled back. I was not laughing at the patient.'

The panel considered that whilst this suggests that whilst Mr Gentile was smiling and/or laughing it may not have been directed at the patient with malice or with the intention of mockery. The panel noted that Mr Gentile stated in the disciplinary investigation meeting that:

'50. [Mr Gentile] At one point he calmed down and I wanted to make fun I said "you sound like an alarm". It was not to make a joke of him.'

The panel considered that Mr Gentile may have been attempting to make light of the situation, but not necessarily directing this at the patient.

The panel was therefore satisfied that the NMC had not proved this charge on the balance of probabilities.

Charge 1d)

1. On an unknown date in or around October 2019:
 - d) Remarked or joked that Patient A sounded “like an alarm” or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the statement of Witness 1, the disciplinary investigation meeting and evidence underlying it as well as Mr Gentile’s submissions including written reflections and statement to the NMC, dated 20 January 2020.

The panel noted that Mr Gentile stated in the disciplinary investigation meeting that:

’50. [Mr Gentile] At one point he calmed down and I wanted to make fun I said “you sound like an alarm”. It was not to make a joke of him.’

The disciplinary investigation report states:

’Once the patient is back on the bed and stops shouting out Staff Nurse Gentile is heard to say “Like an alarm you know, the alarm, meow, meow, meow”, appearing to mock the patient.’

In his reflective piece Mr Gentile specifically states:

’Once the patient was back in his bed he finished to shout and I said back to him “ow ow ow, you did sound like an alarm “ for play down the Colleague A situation.’

The panel infers that Mr Gentile is admitting that he did say that Patient A sounded like an alarm.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Mr Gentile remarked or joked that Patient A sounded “like an alarm” or words to that effect.

Charge 2)

2. Through your actions at any of charges 1a-1d above failed to preserve Patient A’s dignity.

This charge is found proved.

In reaching this decision, the panel took into account the statement of Witness 1, the disciplinary investigation meeting and evidence underlying it as well as Mr Gentile’s submissions including written reflections and statement to the NMC, dated 20 January 2020.

The panel considered that the Code states:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people’s human rights

The panel was of the view that a failure to challenge a Colleague taking a video of you with a patient whilst you were attending to the patient, failing to respond adequately to a patient who was in distress, and making a joking remark about a patient constitutes a failure and falls below the standards expected of you, notably in that you did not demonstrate kindness, respect or compassion for the patient.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Mr Gentile through his actions in 1a), 1b) and 1d) failed to preserve Patient A's dignity.

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 Mr Gentile'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, Mr Gentile'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 in making its decision.

The NMC identified the specific, relevant standards where Mr Gentile's actions amounted to misconduct.

The written submissions state:

'It is submitted that the misconduct in this case is serious because Mr Gentile mocked a vulnerable patient who was reliant on his care and failed to preserve their dignity. Mr Gentile's actions demonstrate attitudinal problems and cruelty towards Patient A, his actions are deplorable and public confidence in the profession would be seriously undermined. It is therefore submitted that Mr Gentile's actions, as outlined in the charges, amounts to misconduct.'

Mr Gentile's actions could damage the trust that the public places in the profession. Maintaining patients' dignity is integral to the standards expected of a registered nurse and central to the code, which Mr Gentile has fallen significantly short of.'

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 case 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 Mr Gentile's fitness to practise impaired. The written submission states:

'The NMC submits that the registrant has demonstrated limited insight. The NMC takes this view based on the two statements submitted by Mr Gentile. [...]

In this initial reflection Mr Gentile demonstrates minimal insight into his actions, the NMC observes that Mr Gentile focusses on his omissions during the incident. Unfortunately this initial reflection does not focus on his actions in mocking and laughing at the Patient A, nor does he reflect on the impact of his actions and omissions on Patient A, his colleagues, other patients or on the public.

The NMC submits that this later statement demonstrates insight which is developing. The statement addresses remorse and the impact on Patient A's relatives and the trust placed in him as a registered nurse. Whilst the statement

does not set out what Mr Gentile would do differently in the future nor does it demonstrate that changes have been made, it does state that Mr Gentile would consider undertaking further training.

The NMC notes that the registrant has undertaken some relevant training in respect of the issues of concern. Mr Gentile has provided the following training certificates which are relevant:

- a. Dementia Awareness, 2 February 2021*
- b. Pain Management, 6 February 2021*
- c. Dealing with stress, anxiety, depression and violence in the workplace, 2 February 2021*
- d. Deprivation of liberty safeguards, 6 February 2021*
- e. Caring for the elderly, 6 February 2021*
- f. Privacy and dignity, 2 February 2021*

The following training is not relevant:

- a. Assessing mental capacity, 6 February 2021*

The NMC notes the registrant has been working as a nurse in Italy since 5 July 2021. The following testimonials are relevant to the risk of repetition in that they suggest the registrant has practised well between 5 July 2021 to 16 August 2022:

The NMC considers there is a continuing risk to the public and a risk of repetition. Mr Gentile has demonstrated limited insight into his actions and whilst he has demonstrated remorse and an awareness of the impact his actions would have on the patient's family, he has not provided in depth insight nor has he demonstrated that he has made any changes which would prevent such an event occurring in the future. The incident raises clear concerns about Mr Gentile's attitude. Whilst taking into consideration the reflective pieces that Mr Gentile has put forward, the NMC does not consider the attitudinal problems to be incurable. Mr Gentile is yet to provide an in depth reflection or evidence of strengthened practice to demonstrate that the risk of repetition is low. A finding of impairment is therefore required for public protection, [sic]

[...]

The NMC considers there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Mr Gentile's conduct engages the public interest because an informed member of the public would be extremely concerned and public confidence in the profession would be undermined. A member of the public would be concerned to leave their vulnerable loved ones in the care of a profession which is capable of acting so insensitively and so callously. This would lead to a distrust in the profession and a reluctance of public to access the specialist care that they or their loved ones may require.'

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, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people's human rights

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.6 recognise when people are anxious or in distress and respond compassionately and politely

5 Respect people's right to privacy and confidentiality *As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.*

To achieve this, you must:

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

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

To achieve this, you must:

9.1 provide honest, accurate and constructive feedback to Colleagues

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

20.3 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 them upset or distress

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered the charges first individually and then cumulatively.

Charge 1a)

The panel considered that this was a serious breach of the code. Whilst it acknowledged that Mr Gentile asserts that he was not aware a video was taken but was under the impression a photo had been taken, he knew that this was against the Trust's policy and against the Code. Mr Gentile did not challenge his colleague and did not, as the senior

registrant in charge, act with candour by failing to report this, nor was he acting as a role model towards his junior colleague by failing to do so. The panel was of the view that this fell far below the standard expected of a nurse and therefore amounted to misconduct.

Charge 1b)

The panel noted that Patient A was clearly in pain and had shouted out in distress 29 times during the lifting and weighting procedure. Whilst the panel acknowledged Mr Gentile's explanation that he intended to get the procedure done quickly in order to reduce the amount of time Patient A was under distress the patient clearly communicated that they were not comfortable, in pain and in distress. The panel was of the view that Mr Gentile did not respond to this appropriately and that his behaviour also fell far below the standard expected of a registered nurse. The panel was therefore of the view that the actions in charge 1b) amounted to misconduct.

Charge 1c)

The panel was of the view that 'joking' that a patient sounded 'like an alarm' was conduct that fell far below the standard of a nurse and amounted to misconduct.

Charge 2

It follows that due to charges 1a), 1b) and 1c) amounting to misconduct that charge 2 also falls far below the standard expected of a nurse and amounted to misconduct.

The panel found that Mr Gentile's actions did fall seriously short of the conduct and standards expected of a registered nurse and the charges individually amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Gentile'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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To earn and maintain that trust, nurses must make sure that

their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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) [...]'*

The panel finds that a patient was put at risk and was caused pain and/or distress as a result of Mr Gentile's misconduct. Mr Gentile's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered Mr Gentile's reflective statement.

In this Mr Gentile states:

'I have thought long and hard about my omissions on that date. With the benefit of hindsight I should have certainly challenged the CSW as soon as I noticed she was using her phone on duty. I should have ensured that any video she took was immediately deleted. I deeply regret my omission that day and wish to apologise to the patient and his family, also the Trust. I will try my best to ensure that such a situation never arises again. Should I ever face such a situation in future I would definitely challenge the other member of staff right away and report the matter to the nurse in charge.'

He also states:

'I did not mean to disrespect anyone. I am a man of good character and I feel deeply sorry for what has happened... Every time I think about that video, I feel a heavy stone on my stomach. I thought if relatives saw that video, they would feel so disappointed. I feel sorry deepest is my heart toward the patient and my employer because they trusted me and it is like they have lost the trust, and it will never be as before now.'

'Trust take years to build, seconds to break and exceptionally long time to repair. I would do all my best to repair it if I would have another chance. I deeply regret my omission that day and wish to apologise to the patient, his family and the employer. I promise that I will do my best to ensure that such a situation never arises again.'

The panel found that Mr Gentile made admissions early in the local investigation. Mr Gentile has demonstrated some understanding that what he did was wrong and how this impacted negatively on the patient's family and his employer. The panel noted that Mr

Gentile has apologised for his misconduct and has explained how he/ would handle the situation differently in the future. However, the panel was of the view that Mr Gentile did not reflect on how his actions impacted on the patient and reputation of the nursing profession. The panel was of the view that Mr Gentile's insight was still developing. The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Gentile has taken steps to strengthen his practice. The panel took into account for example: the additional, relevant training Mr Gentile has undertaken which included training on dementia; pain management; dealing with stress, anxiety, depression and violence in the workplace; deprivation of liberty safeguards; caring for the elderly; and privacy and dignity.

However, the panel concluded that there is a risk of repetition based on Mr Gentile's developing insight. 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in a case where the nurse failed to preserve a patient's dignity and therefore also finds Mr Gentile's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 9 months. The effect of this order is that the NMC register will show that Mr Gentile's registration has been suspended.

Representations on sanction

The panel noted the NMC's written submission, which states:

'In this case, the conduct of Mr Gentile is serious, the patient was treated with a lack of respect, compassion and dignity which would cause distress to the patient and their family. There is a real risk of harm to the public should such conduct be repeated and the NMC submit that the appropriate sanction to mark the seriousness of the case, to protect the public and to maintain confidence in the profession and the NMC as a regulator is a suspension order with a review. The misconduct relates to Mr Gentile's clinical practice and does suggest attitudinal concerns, there is no evidence to support that they are deep seated. This is because Mr Gentile has shown that he understands what he did was wrong and has, belatedly, shown some remorse. While there remains a risk of repetition as Mr Gentile has demonstrated limited insight there is some evidence that Mr Gentile has been able to practise without a reoccurrence of his misconduct, albeit in nursing practice outside the UK.

The NMC has considered whether a striking off order would be appropriate. However, as Mr Gentile has demonstrated some remorse, he has provided reflective pieces and has demonstrated limited insight, it is the NMC's contention that the attitudinal concerns are not so deep seated as to be incurable. As a suspension order (which must be reviewed before its expiry) will prevent Mr Gentile from resuming unrestricted practice until he has satisfied a panel of the Fitness to Practise Committee that he has fully addressed the concerns, it is possible to protect the public with a sanction less severe than a striking off order. As this was a single incident for which Mr Gentile has shown some remorse and insight, the

public's confidence in the profession can be maintained by a long suspension order. For these reasons a striking off order would be disproportionate.'

Decision and reasons on sanction

Having found Mr Gentile'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 Sanctions Guidance (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 position of trust and seniority of relationship with Colleague A; and
- Putting a patient at risk of harm

The panel also took into account the following mitigating features:

- Genuine remorse;
- Developing insight;
- Early admissions;
- Engaged with process fully; and
- Relevant training

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Gentile's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour*

was unacceptable and must not happen again.' The panel considered that Mr Gentile's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Gentile's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

However, the panel was of the view that the placing of conditions on Mr Gentile's registration would not adequately address the seriousness of this case where a patient had been mocked, their privacy disregarded, and their dignity not preserved. It is of the view that further assurances are necessary over a period of time about the strengthening of Mr Gentile's practice and in particular in his professional attitude toward the care of elderly and vulnerable patients.

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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was satisfied that this was a single episode of misconduct which does not demonstrate a harmful deep seated personality or attitudinal issue. The panel had no evidence that Mr Gentile has since repeated this behaviour. Finally, Mr Gentile has demonstrated developing insight into his misconduct.

The panel was therefore satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Gentile's case to impose a striking-off order.

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

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

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

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

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- An updated reflective piece in a recognised format, such as Gibbs' Reflective Cycle, focussing on the impact of the incident on the patient himself and the reputation of the profession as a whole;
- Evidence of further training undertaken, these can be online courses suitable for UK nurses concerning Safeguarding, Equality and Diversity, Deprivation of Liberty, acting in the best interest of patients, in particular, dealing with elderly and vulnerable patients;
- An up to date reference from Mr Gentile's employer. This should preferably be a senior nurse; and
- Mr Gentile's continued participation.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Gentile's own interests until the suspension 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:

'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 18 month 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.'

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 the 28 day appeal period and any period of appeal.

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

That concludes this determination.