

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

Substantive Hearing

29 November 2021

2 Stratford Place, Montfichet Road, London, E20 1EJ

30 November 2021- 07 December 2021

Virtual Hearing

Name of registrant: Seana Rose-Ann Balakrishna

NMC PIN: 91I0530E

Part(s) of the register: Nursing, SUB Part 1
RN3, Mental Health Nurse (18 November 1994)

Area of registered address: Glen Vine, Isle of Man

Type of case: Misconduct

Panel members: Anthony Griffin (Chair, Lay member)
Michael Duque (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Hala Helmi

Panel Secretary: Roshani Wanigasinghe
Christine Iraguha (6 December 2021)

Nursing and Midwifery Council: Represented by Matthew Cassells, Case
Presenter

Ms Balakrishna: Not present and not represented in absence

Facts proved: Charges 1a in respect of completing the form,
Charge 1b in respect of allowing the form to be
submitted, Charge 2 in its entirety, Charge 3a in
respect of completing the prescriptions, Charge
3b in respect of allowing the prescriptions to be

submitted, Charge 5a in respect of your actions at Charge 3 alone and only in respect of your knowledge that Dr A had not signed the prescriptions, Charge 5b in respect of your actions at Charge 3 alone and only in seeking to represent that Dr A had signed the prescriptions, Charge 5c in respect of your actions at Charge 3 alone and Charge 5d in respect of your actions at Charge 3 alone.

Facts not proved:

Charge 4 in its entirety, Charge 5a in respect of your actions at Charge 4 and that the address in question did not exist, Charge 5b in respect of your actions at Charge 4 and that the address in question was genuine, Charge 5c in respect of your actions at Charge 4 alone and Charge 5d in respect of your actions at Charge 4 alone.

Fitness to practise:

Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Balakrishna was not in attendance and that the Notice of Hearing had been sent to her registered email address by secure email on 21 October 2021.

The panel considered whether notice of this meeting had been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules'). It noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a Notice of Hearing/Meeting may be sent to a registrant's registered address by recorded delivery and first-class post, or to a suitable email address on the register.

Mr Cassells, on behalf of the Nursing and Midwifery Council (NMC), submitted that it 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.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Ms Balakrishna's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Balakrishna has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Ms Balakrishna

The panel next considered whether it should proceed in the absence of Ms Balakrishna. It had regard to Rule 21 and heard the submissions of Mr Cassells who invited the panel to

continue in the absence of Ms Balakrishna. He submitted that Ms Balakrishna had voluntarily absented herself.

Mr Cassells referred to an email from Ms Balakrishna to the NMC dated 25 October 2021 in which she stated:

“I will not be defending myself...Please strike me off the register ASAP...”

Mr Cassells also referred the panel to an email correspondence between the NMC and Ms Balakrishna dated 08 November 2021 in which the NMC had written at 08:47 am:

“ In light of your email, at your hearing on 29 November 2021 we will be applying to the Fitness to Practise Committee panel to proceed with the hearing in your absence...”

Ms Balakrishna’s response at 10:51 am, stated:

“...That’s fine I will provide a statement before the hearing.”

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 has decided to proceed in the absence of Ms Balakrishna. In reaching this decision, the panel has considered the submissions of Mr Cassells, the email representations from Ms Balakrishna, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones, General Medical*

Council v Adeogba [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms Balakrishna has informed the NMC that she will not be attending the hearing and is aware that the NMC was applying for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Eight witnesses have been warned to give evidence;
- 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 since 2010;
- 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 Ms Balakrishna in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her via secured email, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, 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 consequence of Ms Balakrishna's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charges (as amended)

That you, a Registered Nurse and whilst the Director of the Cosmetic Medical Clinic, Douglas, Isle of Mann:

1) On or about 17 September 2010, in relation to a 'Prescribers Authorisation Form' that purported to contain the signature of Dr A:

a) Completed the form, or allowed the form to be completed, when you knew that Dr A had not signed it; **[Charge found proved in respect of completing the form]**

b) Submitted the form, or allowed the form to be submitted, to the Health Xchange Pharmacy, when you knew that Dr A had not signed it. **[Charge found proved in respect of submitting the form]**

2) Your actions at Charge 1 were dishonest in that:

a) You knew that Dr A had not signed the form; **[Charge found proved]**

b) You sought to represent that Dr A had signed the form and/ or that he was an authorised prescriber; **[Charge found proved]**

c) You sought to mislead any individual reading the form. **[Charge found proved]**

3) On dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1, which purport to contain the signature of Dr A:

a) Completed, or allowed to be completed, one or more of the prescription in Schedule 1, when you knew that they had not been signed by Dr A; **[Charge found proved in respect**

of completing the prescriptions]

b) Submitted, or allowed to be submitted, one or more of the prescriptions in Schedule 1, to the Health Xchange Pharmacy, when you knew that they had not been signed by Dr A.

[Charge found proved in respect of allowing the prescriptions to be submitted]

4) On dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1:

a) Completed, or allowed to be completed, one or more of the prescriptions in Schedule 1, with details of an address that you knew did not exist; **[Charge found NOT proved]**

b) Submitted, or allowed to be submitted, one or more of the prescriptions in Schedule 1, to the Health Xchange Pharmacy, when you knew that they contained details of addresses that you knew did not exist. **[Charge found NOT proved]**

5) Your actions at Charge 3 and/or 4 were dishonest in that:

a) You knew that Dr A had not signed the prescription(s) and/ or that the address in question did not exist; **[Charge found proved in respect of your actions at Charge 3 alone and that you knew that Dr A had not signed the prescriptions only]** **[Charge not proved in respect of your actions at Charge 4 and that the address in question did not exist]**

b) You sought to represent that Dr A had signed the prescription(s) and/ or that the address in question was genuine; **[Charge found proved in respect of your actions at Charge 3 alone and that you sought to represent that Dr A had signed the prescriptions only]** **[Charge not proved in respect of your actions at Charge 4 and that the address in question was genuine]**

c) You sought to mislead any individual reading the prescription(s);

[Charge found proved in respect of your actions at Charge 3 alone]

d) You sought to obtain medication with a prescription(s) that you knew to be false.

[Charge found proved in respect of your actions at Charge 3 alone]

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

Schedule 1

Prescriptions dated 2011

| Date | Patient name | Product |
|------------------|---------------------|---|
| 13 January 2011 | Patient A | Dysport 2 vials (1 box) |
| 13 January 2011 | Patient B | Dysport 2 vials (1 box) |
| 13 January 2011 | Patient C | Dysport 2 vials (1 box) |
| 21 February 2011 | Patient D | Dysport 2 vials (1 box) |
| 21 February 2011 | Patient E | Dysport 2 vials (1 box) |
| 21 February 2011 | Patient F | Dysport 2 vials (1 box) |
| 21 February 2011 | Patient G | Dysport 2 vials (1 box) |
| 16 March 2011 | Patient H | Dysport 2 vials (1 box) |
| 16 March 2011 | Patient I | Dysport 2 vials (1 box) |
| 16 March 2011 | Patient J | Dysport 2 vials (1 box) |
| 18 April 2011 | Patient K | Dysport 2 vials (1 box) Juvederm 24+ x 4 boxes (8 syringes) |
| 18 April 2011 | Patient L | Dysport 2 vials (1 box) |

| | | |
|-------------------|------------|---|
| 18 April 2011 | Patient M | Dysport 2 vials (1 box) |
| 18 April 2011 | Patient N | Dysport 2 vials (1 box) |
| 18 May 2011 | Patient O | Dysport 2 vials (1 box) Juvederm 2, 2 boxes (4 syringes) |
| 18 May 2011 | Patient P | Dysport 2 vials (1 box) Juvederm 2, 2 boxes (4 syringes) |
| 18 May 2011 | Patient Q | Dysport 2 vials (1 box) |
| 18 May 2011 | Patient R | Dysport 2 vials (1 box) |
| 14 June 2011 | Patient S | Dysport 2 vials (1 box) |
| 14 June 2011 | Patient T | Dysport 2 vials (1 box) |
| 14 June 2011 | Patient U | Dysport 2 vials (1 box) |
| 14 June 2011 | Patient V | Dysport 2 vials (1 box) |
| 14 June 2011 | Patient W | Juvederm 2 x 2 boxes |
| 14 June 2011 | Patient X | Juvederm 2 x 3 boxes |
| 15 July 2011 | Patient Y | Juvederm 2 x 3 boxes (6 vials) |
| 15 July 2011 | Patient Z | Juvederm 2 x 3 boxes (6 vials) |
| 10 August 2011 | Patient AA | Dysport 2 vials (1 box) |
| 10 August 2011 | Patient BB | Dysport 2 vials (1 box) |
| 10 August 2011 | Patient CC | Dysport 2 vials (1 box) |
| 22 September 2011 | Patient DD | Dysport 2 vials (1 box) |
| 22 September 2011 | Patient EE | Dysport 2 vials (1 box) |
| 22 September 2011 | Patient FF | Dysport 2 vials (1 box) |
| 28 October 2011 | Patient GG | Dysport 2 vials (1 box) |

| | | |
|------------------|------------|----------------------------------|
| | | |
| 28 October 2011 | Patient HH | Dysport 2 vials (1 box) |
| 28 October 2011 | Patient II | Dysport 2 vials (1 box) |
| 28 October 2011 | Patient JJ | Dysport 2 vials (1 box) |
| 28 October 2011 | Patient KK | Dysport 2 vials (1 box) |
| 14 November 2011 | Patient LL | Juvederm 2, 2 boxes (4 syringes) |
| 14 November 2011 | Patient MM | Juvederm 2, 2 boxes (4 syringes) |
| 14 November 2011 | Patient NN | Juvederm 2, 2 boxes (4 syringes) |
| 12 December 2011 | Patient OO | Juvederm 2, 3 boxes (6 syringes) |
| 12 December 2011 | Patient PP | Juvederm 2, 3 boxes (6 syringes) |
| 12 December 2011 | Patient QQ | Dysport 2 vials (1 box) |
| 12 December 2011 | Patient RR | Dysport 2 vials (1 box) |
| 12 December 2011 | Patient SS | Dysport 2 vials (1 box) |

Prescriptions dated 2012

| Date | Patient name | Product |
|-----------------|---------------------|---|
| 25 January 2012 | Patient TT | Dysport 2 vials (1 box) |
| 25 January 2012 | Patient UU | Dysport 2 vials (1 box) |
| 25 January 2012 | Patient VV | Dysport 2 vials (1 box) |
| 7 February 2012 | Patient WW | Dysport 2 vials (1 box) Juvederm 2, 2 boxes (4 syringes) |

| | | |
|-----------------|-------------|---|
| 7 February 2012 | Patient XX | Juvederm volume 2 syringes |
| 7 February 2012 | Patient YY | Dysport 2 vials (1 box) 3 x 30ml Bacteriostatic water 0.9% Sodium Chloride |
| 7 February 2012 | Patient ZZ | Dysport 2 vials (1 box) 3 x 30ml Bacteriostatic water 0.9% Sodium Chloride |
| 5 March 2012 | Patient AAA | Dysport 2 vials (1 box) |
| 5 March 2012 | Patient BBB | Juvederm ultra 2 syringes (1 box) |
| 5 March 2012 | Patient CCC | Juvederm ultra 2 syringes (1 box) Dysport 2 vials (1 box) |
| 3 April 2012 | Patient DDD | Dysport 2 vials (1 box) |
| 3 April 2012 | Patient EEE | Dysport 2 vials (1 box) |
| 21 May 2012 | Patient FFF | Juvederm 2, 4 syringes (2 boxes) |
| 21 May 2012 | Patient GGG | Juvederm 2, 4 syringes (2 boxes) |
| 15 June 2012 | Patient HHH | Juvederm 2, 2 syringes (1 box) Dysport 2 vials (1 box) |
| 15 June 2012 | Patient III | Juvederm volume 1 syringe |
| 15 June 2012 | Patient JJJ | Juvederm 2, 2 syringes (1 box) |
| 24 July 2012 | Patient KKK | Dysport 2 vials (1 box) |
| 24 July 2012 | Patient LLL | Juvederm 2, 4 syringes |

| | | |
|-------------------|-------------|---|
| | | (2 boxes) |
| 24 July 2012 | Patient MMM | Dysport 2 vials (1 box) |
| 10 August 2012 | Patient O | Botox 50 units |
| 10 August 2012 | Patient NNN | Botox 50 units |
| 10 August 2012 | Patient OOO | Botox 50 units |
| 10 August 2012 | Patient PPP | Botox 50 units |
| 10 August 2012 | Patient QQQ | Botox 50 units |
| 10 August 2012 | Patient RRR | Juvederm 2, 2 syringes (1 box) |
| 18 September 2012 | Patient SSS | Botox 50 units Juvederm 2, 1 box (2 syringes) |
| 18 September 2012 | Patient TTT | Botox 50 |
| 18 September 2012 | Patient O | Botox 50 Juvederm 2, 1 box (2 syringes) |
| 17 October 2012 | Patient UUU | Botox 50 |
| 17 October 2012 | Patient VVV | Juvederm 3, 1 box (2 syringes) Botox 50 |
| 17 October 2012 | Patient WWW | Juvederm 2, 1 box (2 syringes) Botox 50 |
| 17 October 2012 | Patient XXX | Botox 50 |
| 17 October 2012 | Patient YYY | Juvederm 2, 1 box (2 syringes) Botox 50 |
| 9 November 2012 | Patient ZZZ | Botox 50 units |

| | | |
|------------------|--------------|----------------|
| | | |
| 9 November 2012 | Patient AAAA | Botox 50 units |
| 9 November 2012 | Patient O | Botox 50 units |
| 9 November 2012 | Patient BBBB | Botox 50 units |
| 10 December 2012 | Patient CCCC | Botox 50 |
| 10 December 2012 | Patient DDDD | Botox 50 |
| 10 December 2012 | Patient EEEE | Botox 50 |
| 10 December 2012 | Patient FFFF | Botox 50 |
| 10 December 2012 | Patient GGGG | Botox 50 |
| 10 December 2012 | Patient HHHH | Botox 50 |
| 10 December 2012 | - Patient TT | Botox 50 |

Prescriptions dated 2013

| Date | Patient name | Product |
|------------------|---------------------|---|
| 16 January 2013 | Patient IIII | Botox 50 (1 syringe) Juvederm 2, 2 syringes (1 box) |
| 16 January 2013 | Patient JJJJ | Juvederm 2, 2 syringes (1 box) Botox 50 (1 vial) |
| 16 January 2013 | Patient KKKK | Juvederm 2, 2 syringes (1 box) |
| 16 January 2013 | Patient LLLL | Juvederm 2, 2 syringes (1 box) |
| 12 February 2013 | Patient MMMM | Botox 50 Juvederm 2, 2 syringes (1 box) |

| | | |
|------------------|--------------|--|
| | | |
| 11 February 2013 | Patient NNNN | Botox 50 Juvederm 3, 2 syringes (1 box) |
| 11 February 2013 | Patient OOOO | Botox 50 Juvederm 3, 2 syringes (1 box) |
| 11 February 2013 | Patient PPPP | Botox 50 Juvederm 3, 2 syringes (1 box) |
| 11 February 2013 | Patient RRR | Botox 50 Juvederm 3, 2 syringes (1 box) |
| 11 February 2013 | Patient QQQQ | Botox 50 Juvederm 2, 1 box (2 syringes) |
| 19 March 2013 | Patient RRRR | Dysport 500 unit/vial Juvederm ultra smile 2x 0.55 |
| 19 March 2013 | Patient SSSS | Dysport 500 unit/vial |
| 19 March 2013 | Patient TTTT | Dysport 500 unit/vial |
| 19 March 2013 | Patient UUUU | Dysport 500 unit/vial |
| 23 April 2013 | Patient DDDD | Juvederm ultra 2, 2x 0.55 |
| 23 April 2013 | Patient VVVV | Juvederm ultra 2, 2x 0.55 |
| 23 April 2013 | Patient WWWW | Juvederm ultra 2, 2x 0.55 |
| 23 April 2013 | Patient XXXX | Juvederm ultra 2, 2x 0.55 |
| 23 April 2013 | Patient YYYY | Dysport 500 unit/vial |
| 23 April 2013 | Patient RRR | Dysport 500 unit/vial |
| 23 April 2013 | Patient ZZZZ | Dysport 500 unit/vial |
| 20 May 2013 | Patient CCCC | Dysport 500 unit/vial x1 |

| | | |
|-------------------|---------------|---|
| | | Bacteriostatic water 0.9% Sodium Chloride 30ml |
| 20 May 2013 | Patient AAAAA | Dysport 500 unit/vial Bacteriostatic water 0.9% Sodium Chloride |
| 11 June 2013 | Patient BBBBB | Dysport 500 unit x1 vial |
| 11 June 2013 | Patient CCCCC | Dysport 500 unit x1 vial |
| 11 June 2013 | Patient DDDDD | Dysport 500 unit x1 vial |
| 11 June 2013 | Patient RRRR | Dysport 500 unit x1 vial |
| 8 July 2013 | Patient EEEEE | Juvederm ultra 2, 2x 0.55 |
| 8 July 2013 | Patient FFFFF | Juvederm ultra 2, 2x 0.55 |
| 8 July 2013 | Patient GGGGG | Dysport 500mg unit |
| 8 July 2013 | Patient HHHHH | Juvederm ultra 2, 2x 0.55 |
| 16 August 2013 | Patient IIIII | Dysport 500 unit/vial |
| 16 August 2013 | Patient JJJJJ | Dysport 500 unit/vial |
| 16 August 2013 | Patient KKKKK | Dysport 500 unit/vial |
| 19 September 2013 | Patient LLLLL | Dysport 500 unit/vial |
| 19 September 2013 | Patient MMMMM | Juvederm 4, 2 x 1ml |
| 19 September 2013 | Patient NNNNN | Juvederm ultra 2, 2x 0.55 |
| 11 October 2013 | Patient OOOOO | Juvederm ultra 2x 0.55 |
| 11 October 2013 | Patient PPPPP | Dysport 500 unit/vial |
| 11 October 2013 | Patient QQQQQ | Dysport 500 unit/vial |
| 19 November 2013 | Patient RRRRR | Dysport 500 unit/vial |
| 19 November 2013 | Patient SSSSS | Dysport 500 unit/vial |
| 19 November 2013 | Patient TTTTT | SucceeV One, 2 x 0.8ml |

Further Prescriptions

| Date | Patient Name | Product |
|-------------------|---------------------|---|
| Not shown | Patient UUUUU | Dysport 2 vials (1box) |
| Not shown | Patient VVVVV | Dysport 2 vials (1 box) |
| Not shown | Patient WWWW | Dysport 2 vials (1 box) |
| 7 September 2012 | Patient XXXXX | Botox 50 |
| 7 September 2012 | Patient YYYYY | Botox 50 |
| Not shown | Patient ZZZZZ | Dysport (1 box) 2 vials |
| Not shown | Patient AAAAAA | Dysport 1 box 2 vials |
| Not shown | Patient BBBBBB | Dysport 2 vials 1 box Juvederm 2 2 Syringes (1 box) |
| 7 September 2012 | Patient CCCCCC | Botox 50 |
| 11 September 2012 | Patient DDDDDD | Botox 50 |
| 11 September 2012 | Patient EEEEE | Botox 50 |
| 11 September 2012 | Patient FFFFFF | Botox 50 |
| Not shown | Patient GGGGGG | Botox 1 vial |

| | | |
|-------------------|----------------|--------------------------------|
| | | |
| Not shown | Patient HHHHHH | Juvederm 3 1 box 2 syringes |
| Not shown | Patient IIIIII | Juvederm 2 1 box 2 syringes |
| Not shown | Patient JJJJJJ | Juvederm 2 1 box 2 syringes |
| 7 September 2012 | Patient KKKKKK | Botox 50 |
| 11 September 2012 | Patient LLLLLL | Botox 50 |
| Not shown | Patient MMMMMM | Botox 50 1 vial |

Decision and reasons on application to amend the charge

The panel of its own volition noted that there were minor typographical errors to charges 2b and 4b. It was the position that in charge 2b, the word 'to' is added to the charge so that it reads *"You sought to represent..."*; and in charge 4b, the word 'address' is put in the plural form, so that it reads *"...contained details of addresses..."*. The panel was of the view that amending these minor errors would provide further clarity and would more accurately reflect the charges.

Mr Cassells agreed to these changes. He submitted that such changes would not cause any prejudice to Ms Balakrishna.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such amendments, were in the interest of justice. The panel was satisfied that there would be no prejudice to Ms Balakrishna and no injustice would be caused to either party by the proposed amendment being allowed. It therefore determined to make the appropriate amendments to ensure clarity and accuracy.

Background

The NMC brings this case against Ms Balakrishna who is said, at the time of the allegations to have been the Director of the Cosmetic Medical Centre, Douglas, Isle of Man. Ms Balakrishna had qualified as a Registered Mental Health Nurse on 18 November 1994.

On 9 January 2014, an anonymous letter was sent to Ms 5, Managing Director at the Health Xchange, a wholesale pharmacy based in Guernsey and London, and to Dr A. The letter alleged that Dr A's signature had been used on prescriptions sent to Health Xchange from Cosmetic Medical Centre in order to obtain prescriptions for cosmetic products, without Dr A's knowledge. Dr A was in partnership with Ms Balakrishna at the Cosmetic Medical Centre but is said to have had left the partnership in 2007.

Ms 5 had provided a statement to the police and stated that she had received a request from a male purporting to be Dr A asking for a copy of the letter. Ms 5 had then sent the letter to Dr A's personal email address rather than the email address associated with the Ms Balakrishna's HealthXchange account. When Dr A had received the email he had telephoned Ms 5 and said that he had not previously telephoned HealthXchange. Dr A had denied any knowledge of signing the form acknowledging his association with the Ms Balakrishna's HealthXchange account and that he knew nothing of the prescriptions.

It is alleged that HealthXchange had received via fax, a copy of prescriptions from Cosmetic Medical Centre between 2011 and 2013. These prescriptions appeared to be signed by Dr A.

Dr A viewed the prescriptions and had confirmed that although the prescriptions appeared to have his signature on them he did not write the signatures and had not given his permission to anybody to copy his signature. The police carried out an investigation into Ms Balakrishna but following the conclusion of that investigation, a decision was taken, by the Prosecutions Division of the Attorney General's Chambers of the Isle of Mann, to take no further action.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Cassells on behalf of the NMC and the written submission from Ms Balakrishna which was included in the NMC's hearing bundle. In addition, Mr Cassells also set out Ms Balakrishna's case which was that Dr A was issuing the prescriptions, with which this case is concerned, on a remote basis.

The panel has drawn no adverse inference from the non-attendance of Ms Balakrishna.

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 heard live evidence from the following witnesses called on behalf of the NMC:

- Mr 1: Police Sergeant in Isle of Mann Constabulary, supervising Office for premises at the time of the incidents;
- Mr 2: inspector in charge of information management and security the Isle of Man Constabulary, at the time of the incidents.
- Mr 3: Fingerprint Expert;
- Dr 4: Forensic scientist, specialising in the scientific examination of documents and comparison of handwriting;
- Ms 5: Managing director of HealthXchange Pharmacy;
- Mr 6: NMC Case Officer in the Fitness to Practice Directorate, at the time of the incidents;
- Mr 7: Superintendent Pharmacist of HealthXchange Pharmacy, at the time of the incidents;
- Dr A: Registered Medical Practitioner in independent practice since 1988.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who advised the panel that Ms Balakrishna should be considered to be a

person of good character, on the basis that she has not been the subject of any fitness to practise findings or convictions, and that she is entitled to have her good character taken into account when considering her credibility in respect of her written submissions and the case which she has presented, as well as her propensity to act as alleged. The panel took her good character into account as advised.

The panel considered the witness and documentary evidence.

Before hearing evidence from Mr 6, the panel declared dealings with Mr 6 as he is currently employed by the NMC as the Panel Allocations Manager. However, the panel was of the view that there were no concerns raised regarding this given the specific nature of his evidence.

Mr Cassells acknowledged and agreed to this. He raised no concerns regarding any interactions with the panel and Mr 6 as Mr 6's evidence related to matters which were not in dispute.

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

Head of the Charge

'That you, a Registered Nurse and whilst the Director of the Cosmetic Medical Clinic, Douglas, Isle of Mann:'

The panel considered the evidence that Ms Balakrishna was, at the relevant time, the Director of the Cosmetic Medical Clinic, Douglas, Isle of Man.

The panel took into account a number of documents which, according to the evidence of Ms 5 and Mr 7, were received by Health Xchange from the company known as Cosmetic Medical Clinic. Firstly, on 8 March 2008, Health Xchange received a data confirmation

document from an existing client, signed by Ms Balakrishna, for an account “BAL04”, giving the correspondence address as the Cosmetic Medical Centre, Douglas, Isle of Man. Ms 5 confirmed that the BAL04 account authorised prescriber information was updated on 20 September 2010 when Health Xchange received a fax containing firstly, the authorised prescriber form dated 17 September 2010 which was signed by Ms Balakrishna as the account holder, and secondly, a document confirming that the directors of Cosmetic Medical Clinic were Ms Balakrishna and another person.

On the basis of the evidence, the panel found that Ms Balakrishna was at the time to which the allegations relate, the Director of the Cosmetic Medical Clinic.

Charge 1a

1) On or about 17 September 2010, in relation to a 'Prescribers Authorisation Form' that purported to contain the signature of Dr A:

a) Completed the form, or allowed the form to be completed, when you knew that Dr A had not signed it.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Dr A, Ms 5 and Dr 4.

The panel first noted that the form in question was a form updating authorised prescriber information, and the form was signed and dated by Ms Balakrishna.

The panel took into account that the purpose of this form was to ensure that Cosmetic Medical would continue to receive prescription medicines for the purpose of the cosmetic work undertaken at the clinic.

On the face of the document, it appears that it was completed, signed and dated by Ms Balakrishna, and on the form, she confirmed that she was the account holder the account BAL04.

Dr A's name is given as the "prescriber" and in addition, his signature purportedly appears on the document

The panel noted Ms 5's evidence that when she spoke to Dr A on the telephone on or around January 2014 that he informed her that he had ceased working at Cosmetic Medical in 2007 and he stated that he had no knowledge of his name being used for prescriptions related to Cosmetic Medical.

The panel noted that Dr A's evidence was that he had not signed the form. Dr A states in his witness statement dated 3 June 2016 which was confirmed during his oral evidence that:

"I resigned from the company on 30 of April 2007 and the partnership was dissolved but I continued to work for the clinic in very limited capacity providing an online video consultation service for patients wishing to have botulinum toxin treatments until October 2007 and prescriptions for patients until December 2007. From that point onwards I seized all activity in the business and had no further financial or other interest in it.

Following the dissolution of the partnership the KIN04 account was transferred to Seana Balakrishna in August 2007.

... I informed [Ms 5] that I knew nothing of Seana Balakrishna's account or the prescriptions...

I also learned that Seana Balakrishna had authorised me as a prescriber for the account in a Prescribers Authorisation document that she signed on 19 September

2010. I was asked to examine the documents and prescriptions and to confirm whether any of the signatures were mine. I examined the documents and prescriptions and confirmed that none of the signatures were mine. I can confirm that I had no previous knowledge of the BAL04 account and did not give Seana Balakrishna any authority or permission to use my name to obtain prescription items on the BAL04 account.”

The panel accepted Dr A's evidence and denials about signing the form, which were consistent, and bore in mind Dr A's evidence that he had not signed any prescriptions since the dissolution of the partnership in late 2007.

The panel further noted Dr 4's evidence, who examined signatures obtained from Dr A for the purpose of providing her expert evidence that the signature on the form, although purporting to be Dr A's was not in fact his.

The panel took into account Ms Balakrishna's case that the signing of the prescriptions were done remotely by Dr A as a remote prescriber. However, in light of all of the evidence before it, the panel determined that it was satisfied from the evidence before it that Ms Balakrishna, on the balance of probabilities, completed the 'Prescribers Authorisation Form' on or about 17 September 2010, when she knew that Dr A had not signed it.

In these circumstances, the panel found Charge 1a, proved.

Charge 1b

1) On or about 17 September 2010, in relation to a 'Prescribers Authorisation Form' that purported to contain the signature of Dr A:

b) Submitted the form, or allowed the form to be submitted, to the Health Xchange Pharmacy, when you knew that Dr A had not signed it.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Dr A, Dr 4, Ms 5 and Mr 7 as well it's decision at Charge 1a above.

The panel bore in mind that having found Charge 1a proved, Ms Balakrishna had completed the Prescribers Authorisation Form, when she knew that Dr A had not signed it.

There was no evidence before the panel to show that Ms Balakrishna herself personally faxed the form to HeathXchange. However, the panel therefore determined that having completed the form as found in relation to Charge 1a above, it is more likely than not that, as Director of Cosmetic Medical, Ms Balakrishna allowed the form to be submitted.

The panel was therefore satisfied from the evidence before it that Ms Balakrishna, on the balance of probabilities, on or about 17 September 2010, in relation to the 'Prescribers Authorisation Form' allowed the form to be submitted to the Health Xchange Pharmacy, when she knew that Dr A had not signed it.

In these circumstances, the panel found Charge 1b, proved.

Charge 2

2) Your actions at Charge 1 were dishonest in that:

a) You knew that Dr A had not signed the form;

b) You sought to represent that Dr A had signed the form and/ or that he was an authorised prescriber;

c) You sought to mislead any individual reading the form.

This charge is found proved in its entirety.

In considering this charge the panel adopted the test for dishonesty as set out in the case of *Ivey Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 that states:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The panel also followed the approach set out in the case of *Lavis v NMC* [2014] EWHC 4083 (Admin) and considered whether there might be an alternative explanation for Ms Balakrishna's actions such as a mistake or oversight.

In reaching its decision, the panel took into account all the relevant evidence including Ms Balakrishna's written response.

The panel bore in mind its decision at Charge 1a and b that Ms Balakrishna had completed and submitted the form with Dr A's purported signature when she knew he had not signed it. It bore in mind Dr 4's evidence in that the signature on the form was not Dr A's and Dr A's own evidence in which he denies signing the form.

In its decision on Charge 2a, the panel considered Ms Balakrishna's state of mind in relation to her knowledge and belief at the time. As the panel has already found, Ms

Balakrishna knew that Dr A had not signed the form when she completed and submitted the form to HealthXchange.

The panel noted that Ms Balakrishna has not provided any documentary evidence to suggest a professional relationship with Dr A beyond December 2007.

In respect of Charge 2b and 2c, the panel was satisfied that this action indicates that Ms Balakrishna sought to make it appear that Dr A had signed the form and that he was an authorised prescriber, and further to mislead anyone reading the form that this was the case, in order to ensure that HealthXchange continued to provide prescriptions to Ms Balakrishna's company. The panel could not conceive of any explanation for Ms Balakrishna's actions, such as a mistake, considering her knowledge at the time that Dr A had not signed the form.

The panel was satisfied that by acting in this way, Ms Balakrishna was intending to deceive a reader of the form that Dr A had signed the form as the authorised prescriber. The panel was further satisfied that her conduct would have been seen to be dishonest by the standards of ordinary decent people.

The panel therefore found that Ms Balakrishna's actions at Charges 2a, 2b and 2c were dishonest.

Accordingly the panel found Charge 2 in its entirety is found proved.

Charge 3a

3) On dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1, which purport to contain the signature of Dr A:

a) Completed, or allowed to be completed, one or more of the prescription in Schedule 1, when you knew that they had not been signed by Dr A.

This charge is found proved.

In reaching its decision, the panel took into account the evidence of Dr 4 which was that the 20 prescriptions within the table below were examined by her as a Handwriting expert. It noted that a further Patient scheduled as “Patient WWWW” was also part of Dr 4’s handwriting prescription analysis. However, upon closer inspection the panel was of the view that there appears to be a typographical error in the anonymisation of this particular Patient’s name and therefore in the interest of fairness and lack of clarity, it determined to discount this patient’s prescription in its decision.

| Date | Patient name |
|------------------|---------------------|
| 15 June 2012 | Patient HHH |
| 15 June 2012 | Patient III |
| 15 June 2012 | Patient JJJ |
| Not shown | Patient UUUUU |
| Not shown | Patient VVVVV |
| 7 September 2012 | Patient XXXXX |
| 7 September 2012 | Patient YYYYY |
| Not shown | Patient ZZZZZ |
| Not shown | Patient AAAAAA |
| Not shown | Patient BBBBBB |
| 7 September 2012 | Patient CCCCCC |

| | |
|----------------------|-----------------|
| 11 September 2012 | Patient DDDDDD |
| 11 of September 2012 | Patient EEEEEEE |
| 11 September 2012 | Patient FFFFFFF |
| Not shown | Patient GGGGGG |
| Not shown | Patient HHHHHH |
| Not shown | Patient IIIIII |
| Not shown | Patient JJJJJJ |
| 7 September 2012 | Patient KKKKKK |
| 11 September 2012 | Patient LLLLLL |
| Not shown | Patient MMMMMM |

The panel had regard to Dr 4's statement in which she states that:

"I have been told that Seana Balakrishna has stated that she has written the patient details and products on these 22 prescriptions. I have been asked to determine whether or not the signatures on the prescriptions are those of Dr A and. If not, whether or not the signatures are written by the same person as wrote the patient details and products..."

...I have compared the signatures of Dr A with each of the signatures in his name on the prescriptions. There is some pictorial similarity between these signatures, but there are significant differences in the construction, proportions and fluency of the pen lines, such that I have found nothing to connect to signatures of Dr A with the writing of the signatures on the prescriptions. I have concluded that all of the

signatures on the prescriptions are copies of Dr A's signature made by a writer with some knowledge of his writing...

... I have compared this writing with that writing of the patient's details and products (the states writing of Seana Balakrishna). There are similarities between these writings and there are no differences of significance, but the amount of comparable writing is small and this limits my conclusion. I have found moderately strong evidence that these writings for me by the same person. I have concluded that Seana Balakrishna could have written all of these entries associated with the signatures."

On further questioning by the panel during her oral evidence, Dr 4 confirmed that her statement that "*I have been told that Seana Balakrishna has stated that she has written the patient details and products on these 22 prescriptions*" referred to Dr 4 being informed by police that Ms Balakrishna had confirmed to police that she had completed the patient details and the details of the medicines on the prescriptions which she examined. The panel was aware that this was hearsay evidence. However, the panel decided to give it weight on the basis that Dr 4 is a professional expert witness, and the hearsay evidence was in the context of a formal police investigation, in which the police had an interest in ensuring that Dr 4 had accurate information before coming to her conclusions.

In addition, and also in this regard, the panel took into account the evidence of Dr 4, who having compared the writing of the entries "1599709 G Kindy" on some of the prescriptions before her with those entries on other prescriptions which she examined, she concluded that there was nothing to suggest that they were anything but the writing of one person. She compared this writing with the writing of the patient's details and products (which she had been told that Ms Balakrishna admitted having written), and concluded that on the balance of probabilities, that Ms Balakrishna wrote all of the entries associated with the signatures.

In addition, there is nothing before the panel which indicates that Ms Balakrishna denies that she completed the details on the form. The panel also took into account the context in which the prescriptions were submitted to HealthXchange, namely that they were for prescriptions needed by Cosmetic Medical, of which Ms Balakrishna was a Director.

On the basis of the evidence, the panel was satisfied that Ms Balakrishna completed the prescriptions set out in the above schedule, namely the writings on the prescriptions,

The panel noted that Dr 4's opinion did not extend to the purported signatures of Dr A themselves on the prescriptions.

The panel bore in mind Ms Balakrishna's case that the signing of the prescriptions were done remotely by Dr A as a remote prescriber. However, the panel took into account Dr A's clear and consistent oral and written evidence that he did not sign any of the prescriptions, and had not done so since December 2007. The panel also took into account its findings in respect of Charge 1a and b that Ms Balakrishna knew that Dr A had not signed the "Prescriber's Authorisation Form", and also took into account the dishonesty findings in Charge 3 as one of the aspects of the evidence before it. The panel recognised that these findings were not conclusive, in coming to any further decisions, rather they could be taken into account along with the rest of the evidence.

On the basis of the evidence, the panel was satisfied that Ms Balakrishna knew the prescriptions had not been signed by Dr A.

The panel therefore determined that it was satisfied from the evidence before it that Ms Balakrishna on the balance of probabilities, on dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1, which purport to contain the signature of Dr A, completed, one or more of the prescriptions in Schedule 1, when she knew that they had not been signed by Dr A.

In these circumstances, the panel found Charge 3a, proved

Charge 3b

3) On dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1, which purport to contain the signature of Dr A:

b) Submitted, or allowed to be submitted, one or more of the prescriptions in Schedule 1, to the Health Xchange Pharmacy, when you knew that they had not been signed by Dr A.

This charge is found proved.

In reaching its decision, the panel took into account the evidence and its findings in respect of Charge 3a. The panel bore in mind that having found Charge 3a proved, it has found that Ms Balakrishna had completed the prescriptions when she knew that Dr A had not signed them.

There was no evidence before the panel to show that Ms Balakrishna herself personally sent the prescriptions to HealthXchange. However, the panel determined that having completed them as found in relation to Charge 3a above, it is more likely than not that, as Director of Cosmetic Medical, Ms Balakrishna allowed the form to be submitted.

The panel was therefore satisfied from the evidence before it that Ms Balakrishna, on the balance of probabilities, on dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1, which purport to contain the signature of Dr A, allowed to be submitted one or more of the prescriptions in Schedule 1, when she knew that they had not been signed by Dr A.

In these circumstances, the panel found Charge 3b, proved.

Charge 4a

4) On dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1:

a) Completed, or allowed to be completed, one or more of the prescriptions in Schedule 1, with details of an address that you knew did not exist.

This charge is found NOT proved.

In reaching this decision, the panel took into account Ms Balakrishna's undated statement.

It noted that she said:

"The police said at the end of the interview that there was some addresses that didn't seem correct did not specify actual numbers nor were very specific of claim. I answered that no due diligence was required from clients and I couldn't verify if a client's address was correct I simply took clients word for it when I took patients details, no proof is required in any help setting NHS or private."

The panel found that Ms Balakrishna had completed the prescriptions but noted that it had no other evidence before it to indicate that she knew any of the addresses did not exist.

The panel bore in mind that Ms Balakrishna maintains her position that it is not her responsibility to check the addresses of patients.

The panel considered the NMC's position that Ms Balakrishna knew the addresses did not exist on the basis of the sheer quantity of prescriptions where the addresses did not exist and that over 150 occasions for an incorrect address to be given on prescriptions would be "extraordinary".

Although the panel bore this in mind, it also noted that there is no direct evidence to suggest that Ms Balakrishna knew this to be the case, nor was the panel satisfied that the quantity alone was sufficient circumstantial evidence of this.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

Charge 4b

- 4) On dates between January 2011 and November 2013, in relation to one or more of the prescriptions in Schedule 1:
- b) Submitted, or allowed to be submitted, one or more of the prescriptions in Schedule 1, to the Health Xchange Pharmacy, when you knew that they contained details of addresses that you knew did not exist.

This charge is found NOT proved.

Having found Charge 4a above not proved, the panel determined that Charge 4b falls away.

Charge 5

- 5) Your actions at Charge 3 and/or 4 were dishonest in that:
- a) You knew that Dr A had not signed the prescription(s) and/ or that the address in question did not exist;
 - b) You sought to represent that Dr A had signed the prescription(s) and/ or that the address in question was genuine;
 - c) You sought to mislead any individual reading the prescription(s);
 - d) You sought to obtain medication with a prescription(s) that you knew to be false.

Charge 5 is not proved in its entirety in respect of your actions at Charge 4

Having found Charge 4 not proved in its entirety, the panel determined that Charge 5 in respect of Ms Balakrishna's actions at Charge 4 falls away, including in relation to the parts of the charges that allege she knew the addresses did not exist.

In considering charge 5a-5b the panel adopted the test for dishonesty as set out in the case of *Ivey* and also considered potential explanations other than dishonesty.

Charge 5a - Found proved in respect of your actions at Charge 3 alone and that you had not signed the prescriptions only. Charge not proved in respect of the fact that the address in question did not exist

The panel has already found, in relation to Charge 3 a and b, that Ms Balakrishna knew that Dr A had not signed the prescriptions. Therefore Ms Balakrishna's actual state of mind as to knowledge or belief, in the panel's decision, was to complete and submit the prescriptions, knowing that Dr A had not signed them. The panel determined, in the circumstances that this was done wishing to deceive HealthXchange that Dr A had signed the prescriptions in order to obtain the medicines set out in the prescriptions. The panel could not conceive of any other reason. The panel was satisfied that by the standards of ordinary decent people, Ms Balakrishna was dishonest.

Charge 5b- Found proved in respect of your actions at Charge 3 alone and that you sought to represent that Dr A had signed the prescriptions only. Charge not proved in respect of the fact that the address in question was genuine.

The panel has already found, in relation to Charge 3 a and b, that Ms Balakrishna knew that Dr A had not signed the prescriptions. The panel determined that Ms Balakrishna sought to give the false impression that Dr A had signed the prescriptions in order to obtain the medicines, and that this was an act intended to deceive. The panel could not conceive of any other explanation for her behaviour. The panel was therefore satisfied that by the standards of ordinary decent people, Ms Balakrishna was dishonest.

Charge 5c- Charge found proved in respect of your actions at Charge 3 alone

The panel took into account its findings in relation to Charge 3 a and b, that Ms Balakrishna knew that Dr A had not signed the prescriptions, The panel decided that Ms Balakrishna sought to mislead any individual reading the prescriptions that Dr A done so. The panel determined that in the circumstances, Ms Balakrishna, through her actions, sought to mislead the supplier of the medicines in order to obtain them for use in her business. The panel was satisfied that by the standards of ordinary decent people, Ms Balakrishna was dishonest.

Charge 5d- Charge found proved in respect of your actions at Charge 3 alone

The panel took into account its findings in relation to Charge 3 a and b, that Ms Balakrishna knew that Dr A had not signed the prescriptions. As such, the panel decided that Ms Balakrishna sought to obtain medication with prescriptions that she knew to be false. Ms Balakrishna through her actions sought to mislead the supplier in order to obtain the prescription medicines for use in her business. The panel was satisfied that by the standards of ordinary decent people, Ms Balakrishna was dishonest.

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 Ms Balakrishna's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Ms Balakrishna's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Cassells submitted that whether the facts found proved amount to misconduct is a matter entirely for the panel's professional judgment. There is no burden or standard of proof and referred the panel to the case of *Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas* [2006] EWHC 464 (Admin).

Mr Cassells identified the specific, relevant standards where Ms Balakrishna's actions amounted to misconduct and referred the panel to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin). He submitted that the panel may further be assisted by the comments of Leggat J in the substantive hearing of *Johnson and Maggs v Nursing and Midwifery Council (No. 2)* [2013] EWHC 2140 (Admin).

'... to find misconduct however, the Committee had been advised and had accepted that the failure had to be such that it would be seen as "deplorable" by fellow practitioners and as involving a serious departure from acceptable standards.'

Mr Cassells invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code)' in making its decision. He submitted, that the following parts of the Code are engaged in this case:

'Practise effectively

10 Keep clear and accurate records relevant to your practice

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.

Preserve safety

13 Recognise and work within the limits of your competence

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs.

Promote professionalism and trust

... You should be a model of integrity and leadership for others to aspire to...

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 ...

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

Mr Cassells submitted that Ms Balakrishna had put personal profit ahead of patient safety consistently for a period of time. She used her knowledge, her isolation on the Isle of Man in purporting the fraud, and abused her position of trust with HealthXchange. He stated that she created a realistic copy of Dr A's signature to prescribe the medication which is a serious allegation and suggests dishonesty which is difficult to remediate.

Mr Cassells invited the panel to step back from the individual charges and consider the case as a whole. He submitted that the concerns raised in this case concern a registrant whose business was, for years, predicated as a fraud. That fraud involved Ms Balakrishna providing drugs to patients when she was not qualified to do so and in so doing presenting a risk of harm to the patients.

In addition, Mr Cassells submitted that dishonesty is, after all, a serious matter. Even a one off, panicked instance of dishonesty could properly be sufficiently serious to constitute misconduct. In this insistence, Ms Balakrishna's dishonesty was premeditated, sustained and sophisticated. She took advantage of what, on any reading, was a gap in HealthXchange's process for filling prescriptions.

Put simply, Ms Balakrishna knew that if a reasonably convincing copy of Dr A's signature could be created, she never need worry about paying a prescriber again. That it was her intention to operate her business in this way is demonstrated by the Prescriber's

Authorisation Form - the forging of Dr A's signature was, from at least September 2010, which was central to the Ms Balakrishna's business model.

Mr Cassells submitted that Ms Balakrishna's conduct fell far below the standards to be expected of nurses and a finding of misconduct must follow.

Submissions on impairment

Mr Cassells moved on to the issue of impairment and addressed the panel on the need to have regard to protecting 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

Mr Cassells submitted that, in line with rule 31(7)(b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, a departure from the Code is not of itself sufficient to establish impairment of fitness to practise, that question, like misconduct, is a matter for the panel's professional judgment.

Mr Cassells also submitted that the panel is likely to find 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) instructive. Those questions as are relevant in this case 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*
4. *has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

Mr Cassells stated that Ms Balakrishna's actions put patients at an unwarranted risk of harm. He said that patients were being administered with the drugs that Ms Balakrishna had received from HealthXchange which had not been properly prescribed. The system of checks and balances that exists in respect of prescribing is there primarily to ensure patient safety. In bypassing that system, Ms Balakrishna exposed patients to a risk of harm.

Mr Cassells also submitted that Ms Balakrishna's actions brought the nursing and prescribing profession into disrepute. Her actions caused damage to the trust and confidence of those professions. He submitted that a member of the public hearing of this case might understandably ask, what confidence can patients have that prescription only drugs they are provided with are appropriate in circumstances where a registered professional is willing to circumvent the restrictions put in place to protect them?

Mr Cassells further submitted that honesty and integrity are fundamental tenets of the nursing profession, and indeed in all professions. The management of medication in line with the relevant controls is a basic expectation on all healthcare professionals.

Regarding dishonesty, Mr Cassells submitted that Ms Balakrishna had acted dishonestly. With regard to future risk, it is submitted, the panel will likely find assistance in the questions asked by Silber J in *Cohen*, namely, whether the misconduct is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated. He submitted that, Ms Balakrishna's misconduct is not easily remediable.

Dishonesty is often said to be demonstrative of an attitudinal problem. He submitted that there is clearly a sliding scale, an individual who engages in a sophisticated fraud over a

number of years is someone about whom it can properly be said is of a fundamentally and instinctively dishonest character. Ms Balakrishna in this case engaged in significant and prolonged dishonesty. Mr Cassells submitted that this demonstrates an attitudinal problem which is not easily remediable.

Mr Cassells stated that Ms Balakrishna had not engaged in the NMC proceedings before this panel and has not provided any evidence of insight or remediation. He submitted that it must therefore follow that the issues in this case have not been remedied and as such that a finding of current impairment should follow.

Mr Cassells submitted that a finding of impairment on the grounds of public protection is necessary, in that there is nothing to suggest Ms Balakrishna will not act in a similarly dishonest way in the future. With particular reference to the public interest, he submitted that the importance of honesty and integrity cannot be overstated. The people using the services of health professionals make themselves extremely vulnerable; any suggestion that those professionals are people whose honesty and integrity has been seriously called into question is corrosive to public trust and confidence.

Mr Cassells also submitted that Ms Balakrishna has not engaged with the NMC in these proceedings despite the several opportunities provided. He submitted that there is no evidence of any insight nor of any remediation. In light of the seriousness of the charges, the dishonesty involved, and given Ms Balakrishna's limited engagement with the NMC, her fitness to practice is currently impaired. He submitted that Ms Balakrishna's misconduct breached the Code and fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel accepted the advice of the legal assessor which included reference to the general principles in *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311 and *Nandi v General Medical Council* [2004] EWHC 2317 (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 accepted those aspects of the Code drawn to its attention by Mr Cassells.

The panel considered, in turn each of the charges found proved and whether they by themselves amounted to misconduct. The panel concluded that in each case Ms Balakrishna's actions did amount to misconduct in that they did fall significantly short of the standards expected of a registered nurse and that Ms Balakrishna's actions amounted to a breach of the Code.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Ms Balakrishna's actions did fall seriously short of the conduct and standards expected of a nurse.

The panel noted that no harm was caused to patients but there was a potential for serious harm. It considered that Ms Balakrishna's actions were not an isolated incident but were planned, multiple, repeated and conducted over a period of three years, apart from December 2013, and involved protracted and systematic dishonesty. It also considered that Ms Balakrishna was not a qualified nurse prescriber, but she had made a deliberate decision to prescribe medication with no clinical authorisation to do so. The panel was of the view that Ms Balakrishna had placed personal profit over patient safety and the fact that this was done with a dishonest intent made her actions, even the more serious.

The panel found that Ms Balakrishna's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct and that other registrants would find these actions to be deplorable.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional 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 determined that all four limbs of the test in *Grant* have been engaged in Ms Balakrishna's case. The panel finds that by dishonestly obtaining prescription medicines which had not been properly prescribed, patients were put at a real risk of harm. Ms Balakrishna's misconduct was dishonest and fraudulent over a long period of time and 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 the misconduct as extremely serious.

Regarding insight, the panel noted that it had not received any evidence of insight. It had no information as to Ms Balakrishna's understanding of how her actions and/or inactions put patients at a risk of harm, she has not demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted that Ms Balakrishna had not accepted her misconduct but instead sought to blame other professional colleagues. The panel observed that in blaming Dr A for her actions, Ms Balakrishna had put Dr A's professional reputation into disrepute, which suggests that she has no insight into the seriousness of the allegations.

The panel had sight of Ms Balakrishna's last email to the NMC, dated 25 October 2021, it states: *'I no longer work as a nurse and I didn't re register last year. All of these complaints are connected to the same local competitor and there have been others I've*

already fought and won. I have no intention of continuing to fight never ending cases that are manufactured, where people have been offered money to complain about me. I will not be defending myself in any of these cases. I have lost all confidence in the NMC and their abilities. Please strike me off the register ASAP I've only been kept on it by the NMC so they can strike me off it. It's a ridiculous waste of nurses (sic) fees.'

The panel acknowledged that dishonesty is difficult to remediate. However, it was satisfied that the misconduct in Ms Balakrishna's case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Ms Balakrishna has remedied her practice. However, the panel was of the view that Ms Balakrishna had not demonstrated any remediation to address the failings highlighted.

The panel noted Ms Balakrishna's disengagement from the NMC process, despite repeated efforts by the NMC prior to these proceedings and the panel's efforts to engage with her during these proceedings. There continued to be a lack of insight and no evidence of remediation, therefore, the panel was of the view that there is a real 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; 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. The panel concluded that public confidence in the profession and the need to uphold the proper standards of conduct and behaviour would be undermined if a finding of impairment were not made in this case. It therefore also finds Ms Balakrishna's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

Submissions on sanction

Mr Cassells referred the panel to the SG and he drew the panel to what the NMC considered to be the aggravating features of the case. He submitted that there were no identifiable mitigating features in this case. Mr Cassells submitted that the only appropriate sanction in Ms Balakrishna's case is a striking-off order. Mr Cassells submitted that Ms Balakrishna's dishonesty is of the most serious kind. He referred the panel to the NMC's guidance on considering sanctions for serious cases; he submitted that the following features said to be most likely to call into question whether a nurse should be allowed to remain on the register are present in this case:

1. Deliberately breaching the professional duty of candour in Ms Balakrishna's attempt to cover up her actions by having an unknown third party impersonate Dr A on the telephone to Ms 5.
2. Misuse of power. Ms Balakrishna abused her relationship with HealthXchange to perpetrate her fraud.
3. Personal financial gain from a breach of trust.

4. Direct risk to patients.
5. Premeditated, systematic and longstanding deception.

Mr Cassells submitted that Ms Balakrishna's dishonesty is longstanding, basic and fundamental and that there are no identifiable features said to indicate that a less serious dishonesty applies in this case.

Mr Cassells submitted that the public would be deeply concerned by the kind of serious and significant dishonesty involved in this case. He referred to the case of *Parkinson v NMC* [2010] EWHC1898 Admin and submitted that, a professional who acts in the way that Ms Balakrishna has been found to have done is at risk of being struck off. He submitted that in circumstances where Ms Balakrishna has not shown remorse, insight or any effort to remediate, a striking off order is the only appropriate and proportionate sanction.

Decision and reasons on sanction

Having found Ms Balakrishna'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. Although any sanction imposed is not intended to be punitive, it may, in its effect, have such consequences. The panel had careful regard to the Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust in that the Ms Balakrishna used her relationship with and knowledge of HealthXchange's systems to perpetrate her fraud.
- Ms Balakrishna attempted cover up upon discovery by using an unknown third party when it became apparent her deceit was starting to unravel.
- Prolonged misconduct which put patients at risk of harm.

- No evidence of insight, remorse or remediation.

The panel bore in mind that Ms Balakrishna had no previous regulatory concerns. However, it did not consider this to be a mitigating feature given her misconduct spanned over a period of 35 months.

The panel could not conceive of any mitigating features in this case.

The panel considered that this was a case of serious dishonesty, and was at the higher level of the spectrum of dishonesty. In considering this, the panel was guided by the NMC SG on 'Considering sanctions for serious cases' (Reference SAN-2), in particular the section under 'cases involving dishonesty'. The panel noted that generally the forms of dishonesty which are most likely to call into question whether a nurse should be allowed to remain on the register will involve:

- deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients
- misuse of power
- vulnerable victims
- personal financial gain from a breach of trust
- direct risk to patients
- premeditated, systematic or longstanding deception.

The panel was of the view that all of these forms of dishonesty could properly describe the dishonesty in Ms Balakrishna's case.

The panel further noted that the SG suggests that dishonest conduct will generally be less serious in cases where the following arise:

- one-off incidents
- opportunistic or spontaneous conduct
- no direct personal gain

- no risk to patients
- incidents in private life of nurse, midwife or nursing associate

The panel was of the view that none of these features could be said to apply to the case before it.

The panel determined that Ms Balakrishna abused her relationship with HealthXchange by virtue of her nursing position to perpetrate fraud for personal financial gain over a period of 35 months. It determined that her dishonesty was longstanding and premeditated.

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, nor would it protect the public.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not restrict your practice would not protect the public, would not uphold the public interest, and 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 Ms Balakrishna's misconduct and dishonesty 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 next considered whether placing conditions of practice on your 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 as they relate to attitudinal concerns and dishonesty. The misconduct identified in this case was not something that can be addressed through retraining. In any event, the panel concluded that the placing of conditions on Ms Balakrishna's registration

would not adequately address the seriousness of this case and the associated attitudinal concerns and it would not satisfy the public interest considerations of this case. Further, the panel was of the view that given the lack of any meaningful engagement, it could not be satisfied that Ms Balakrishna would be willing to comply with any conditions imposed on her practice.

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 panel considered that Ms Balakrishna's dishonesty related directly to her practice as a nurse, was deliberate and for personal financial gain. The panel considered that Ms Balakrishna's misconduct was repeated over a prolonged period of time, a period of 35 months, and is of a serious nature. The panel reached the view that Ms Balakrishna's lack of insight, remorse and remediation was indicative of harmful deep-seated personality or attitudinal problems and determined that there is a risk of her repeating the misconduct found proved.

Additionally, the panel considered that with very limited engagement from Ms Balakrishna, it has not been presented with any evidence that she can return to practice without compromising patient safety. Without Ms Balakrishna's engagement in this hearing the panel had no information before it that her attitude or behaviour was likely to improve. The panel was of the view that the serious breach of the fundamental tenets of the profession

evidenced by Ms Balakrishna's actions is fundamentally incompatible with Ms Balakrishna remaining on the register.

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

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

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

Ms Balakrishna'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 reminded itself again, that as well as her serious, systematic and ongoing dishonesty, Ms Balakrishna deliberately breached her professional duty of candour by attempting to cover up her actions by having an unknown third party impersonate Dr A on the telephone to Ms 5. Further it bore in mind that she misused her power and abused her position as a registered nurse and through her relationship with HealthXchange to perpetrate fraud. The panel was of the view that the findings in this particular case demonstrate that Ms Balakrishna's actions were serious, deep-seated, systematic and prolonged and that to allow her to continue practising would undermine public trust and confidence in the profession and in the NMC as a regulatory body, as well as continue the risk to the public.

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 effect of Ms Balakrishna'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 not only to protect the public, but also 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 standards of behaviour required of a registered nurse. The panel took into account proportionality, throughout its decision-making, and that Ms Balakrishna will be prevented from practising as a nurse, along with the potential financial and reputational impact upon her. However, the need to uphold the public interest, as well as the need to protect the public, outweighed her interests in this regard.

This will be confirmed to Ms Balakrishna 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 Ms Balakrishna's own interest until the striking-off sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Mr Cassells. He submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest.

Mr Cassells invited the panel to impose an interim suspension order for a period of 18 months.

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 any possible appeal period.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Ms Balakrishna is served with the decision of this hearing in writing.

That concludes this determination.