

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

**Substantive Meeting
Wednesday 17 April 2024 – Thursday 18 April 2024**

Virtual Meeting

Name of Registrant: Hasan Abusheikha

NMC PIN: 02G08740

Part(s) of the register: Adult Nurse, Sub Part 1, Level 1 (24 July 2002)

Relevant Location: Hertfordshire

Type of case: Conviction

Panel members: Paul O'Connor (Chair, Lay member)
Jane Jones (Registrant member)
Jocelyn Griffith (Lay member)

Legal Assessor: Caroline Hartley

Hearings Coordinator: Zahra Khan

Facts proved: Charges 1a, 1b and 1c

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 the Notice of Meeting had been sent to Mr Abusheikha's registered email address by secure email on 13 March 2024.

Further, the panel noted that the Notice of Meeting was also sent to Mr Abusheikha's representative on 13 March 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, that the meeting will take place on or after 15 April 2024, and the fact that this meeting would be held virtually.

In light of all of the information available, the panel was satisfied that Mr Abusheikha 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 7 March 2023 in the Crown Court at St. Albans, were convicted of the following offences:

- a. 3 counts of fraud by abuse of position, contrary to section 4 of the Fraud Act 2006
- b. 2 counts of bribery, contrary to section 2 of the Bribery Act 2010
- c. 1 count of theft by employee, contrary to section 1 of the Theft Act 1968

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

Background

On 8 May 2017, the NMC received a referral from The West Hertfordshire Hospital NHS Trust (“the Trust”) in relation to Mr Abusheikha, stating that he had been suspended from work due to allegations of dishonesty.

The conviction results from incidents that took place while Mr Abusheikha was working as a Band 7 Interim Operational Theatre Manager. Between 2012 and 2017 it was his role to obtain equipment for the Trust.

Mr Abusheikha, dishonestly and for his own gain, abused his position of Trust in that he:

- a. Purchased a Leica OHS-1 Microscope initially for himself from an auction site leading the referrer to believe it was from a contact in Jordan. He then sold it onto the Trust for profit without disclosing that he had a financial interest in the microscope.
- b. Between 1 March 2012 and 1 October 2017, accepted bribes from others in that he purchased goods for the Trust from their respective companies instead of from their competitors, disregarding whether these companies offered the best value for the Trust’s money. In exchange for the favourable treatment, Mr Abusheikha received a percentage of the sale price of goods supplied to the Trust.
- c. Between 1 February 2012 to 1 November 2015, procured goods as charitable from WG healthcare, which he supplied to others, who in turn sold them to the Trust. Mr Abusheikha received a significant percentage from these companies for his role in procuring the goods and facilitating the sales to the Trust and did not disclose his financial interest in those goods.
- d. On or before 12 April 2017, stole surgical implants which belonged to the Trust.

It is estimated that Mr Abusheikha defrauded the NHS of around £600,000 in total. The case was reported to the police. A search warrant was executed on Mr Abusheikha’s

home address in April 2017, where they found medical equipment believed to be worth in excess of £100,000.

The case was also investigated by NHS Counter Fraud Authority. The CPS prosecuted the case at St. Albans Crown Court.

On 7 March 2023, Mr Abusheikha was convicted after his trial and the case was adjourned for sentencing.

On 24 May 2023, Mr Abusheikha was sentenced to a total of 11 years imprisonment for a total of 6 dishonesty related offences.

Decision and reasons on facts

The charges concern Mr Abusheikha's conviction and, having been provided with a copy of the certificate of conviction dated 7 March 2023 and the Judge's Sentencing Remarks dated 24 May 2023, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
 - (b) *the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Abusheikha's fitness to practise is currently impaired by reason of Mr Abusheikha's conviction. 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.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes 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 panel had regard to the NMC's written submissions:

"The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is: "Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.

Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

*When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and**

Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

- 1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- 3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- 4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future. It is the submission of the NMC that 1, 2, 3 and 4 can be answered in the affirmative in this case.*

Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. The NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

Mr Abusheikha has been convicted of serious dishonest offences which relate directly to his professional practice. He abused his position of trust and the power conferred to him by his employment as a registered nurse in a clinical setting. Mr Abusheikha's actions impacted patient safety in that they defrauded the NHS of significant amounts of money for his own personal gain. This placed the Trust and patients at risk of harm if the equipment failed whilst in use in theatre because the Trust would not be able to seek indemnity from a manufacturer and the Trust could not insure it. Further, Mr Abusheikha stole surgical implants belonging to the Trust and various companies that supplies implants on consignment to the Trust, thereby depleting stock available for colleagues and patients.

Mr Abusheikha's offending conduct has brought the nursing profession into disrepute and is liable in the future to bring the profession into disrepute as the public would be seriously concerned to hear of a nurse committing such offences. The outcome of the criminal proceedings in this case causes further damage to the reputation of the nursing profession as he received a lengthy custodial sentence of 11 years. Mr Abusheikha's offending conduct breaches fundamental tenets of the profession. Nurses are expected to act with integrity and trustworthiness at all times. They are expected to treat people with dignity and keep people safe. The Registrant's dishonest and fraudulent actions can be properly characterised as serious criminal conduct that undermines the integrity of the profession. His conduct and the conviction amount to a serious departure from the accepted standards and proper behaviour expected of a registered nurse. The conduct suggests deepseated attitudinal concerns, and has clearly brought the reputation of the nursing profession into disrepute.

Further, The Code (NMC, 2015), requires that nurses and midwives keep to the laws of the country in which they practise and uphold the reputation of the professions at all times and therefore the Registrant has breached the fundamental tenets of the profession. 21. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

The NMC's guidance on seriousness includes examples of conduct which is so serious that it may be difficult to put right, and may result in harm if not put right. These include abuse of a position of power to exploit or obtain a benefit and failure to uphold the reputation of the profession by not acting with honesty and integrity. The NMC's guidance on criminal convictions sets out that offending involving exploiting people provides particularly strong evidence of risk to the public and is so serious that it is more difficult to put right. In such serious cases, evidence of insight from the registrant showing they have reflected on the concerns and demonstrated insight is essential.

The NMC submits that Mr Abusheikha has not displayed meaningful sufficient insight. In his response to the Case Examiners, dated 3 August 2023, he does not accept the concerns or acknowledge the potential risk of harm his conduct poses to patients or public confidence in the profession. It is submitted that Mr Abusheikha has demonstrated no evidence of any meaningful reflection or steps to address his offending behaviour.

It is the submission of the NMC that there is a continuing risk to the public were the registrant to be allowed to practise unrestricted as he would be in a position where he could potentially take advantage of the trust placed in nurses.

The public is placed at risk of harm where a nurse in a position of trust is fraudulently procuring medical equipment for his own financial gain and stealing medical equipment from his workplace. Therefore, a finding of impairment is required for the protection of the public.

In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

“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.”

It is the submission of the NMC that a reasonable and fully informed member of the public would expect a finding of impairment to follow such a serious conviction. Public confidence would be damaged if a finding of impairment were not made. It is therefore submitted that a finding of current impairment is necessary on grounds of public interest to declare and uphold proper standards of conduct and behaviour.”

The panel also had regard to Mr Abusheikha's response form dated 3 August 2023. He stated:

"... for me was brownie point to get higher in my job... I was on my own eyes good on my job, even the witnesses confirm I was safe and Trusted [sic]... I was a victim of my own success..."

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 GMC* [2004] EWHC 2317 (Admin), and *GMC v Meadow* [2007] QB 462 (Admin).

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Abusheikha's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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*
- a) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel endorsed the NMC's written submissions regarding impairment.

The panel found that patients, colleagues, the public, and the nursing profession were put at risk of harm as a result of Mr Abusheikha's actions. Mr Abusheikha's conduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel 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 determined that Mr Abusheikha has no insight at all into his actions and failings. He has disputed the regulatory concerns arising from his convictions and asserted that he was acting in the best interests of the Trust despite the findings of the jury and the sentencing remarks of the Judge. Further, Mr Abusheikha has not demonstrated an understanding of how his actions put patients and colleagues at risk of harm, nor has he demonstrated an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Mr Abusheikha has not apologised for his actions, nor has he sufficiently demonstrated how he would handle the situation differently in the future.

The panel was not provided with any evidence of potential steps Mr Abusheikha has taken to strengthen his practice.

The panel was of the view that there is a real risk of repetition based on Mr Abusheikha's lack of insight and the seriousness of the conviction. 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that, in this case, a finding of impairment on public interest grounds was required.

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

Sanction

The panel decided to make a striking-off order. It directs the registrar to strike Mr Abusheikha off the register. The effect of this order is that the NMC register will show that Mr Abusheikha has been struck-off the register.

In reaching this decision, the panel 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 panel noted that in the Notice of Meeting, dated 13 March 2024, the NMC had advised Mr Abusheikha that it would seek the imposition of a striking-off order if it found Mr Abusheikha's fitness to practise currently impaired.

The panel had regard to the NMC's written submissions:

"The NMC submits that a striking-off order is the proportionate sanction.

The panel may consider that the aggravating factors are:

- abuse of a position of trust*
- lack of insight into failings*
- a pattern of misconduct over a period of time*
- conduct which put patients at risk of suffering harm.*

The panel may consider there are no mitigating factors.

Taking no further action or imposing a caution order would not be appropriate as they would not reflect the seriousness of the convictions or be sufficient to protect the public and the public interest, in maintaining confidence in the professions and the NMC as the regulator.

A conditions of practice order would not be appropriate as this is not a case which relates to clinical concerns that could be addressed with conditions. This case involves a registrant who has been convicted of bribery, theft and fraud by abuse of position. A conditions of practice order is not sufficient to mitigate the significant risks in this case, protect the public or satisfy the significant public interest.

A suspension order would only temporarily protect the public. It would not be sufficient to satisfy the significant public interest in this case or mark the seriousness of the convictions. Further, the sentence of 11 years imprisonment was imposed on 24 May 2023. As the sentence is still ongoing, the case of Fleischmann [2005] EWHC 87 (QB) should be taken into consideration. In general, the rule is that a nurse, midwife or nursing associate should not be permitted to start practising again until they have completed a sentence for a serious offence. This case falls under this category as the convictions are in relation to serious offences and have resulted in a lengthy sentence.

The only appropriate and proportionate sanction in this case is that of a striking-off order. The registrant's offending behaviour is fundamentally incompatible with him remaining on the register.

With regard to the NMC's sanctions guidance, the following aspects have led to this conclusion:

- the conviction raises fundamental questions about the registrant's professionalism and suitability to remain on the register;*
- there appears to be a deep-seated attitudinal/behavioural problem;*
- the offending behaviour is extremely serious and difficult to put right;*
- public confidence in the profession cannot be maintained if the registrant is not removed from the register.*

The sanctions guidance sets out that courts have supported decisions to strike off healthcare professionals where there has been a lack of probity, honesty or trustworthiness. Mr Abusheikha has not engaged in a meaningful way to demonstrate insight or take steps to remediate. A striking-off order is therefore the

only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.”

Decision and reasons on sanction

Having found Mr Abusheikha'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 endorsed the NMC's written submissions regarding sanction.

The panel took into account the following aggravating features:

- Abuse of a position of trust.
- No insight into failings.
- A pattern of premeditated misconduct over a long period of time.
- Conduct which put patients and colleagues at risk of harm.
- Mr Abusheikha was in a senior position of a Band 7 Operational Theatre Manager.
- The misconduct was for personal financial gain.
- The misconduct was for personal gain in order to seek promotion.

The panel did not find any 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, the conviction, and the public protection issues identified, an order that does not restrict Mr Abusheikha'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 Abusheikha'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 Mr Abusheikha'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 was not something that can be addressed through retraining as Mrs Abusheikha presents deep-seated attitudinal issues. Further, the panel concluded that the placing of conditions on Mr Abusheikha'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; and*
- *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 Mr Abusheikha's actions is fundamentally incompatible with Mr Abusheikha 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?*

Mr Abusheikha's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Abusheikha's actions were serious and to allow him 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 Mr Abusheikha's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Abusheikha 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 Mr Abusheikha's own interests 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:

"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 considerate is submitted that 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, it is submitted that 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 conviction 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 which an appeal may be heard.

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

That concludes this determination.