

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

**Substantive Meeting  
Tuesday 18 May 2021**

Nursing and Midwifery Council  
Virtual Hearing

**Name of registrant:** Daniel Guemes Martinez

**NMC PIN:** 15A0377C

**Part(s) of the register:** Registered Nurse - Adult  
Nurse – sub part 1  
RN1 – Adult nurse (level 1), 23 January 2015

**Area of registered address:** Madrid, Spain

**Type of case:** Misconduct

**Panel members:** Avril O'Meara (Chair, lay member)  
Sally Underwood (Registrant member)  
June Robertson (Lay member)

**Legal Assessor:** Gerard Coll

**Panel Secretary:** Catherine Acevedo

**Facts proved:** Charges 1, 2, 3, 4, 5, 6

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** Striking-off order

**Interim order:** Interim suspension order (18 months)

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that Mr Guemes Martinez was not in attendance and that the Notice of Meeting had been sent to Mr Guemes Martinez' registered address and email on 14 April 2021.

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

The panel accepted the advice of the legal assessor.

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

## **Details of charges**

*That you a registered nurse;*

- 1. Between the 1st June 2017 and the 21st September 2017, on one or more occasions, took Fentanyl from your employer for your own use.*
- 2. Your actions in charge 1 were dishonest because you knew you did not have permission to take Fentanyl from your employer for your own use.*
- 3. Between the 1st June 2017 and the 21st September 2017, on one or more occasions, made inaccurate entries in the controlled drug book relating to Fentanyl.*
- 4. Your actions in charge 3 above were dishonest because you were seeking to hide your misuse of Fentanyl.*
- 5. Between the 1st June 2017 and the 21st September 2017, on one or more occasions, drew up medication in advance of its required administration.*

6. *Between the 14th December 2017 and the 6th February 2019 failed to co-operate with the NMC investigation into your health.*

*That in light above charges your fitness to practise is impaired by your misconduct.*

## **Background**

The NMC received a referral about Mr Guemes Martinez' fitness to practise on 23 November 2017. The referral came the Lead Nurse for Endoscopy Services, at the Royal Berkshire NHS Foundation Trust ('the Trust').

Mr Guemes Martinez' name was first entered onto the NMC's Register on 23 January 2015. He began working for the Trust on 28 March 2017 and was employed as a staff nurse based in the Endoscopy Department.

Mr Guemes Martinez' role in the Endoscopy Department involved the administration of Fentanyl, a pain relief, during the endoscopy process. Fentanyl is a controlled drug and as such, there are strict procedures and protocols for its administration.

Concerns were first raised by staff in August 2017 that Mr Guemes Martinez was drawing up extra Fentanyl during administration to patients. It was also reported that he was drawing up drugs in advance of patients being present.

Due to the concerns raised, a local investigation was initiated and Mr Guemes Martinez was suspended from duties. He made admissions when interviewed as part of the Trust investigation. He confirmed that he had been taking small quantities of Fentanyl for his own use over a significant period of time [PRIVATE].

Mr Guemes Martinez provided a reflective statement to the Trust on 29 September 2017 as part of their investigation in which he made admissions to taking Fentanyl for his own use, making inaccurate entries in patient records and drawing up Fentanyl in advance of the patient needing it and in another room.

Mr Guemes Martinez resigned his position with the Trust on 31 October 2017 before any disciplinary action could be taken.

As part of the NMC investigations, Mr Guemes Martinez was invited to undergo medical examination, but has not consented to the process taking place. Mr Guemes Martinez has not engaged with the NMC since December 2017.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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

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

- Witness 1: Junior Sister on the Endoscopy Ward at the Trust
- Witness 2: Lead Nurse for endoscopy Services at the Trust
- Witness 3: Security Manager at the Trust
- Witness 4: Employee relations advisor in Human Resources Directorate at the Trust
- Witness 5: NMC Case Investigations Officer

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

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

### **Charge 1**

*Between the 1st June 2017 and the 21st September 2017, on one or more occasions, took Fentanyl from your employer for your own use.*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 4.

Witness 4 interviewed Mr Guemes Martinez on 29 September 2017 and produced the investigation meeting notes where Mr Guemes Martinez “said he was unhappy and one day he took it”. The panel also took into account Mr Guemes Martinez’ reflective account where he acknowledged that he took Fentanyl and explained in detail how he did this. He stated that:

*“From June 2017 I started to take Fentanyl for use myself.”*

He also stated:

*“In the beginning I used it once a week or less, but slowly I started to use it more frequently, until I used it twice a day, three or four times a week, it depended also how many time I worked. I used to prepare a syringe and write in the book for registering medication a patient’s name that did not need the drug for any reason, and then, when I was to discard it with one of my colleagues. I kept the fentanyl in my pocket and prepared a new syringe just with saline to show my colleague to discard it”.*

The panel determined that between the 1st June 2017 and the 21st September 2017, on one or more occasions, Mr Guemes Martinez took Fentanyl from his employer for his own use and found this charge proved.

## **Charge 2**

*Your actions in charge 1 were dishonest because you knew you did not have permission to take Fentanyl from your employer for your own use.*

**This charge is found proved.**

In reaching this decision, the panel took into account Mr Guemes Martinez' acknowledgement in his reflective account of having taken the Fentanyl and also his explanation of how he had tried to conceal that he had taken it. The panel considered that by the standard of ordinary decent people his actions had been dishonest because he knew he did not have permission to take Fentanyl from his employer for his own use and therefore found charge 2 proved.

## **Charge 3**

*Between the 1st June 2017 and the 21st September 2017, on one or more occasions, made inaccurate entries in the controlled drug book relating to Fentanyl.*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 2, Witness 3 and Witness 4

The panel took into account Mr Guemes Martinez' reflective account where he accepts that he *"Used to prepare a syringe and write into the book for registering medication a patients name that did not need the drug for any reason"*. The panel consider this to demonstrate he admits to making a false entry in the controlled drugs book.

Witness 3 evidence is that in his investigation he was told by one of the sisters that concerns had been highlighted regarding entries made in the controlled drug book by Mr Guemes Martinez. Witness 4 evidence also support what was highlighted by the Unit Sister.

The panel found the evidence of Witness 2, Witness 3 and Witness 4 to support that there were inaccurate entries being made in the controlled drug book relating to Fentanyl. The panel accepted Mr Guemes Martinez' admission in his reflective account, that he had made the inaccurate entries in the controlled drug book himself and found this charge proved.

#### **Charge 4**

*Your actions in charge 3 above were dishonest because you were seeking to hide your misuse of Fentanyl.*

**This charge is found proved.**

In reaching this decision, the panel took into account Mr Guemes Martinez' acknowledgement in his reflective account of having made inaccurate entries in the controlled drug book. The panel considered that by the standard of ordinary decent people his actions would be considered dishonest because he knew he should not have been taking the Fentanyl and the only reason he made an inaccurate entry in the book was to conceal that he had been misusing it. The panel therefore found charge 4 proved.

#### **Charge 5**

*Between the 1st June 2017 and the 21st September 2017, on one or more occasions, drew up medication in advance of its required administration.*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 1 and Witness 2.

The panel took into account Mr Guemes Martinez' reflective account where he accepts that he drew up medication in advance of its required administration. He states that *"In the last week, because I was looking for a higher dose, I even took a couple of times the medication that we were supposed to discard after it was given to the patient. Sometimes too, I prepared the medication in advance for my colleagues in another room because I knew if they did not use it, they would come to my room to use it on my patients or to discard it, so I could take it too"*.

Witness 1 in her statement she said there were two separate incidents where she explained to Mr Guemes Martinez that drawing up medication in advance was not Trust policy and why the Trust policy is as it is. This was supported by the Trust's medication policy. She explained that Mr Guemes Martinez was very apologetic and seemed to understand and take on board what she said to him. Witness 2 explains the Procedure about drawing up medication and the Trust's policy on controlled drugs in her witness statement.

The panel accepted your admissions that you had drawn up medication in advance of its required administration which was against the Trust policy and found this charge proved.

## **Charge 6**

*Between the 14th December 2017 and the 6th February 2019 failed to co-operate with the NMC investigation into your health.*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 5.

Witness 5's evidence is that several attempts were made by the NMC to get Mr Guemes Martinez to engage and to consent to medical testing.

The panel noted that the last communication from Mr Guemes Martinez to the NMC was in December 2017 and there had been no information from him despite the NMC sending information to various addresses using different methods.

The panel determined that Mrs Guemes Martinez had failed to co-operate with the NMC investigation into his health and found this charge proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mr Guemes Martinez' 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, Mr Guemes Martinez' fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.'

The NMC 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.

The NMC identified the specific, relevant standards where Mr Guemes Martinez' actions amounted to misconduct. The conduct displayed was very serious involving a high degree of dishonesty. The NMC also submitted that Mr Guemes Martinez' failure to engage with the NMC's investigation into his health is a serious departure from the Code and the standards expected of a professional nurse. The NMC invited the panel to find that Mr Guemes Martinez' actions and conduct amounted to serious misconduct.

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

The NMC invited the panel to find Mr Guemes Martinez' fitness to practise impaired. The NMC submit that, in light of Mr Guemes Martinez' insight, his poor medication administration (drawing up medication in advance) could potentially be remediated through further training. However, dishonesty and failing to cooperate with the NMC suggests an underlying attitudinal issue that taken together is more difficult to put right. Mr Guemes Martinez' repeated failure to respond to communications and there being no evidence of remediation, through further training, is an indication that there remains a risk to the public if he was able to practise without restriction.

There remains a risk of repetition to the health, safety or wellbeing of the public and therefore a finding of current impairment on public protection grounds is warranted in this case.

A finding of current impairment is further warranted on public interest grounds in order to declare and uphold proper professional standards and maintain confidence within the profession and the NMC as the regulator.

The misconduct in this case is very serious and therefore a finding of current impairment is justified on both public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

### **Decision and reasons on misconduct**

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

The panel was of the view that Mr Guemes Martinez' actions did fall significantly short of the standards expected of a registered nurse, and that Mr Guemes Martinez' actions amounted to a breach of the Code. Specifically:

***“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:*

*10.3 complete 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*

*20.2 act with honesty and integrity at all times*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

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

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

***23 Cooperate with all investigations and audits***

*This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating*

*with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.*

*To achieve this, you must:*

*23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise”.*

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 Mr Guemes Martinez’ conduct has fallen seriously short of the standards expected of a nurse. The conduct was very serious involving multiple instances of dishonesty over a three month period. He displayed a high degree of dishonesty which was evident by the methods used to hide his conduct from colleagues and/or his employer, in particular falsification of records.

The panel considered that Mr Guemes Martinez has further breached fundamental tenets of the profession, such as trust, professionalism, honesty and integrity. These are qualities of the nursing profession that must be adhered to at all times. His failure to adhere to these fundamental tenets could well result in members of the public losing faith with the profession and the NMC as its regulator. Members of the public could take risks with their health and seek treatment in a less regulated environment.

The panel also considered that Mr Guemes Martinez’ failure to engage with the NMC’s investigation into his health is a serious departure from the Code and the standards expected of a professional nurse. It prevents the NMC to properly assess whether he is a serious risk to the public and put in appropriate measures to prevent harm being caused to the public.

In light of Mr Guemes Martinez’ actions and the conduct displayed, the panel found that Mr Guemes Martinez’ actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Mr Guemes Martinez' 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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*

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

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limb a, b, c and d are engaged in this case. The panel found that although there was no harm caused to patients, Mr Guemes Martinez exposed patients to a risk of harm because the falsification of records calls into question the integrity of the record made of the care provided to patients. Mr Guemes Martinez' failure to engage with the NMC's investigation into his health raises the question as to whether or not he has an underlying health issue. Continued use may well result in Mr Guemes Martinez being tempted to take medication during shifts, which would expose patients to a risk of harm. The registrant has misused a controlled drug and there is a risk that his judgment and so his treatment of patients could be impaired.

The panel also found that Mr Guemes Martinez has brought the profession into disrepute, breached fundamental tenets and acted dishonestly. The dishonesty is exacerbated by the fact that it is linked to his clinical practice.

With regard to insight, the panel took into account Mr Guemes Martinez reflective statement where he acknowledged his wrongdoing by admitting to stealing Fentanyl from his employer over a significant period of time. Mr Guemes Martinez is open as to the methods used to steal the medication in order to hide it from his colleagues and employer. Mr Guemes Martinez further acknowledged in his reflective account provided to the Trust that his behaviour exposed patients to a risk of harm, by stating the following:

*"I have learnt, after think a lot about all of this problem, that I could put my patient at risk if I kept that behaviour for longer and also that I could put in at risk my colleagues or the whole unit for my actions; they could lose their jobs because of me, the patient could be hurt because of me, the hospital could lose its reputation because of me and the nursing profession could have a very bad reputation because of me. I know I am the responsible in this event and that I will need help to re-learn how to do things, maybe with new medication trainings, maybe being away*

*from this kind of drug, to protect the hospital and to protect myself of the temptation, in case I could get worse and have it.”*

In light of Mr Guemes Martinez’ insight, the panel considered that his poor medication administration (drawing up medication in advance) could potentially be remediated through further training. However, the panel was of the view that dishonesty and failing to cooperate with the NMC suggests an underlying attitudinal issue that taken together is more difficult to put right.

The panel considered that Mr Guemes Martinez’ repeated failure to engage with the NMC proceedings and there being no evidence of remediation indicates that there remains a risk of repetition of his conduct and therefore a risk to the public if Mr Guemes Martinez were able to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel also determined that a finding of current impairment is also necessary on public interest grounds in order to declare and uphold proper professional standards and maintain confidence within the profession and the NMC as the regulator.

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.

Having regard to all of the above, the panel was satisfied that Mr Guemes Martinez’ 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 Mr Guemes Martinez’ off the register. The effect of this order is that the NMC register will show that Mr Guemes Martinez’ 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.

### **Representations on sanction**

The NMC outlined what it considered to be the aggravating and mitigating factors. It submitted that the proportionate sanction in this case is a striking-off order in order to protect the public, maintain confidence and standards within the profession and to mark the seriousness of the conduct.

### **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- High degree of dishonesty/deception involved.
- Pre-meditated, planned and sophisticated.
- Attitudinal conduct displayed.
- Repeated theft of medication over a significant period of time
- Within a clinical setting.
- Significant breach of trust to both colleagues and employer.
- Potential to place patients at risk of harm.
- Lack of remediation.
- Lack of engagement with the NMC investigation into his health

The panel took into account the following mitigating features:

- Admissions at local level.
- Some insight indicated.
- Personal mitigation – [PRIVATE].

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 not protect the public nor be in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Guemes Martinez' practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Guemes Martinez' 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 Mr Guemes Martinez' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Guemes Martinez' registration would not adequately address the serious nature of the dishonesty of this case and would not meet the public interests or adequately protect the public.

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

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

The panel considered Mr Guemes Martinez' actions in this case are at the upper end of the spectrum and call into question his professionalism and trust. The theft of the medication occurred over a significant period of time, which was highly deceptive in nature and linked to Mr Guemes Martinez' practice. It was pre-meditated, sophisticated and only came to light as a result of Mr Guemes Martinez' actions in drawing up medication in advance of it being administered. Despite his admissions and some insight shown, Mr Guemes Martinez' actions are fundamentally incompatible with him remaining on the Register. Mr Guemes Martinez' failure to engage with an investigation by his regulator has aggravated the clinical and attitudinal concerns.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Guemes Martinez' actions is fundamentally incompatible with Mr Guemes Martinez' 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?*

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Guemes Martinez' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Guemes Martinez' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This decision will be confirmed to Mr Guemes Martinez' 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 Mr Guemes Martinez' own

interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Representations on interim order**

The panel took account of the representations made by the NMC that an interim order is necessary for the protection of the public and otherwise in the public interest to impose an interim suspension order for a period of 18 months to cover the appeal period.

### **Decision and reasons on interim order**

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

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

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

That concludes this determination.