Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Meeting
Tuesday, 14 May 2024 – Wednesday, 15 May 2024

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant:	Akinkunmi Akintunde
NMC PIN:	04D0773O
Part(s) of the register:	RN3: Mental health nurse Level 1 – 19 April 2004
Relevant Location:	Bristol
Type of case:	Misconduct
Panel members:	Bryan Hume (Chair, Lay member) Mark Gibson (Registrant member) Christine Moody (Lay member)
Legal Assessor:	Alice Robertson Rickard (14 May 2024) Caroline Hartley – (15 May 2024)
Hearings Coordinator:	Samara Baboolal
Facts proved:	Charges 1, 2, 3, 4, 5, 6, 7(a), 7(b), 8(a), 8(b), 8(c)
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Suspension order (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 the Notice of Meeting had been sent to Mr Akintunde's registered email address by secure email on 15 April 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, the time, dates and venue of the meeting.

In the light of all of the information available, the panel was satisfied that Mr Akintunde 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 charges (as amended)

That you, a registered nurse:

1. On 2 November 2020 failed to administer Senna to Resident C. **[PROVED]**

2. On 2 November 2020 signed Resident C's MAR chart to confirm Senna had been administered to Resident C when it had not. **[PROVED]**

3. On 3 November 2020 failed to administer Levothyroxine to Resident B. **[PROVED]**

4. On 3 November 2020 signed Resident B's MAR chart to confirm Levothyroxine had been administered to Resident B when it had not. **[PROVED]**

5. On 12 November 2020 failed to administer Memantine 20mg to Resident A. **[PROVED]**

6. On 12 November 2020 failed to sign the MAR chart to confirm whether or not Resident A had been administered Memantine 20mg. **[PROVED]**

7. Between 13 and 20 November 2020 in relation to Resident A's MAR chart for 12 November 2020:

    a. Marked the chart with your initials to indicate you had administered Memantine 20mg to Resident A. **[PROVED]**
    b. After marking the chart with your initials, you added an "S" to indicate Resident A had been asleep. **[PROVED]**

8. Your conduct at charge 7 (a) and/or (b) was dishonest because:

    a. You amended Resident A's MAR chart to prevent your record keeping failure being discovered in a future audit. **[PROVED]**
    b. You intended any reader to understand you had created a contemporaneous record on 12 November 2020 when you had not. **[PROVED]**
    c. You intended any reader to understand the records to be accurate, when you knew they were not. **[PROVED]**

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

Amendment of charges

The panel noted that there is a typographical error on Charge 8, accepted legal advice, and decided to amend the charges to correct the error. It determined that there would be no unfairness to Mr Akintunde.

"That you, a registered nurse:

8. Your conduct at charge ~~9~~ **7**(a) and/or (b) was dishonest because:

    a. You amended Resident A's MAR chart to prevent your record keeping failure being discovered in a future audit.
    b. You intended any reader to understand you had created a contemporaneous record on 12 November 2020 when you had not.
    c. You intended any reader to understand the records to be accurate, when you knew they were not."

Background

Mr Akintunde was referred to the NMC on 5 February 2021 by the Home Manager at Brunelcare (the Home), where he was employed as a registered nurse.

The charges arose in 2020 when it was allegedly noticed that Resident C had not received their Senna medication which should have been administered by Mr Akintunde. The Senna was still in its box; however, the Medication Administration Record (MAR) chart had been signed by Mr Akintunde, indicating that it was given to Resident C.

On 3 November 2020 it was allegedly noticed that Resident B had not received their Levothyroxine at 07:00, which should have been administered by Mr Akintunde. The tablet was still in the blister pack; however, the MAR chart was signed by Mr Akintunde to indicate that it was given.

On 13 November 2020, it was allegedly noticed that a blister pack from the previous day still contained a tablet of Memantine for Resident A. The MAR chart had not been signed on this occasion.

It is alleged that on 19 November, Mr Akintunde noticed that he had left the MAR chart for Resident A unsigned on the night of 12 November 2020. He then signed his initials on the MAR and then realised that the medication was still in the blister pack. He then marked over his initials with an 's' for 'sleep', indicating that the resident was asleep at the time that the medication was supposed to be administered.

A local investigation was undertaken by the Home Manager which led to a disciplinary hearing on 21 December 2020.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case, including Mr Akintunde's responses together with the representations made by the NMC.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Home Manager at the Home;
- Witness 2: Part-time registered nurse at the Home;
- Witness 3: Band 5 registered nurse at the Home;
- Witness 4: Band 5 registered nurse at the Home;
- Witness 5: Full time Unit leader at the Home.

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 the NMC and the responses from Mr Akintunde.

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

Charge 1

> "That you, a registered nurse, on 2 November 2020 failed to administer Senna to Resident C."

This charge is found proved.

In reaching this decision, the panel had regard to Witness 3's statement which corroborates that the MAR chart had been signed when the Senna medication intended for Resident C was still in the box. Witness 3's statement confirms that the signature on the MAR chart for 26 October 2020 had been signed by Mr Akintunde, and when spoken by Witness 3 about this, he said words to the effect of "*oh okay, I must have mis looked".*

The panel further took into account the documentary evidence, namely the MAR chart dated 26 October 2020, the Incident form dated 4 November 2020, and the Medications error checklist dated 4 November 2020.

The panel accepted the evidence from Witness 3 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 2

> "That you, a registered nurse, on 2 November 2020 signed Resident C's MAR chart to confirm Senna had been administered to Resident C when it had not."

This charge is found proved.

In reaching this decision, the panel took into account Witness 3's statement, the MAR chart for Resident C, the incident form for Resident C dated 4 November 2020 and the medication error checklist for Resident C dated 4 November 2020.

Witness 3's statement and the MAR chart dated 26 October 2020 corroborates that Mr Akintunde signed Resident C's MAR chart despite that he had not administered the Senna medication. The panel noted that there is no further evidence before it to suggest that the medication had been given. The signature in the MAR chart is indicated as '*AA*', which the panel believed to be Mr Akintunde's signature.

The panel also took into account the incident report and that Witness 3 reported the incident to management.

The panel was satisfied that the incident form for Resident C had greater weight as it was produced on 4 November 2020, which was one day after Witness 3 noticed the incident, and two days after the incident occurred.

The panel accepted the evidence from Witness 3 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 3

> "That you, a registered nurse, on 3 November 2020 failed to administer Levothyroxine to Resident B."

This charge is found proved.

In reaching this decision, the panel took into account the medication error checklist and action plan from the Home, dated 3 November 2020 and the statement of Witness 4.

The medication error checklist and action plan created by Witness 4 makes it clear that Mr Akintunde had not administered the medication. It says:

> '*When I looked at the MAR chart, [Mr Akintunde] had signed to say it had been given. I phoned [Mr Akintunde] and he said he didn't give it'.*

The panel accepted the evidence from Witness 4 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 4

> "That you, a registered nurse, on 3 November 2020 signed Resident B's MAR chart to confirm Levothyroxine had been administered to Resident B when it had not."

This charge is found proved.

In reaching this decision, the panel took into account the medication error checklist and action plan from the Home, dated 3 November 2020 and the statement of Witness 4. It also took into account the MAR chart dated 20 October 2020 which contains a signature which appears to have been crossed out, that shows that medication was administered to Resident B, but there is a further signature from Witness 4.

The panel noted that Mr Akintunde had confirmed to Witness 4 on the telephone that he had not administered the medication, despite there being a signature on the MAR chart for Resident B.

The panel accepted the evidence from Witness 4 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 5

> "That you, a registered nurse, on 12 November 2020 failed to administer Memantine 20mg to Resident A."

This charge is found proved.

In making this decision, the panel took into account the statement of Witness 3, the medication error checklist for Resident A dated 13 November 2020 and the photograph of the Memantine medication.

Witness 3 stated that they noticed on 13 November 2020 that the blister pack for the previous day tablet had not been administered to Resident A. They stated that upon checking the MAR chart for Resident A, it was not signed, which indicated the Mr Akintunde had not administered the medication to Resident A.

The panel took into account the photograph produced by Witness 3 of the blister pack of medication which shows that the relevant day's dose was not given out.

The panel accepted the evidence from Witness 3 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 6

> "That you, a registered nurse, on 12 November 2020 failed to sign the MAR chart to confirm whether or not Resident A had been administered Memantine 20mg."

This charge is found proved.

The panel took into account the statement by Witness 3 which provides that she had checked the MAR chart for Resident A after noticing the blister pack of medication containing the previous day's dose. It noted that Witness 3 provided a medication error checklist for Resident A dated 13 November 2020 and a photo of the blister pack of medication which corroborates her statement.

The panel further noted that Witness 3 said that she spoke to Mr Akintunde about the missed medication, to which he '*did not appear concerned'*.

The panel accepted the evidence from Witness 3 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 7a)

"That you, a registered nurse, between 13 and 20 November 2020 in relation to Resident A's MAR chart for 12 November 2020:

a. Marked the chart with your initials to indicate you had administered Memantine 20mg to Resident A."

This charge is found proved.

In making this decision, the panel took into account the statement of Witness 5, the local statement prepared for Witness 1 and Witness 5, handwritten reflections by Mr Akintunde, and email correspondence from Witness 5 to Mr Akintunde stating that there was a signature on the MAR chart for Resident A despite no medication being administered.

The panel noted the local statement from Witness 3 which was reported to Witness 1 and Witness 5, confirmed that the medication for Resident A was not given on 12 November 2020, and the MAR chart was left blank. However, on 20 November Witness 3 and Witness 4 found Mr Akintunde's initials on the MAR chart for the date 12 November 2020.

The panel accepted the evidence from Witness 3 and Witness 5 and notes that while Mr Akintunde has not admitted to the allegation, he has not denied it. The panel therefore found that this charge is proved on the balance of probabilities.

Charge 7b)

"That you, a registered nurse, between 13 and 20 November 2020 in relation to Resident A's MAR chart for 12 November 2020:

b. After marking the chart with your initials, you added an "S" to indicate Resident A had been asleep."

This charge is found proved.

In reaching this decision, the panel took into account the statement of Witness 5, the local statement from Witness 3, and the record of the discussion between Mr Akintunde and Witness 5 on 1 December 2020.

The panel noted that the record of the discussion contained an admission made by Mr Akintunde that he noticed a gap on the MAR chart for Resident A, and signed his initials as he was aware that there was an upcoming audit that would have picked up this omission. As he realised that the tablet was still in the blister pack, he wrote an '*S*' for sleeping over the top of his signature. Mr Akintunde appears to have done this as he was concerned about the audit.

The panel further took into account the statement from Witness 3 that confirmed that there was no signature on November 13, 2020, however on the 20 November 2020 Mr Akintunde's signature was present with a signed '*S*' for sleeping.

Charge 8

"That your conduct at charge 7(a) and/or (b) was dishonest because:

a. You amended Resident A's MAR chart to prevent your record keeping failure being discovered in a future audit.
b. You intended any reader to understand you had created a contemporaneous record on 12 November 2020 when you had not.
c. You intended any reader to understand the records to be accurate, when you knew they were not."

This charge is found proved.

In reaching this decision, the panel determined that Mr Akintunde's intention was to falsify the MAR chart so that any person looking at it would not recognise that there were instances that he did not administer medication to residents at the Home.

The panel considered that Mr Akintunde as a registered nurse would have been familiar with completion of these records, and this indicates that these were intentional and dishonest falsifications.

The panel further noted the Home's internal investigation, particularly the record of the conversation dated 1 December 2020, in which Mr Akintunde admitted that he noticed the gap in Resident A's MAR chart and added his signature and an '*S*' as he was concerned that this gap would be picked up in an audit.

The panel considered that a member of the public fully appraised of this information would view Mr Akintunde's conduct as dishonest, as he was aware that he had not administered medication to a resident at the Home and attempted to cover this up later.

The panel took into account the reflective statement provided by Mr Akintunde, where he provided mitigating explanations that he had not taken his age into account. The panel noted that this demonstrates that Mr Akintunde views these incidents as matters of competence rather than instances of misconduct. It was of the view that Mr Akintunde should have been aware that he should have not amended the resident's MAR chart, should have been aware that any reader would think that the record had been completed honestly when it had not, and that his actions put patients at risk of harm and put the reputation of the nursing profession into disrepute.

The panel took into account Mr Akintunde's handwritten reflection which contained no dates or times or specificity. It noted that the reflection had provided the following explanation:

> *'[There was a] mix up with who to do the medication but when I came into the unit resident (sic) was sleeping. Forget (sic) to put appropriate thing (sic) but later when I return (sic) to duty. I but (sic) a sign for sleeping as the case was (s)'.*

The panel noted that this explanation differed from the one provided at the local investigation, where Mr Akintunde said that he was concerned about the gap in the MAR chart being noticed during the audit process.

However, the panel determined that the admission in the formal interview with the Home holds more weight as the interview is a formal investigation with formal documentation, as opposed to Mr Akintunde's handwritten reflection.

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 Akintunde'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 ability to practise kindly, safely and professionally.

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 Akintunde's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The panel had regard to the following written submissions on misconduct contained within the NMC's Statement of Case:

> *'13. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*
>
> > *'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and*

standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

14. As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively

'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.

And

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

15. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.

16.We consider the following provisions of the Code have been breached in this case:

Keep clear and accurate records relevant to your practice
10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event
10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need
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

Uphold the reputation of your profession at all times

20.1 Keep and uphold the standards and values set out in the Code.
20.2 act with honesty and integrity at all times …

17.We consider the misconduct serious. Mr Akintunde made medication errors and despite further training and monitoring he continued to make similar errors over a period of time. These errors fall far below the standards expected of a registered nurse and would be found deplorable by fellow nursing professionals. Not only did Mr Akintunde fail to administer medication and fail to keep accurate records, he was also dishonest and showed a lack of integrity in an attempt to cover up his mistakes. Accordingly, his actions amount to misconduct.'

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)

The NMC, in its written Statement of Case, invited the panel to consider the following in respect of impairment:

'18.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?"

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

20.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.

21.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.

22.It is the submission of the NMC that all 4 questions can be answered in the affirmative in this case. Mr Akintunde's actions resulted in residents not receiving their medication. Mr Akintunde failed to carry out the basics of the profession and was dishonest in attempting to cover up some of these failings.

23.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.

24.We consider the registrant has displayed limited insight.

25.We take this view having noted the content of Mr Akintunde's local reflective piece. Mr Akintunde accepts responsibility for medication errors and poor practice, he says the errors were committed unknowingly because he allowed himself to be distracted. He acknowledges that he should have done things differently and says he understands how to act differently in the future to avoid

such occurrences by being more careful, keeping a notebook to aid his memory, to refresh his medication training and to read the NMC's medication guidance. Mr Akintunde goes on to accept that his actions might have impacted on the health of the residence in his care and his colleagues.

26.In relation to the falsification of records Mr Akintunde accepted locally that he noticed a gap on the MAR chart of Resident A a week late and signed his initials as he was concerned it would be picked up on an audit. However, when he noticed the tablet still in the blister pack he amended his signature to read 'S' for sleeping. While this shows Mr Akintunde has taken responsibility for and explained his actions he has not provided any insight into his dishonesty.

27.We consider the registrant has undertaken some relevant training in respect of the issues of concern. The following training is relevant

- *Medication Administration 2 November 2022*
- *Medication Management 12 April 2022*

28.We note the Mr Akintunde has not worked since the issues of concern. Mr Atkintunde has provided testimonials but not from current colleagues or employers.

29.Mr Akintunde has previously been referred to the NMC (069106/2018) in relation to poor medication management. These allegations are unproven and not adduced here as evidence of the underlying conduct. Rather, the fact of the allegation itself is relied upon to demonstrate that Mr Akintunde was 'on notice' that this sort of conduct would attract regulatory scrutiny. A reflective practitioner would be expected, even with unproven allegations to consider why those allegations had been made and to see to improve their practice in that area. The registrant now faces similar allegations which suggests he has limited insight into proper professional standards in this area. That he has limited insight is more concerning than it would be for a registrant whose practice in this area has never been called into question.

30.We consider there is a continuing risk to the public due to the registrant's lack of

full insight, his failure to undertake sufficient and up-to-date relevant training, and by not having the opportunity to demonstrate strengthened practice through work in a relevant area.

Public interest

31. 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."

32.Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/or to maintain public confidence in the profession.

33.In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

34.However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.

35.We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. The public rightly expects nurses to carry out the fundaments of nursing, particularly medication administration and record keeping, and to act with honesty and integrity at all times. The registrant's conduct engages the public interest because he falsified medical records of residents in his care and was dishonest.'

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

'10 Keep clear and accurate records relevant to your practice

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

10.2 Identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

10.3 Complete records accurately and without any falsification […]

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

14.2 Explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers

20 Uphold the reputation of your profession at all times

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

20.2 Act with honesty and integrity at all times […]'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel was of the view that there was no misconduct found in Charges 1, 2, 3, 4, 5 and 6, as these were instances of single medication errors, and when taken into account on their own, are not serious enough to amount to misconduct.

However, the panel determined that in relation to Charge 7a, 7b and Charge 8a, 8b, 8c, Mr Akintunde's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel considered that the charges set out in Charge 7a and 7b were serious and related to completing important medical records incorrectly and inaccurately and consequently putting patients at a risk of harm.

The panel also determined that Charge 8 was very serious and amounted to serious misconduct as the charges relate to dishonesty. It was of the view that honesty and integrity are core tenets of the nursing profession and are important for maintaining trust between patients and healthcare providers.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC guidance on impairment, found in 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. 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 fitness to practise is impaired in the sense that 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 found that patients were put at risk as a result of Mr Akintunde's misconduct. Mr Akintunde's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that Mr Akintunde has taken no real steps to address the concerns raised by the facts found proved. The panel did note that Mr Akintunde has undertaken some online training courses but determined that this is satisfactory only as a refresher. The panel found that it could not rely on Mr Akintunde's own endorsement of completion of training. The panel further noted that there is no evidence before it as to how Mr Akintunde has put this training into practice.

The panel took into account that the medication errors in this matter can be addressed and that there are some reflections provided by Mr Akintunde with some insight demonstrated. However, it noted that there has been no reflection in relation to the dishonesty element of the facts found proved. The panel was also of the view that Mr Akintunde's reflections were very limited and vague.

The panel considered the positive testimonials provided by Mr Akintunde but noted that these are dated from 2022. The panel also noted that he has not undertaken work since 2020 and consequentially, there is a risk of harm that remains.

The panel determined that the concerns raised in the facts found proved are serious as they relate to a registered nurse failing to administer medication to a resident in their care, and then attempting to falsify documentation to prevent this error from being noticed. The panel determined that a finding of impairment is necessary on the ground of public

protection, as his conduct put a patient in his care at a risk of harm, and his insufficient insight raises a risk of repetition.

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

The panel determined that a finding of impairment on public interest grounds is required as well-informed members of the public would be very concerned to learn that a nurse was dishonestly covering up medication errors and allowed to practise without restrictions.

Having regard to all of the above, the panel was satisfied that Mr Akintunde'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 Akintunde's registration has been suspended.

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

Representations on sanction

The panel noted that in the NMC's Statement of Case attached to the Notice of Meeting, the NMC had advised Mr Akintunde that it would seek the imposition of a 6-month suspension order with a review if it found Mr Akintunde's fitness to practise currently impaired.

In its written submissions, the NMC stated:

‘36.We consider that a suspension order for 6 months, with review, is the appropriate and proportionate sanction in this case.

37.Considering the sanctions in order of least restrictive first, it is submitted that taking no action and a caution order would be completely insufficient in addressing the seriousness of the charges. NMC guidance makes clear that a caution order is the least restrictive sanction which will only be suitable where the nurse presents no risk to the public. Given the charges in this case, there remains significant risk to the public.

38.A conditions of practice order would not address the seriousness of this case, particularly given the dishonesty concerns, and Mr Akintunde’s lack of insight and remediation. This gives rise to a very real risk of repetition and there are no conditions that could be formulated to address the attitudinal concerns in this case. Deliberately covering up when things have gone wrong is very serious.

39.A suspension order would be a sufficient sanction for this case. At present, Mr Akintunde has not provided full insight into his behaviour or fully remediated his practice. He has failed to show insight into the seriousness of his dishonesty and lack of candour. However, not all dishonesty is equally serious, and conduct may be considered less serious if, as in this case, it is a one-off incident and spontaneous in nature. A suspension order would be the appropriate and proportionate sanction as it would protect the public by preventing Mr Akintunde from practicing for a period of time and providing him with the opportunity to reflect further, demonstrate developing insight and strengthen his practice. A suspension order would also mark the importance of maintaining public confidence in the professions and would send a clear message about standards and behaviour required of a registered nurse.

40.A suspension order for 6 months would be appropriate to allow Mr Akintunde to reengage with the NMC, demonstrate insight and strengthen practice.’

Decision and reasons on sanction

Having found Mr Akintunde'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:

- Mr Akintunde's conduct put patients at a risk of harm.
- Mr Akintunde's limited insight, particularly regarding dishonesty.
- Mr Akintunde's lack of candour in accordance with his duties.
- Mr Akintunde's actions were deliberate.

The panel did not identify 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.

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 Akintunde'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 Akintunde'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 Akintunde'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;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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.*

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 it related to dishonesty.

Furthermore, the panel concluded that the placing of conditions on Mr Akintunde's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The misconduct did not take place over an extended period of time and was a one-off incident. The dishonesty relates directly to an error made in the course of Mr Akintunde's practice and is on the lower spectrum of seriousness. The suspension order will also allow Mr Akintunde to strengthen his practice through further training and reflection.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in Mr Akintunde'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 Akintunde. 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 9 months was appropriate in this case in order to allow Mr Akintunde to reflect on his actions, remediate, and gain the necessary insight to allow him to return to practice safely.

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:

- Engagement with the NMC, including Mr Akintunde's attendance at a future review.
- Evidence of further training specific to the charges brought before the panel in particular: medication management, accurate contemporaneous record keeping, and ethical nursing practice.
- References from any paid or unpaid work attesting to Mr Akintunde's honesty.
- Confirmation of whether Mr Akintunde intends to continue to practice as a nurse.
- A reflective piece using a recognised model, particularly addressing the dishonesty charge and record keeping.

This will be confirmed to Mr Akintunde in writing.

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 Akintunde'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:

> *'41.If a finding is made that the registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis*

that it is necessary for the protection of the public and otherwise in the public interest.

42.If a finding is made that the registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued registrant we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.'

Decision and reasons on interim order

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

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

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

That concludes this determination.