

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

**Substantive Meeting
8 November 2019**

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

Name of registrant:	Saeeda Kauser
NMC PIN:	09A0292E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult: RNA September 2009
Area of registered address:	Australia
Type of case:	Conviction
Panel members:	Philip Sayce (Chair, Registrant member) Sue O’Sullivan (Registrant member) Paul Leighton (Lay member)
Legal Assessor:	Ian Ashford-Thom
Panel Secretary:	Max Buadi
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse, were convicted at Hornsby Local Court in New South Wales, Australia, on 13 November 2018 of:

1. On 22 February 2018 at Brookvale, did, by deception, that is, by providing Westpac Credit card details ending 4632 in store, dishonestly obtain property to the value of \$25,327.97, using a credit card belonging to Person A. Making the following transactions set out in schedule 1;
2. On 08 March 2018 at Forestville, did, by deception, that is, by providing Westpac credit card details ending 2000 online, dishonestly obtain property to the value of \$10,746.71, using a credit card belonging to Person B. Making the following transactions set out in schedule 2;
3. On 13 March 2018 at Forestville, did, by deception, that is, by providing Westpac credit card details ending 9340 over the phone, dishonestly attempt to obtain life coaching sessions from "The Coaching Room" to the value of \$3135.00 using a credit card belonging to Person C. Making the following transactions set out in schedule 3;

And in light of the above, your fitness to practise is impaired by reason of your conviction/s

Decision and reasons on service of Notice of Meeting

The panel was informed that the Notice of Meeting had been sent to Miss Kauser's registered address by air mail on 1 October 2019.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Kauser has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' (as amended) (the Rules).

The panel noted that the Rules do not require proof of delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Background

On July 2018, the NMC received a referral from Nursing and Midwifery Council of New South Wales ("NMC NSW", Regulator of Health Practitioners). On 25 September 2009 Miss Kauser entered the NMC register. In 2013 she immigrated to Australia from the United Kingdom. In November 2017 Miss Kauser began working for Sydney Skin and Vein Clinic (the Clinic) as a registered nurse with the Australian Health Practitioner Regulation Authority.

Patient 1 underwent day surgery on 22 February 2018. Miss Kauser, between 22 February 2018 and 12 March 2018, made 55 fraudulent transactions to the value of \$25,327.97, using a credit card belonging to Patient 1. Miss Kauser was informed by Patient 1 that her credit card had been stolen. Miss Kauser called Narromine police station, on 15 March 2018, identifying herself as Patient 1 in an attempt to deceive the police into thinking that the credit card was found. She also called Westpac Bank fraud hotline identifying herself as Patient 1 to request information about the fraud.

Patient 2 underwent day surgery on 8 March 2018. On that day Miss Kauser took \$230 in cash from Patient 2's handbag and took a photo of Patient 2's Westpac credit card. Miss Kauser, between 8 March 2018 and 14 March 2018, made 14 fraudulent transactions to the value of \$10,746.71, using a credit card belonging to Patient 2. She also made 6 unsuccessful transactions using Patient 2's credit card.

Patient 3 underwent day surgery on 12 March 2018. On 13 March 2018 Miss Kauser dishonestly attempted to obtain life coaching sessions from "The Coaching Room" to the value of \$3,135.00, using a credit card belonging to Patient 3.

On 19 March 2018, Miss Kauser's employment at the Clinic was terminated.

On 27 April 2018 Miss Kauser was charged at Chatswood police station with multiple counts of Dishonestly Obtain Property by Deception under s 192E(1)(a) of the Crimes Act 1900 and Larceny Value >\$15000 under s 117 of the Crimes Act.

On 13 June 2018 Miss Kauser entered a guilty plea.

On 13 November 2018 Miss Kauser was convicted at Hornsby Local Court of three counts of Dishonestly Obtain Property by Deception under s 192E (1) (a) of the Crimes Act 1900.

Facts

The charge concern Miss Kauser's conviction. The panel noted that Rule 31 (2) and (3) which relate to certificate of convictions only apply to convictions in the United Kingdom.

However the legal assessor reminded the panel that it was entitled to take into account the certificate of convictions as evidence into account in deciding if the burden of proof had been discharged and the facts of the convictions proved.

The panel had a copy of the certificate of conviction which showed that on 13 November 2018, Miss Kauser was convicted of obtaining property by deception at Hornsby Local Court. On the balance of probabilities, and in the absence of any information from Miss Kauser to the contrary, the panel find all the charges proved by virtue of the convictions.

Decision and reasons on impairment

Having found the facts proved, the panel then moved on to consider whether Miss Kauser's fitness to practise is currently impaired as a result of her convictions.

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' ("the Code") in making its decision.

The panel was of the view that Miss Kauser's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. The panel had particular regard to the preamble under the title "Promote professionalism and trust"

"You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public."

The panel considered that Miss Kauser's actions specifically breached the following codes:

1.1 treat people with kindness, respect and compassion;

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

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

20.4 keep to the laws of the country in which you are practising;

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;

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care.

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 fitness to practise is impaired in the sense that s/he:

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

- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that all the limbs of the Grant test were engaged in this case. The panel was of the view that the conviction relates to serious offences. The panel also noted that this was not a single isolated offence. It was sustained over a period of time where substantial amounts of money was stolen from patients under her care.

Further, the panel was of the view that Miss Kauser has breached one of the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel noted that her conduct was dishonest, a misuse of power, deliberate, pre-meditated and violated the trust of her patients.

The panel had regard to the fact that the patients would have been in a vulnerable position at the time as they were undergoing surgery. These patients would have had every reason to believe that their possessions would be safe with Miss Kauser.

The panel also bore in mind that Miss Kauser attempted to deceive the police who were investigating this.

It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to such dishonesty extremely serious.

The panel also took account of the email from Ms Kauser, dated 25 October 2019. It noted that within this email she demonstrated limited remorse, limited insight but provided no information regarding any remediation. The panel concluded that there remains a risk of repetition and therefore a finding of current impairment was required on the grounds of public protection.

The panel also 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 and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel was of the view that a reasonable and fully informed member of the public would expect a finding of impairment to follow such a very serious conviction and would be concerned if impairment were not found. Any other outcome would undermine confidence in the profession and its regulator. The panel therefore determined that a finding of current impairment is also necessary on grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Kauser's fitness to practise is currently impaired by reasons of her convictions.

Determination on Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Kauser off the register. The effect of this order is that the NMC register will show that Miss Kauser has been struck-off the register.

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

Decision and reasons on sanction

Having found Miss Kauser'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. 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:

- Very serious conduct involving the theft of patient belongings resulting in a conviction;
- Breaching the trust of patients while vulnerable
- The risk of harm to her patients (financial and psychological);
- Her course of action was for personal financial gain;
- Pre-meditated deliberate acts;
- Multiple occurrences;
- Limited evidence of remorse;
- Limited evidence of insight;
- No evidence of remediation.

The panel identified a single mitigating factor in that Miss Kauser pleaded guilty.

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

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

from Miss Kauser, there is no information before it that would suggest that she would comply. Furthermore, the panel concluded that the placing of conditions on Miss Kauser's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Kauser's actions is fundamentally incompatible with Miss Kauser remaining on the register.

The panel also bore in mind that the court did convict Miss Kauser. It also noted that she was sentenced to an aggregate term of 7 months, from 13 November 2018 to 12 June 2019, to be served by way of intensive correction in the community. The panel was not seeking to punish Miss Kauser twice in light of this. However, it noted that Miss Kauser's conduct breached the fundamental tenets of the nursing profession. The panel took account of the fact that it had limited evidence of remorse, insight and no evidence of any remediation from Miss Kauser.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Miss Kauser's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Kauser's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel also noted Ms Kauser's stated intention, in an email dated 15 October 2019, of never returning to nursing. Additionally, the panel did not have before it any evidence to suggest that her intention has changed.

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 Miss Kauser's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Miss Kauser in writing.

Interim order

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

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 due to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.