

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**6 & 7 January 2020**

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

<b>Name of registrant:</b>	Grzegorz Wawrzynczak
<b>NMC PIN:</b>	05C0120C
<b>Part(s) of the register:</b>	Registered Nurse - Sub Part 1 Adult Nurse (March 2005)
<b>Area of Registered Address:</b>	Cambridgeshire
<b>Type of Case:</b>	Caution
<b>Panel Members:</b>	Cindy Barnett (Chair, Lay member) Melanie Lumbers (Registrant member) Jane McLeod (Lay member)
<b>Legal Assessor:</b>	James Holdsworth
<b>Panel Secretary:</b>	Alison Martin
<b>Mr Wawrzynczak:</b>	Not present and not represented in absence
<b>Nursing and Midwifery Council:</b>	Represented by Susan Jean, Case Presenter
<b>Facts proved:</b>	All
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim Order:</b>	Suspension order (18 months)

**Details of charge:**

*That you, a registered nurse:*

- 1) *On 23 May 2018 received a conditional caution for common assault and battery in respect of Patient A on 22 April 2018 contrary to Section 39 of the Criminal Justice Act 1988.*

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Wawrzynczak was not in attendance and that written notice of this hearing had been sent to Mr Wawrzynczak's registered address by recorded delivery and by first class post on 5 December 2019. Notice of this hearing was delivered to Mr Wawrzynczak's registered address on 9 December 2019 and signed for in the name of 'Wawrzynczak'.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Wawrzynczak's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Jean submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Wawrzynczak has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

## **Decision on proceeding in the absence of Mr Wawrzynczak**

The panel next considered whether it should proceed in the absence of Mr Wawrzynczak. The panel had regard to Rule 21 (2) which states:

*(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—*

- (a) *shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
- (b) *may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
- (c) *may adjourn the hearing and issue directions.*

Ms Jean invited the panel to continue in the absence of Mr Wawrzynczak on the basis that he had voluntarily absented himself. Ms Jean submitted that, apart from the submission of a written statement by him, there had been no meaningful engagement by Mr Wawrzynczak with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “*with the utmost care and caution*” as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. The panel further noted the case of *GMC v Adeogba [2016] EWCA Civ 162* and the *General Medical Council v Visvardis [2016] EWCA Civ 162*.

The panel noted that Mr Wawrzynczak had not responded to correspondence sent to him by the NMC on 9 August 2019. It also had regard to a note of a telephone call made by Mr Wawrzynczak to the NMC on 30 August 2019 in response to an email of that date from the NMC. During the conversation, Mr Wawrzynczak stated that he is not nursing and will not nurse in the UK ever again and that he does not care “*what the NMC do*”, that he “*will not be engaging at all*”, and that he “*will not ever work in the UK as a*

nurse.” The panel further noted that Mr Wawrzynczak had not responded to a call made to him by the NMC on 17 October 2019 nor had he responded to correspondence sent to him by the NMC on 19 December 2019.

The panel has decided to proceed in the absence of Mr Wawrzynczak. In reaching this decision, the panel has considered the submissions of the case presenter and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mr Wawrzynczak;
- Mr Wawrzynczak has not engaged meaningfully with the NMC since August 2019 and has not responded to letters sent to him about this hearing;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- two witnesses have attended today to give live evidence, another witness is due to give evidence by video-link;
- not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred in 2018;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Wawrzynczak in proceeding in his absence. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel’s judgment, this can be mitigated. The panel can make allowance for the fact that the NMC’s evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the direct consequence of Mr Wawrzynczak’s decision to absent himself from the hearing, waive

his rights to attend and/or be represented and to not provide oral evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Wawrzynczak. The panel will draw no adverse inference from Mr Wawrzynczak's absence in its findings of fact.

## Decision and reasons on application under Rule 19

At the outset of the hearing Ms Jean made a request that parts of the hearing of Mr Wawrzynczak's case be held in private on the basis that proper exploration of his case involves [PRIVATE]. The application was made pursuant to Rule 19 of the Rules.

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

The relevant parts of Rule 19 state:

- 19.—(1) Subject to paragraphs ... and (3) below, hearings shall be conducted in public.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
  - (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
  - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there will be reference to [PRIVATE], the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to

go into private session in connection with [PRIVATE] as and when such issues are raised.



## **Decision and reasons on application pursuant to Rule 31**

Ms Jean applied under Rule 31 for Ms 1 to give her evidence by GoToMeeting video link. She told the panel that Ms 1's health condition prevented her from attending the hearing in person.

She submitted that her evidence was crucial to the charge and pointed out that the panel would be able to view Ms 1 on screen and assess her credibility. She submitted that it would be fair and relevant to allow Ms 1 to give her evidence in this manner.

The panel accepted the advice of the legal assessor who advised the panel of the legal test of relevance and fairness to be applied for such an application and referred to Rule 31 of the Rules. He also referred to the case of *Polanski v Conde Nast Publications Ltd (HL) [2005] UKHL 10*.

The panel took into account that Ms 1's evidence went to the background to the charge and that the charge was in dispute. It noted that it would be able to observe Ms 1's demeanour and credibility and to ask questions. Accordingly, the panel determined that the requirements for fairness and relevance were satisfied and that Ms 1 should be allowed to give evidence by GoToMeeting video-link.

## Background

Mr Wawrzynczak was admitted to the NMC register as an adult nurse in March 2005. Prior to this, he had practised as a nurse in Poland and Germany for some years.

The charges arose whilst Mr Wawrzynczak was employed as a band 5 registered nurse by the neuro and major trauma intensive care unit (NCCU) at Cambridge University Hospital NHS Foundation Trust (the "Trust") where he had been employed since 12 May 2008.

On 8 September 2018 the NMC received a referral from Mr Wawrzynczak himself in relation to a police caution he had received. He provided documentary evidence of the caution. The caution records that on 22 April 2018 Mr Wawrzynczak assaulted Patient A at Addenbrookes Hospital (the "Hospital") by beating him contrary to section 39 of the Criminal Justice Act 1988. The caution records that Mr Wawrzynczak admitted the offence. The first condition of the caution was that Mr Wawrzynczak pays compensation in the sum of £50.00 to Patient A within six weeks from the date of the caution. The second condition was that Mr Wawrzynczak engage and cooperate in the restorative justice process when contact is made by the Cambridgeshire Constabulary. The panel was informed that Mr Wawrzynczak complied with these conditions.

It is alleged that whilst working a night shift on 22 April 2018 and 23 April 2018 on the NCCU, Mr Wawrzynczak was seen by another staff nurse, Ms 2, to smack Patient A on the legs, causing him pain and emotional and psychological distress. Mr Wawrzynczak was also observed by Ms 1 and Ms 2 being verbally abusive to Patient A and trying to forcibly prise apart his legs in order that he could wash Patient A. Patient A was admitted to the Hospital following a fall which resulted in a head injury. Patient A was described as being able to respond to questions using head movements; although verbal communication was limited due to him being on a ventilator.

Following the alleged assault on Patient A, Mr Wawrzynczak was removed from duty. On 12 October 2018 the Trust notified the NMC that Mr Wawrzynczak had resigned.

[PRIVATE]. Mr Wawrzynczak also said that after the incident he personally apologised to Patient A and that he had learnt from the incident.

Although Mr Wawrzynczak admitted the offence of common assault and battery, he has subsequently denied smacking Patient A. In a written statement provided to the NMC Mr Wawrzynczak accepts that he pushed the patient's leg but does not admit that he smacked the patient or turned him roughly.

Ms 2, a staff nurse who was also providing care for Patient A at the time of the incident, sets out in her NMC statement and her local statement to the Trust that she witnessed Mr Wawrzynczak swearing at Patient A, turning him roughly, roughly pulling his legs apart and smacking his legs.

Ms 1, a Health Care Assistant (HCA) who was also present for some of the incident sets out in her NMC statement and in her local statement to the Trust that she witnessed Mr Wawrzynczak holding the patient tightly, rolling him over fast and roughly and raising his voice at Patient A.

Ms 3, a senior sister, sets out in her NMC statement that she attended an investigatory interview with Mr Wawrzynczak two days after the incident and states that he admitted in that interview that he had smacked the patient.

## **Decision on the findings on facts and reasons**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel considered the submissions made by Ms Jean on behalf of the NMC. The panel heard oral evidence from three witnesses called on behalf of the NMC: Ms 1, Assistant Practitioner at the Trust; Ms 2, Staff Nurse at the Trust and Ms 3, Senior Sister at the Trust. The panel heard submissions from Ms Jean on behalf of the NMC.

The panel heard and accepted the advice of the legal assessor.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel has drawn no adverse inference from the non-attendance of Mr Wawrzynczak.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from, and made the following assessments.

### **Ms 1**

The panel found that Ms 1's evidence was at times hazy and her recollection limited but she was however quite clear that Mr Wawrzynczak was not gentle but was quite rough when handling Patient A. The panel found Ms 1 to be helpful.

### **Ms 2**

The panel found Ms 2 to be a fair and helpful witness. She admitted when she could not recall parts of the incident and was clear about those parts that she could recall. Consequently, the panel found her to be a credible and reliable witness.

### **Ms 3**

The panel found Ms 3 was clear about the events and the panel found her to be a credible and reliable witness.

Ms Jean submitted that the three NMC witnesses have been consistent in their evidence and that Ms 1 and Ms 2 have given clear evidence of what they witnessed. Ms Jean drew the panel's attention to the Conditional Caution provided by Mr Wawrzynczak and to the police report which supports the Caution. Ms Jean submitted there is no reason to believe they are not correct and invited the panel to find the charge proved.

The panel considered the charge and made the following findings:

#### **Charge 1:**

*On 23 May 2018 received a conditional caution for common assault and battery in respect of Patient A on 22 April 2018 contrary to Section 39 of the Criminal Justice Act 1988.*

#### **This charge is found proved.**

In reaching this decision, the panel took into account the Conditional Caution document signed by Mr Wawrzynczak on 23 May 2018 in which he admits Common Assault and Battery. The panel noted the Conditional Caution was also administered and signed for by a Police Officer and accepted the supporting documentation provided by the police.

The panel had regard to the investigative meeting held by the Trust with Mr Wawrzynczak on 24 April 2018 and accepted that during this meeting he confirmed that he had smacked Patient A.

The panel had regard to the evidence of Ms 1, Ms 2 and Ms 3. In particular it found Ms 2's evidence that she had seen and heard the smack to be clear and credible.

[PRIVATE].

The panel found Ms 1's oral evidence that Mr Wawrzynczak was holding Patient A very tightly around his back and that he rolled Patient A over fast to be credible. The panel found Ms 1's evidence to be quite clear that Mr Wawrzynczak was not gentle but quite rough when handling Patient A.

The panel had regard to Ms 2's oral evidence that Patient A was able to nod his head and that this in her opinion demonstrated that he could follow commands clearly. The panel had regard to Ms 2's detailed local statement made to the Trust on 24 April 2018 in which she outlined the rough way in which Mr Wawrzynczak turned Patient A.

The panel had regard to Ms 2's evidence that it was usual for three people to reposition patients on the NCCU and that Mr Wawrzynczak repositioned Patient A on his own so that Patient A ended up in a twisted position. The panel found Ms 2's oral evidence to be clear in her assessment of the impact Mr Wawrzynczak's actions had had on Patient A at the time and how she could recall, "*as if it were yesterday*", that when she looked at Patient A's face he was in agony.

Ms 2 was unable to give an approximate number of times Mr Wawrzynczak smacked Patient A's legs. However the panel found that she was clear in her evidence that it had been done more than once. While Ms 2 could not recall or describe the severity of the smacks, the panel found Ms 2 to be clear in her evidence that she both saw and heard the smacks and she was scared in case the patient's skin would be marked.

The panel also had regard to Ms 3's evidence that on 24 April 2018 she attended a meeting with Mr Wawrzynczak called by the Head of Divisional Nursing together with a colleague from Human Resources. The panel found Ms 3 to be clear in her evidence

that during this meeting Mr Wawrzynczak had admitted that he did smack Patient A [PRIVATE].

Having regard to all of this evidence, the panel was satisfied that on the balance of probabilities on 23 May 2018 Mr Wawrzynczak received a conditional caution for common assault and battery in respect of Patient A on 22 April 2018 contrary to Section 39 of the Criminal Justice Act 1988. Although the documentary evidence provided by Mr Wawrzynczak in relation to the Conditional Caution does not fall to be proved pursuant to Rule 31 (2) of the Rules as a “certificate of conviction certified by a competent officer”, the panel is nevertheless satisfied to the required standard of proof that Mr Wawrzynczak received the caution as set out above.

Therefore, this charge is found proved.

## Decision on impairment

The panel next went on to decide if as a result of the Conditional Caution Mr Wawrzynczak's fitness to practise is currently impaired.

The panel heard and took into account the submissions made by Ms Jean on behalf of the NMC.

The panel accepted the advice of the legal assessor which included reference to *GMC v Meadow [2007] QB 462 (Admin)*; *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin)*; *Cohen v GMC [2008] EWHC 581 (Admin)*; *Cheetle v GMC [2009] EWHC 645* and *Zygmunt v GMC [2008] EWHC 2643*.

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.

Neither the Nursing and Midwifery Order nor the Rules define what is meant by impairment of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted. In deciding this matter, the panel has exercised its professional judgement.

The panel considered and applied the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*. 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. ‘*

Mrs Justice Cox went on to say in Paragraph 76:

*‘I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.*

*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 firstly considered whether Mr Wawrzynczak has in the past acted so as to put a patient or patients at unwarranted risk of harm; and/or has in the past brought the nursing profession into disrepute; and/or has in the past breached one of the fundamental tenets of the nursing profession. The panel found that by virtue of the Conditional Caution in which Mr Wawrzynczak admitted that he physically assaulted Patient A, direct physical harm and possible emotional/psychological harm were caused to the patient who was highly vulnerable. The panel further found that the circumstances leading to the Conditional Caution resulted in the profession being brought into disrepute and breaches of fundamental tenets of the profession. Therefore, the nature and extent of Mr Wawrzynczak's caution is such that the first three limbs a), b), and c) of the Shipman test, approved of in Grant, are engaged in Mr Wawrzynczak's case.

When determining whether the facts found proved amount to current impairment of fitness to practise the panel had regard to the terms of *The Code: Professional Standards of practice and behaviour for nurses, midwives and nursing associates 2015* ("*the Code*").

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Mr Wawrzynczak's actions did amount to breaches of the Code as follows:

## **Prioritise people**

### **1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

#### **4 Act in the best interests of people at all times**

##### **Promote professionalism and trust**

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

To achieve this, you must:

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

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, ...

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 and midwives to aspire to.

Regarding insight, the panel considered that although Mr Wawrzynczak had initially made admissions, he has however since withdrawn his admission to the assault. The panel also noted that although Mr Wawrzynczak has stated that he apologised to Patient A, in his written statement he has not demonstrated any understanding of how his actions put Patient A at risk of harm nor does he refer to Patient A's suffering. Furthermore, Mr Wawrzynczak has not demonstrated how his actions may have impacted negatively on Patient A's family or his colleagues, one of whom was physically affected recalling the incident during this hearing. Mr Wawrzynczak made no mention in his statement of how his actions had impacted negatively on the reputation of the nursing profession or how he would handle the situation differently in the future.

In its consideration of whether Mr Wawrzynczak's failings were remediable and whether he had remedied his practice the panel took into account [PRIVATE]. The panel took into account Mr Wawrzynczak's statement in which he sought to blame Patient A for his behaviour and demonstrated no acceptance of any wrongdoing for his actions.

Consequently, the panel was of the view that Mr Wawrzynczak has demonstrated no insight into his wrongdoing and he has provided no evidence that his conduct has been remedied.

The panel noted that Mr Wawrzynczak had worked in this role within this unit since 2008 and the needs of patients on the NCCU should have been well known to him. The panel were of the view that the assault on a highly vulnerable patient resulting in actual physical harm and possible emotional/psychological harm, coupled with the lack of remorse and insight is evidence of harmful attitudinal problems and that there is consequently a risk of repetition. 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. Having regard to the seriousness of the Conditional Caution, the panel considered that this matter engaged high public interest considerations.

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

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

## **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 Mr Wawrzynczak off the register. The effect of this order is that the NMC register will show that Mr Wawrzynczak has been struck-off the register.

In reaching this decision, the panel has had regard to all of the evidence in Mr Wawrzynczak's case. The panel heard submissions from Ms Jean, on behalf of the NMC.

Ms Jean submitted that the appropriate sanction is a striking-off order. Ms Jean made suggestions as to the aggravating and mitigating circumstances of Mr Wawrzynczak's case.

The panel accepted the advice of the legal assessor.

The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement. The panel had regard to the need to protect the public and uphold the wider public interest.

Before making its decision on the appropriate sanction, the panel considered any aggravating features in Mr Wawrzynczak's case.

The panel found the aggravating factors to be:

- Patient A was a highly vulnerable patient.

- Mr Wawrzynczak's lack of insight, lack of remorse and lack of evidence of remediation.
- The actual physical harm and possible emotional/psychological harm.
- Mr Wawrzynczak sought to blame Patient A for his behaviour.

The panel found the mitigating factors to be:

- [PRIVATE]. However he did not fulfil his responsibilities as a nurse and withdraw from the workplace.

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 has identified that there is a real risk of Mr Wawrzynczak repeating this behaviour and that there is a need to protect the public and to address the public interest. The panel therefore determined that it would be wholly inappropriate to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Wawrzynczak's behaviour 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 and the real risk of him repeating his failings. The panel decided that a caution order would not adequately protect the public and would not satisfy the wider public interest.

The panel next considered whether placing conditions of practice on Mr Wawrzynczak'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:

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- 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 conditional registration
- the conditions will protect patients during the period they are in force
- it is possible to formulate conditions and to make provision as to how conditions will be monitored.

The panel is of the view that the concerns were not of a clinical nature and that there are no practical or workable conditions that could be formulated given the nature of the Conditional Caution for Common Assault and Battery. The behaviour identified in this case was not something that can be addressed through retraining.

Furthermore the panel concluded that the placing of conditions on Mr Wawrzynczak'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 indicates that a suspension order would be appropriate where (but not limited to):

- Where the seriousness of the case requires temporary removal from the register.
- A period of suspension is sufficient to protect patients and the public interest.

This sanction may be appropriate where the conduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- 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 aggravating factors that the panel took into account, in particular, are the actual patient harm and the potential emotional/psychological harm, coupled with Mr Wawrzynczak's lack of insight into his failings raising the issue of potential repetition.

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

The panel has taken into account the mitigation identified in this case [PRIVATE]. However, Mr Wawrzynczak did not fulfil his responsibilities as a nurse and withdraw from the workplace.

In light of the seriousness of the case, Mr Wawrzynczak's lack of remorse and insight and the panel's finding of harmful attitudinal problems and the consequent risk of repetition, 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 from the SG:

Key considerations include:

- 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 Wawrzynczak'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 Wawrzynczak's actions were extremely 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, the panel has concluded that nothing short of this would be sufficient in this case. The panel concluded that, in the circumstances of this case, a striking off order is the only sanction that is sufficient to protect the public and maintain professional standards.

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.

## **Determination on Interim Order**

The panel considered the submissions made by Ms Jean that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.