

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

**Substantive Hearing
Monday 29 November – Thursday 2 December 2021
Monday 6 December – Tuesday 7 December 2021**

Virtual Hearing

Name of registrant:	Eliska Neuzilova
NMC PIN:	12A0088C
Part(s) of the register:	Nursing Sub Part 1 RN1, Registered Adult Nurse (10 January 2012)
Area of registered address:	England
Type of case:	Misconduct
Panel members:	Gregory Hammond (Chair, lay member) Lorna Taylor (Registrant member) Matthew Wratten (Lay member)
Legal Assessor:	Caroline Hartley
Panel Secretary:	Jennifer Morrison
Nursing and Midwifery Council:	Represented by Tagbo Ilozue, Case Presenter
Miss Neuzilova:	Not present and unrepresented
Facts proved:	Charges 1b, 2, 3a, 3c, 3d, 3e
Facts not proved:	Charges 1a, 3b
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 Miss Neuzilova was not in attendance and that the Notice of Hearing letter had been sent to Miss Neuzilova's registered email address on 25 October 2021.

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

Mr Ilozue, 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.

In the light of all of the information available, the panel was satisfied that Miss Neuzilova 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 Miss Neuzilova

The panel next considered whether it should proceed in the absence of Miss Neuzilova. It had regard to Rule 21 and heard the submissions of Mr Ilozue, who invited the panel to continue in the absence of Miss Neuzilova. Mr Ilozue referred the panel to an email dated 22 November 2021 from Miss Neuzilova to the NMC, in which Miss Neuzilova stated that she would not be attending the hearing or participating in the process, as she no longer lived in the UK or wished to practise nursing in the UK. Miss Neuzilova also confirmed that she was happy for the hearing to proceed in her absence. Mr Ilozue submitted that Miss

Neuzilova had voluntarily absented herself, and there was no reason to believe that an adjournment would secure her attendance on some future occasion.

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*'.

The panel has decided to proceed in the absence of Miss Neuzilova. In reaching this decision, the panel has considered the submissions of Mr Ilozue, the email communication from Miss Neuzilova and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 and *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:

- No application for an adjournment has been made by Miss Neuzilova;
- Miss Neuzilova has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- Miss Neuzilova has expressly stated that she would not be attending the hearing or participating in the process, as she no longer lived in the UK or wished to practise nursing in the UK;
- There is no reason to suppose that adjourning would secure Miss Neuzilova's attendance at some future date;
- One witness has attended today to give live evidence, four others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) 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 Miss Neuzilova in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Miss Neuzilova at her registered address, 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 Miss Neuzilova'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 person.

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

Decision and reasons on application to amend the charges

The panel heard an application made by Mr Ilozue to amend the wording of charges 2, 3a and 3b.

The proposed amendments were to change the year stated within charge 2 from 2019 to 2018, and to correct the spelling of the drug Nimodipine within charges 3a and 3b. It was submitted by Mr Ilozue that the proposed amendments would correct simple typographical errors, and, regarding charge 2, it had always been clear when the alleged misconduct occurred.

'That you, a registered nurse:

- 2) *Between 23 June and 29 June 2019~~8~~, tried to induce Patient A to purchase Cannabis Oil for your own financial gain*

- 3) *On 22 July 2018 in respect of Patient B:*
 - a) *Documented retrospectively that you had administered ~~Nimoprodine~~ **Nimodipine** at 18:00 hours*

 - b) *Failed to record on the rear of Patient B's medication chart that you had signed for the administration of ~~Nimoprodine~~ **Nimodipine** retrospectively'*

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

The panel was of the view that such amendments, as applied for, were in the interest of justice. The panel was satisfied that the errors were typographical; therefore, there would be no prejudice to Miss Neuzilova and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Ilozue under Rule 31 to allow the original and supplementary written statements of Witness 1 into evidence. Witness 1 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, Witness 1 had informed the NMC on 25 November 2021 that he would not be attending the hearing to give his oral evidence, despite his previous agreement to do so. Mr Ilozue stated that Witness 1 had not provided much detail as to his reasons for not attending, but had made reference to [PRIVATE]. Although Witness 1 had been advised that he would only be questioned by the panel, the case presenter and the legal assessor during the hearing, Witness 1 made it clear that he was not open to negotiation of his position.

Mr Ilozue submitted that the test of relevance had been met, in that Witness 1's evidence spoke directly to the allegations outlined in charges 1 and 2. Further, in the preparation of this hearing, the NMC had indicated to Miss Neuzilova in the Case Management Form (CMF), dated 10 February 2021, that it was the NMC's intention for Witness 1 to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Witness 1, Miss Neuzilova made the decision not to attend this hearing. On this basis, Mr Ilozue advanced the argument that there was no lack of fairness to Miss Neuzilova in allowing Witness 1's written statements into evidence.

The panel accepted the advice of the legal assessor.

The panel gave the application in regard to Witness 1 serious consideration. The panel noted that Witness 1's statements had been prepared in anticipation of being used in these proceedings and contained the paragraph, *'This statement ... is true to the best of my information, knowledge and belief'* and signed by him.

The panel considered whether Miss Neuzilova would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 1 to that of written statements.

The panel considered that, as Miss Neuzilova had been provided with a copy of Witness 1's statement and, as the panel had already determined that Miss Neuzilova had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case. There was also public interest in the issues being explored fully, which supported the admission of this evidence into the proceedings.

The panel was satisfied that the information contained within Witness 1's statements was relevant to charges 1 and 2. It considered that Witness 1 appeared to be the only witness to direct communication between Miss Neuzilova and Patient A regarding the use of

cannabis oil. However, the panel noted that material contained within the registrant's bundle contradicts this.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statements of Witness 1, but would give this evidence the weight the panel deemed appropriate once it had heard and evaluated all the evidence before it.

Details of charges (as amended)

'That you, a registered nurse:

1) *Between 23 June and 29 June 2018, failed to maintain professional boundaries with Patient A in that you:*

a) *Gave Patient A unsolicited medical advice in respect of a non-prescribed treatment for cancer, i.e. Cannabis Oil; and/or **[NOT PROVED]***

b) *Misused patient information by attending Patient A's home address and posting a leaflet advertising Cannabis Oil for sale through the letterbox **[PROVED]***

2) *Between 23 June and 29 June 2018, tried to induce Patient A to purchase Cannabis Oil for your own financial gain **[PROVED]***

3) *On 22 July 2018 in respect of Patient B:*

a) *Documented retrospectively that you had administered Nimodipine at 18:00 hours **[PROVED]***

- b) *Failed to record on the rear of Patient B's medication chart that you had signed for the administration of Nimodipine retrospectively [NOT PROVED]*
- c) *Failed to record any information on the fluid chart between 12:00 and 19:00 hours [PROVED]*
- d) *Completed the fluid balance chart retrospectively [PROVED]*
- e) *Failed to ensure that the External Ventricular Drain was working [PROVED]*

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

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence, including Miss Neuzilova's bundle of documents, together with the submissions made by Mr Ilozue.

The panel has drawn no adverse inference from the non-attendance of Miss Neuzilova.

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:

- Witness 2: Patient A's family member;

- Witness 3: Agency Clinical Lead Manager and Complaints Manager
- Witness 4: Matron, Neuro-Spinal Post-Operative Unit
- Witness 5: Deputy Sister, Neuro-Spinal Post-Operative Unit
- Witness 6: Staff Nurse, Neuro-Spinal Post-Operative Unit

Background

On 26 July 2018, Patient A's family member made a complaint to the Neuro-Spinal Post-Operative Unit ('the NSPU') at Queens Medical Centre, Nottingham University Hospitals NHS Trust ('the Trust'), where Miss Neuzilova was working as an agency nurse. It is alleged that whilst caring for Patient A on the NSPU, Miss Neuzilova had tried to convince Patient A to stop eating sugar and to take cannabis oil to cure her cancer, which Patient A's family found upsetting and inappropriate. It is also alleged that, following Patient A's discharge from the NSPU, Miss Neuzilova posted a leaflet detailing cannabis oil treatments for purchase through the letterbox of Patient A's home. Miss Neuzilova reportedly confirmed to the agency that she was involved with a company that sold cannabis oil.

It is further alleged that on 22 July 2018, also whilst working on the NSPU, Miss Neuzilova completed patient care documentation for Patient B retrospectively after her shift had ended. Miss Neuzilova was allegedly prompted to complete the documentation by the nurse she was handing over to. She also allegedly failed to ensure that Patient B's External Ventricular Drain (EVD) was working during her shift.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Miss Neuzilova.

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

Charge 1a

‘That you, a registered nurse:

1) [...]

a) Gave Patient A unsolicited medical advice in respect of a non-prescribed treatment for cancer, i.e. Cannabis Oil’

This charge is found NOT proved.

In reaching this decision, the panel considered Miss Neuzilova’s written admission that she gave Patient A information about cannabis oil following a direct request from Patient A. It was of the view that this represented advice. However, the panel could not be satisfied, on the balance of probabilities, that this advice was unsolicited. It considered the written evidence of Witness 1, who stated that he was present when Miss Neuzilova asked Patient A whether she had heard of cannabis oil, but was unable to test his account through oral questioning. The panel noted that, sadly, as she had passed away, Patient A was unable to tell the panel first-hand whether Miss Neuzilova’s advice was unsolicited or not, and considered that neither Witness 1 nor Witness 2 would have been present on the ward with Patient A and Miss Neuzilova at all times, and therefore privy to their conversations.

The panel also considered the oral evidence of Witness 2, who described Patient A as chatty and engaged with current affairs, and said that if someone had brought up the topic

of cannabis oil in Patient A's presence, Patient A would have discussed it. It accepted Witness 2's evidence, that at the time of the incident, the relationship between sugar consumption and cancer, and the purported therapeutic properties of cannabis oil, had received considerable media coverage. In its decision on charge 1a, the panel was unable to determine, based on the evidence, whether Miss Neuzilova had recommended cannabis oil as a food supplement, pain relief or cure for cancer.

The panel considered that Miss Neuzilova had been untruthful and inconsistent in her statements in other contexts; however, she has consistently stated that Patient A overheard Miss Neuzilova's conversation with another patient about cannabis oil and asked Miss Neuzilova about it. It noted that charge 1a is predicated solely on hearsay evidence, and was satisfied that Miss Neuzilova's denial of the centrality of charge 1a, that the advice was unsolicited, has been consistent and must therefore outweigh the hearsay evidence of Witness 1.

Charge 1b)

'That you, a registered nurse:

1) [...]

b) Misused patient information by attending Patient A's home address and posting a leaflet advertising Cannabis Oil for sale through the letterbox'

This charge is found proved.

In reaching this decision, the panel considered Miss Neuzilova's eventual admission to this charge in her statement:

' I knew her address from her records...so I decided to drop a leaflet through her door.'

The panel noted that Miss Neuzilova initially told Witness 3 that it was not she who posted the leaflet through Patient A's letterbox, but *'two of my boys'*. However, she later stated through her reflection and written submissions from the Royal College of Nursing (RCN) that it was she who attended the property. The panel concluded that, regardless of whether it was Miss Neuzilova or her agents who attended Patient A's property, Miss Neuzilova could have only obtained Patient A's address from either the clinical records or from Patient A herself. It was satisfied that, as no clinical justification for visiting Patient A's house had been presented, Miss Neuzilova's actions amounted to a misuse of patient information.

The panel considered the leaflet referenced in the statement of Witness 1. Although Witness 1's evidence was hearsay, the panel saw no reason to doubt his evidence that a leaflet advertising cannabis oil products was posted through his door. The panel noted that whilst the leaflet before the panel did not give prices for the products featured, it provided a telephone number for further information, and concluded that the flyer was advertising products that could be purchased.

Charge 2)

'That you, a registered nurse:

- 2) *Between 23 June and 29 June 2018, tried to induce Patient A to purchase Cannabis Oil for your own financial gain'*

This charge is found proved.

In reaching this decision, the panel took into account its findings that Miss Neuzilova discussed the use of cannabis oil with Patient A, and that she posted a leaflet advertising cannabis oil products through Patient A's letterbox, which provided Patient A the knowledge of, and opportunity to, purchase the products.

In Miss Neuzilova's reflection, she states:

'At the time of the allegations, I was involved in a company that sold cannabis oil.'

The panel also had regard to the evidence of Witness 3, who stated that Miss Neuzilova told her that she was operating a side business which sold cannabis oil treatments. This was corroborated by Miss Neuzilova's own admission in her reflection. Miss Neuzilova also stated that she was *'bound to the company...policy'* and *'excited'* that Patient A showed interest in cannabis oil products. The panel was satisfied that Miss Neuzilova was employed by, or had a business interest in, a company which profited from the sale of cannabis oil products.

The panel went on to consider whether Miss Neuzilova would have obtained a financial gain from any purchase Patient A may have made of the advertised products. It noted that it had no evidence of how Miss Neuzilova would have been rewarded by her company for any purchases made, such as a salary, which may have indicated an indirect benefit, or commission, which may have indicated a direct benefit; nonetheless, it concluded that Miss Neuzilova would have obtained some sort of financial gain from Patient A purchasing the advertised products. The panel was satisfied that Miss Neuzilova had given Patient A the opportunity and some persuasion to purchase cannabis oil products.

The panel considered Miss Neuzilova's statement that she sought no financial gain from Patient A, but merely wanted to help her find alternative pain relief. However, the panel found it implausible that Miss Neuzilova would go out of her way to deliver a leaflet to Patient A which advertised products her company sold for purely altruistic reasons.

Charge 3a)

'That you, a registered nurse:

3) [...]:

a) *Documented retrospectively that you had administered Nimodipine at 18:00 hours*

This charge is found proved.

In reaching this decision, the panel took into account the direct evidence of Witness 6, to whom Miss Neuzilova gave the handover on 22 July 2018. Witness 6 stated in both her written and oral evidence that Patient B's 18:00 dose of Nimodipine had not been signed for. She further stated that when she questioned Miss Neuzilova about the signature, Miss Neuzilova insisted that she had given the medication on time and she signed the medication chart in front of Witness 6 at approximately 19:20. The panel found Witness 6 to be credible, consistent and reliable. She recalled events well, and at one point whilst giving her oral evidence, brought an inconsistency between her oral evidence and an exhibit with regard to the dates she cared for Patient B to the panel's attention. The panel saw no reason to doubt Witness 6's evidence, which was corroborated by Miss Neuzilova's own admission to the charge.

Charge 3b)

'That you, a registered nurse:

3) [...]:

b) *Failed to record on the rear of Patient B's medication chart that you had signed for the administration of Nimodipine retrospectively'*

This charge is found NOT proved.

In reaching this decision, the panel noted that it had been established that Miss Neuzilova had signed the medication chart retrospectively for the 18:00 dose of Nimodipine. The panel considered that it had seen what was more likely than not the rear of Patient B's medication chart. It noted that whilst the first entry may have been made on either 20 July 2018 or 22 July 2018, there were no entries that had been made by Miss Neuzilova.

The panel considered whether Miss Neuzilova had a duty to record retrospective entries on the rear of the medication chart. The panel had regard to paragraph 6.6.2 of the Trust policy entitled *Clinical Health Record Keeping* (implementation date 8 May 2019), which stated:

'Entries should be made as soon as possible after the event to be documented, and before the relevant staff member goes off duty.'

The panel considered that the Trust policy did not specify where late entries were to be recorded; therefore, it was satisfied that Miss Neuzilova did not have a duty to record the retrospective entry on the rear of the medication chart.

The panel determined that Miss Neuzilova had a duty under paragraph 10.1 of the Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code') to complete records at the time or as soon as possible after an event, and to record if the notes are made after the event. However, as it had not been provided with Patient B's nursing notes, the panel could not be satisfied on the balance of probabilities that Miss Neuzilova had not retrospectively recorded the administration of Nimodipine on the nursing notes or elsewhere as opposed to the back of the medication chart.

Charge 3c)

'That you, a registered nurse:

3) [...]:

c) *Failed to record any information on the fluid chart between 12:00 and 19:00 hours'*

This charge is found proved.

In reaching this decision, the panel took into account the written and oral evidence of Witness 6, who stated that she noticed that Patient B's fluid chart for entries between the morning and 12:00 was facing upwards. Therefore, the afternoon and evening entries were not displayed as expected. When Witness 6 turned over the chart, the entries between 12:00 and 19:00 were blank. Witness 6 stated that she was surprised to see this, and after she challenged Miss Neuzilova, Miss Neuzilova filled in the entries at around 19:30.

The panel considered that Witness 6 was clearly able to recall in oral evidence where the fluid chart was located on Patient B's bed and unequivocally stated that the chart was displaying the morning's entries when she picked it up. Witness 6 also clearly recalled that there were no entries on the other side of the chart, and Miss Neuzilova completed the entries in front of her. The panel also had regard to Miss Neuzilova's own admission that she failed to keep contemporaneous records.

Charge 3d)

'That you, a registered nurse:

3) [...]:

d) *Completed the fluid balance chart retrospectively'*

This charge is found proved.

In reaching this decision, the panel took into account the written and oral evidence of Witness 6, who stated that she saw Miss Neuzilova filling in the drain columns on the right-hand side of the chart. This was corroborated by Miss Neuzilova's own admission through the RCN's written submissions that she forgot to complete the fluid balance records on the paper chart at the time.

Charge 3e)

'That you, a registered nurse:

3) [...]

e) Failed to ensure that the External Ventricular Drain was working'

This charge is found proved.

In reaching this decision, the panel accepted the definition of the EVD 'working' as operating in the manner it should have been, meaning that fluid was able to drain from the patient via the device as required. The panel accepted Witness 6's direct evidence that she discovered that Patient B's drain was clamped at handover, which meant that the drain was not working effectively. When Witness 6 pointed this out to Miss Neuzilova, Witness 6 said that Miss Neuzilova was '*shocked*' and suggested that either a health care assistant (HCA) or family member must have clamped the drain. Through the RCN's written submissions, Miss Neuzilova later explained that at tea time she had asked an auxiliary nurse to change Patient B's gown because food had been spilled on it, and in doing so, the auxiliary nurse must have clamped the drain but failed to ask Miss Neuzilova to unclamp it.

The panel considered Witness 6's evidence, who was very clear that she felt it was a registered nurse's responsibility to ensure that an EVD was working properly. She stated that, whilst she had known of other health care workers such as physiotherapists or HCAs

to clamp a drain during their work, she was strongly of the view that this was a registered nurse's duty, and that HCAs were not appropriately trained to carry out the task. Witness 6 also stated that health care workers who had clamped a drain would never release the drain; they would ask a registered nurse to do this, as the drain would need to be reset at the correct level, and they were not trained to do so. The panel considered that no visits from a physiotherapist or other health care worker had been recorded in the multi-disciplinary documentation before it. It noted hearsay evidence from Witness 5 that one of the two HCAs caring for Patient B at the time denied interfering with the drain, and considered that a family member attempting to operate a complex medical device in this scenario would be implausible.

During the handover, Witness 6 noted Patient B's reduced conscious level, prompting her to summon urgent medical attention immediately after unclamping and resetting the drain. Witness 6 told the panel that Patient B recovered within one hour of the drain being unclamped and reset, and following an urgent CT scan.

The panel's conclusion that this charge is found proved is further supported by discrepancies in the patient records. The chart showing the EVD's oscillations was signed at 19:00, which is an indication that the device was draining fluid, yet Witness 6 stated that the EVD was clamped at the time of the bedside handover at around 19:20.

Furthermore, the entries on the EVD chart do not correspond with those on the fluid balance chart, which indicate when the drain was emptied and the drainage volume was documented. The panel noted the evidence of both Witness 5 and 6 that if a nurse was going to undertake all the checks on the EVD chart, she would, at that time, also be checking that the clamp was either on or off as appropriate. The panel was of the view that this meant that either the checks were not done as recorded or the charts were not accurately completed.

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 Miss Neuzilova'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, Miss Neuzilova'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 Ilozue invited the panel to take the view that the facts found proved amount to either misconduct or conduct that was morally culpable or disgraceful, whether or not it occurred in relation to the clinical environment. He referred the panel to *Cheatle v GMC* [2009] EWHC 645 (Admin). Mr Ilozue submitted that with respect to charge 1b, although the panel could not determine whether Miss Neuzilova had recommended cannabis oil as a food supplement, pain relief or cure for cancer, it may be of the view that her advice was

related to health matters in the course of her duties as a registered nurse, and therefore amounted to misconduct.

With respect to charge 2, Mr Ilozue submitted that Miss Neuzilova's attempt to secure a personal financial benefit through her interaction with Patient A was very serious and represented an abuse of position. If the panel was not with him in linking Miss Neuzilova's actions to the nursing profession by virtue of the leaflet being delivered outside of the times when Miss Neuzilova was caring for Patient A, Mr Ilozue invited the panel to find that Miss Neuzilova's actions were dishonourable conduct and therefore misconduct.

With respect to charges 1b and 2, Mr Ilozue identified the specific, relevant standards where Miss Neuzilova's actions amounted to misconduct, citing paragraphs 6.1, 20.5, 20.6 and 20.7 of the Code.

With respect to charge 3 and its stems (excluding charge 3b), Mr Ilozue submitted that Miss Neuzilova's failure to monitor the EVD led to the EVD not working properly. This, in turn, caused Patient B's condition to deteriorate, which placed Patient B at risk of serious harm. Mr Ilozue submitted that this, as well as Miss Neuzilova's failure to keep accurate records, amounted to serious professional misconduct.

With respect to charge 3 and its stems (excluding charge 3b), Mr Ilozue identified the specific, relevant standards where Miss Neuzilova's actions amounted to misconduct, citing paragraphs 10.1, 10.3 and 14.1 of the Code.

Submissions on impairment

Mr Ilozue 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.

With regard to charge 1b, Mr Ilozue acknowledged that Miss Neuzilova's conduct was a one-off incident and Patient A was not harmed. He referred the panel to Miss Neuzilova's reflection, where she admitted that using Patient A's address in the manner found proved was wrong. However, with regard to charge 2, he submitted that Miss Neuzilova has not accepted that her actions in attempting to gain a personal financial benefit from Patient A were wrong, referring the panel to the NMC's published guidance on 'Serious concerns which are more difficult to put right' (reference FTP-3a, last updated 29 November 2021), which states that abuse of position for financial gain is a serious concern that is more difficult to put right.

With regard to charge 3 and its stems (excluding charge 3b), Mr Ilozue acknowledged that this also was a one-off incident. However, he submitted that Miss Neuzilova has failed to accept that she was responsible for identifying the state of the EVD. She instead blamed Patient B's relatives and HCAs, as reported by Witness 6 in the immediate aftermath of the incident, and later provided a different account through the RCN's 2020 submissions on her behalf. Mr Ilozue further submitted that there was a "glaring absence" of Miss Neuzilova's acknowledgement of the circumstances that led to Patient B being placed at risk of serious harm and the impact of her actions on Patient B.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 AC 311 and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Neuzilova's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

[...]

1.2 make sure you deliver the fundamentals of care effectively.'

'5 Respect people's right to privacy and confidentiality

As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure [...] that information about them is shared appropriately.

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care.'

'6 Always practise in line with the best available evidence

To achieve this, you must:

6.1 make sure that any information or advice given is evidence-based, including information relating to using any health and care products or services.'

'10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

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

[...]

10.3 complete all records accurately and without any falsification...'

'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

[...]

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It noted that misconduct is on a spectrum of seriousness with regard to departure from professional standards. However, the panel found that both charges proven with respect to Patient A were a serious departure from the Code.

The panel was cognisant that cannabis oil is not a gold-standard medical treatment in Patient A's circumstances, and, regardless of Miss Neuzilova's personal beliefs, it was satisfied that a health care professional giving advice on supplements or treatments that are not supported by medical evidence is inappropriate and potentially dangerous. This therefore represents a serious departure from professional standards.

Further, the panel determined that Patient A was highly vulnerable, and Miss Neuzilova was in a position of trust. Miss Neuzilova's use of Patient A's address, which she admits having obtained in the course of her duties as a registered nurse, in order to target her for financial gain was an abuse of that trust. The panel considered this to be an even more egregious breach of professional standards in the light of Witness 2's evidence of Patient A's strong desire to keep her home life and hospital treatment separate. The panel decided that this was misconduct towards the upper end of the spectrum of seriousness.

With respect to Patient B, the panel determined that, taken individually, some of the charges could have amounted to misconduct at the lesser end of the spectrum. However, the panel determined that, when considered as a whole, the charges found proved amounted to an overall failing to deliver effective and safe patient care, the most serious being the failure to monitor a medical device that was necessary for a patient who had recently undergone neurosurgery and the failure to recognise a deteriorating patient, as well as a record keeping failure. The panel noted that Miss Neuzilova had completed some documentation retrospectively in the presence of a student nurse. Whilst it was mindful that missing information in a single document may not, on its own, have amounted to serious misconduct, the panel was concerned that several of Patient B's essential care records had not been completed contemporaneously, which was a serious departure from the expected standards of care.

The panel considered that Patient B was placed at risk of serious harm as a result of Miss Neuzilova's actions, and determined that, overall, Miss Neuzilova's actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to serious misconduct in the upper half of the spectrum.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, Miss Neuzilova'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 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) [...].'*

The panel finds that Patient A and her family were put at risk of emotional harm, and that Patient B was put at risk of permanent physical harm as a result of Miss Neuzilova's

misconduct. Miss Neuzilova's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel recognised that Miss Neuzilova had expressed an apology to Patient A, her family and Patient B, albeit nearly two years after the incidents had taken place and after she initially characterised the concerns involving Patient A as '*seriously over the top*'. Following GDPR training, Miss Neuzilova accepted that the purpose for which she used Patient A's address was a breach of confidentiality. However, the panel was not satisfied that Miss Neuzilova appreciates how exploiting the vulnerability of a patient to promote a product from which she may receive a financial benefit represents serious misconduct.

Further, the panel was not satisfied that Miss Neuzilova recognised that her failures in care could have led to serious harm to Patient B. It noted that Miss Neuzilova had admitted to poor record keeping in her reflection and stated that she understood her responsibilities in this area under the Code. However, Miss Neuzilova's responses did not address the fact that the concerns in this case encompass more than record keeping. The panel considered that Miss Neuzilova has not shown sufficient insight into her responsibilities in monitoring Patient B's condition, and recognising a deterioration, or what she might do differently in the future, even though she was considered by Witnesses 4, 5 and 6 to be an experienced neurosurgical nurse. It further considered that Miss Neuzilova, in passing the blame to others, did not accept that she was ultimately responsible for the observation and proper performance of the EVD.

The panel was satisfied that the misconduct found in a number of the charges in this case is capable of remediation, as set out in *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin). Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Neuzilova has strengthened her practice. It considered that Miss Neuzilova had undertaken some training relating to GDPR requirements, and had shown some insight into her misuse of personal data, which may be relevant to charge 1b. However, the panel has no evidence before it to suggest that

Miss Neuzilova has remediated her practice with respect to the other charges found proved.

The panel considered the serious misconduct identified in charge 2 to be attitudinal in nature. Therefore, it is difficult to demonstrate remediation. This charge is not admitted, so the panel have no evidence of any remediation with regard to this attitudinal concern.

The panel decided that there is a risk of repetition and of consequential harm to patients. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 concluded that public confidence in the professions would be undermined if a finding of impairment were not made in this case. Therefore, it also finds Miss Neuzilova's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Neuzilova'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 Miss Neuzilova off the register. The effect of this order is that the NMC register will show that Miss Neuzilova 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 Ilozue informed the panel that in the Notice of Hearing, dated 25 October 2021, the NMC had advised Miss Neuzilova that it would seek the imposition of a striking-off order if it found her fitness to practise currently impaired. Mr Ilozue outlined a number of aggravating and mitigating factors in this case. He submitted that the severity of the misconduct, combined with Miss Neuzilova's lack of insight and remediation, as well as her expressed wish to be removed from the register meant that the only appropriate sanction was a striking-off order.

Decision and reasons on sanction

The panel accepted the advice of the legal assessor.

Having found Miss Neuzilova's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

In reaching this decision, the panel had regard to the NMC's published guidance on 'Serious concerns which are more difficult to put right' (reference FTP-3a, last updated 29 November 2021), in particular, the following:

'...where the evidence shows that the nurse, midwife or nursing associate is responsible for:

[...]

- *Exploiting patients or abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain.'*

The panel took into account the following aggravating features:

- Miss Neuzilova's actions regarding Patient A were an abuse of a position of trust;
- Miss Neuzilova attempted to use her position as a registered nurse to obtain a personal financial gain from Patient A;
- Two distinct incidents of misconduct took place;
- Patient A and her family were placed at risk of psychological harm and Patient B was placed at risk of permanent physical harm;
- Miss Neuzilova sought to deflect blame for her actions regarding Patient B onto Patient B's family and HCAs;
- Miss Neuzilova has shown no insight into the most serious aspects of her misconduct; and
- The panel has seen evidence of wider attitudinal concerns, including Miss Neuzilova's general attitude towards the nursing profession and her overall professionalism.

The panel also took into account the following mitigating features:

- The incidents took place over a single month;
- Miss Neuzilova made admissions, albeit late, to some of the misconduct;
- Miss Neuzilova has expressed an apology to Patient A, Patient A's family and Patient B; and
- Miss Neuzilova has undertaken a review of the Code in relation to record keeping and has evidenced training in data protection.

The panel first considered whether to take no action but concluded that this would be inappropriate in the light of the seriousness of the case and its finding of current

impairment. The panel decided that it would be neither proportionate nor in the public interest to take no further action, nor would it provide any public protection.

It then considered the imposition of a caution order but again determined that, for the reasons previously stated, an order that does not restrict Miss Neuzilova's practice would not be appropriate in the circumstances, nor would it protect the public. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Neuzilova's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Neuzilova's registration would be a sufficient and appropriate response. It considered that some of the clinical aspects of Miss Neuzilova's failures in her care of Patient B could have been addressed through conditions of practice. However, the panel determined that the serious attitudinal concerns evident in Miss Neuzilova's conduct towards Patient A, Patient A's family and Patient B, as well as Miss Neuzilova's expressed intent not to return to nursing in the UK, meant that no practicable or workable conditions could be formulated. The panel concluded that the placing of conditions on Miss Neuzilova's registration would not adequately address the seriousness of this case, would not protect the public and would not satisfy the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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; and*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel found that none of the factors identified above was applicable to this case. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Patient A, in particular, was a highly vulnerable patient, and Patient B's EVD mismanagement put Patient B at risk of long-term harm. Miss Neuzilova has also failed to show any insight into the most serious aspects of her misconduct.

The panel was concerned to note the following emailed evidence provided to the NMC by one of Miss Neuzilova's subsequent employers about Miss Neuzilova's general attitude towards the nursing profession and her patients:

'Eliska did not display a caring or empathetic attitude towards residents during her time at Ruddington Manor. She performed her duties as required with regards to the work she undertook but did not act with care towards the service users. Whilst this was addressed with her during clinical supervisions, as a nurse myself, I did not feel that she was working in line with the level of care that I would expect in line with the code of practice.

[...]

Eliska also expressed to me directly on many occasions that she did not want to be a nurse anymore...I believe that she did not have the desire or passion for the role that is so essential to be an effective nurse.'

The panel also considered the evidence of Witness 2, who stated that Miss Neuzilova inappropriately complained about nurses' pay and being a nurse whilst caring for Patient A. The panel concluded that significant questions about Miss Neuzilova's professionalism had been raised, which, in addition to the serious breach of the fundamental tenets of the

profession evidenced by Miss Neuzilova's actions, are incompatible with Miss Neuzilova's 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?*

Miss Neuzilova'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 determined that the findings in this case demonstrate that Miss Neuzilova's actions were particularly serious, and to allow her to continue practising would present an unacceptable risk to patients and 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 effect of Miss Neuzilova'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 a striking-off order would be sufficient in this case.

Due to the absence of any evidence of remediation in regard to the most serious concerns highlighted in this case, the panel decided that no lesser sanction would protect the public.

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

This will be confirmed to Miss Neuzilova in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, or until the conclusion of any appeal that is lodged, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Neuzilova'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 Ilozue. He referred the panel to Rule 32(5), submitting that the panel must consider the risk of repetition or damage to public confidence in the profession should an interim order not be imposed. Mr Ilozue referred the panel to its previous findings on sanction, and informed the panel that Miss Neuzilova was not currently subject to an interim order.

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

misconduct 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 in order to protect the public and satisfy the public interest during the 28-day appeal period or until the conclusion of any appeal that is lodged.

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

That concludes this determination.