

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

**Substantive Hearing
15-19 August 2022**

Virtual Hearing

Name of registrant:	Amanda-Jane Price
NMC PIN:	9512578E
Part(s) of the register:	Registered Nurse – Children Nursing RNC 30 August 1998
Relevant Location:	Somerset
Type of case:	Misconduct
Panel members:	Derek McFaull (Chair, Lay member) Shorai Dzirambe (Registrant member) Alison Lyon (Lay member)
Legal Assessor:	Graeme Henderson
Hearings Coordinator:	Renee Melton-Klein
Nursing and Midwifery Council:	Represented by Leila Taleb, Case Presenter
Miss Price:	Not present and not represented
Facts proved:	All (Charges 1 -3)
Facts not proved:	None
Misconduct	Charges 1 and 2 only
Fitness to practise:	Impaired
Sanction:	Striking-Off Order
Interim order:	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 Price was not in attendance and that the Notice of Hearing letter had been sent to Miss Price's registered address by email and by first class post on 16 June 2022.

Ms Taleb, 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 means of participating in the virtual hearing and, amongst other things, information about Miss Price'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 Miss Price 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 Price

The panel next considered whether it should proceed in the absence of Miss Price. It had regard to Rule 21 and heard the submissions of Ms Taleb who invited the panel to continue in the absence of Miss Price.

Ms Taleb submitted that there had been limited engagement by Miss Price which concluded with an email dated 19 April 2022 which indicated that she did not wish to

engage with the NMC in relation to these proceedings and that there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Price. In reaching this decision, the panel has considered the submissions of Ms Taleb and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* 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 Price;
- Miss Price has indicated in an email dated 19 April 2022 that she does not wish to engage with the proceedings;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Witnesses have been scheduled to attend today to give live evidence and 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;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Price in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. 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 Price's decision to absent herself from the hearing.

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

Details of charge

That you, a registered nurse:

1. On 31 March 2019 in respect of Patient A:
 - a) Did not administer morphine to them when it had been required
 - b) Recorded in their notes that morphine had been administered
 - c) Told colleague A and/or others that they had not required morphine and/or morphine had been administered
2. Your conduct in charge 1 above was dishonest in that:
 - a) You knew you had not administered the morphine
 - b) You intended others to believe that the morphine had been administered
3. On 31 March 2019 left the medication cupboard unattended
4. On 31 March 2019 were unable to account for the whereabouts of the keys for the drug cupboard

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

Background

The charges arose whilst Miss Price was employed as a registered nurse by Taunton and Somerset NHS Foundation Trust (“the Trust”). Miss Price commenced employment as a Staff Nurse in the Emergency Department of Musgrove Park Hospital (“the Hospital”) in June 2018.

It is alleged that on 31 March 2019 Miss Price failed to administer morphine to Patient A, when prescribed by the Emergency Medicine Consultant. It is further alleged that on 31 March 2019 Miss Price failed to secure the controlled drugs cupboard. It is alleged that Miss Price was dishonest in that she falsified drug administration records and lied to her colleagues, as she indicated that she had administered the morphine when she had not. It is alleged that the patient suffered harm as a result of Miss Price’s actions, as the patient underwent an invasive procedure without analgesia, and complained of being in pain.

Evidence

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

- Witness 1: Associate Director of Patient Care.
Carried out investigation into the charges and wrote Investigation Report for the Somerset NHS Foundation Trust.
- Witness 2: Junior sister at the time of the incident. Eyewitness.

- Witness 3: Senior sister at the time of the incident.

Decision and reasons on application to admit hearsay evidence

Prior to the closing of the NMC case the panel heard an application made by Ms Taleb under Rule 31 to allow the written statement of Witness 4 into evidence. She referred to the cases of *Thorneycroft v NMC [2014] 1565 (Admin)* and *R (Bonhoeffer) v GMC [2012] IRLR 37*.

She submitted that the NMC had made sufficient efforts to ensure that this witness was present. He was unable to attend today as he was not currently in the same role and was on annual leave or deployment in his current position as a military doctor. He had indicated to the NMC in a letter dated 18 May 2022 that he would be unable to clear a half day on any future dates due to the schedule and demands of his current role.

In the preparation of this hearing, the NMC had not indicated to Miss Price that Witness 4 did not intend to provide live evidence to the panel, as Miss Price had not engaged with the NMC in regard to these proceedings. Despite knowledge of the nature of the evidence to be given by Witness 4, Miss Price made the decision not to attend this hearing and therefore would not be able to cross examine Witness 4 today. On this basis, Ms Taleb advanced the argument that there was no lack of fairness to Miss Price in allowing Witness 4's hearsay testimony into evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. At this stage the Panel

had to be satisfied that it was fair to admit this evidence. He also referred to the cases cited by Ms Taleb.

The Panel was aware that the admission of a witness statement as evidence was not to be regarded as a matter of routine.

Although Miss Price had chosen not to attend this hearing, she was not aware at the time of making that decision, of this application to have Witness 4's hearsay testimony into evidence. The NMC had been aware that Witness 4 was unlikely to attend since May 2022 and had taken no steps to warn Miss Price that an application would be made to have his evidence read into the record. It was not clear to the Panel whether or not Witness 4 had provided the NMC with a time when he was available.

In relation to fairness, the panel was of the view that, although Miss Price was not present to cross examine the witness, the panel could only explore any inconsistencies, and difficulties, with his evidence if the witness was present. The Panel had already heard evidence from Witness 1 which cast doubts on the reliability of some of his evidence. In that he stated that "he couldn't recall much." In the absence of Witness 4 the Panel would be unable to test the issue of how much he could recall. Witness 4 stated that he did not have a clear memory of the events on which the charges were based.

The panel considered that the hearsay evidence of Witness 4 was not sole or decisive evidence in relation to the charges. There was already evidence, before the Panel, of what Witness 4 said at the time of the incidents and shortly thereafter. This is more likely to be a reliable indicator than what Witness 4 said in a witness statement taken much later. The Committee could attach such weight as it deemed appropriate to that and other hearsay evidence.

The panel determined that it was a basic principle of fairness that Miss Price should have been informed that Witness 4 would not be giving oral evidence, even if she was not engaging, and given the opportunity to factor this into any defence she chose to present to

the panel. The seriousness of these charges could have an impact on Miss Price's career as a registered nurse and the panel determined that she should have all the relevant information available to her.

In these circumstances the panel refused the application.

Decision and reasons on application to amend the charge

During the course of submissions on the facts the panel sought clarification on the status of Charge 4. Ms Taleb sought and was allowed time to seek instructions regarding this issue.

Having taken instructions, the panel then heard an application made by Ms Taleb, on behalf of the NMC, to reword Charge 3 and delete Charge 4.

Ms Taleb submitted that the proposed amendment would provide clarity and more accurately reflect the evidence.

That you, a registered nurse:

3. On 31 March 2019 left the medication cupboard unattended **with the keys inside, knowing that it should have been secured.**

~~4. On 31 March 2019 were unable to account for the whereabouts of the keys for the drug cupboard~~

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

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 an amendment, as applied for, was in the interest of justice. It was clear, from the Witness evidence, that the regulatory concern was that the medication cupboard was unlocked and unattended and that this was obvious due to the keys being left there. The amendment to Charge 3 better reflected the contents of the witness statements that Miss Price had already seen. It was neither in the public interest nor in Miss Price's interest that Charge 4 should remain. Charge 4 did not add to the seriousness of Charge 3. The panel was satisfied that there would be no prejudice to Miss Price and no injustice would be caused by the proposed amendment being allowed, nor would there be any risk to public protection. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

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 Ms Taleb.

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

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

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who referred to the test of dishonesty set out in the case of *Ivey v Genting Casinos [2017] UKSC 67*.

It considered the witness and documentary evidence provided by the NMC.

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

Charge 1

1. On 31 March 2019 in respect of Patient A:
 - a) Did not administer morphine to them when it had been required

This charge is found proved.

In reaching this decision, the panel took into account eyewitness evidence of Witness 2. In the witness statement and oral evidence given by Witness 2, she explained that Miss Price had begun the process of signing out morphine for Patient A, this had been written in the controlled drugs book which was provided to the panel as evidence. When Witness 2 asked her about the entry as the medicine had not been taken out of the cupboard, and Miss Price told her that Patient A no longer needed the medication. Witness 2 told the panel that later during a conversation with the emergency medicine consultant it came to light that something was not correct in the documentation as the consultant told Witness 2 that the patient's MAR chart dated 31 March 2019 at 13:55, which has been provided as evidence, documented that morphine had been administered to Patient A. Witness 2 then had another conversation with Miss Price in the controlled drugs cupboard at this time Witness 2 states that she then,

'kept insisting that she did give it. I checked the count of the morphine again and it was accurate. There was no vial missing that would have suggested she had given it.'

The panel was of the view that Witness 2's evidence was clear and consistent and corroborated the evidence provided in the controlled drugs book page and the patient's MAR chart.

The panel also took into account the contemporaneous investigation report dated 24 May 2019. The Summary of Findings in the investigation report states:

'AJP admits to falsifying the prescription chart to state (that) she given the morphine to the patient. She admits to being consciously aware of her decision. She admits to making a further decision not to rectify this, by speaking (to) the receiving patient's nurse. She contravenes her NMC code of practice...'

On the balance of probabilities, the panel determined that Miss Price did not administer morphine to Patient A when it had been required and found charge 1 a) proved.

Charge 1

b) Recorded in their notes that morphine had been administered

This charge is found proved.

In reaching this decision, the panel had sight of contemporaneous documentation from the afternoon of 31 March 2019 including the controlled drug book entry, the patient's MAR chart. In the patient's MAR chart there is a signature that shows that 6 mg of morphine was given at 14:35, which had been prescribed at 13:55. The oral evidence given by Witness 2 indicate the morphine that was recorded as administered on the patient's MAR chart was not, in fact, administered to Patient A.

The panel also referenced the contemporaneous investigation report dated 24 May 2019 in which the Summary of Findings in the investigation report states:

'AJP admits to falsifying the prescription chart to state (that) she given the morphine to the patient. She admits to being consciously aware of her decision.'

The panel determined on the balance of probabilities that Miss Price did record in her notes that morphine had been administered and found charge 1 b) proved.

Charge 1

c) Told colleague A and/or others that they had not required morphine and/or morphine had been administered

This charge is found proved.

In reaching this decision, the panel took into account the consistent and cogent written and oral evidence from Witness 2 (Colleague A). She stated that Miss Price first told her that the morphine was no longer required by the patient but that later Miss Price changed that to asking that the medicine be marked as wasted, which Witness 2 did not consent to as the medicine was accounted for in the controlled drugs book. Miss Price then told Witness 2 that she had given the medication to Patient A. The panel also noted email communication from Witness 4 who administered the invasive procedure indicating that he would not have undertaken this kind of procedure if morphine had not been given and that he believed it had. The Panel considered that although Witness 4 may have had a poor memory of all of the details of events he did recollect being told by Miss Price that morphine had been administered. It seemed inherently improbable that he would have undertaken a painful procedure, on Patient A, without being reassured that it was appropriate to do so. He also told Witness 2 that Miss Price had told him that the morphine had been administered.

The panel determined, on the balance of probabilities, that Miss Price had told Colleague A that Patient A had not required morphine and told Colleague A and others that morphine had been administered to Patient A. It found charge 1 c) proved.

Charge 2

Your conduct in charge 1 above was dishonest in that:

- a) You knew you had not administered the morphine

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and the contemporaneous interview report and the patient's MAR chart. The investigation report states that,

'AJP admits to falsifying the prescription chart to state (that) she given the morphine to the patient. She admits to being consciously aware of her decision.'

The panel was of the view that Miss Price understood at the time that she did not administer the morphine despite the evidence that patient's MAR chart was signed off that it had been administered. The Panel considered the state of mind of Miss Price and considered that it is clear that she should have known that she was creating a false entry. No other explanation was put forward to the panel for the reasons for her actions.

The panel determined that having recorded that she administered morphine but had not done so that would be considered dishonest according to the standards of ordinary decent people. Accordingly, it found charge 2 a) proved.

Charge 2

- b) You intended others to believe that the morphine had been administered

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence of Witness 2 and the communication from the Emergency Medical Consultant. The evidence from the

original MAR chart indicated that she had administered the medicine at 14:35, though no medication had been removed from the drugs cupboard. This MAR chart was signed by Miss Price to lead others to believe she had administered the medication. The panel was also satisfied that the Emergency Medical Consultant would have not undertaken an invasive procedure unless he was under the clear belief that analgesia had been administered.

The panel determined, on the balance of probability that Miss Price intended others to believe that the morphine had been administered. The Panel considered that this would be regarded as dishonest according to the standards of ordinary decent people. Accordingly it found charge 2 b) proved.

Charge 3

On 31 March 2019 left you left the medication cupboard unattended with the keys inside, knowing that it should have been secured.

This charge is found proved.

In reaching this decision, the panel took into account the written and oral evidence of Witness 1, Witness 2, Witness 3 and the investigation report. Witness 2 provided clear oral and written evidence that she had come across the cupboard unlocked with the drug card of one of Miss Price's patients in situ. Witness 1 reported that when immediately challenged, Miss Price said that she had left the keys in the cupboard to save time, though Miss Price could not remember why she had to leave the cupboard so quickly. In the Summary of Findings in the investigation report Miss Price,

'..admits to leaving the drug cupboard unattended. She has expressed no clear memory about the whereabouts of the keys to the drug (cupboard) whether it was

in the drug cupboard or in her hands. She expresses no clear memory as to what the distraction was that called her away from the drug cupboard room.'

There was conflicting evidence regarding how serious the consequences were of leaving the drugs cupboard unlocked. Witness 1 gave evidence that the drug cupboard could be accessed by anyone in the event that it was unlocked. This was contradicted by the other two live witnesses who were Registrants. They were more used to working in that area of the hospital. The Panel preferred their evidence which was to the effect that the controlled drugs cupboard was behind a locked door with access only by using a swipe card. This meant that, at the time of the incident, the contents of the cupboard would not have been easily accessible to the public or patients.

The panel determined that on the balance of probability, Miss Price had left the medication cupboard unattended with the keys inside, knowing that it should have been secured and found charge 3 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 Miss Price'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 Price's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

Miss Taleb invited the panel to have 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.*'

Ms Taleb invited the panel to take the view that the facts found proved amount to misconduct. She invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Taleb identified specific, relevant standards of the code where, she submitted Miss Price's actions amounted to misconduct. She submitted that Miss Price's actions did fall significantly short of the standards expected of a registered nurse.

Ms Taleb 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) and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Ms Taleb submitted that Miss Price's fitness to practise is currently impaired. She took the panel through each of the charges and submitted how each one impacted Miss Price's fitness to practise. She told the panel that Miss Price's actions resulted in actual harm to a

vulnerable patient. She submitted that Miss Price would have been aware of the impact of her actions on the patient but persisted in her dishonesty thereby prolonging their pain. Ms Taleb told the panel that though Miss Price had stated that she had a strained relationship with Witness 2, there was no reason to think that this was the only reason she had been dishonest as she had also been dishonest in her records and with others. She invited the panel to consider that charge 3 amounted to misconduct, despite the controlled drugs cupboard being behind a locking swiped restricted door, as leaving this opened was against the rules. These drugs had a 'street value' and for these reasons they are required to be kept locked away.

Ms Taleb submitted that the risk of repetition in this case is high as Miss Price has breached fundamental tenants of the nursing profession and has acted dishonestly, and has demonstrated no reflection, remorse, or insight. Ms Taleb submitted that an aggravating feature of this case is the Miss Price was on a clinical improvement plan at the time of the charges. She told the panel that a mitigating feature could be admission of the charges to her employers, but in this case though Miss Price admitted, albeit belatedly, that she had not given Patient A morphine, she never admitted culpability. Witnesses said that she appeared cold when discussing her actions that day and showed no remorse. Her reactions included deflecting accountability to others.

Ms Taleb submitted that as there is a risk of repetition, a finding of current impairment should be made on both public interest and public protection grounds.

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*, *Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin)*, and *CHRE v NMC and Grant*.

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 Price's actions did amount to breaches of the Code. Specifically:

'Prioritise people

You assess need and deliver or advise on treatment, or give help (including preventative or rehabilitative care) without too much delay, to the best of your abilities, on the basis of best available evidence. You communicate effectively, keeping clear and accurate records and sharing skills, knowledge and experience where appropriate. You reflect and act on any feedback you receive to improve your practice.

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

Practise effectively

8 Work co-operatively

To achieve this, you must:

8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate

8.2 maintain effective communication with colleagues

8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

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

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

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

You make sure that patient and public safety is not affected. You work within the limits of your competence, exercising your professional ‘duty of candour’ and raising concerns immediately whenever you come across situations that put patients or public safety at risk. You take necessary action to deal with any concerns where appropriate.

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm

14.2 explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers

14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly

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

To achieve this, you must:

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

18.4 take all steps to keep medicines stored securely

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible...harm and the effect of harm if it takes place

Promote professionalism and trust

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.2 act with honesty and integrity at all times...

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

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 charges 1 and 2 show a lack of compassion, actual harm and dishonesty which strike at the heart of the code of nursing and amount to serious misconduct. The panel was of the view that dishonesty persisted throughout the incident and Miss Price did not fulfil her duty of candour. The panel considered that the patient's pain could have been rectified quickly if Miss Price had not persisted in her dishonesty which caused direct harm to a vulnerable patient, impacted the professionalism of her colleagues, and the reputation of the profession.

The panel next considered whether charge 3 amounted to misconduct. The panel noted that the rules of the Hospital stated that the drugs cupboard should be locked, and that Miss Price's behaviour was a departure from those standards as well as the Code. The panel considered that there was no pattern of this behaviour in the evidence and the controlled drugs cupboard was behind a door with access only by a swipe card, which offered protection. Witness 2, in her oral evidence, said that she was going to remind Miss Price that the cupboard had been left opened, but that at that point she was not 'overly concerned' about the cupboard being unlocked. The Panel accepted the witness evidence of those who had experience on that ward. The ward was a workplace where a registered nurse could be called away to deal with a sudden emergency. It was possible that the urgency of the situation meant that the registered nurse would rush to deal with the emergency and forget to lock the cupboard. The panel determined that although this was a departure from the Hospital rules, and the code it was not sufficiently serious to amount to misconduct.

The panel accordingly found that Miss Price's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct with respect to the first two charges only.

Decision and reasons on impairment

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

The panel first considered whether or not there had been remediation on the part of Miss Price. It considered on the basis of *Cohen* whether her misconduct was capable of remediation and had been remedied. Although dishonesty is less easy to remediate than clinical errors it determined that there was no reason in principle why she could not have attempted some form of remediation.

There was limited information, from the registrant, regarding her attitude to nursing and attempts to keep her knowledge up to date. She complained, in her last email to the NMC, that she had become unskilled due to the imposition of an interim suspension order.

The panel also considered insight. The panel were concerned that Miss Price has provided no evidence of a reflective piece, apology, or lessons learned. The panel noted that there has been no engagement to show remediation, and that the admissions made during the Hospital investigation were made without remorse. There is no suggestion that her position had changed. The panel had no information to indicate how Miss Price viewed the impact of her actions on the patient or any acknowledgement that actual harm has been suffered.

It determined that there was no evidence of remediation on the part of Miss Price.

The panel then considered the test set by Mrs Justice Cox in Paragraph 76 of the case of *CHRE v NMC and Grant*

'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) was engaged with regard to the past. This was not a case that she put a patient at risk of harm. Patient A was caused actual physical harm as a result of Miss Price's misconduct.

The panel also found limb (b) was engaged with regard to the past. Her actions brought the profession into disrepute. She was in a position of trust. She was trusted to administer medication and create honest and reliable records. She did not administer medication but created a false entry that she had. She continued to misrepresent the facts when asked.

The panel also found limb (c) to be engaged with regard to the past. Her actions brought the nursing profession into disrepute.

The panel found limb (d) to be engaged with regard to the past. The Panel made findings of dishonesty at the fact stage.

The panel considered that Miss Price would be liable to repeat this behaviour in the future. The panel accepted the witness evidence to the effect that the Registrant showed limited remorse and a cold attitude to her misconduct and there was nothing before the panel to indicate that this stance had changed. It therefore found limbs (a) – (d) engaged with regard to the future.

The panel decided that a finding of impairment was 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. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made. The panel therefore also found Miss Price's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Price's fitness to practise was currently impaired.

Sanction

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

The panel noted that in the Notice of Hearing, dated 16 June 2022, the NMC had warned Miss Price that it would seek a striking-off order in the event that the Committee found Miss Price's fitness to practise was currently impaired.

Ms Taleb informed the Committee that the NMC's sanction bid was for a striking off order. She submitted that the misconduct set out in the first two charges struck at the heart of the NMC code and the guidance. She submitted that if this case were solely based on drug administration then the NMC may not have been seeking this order, but Miss Price's dishonesty was an aggravating factor in this case, in that she breached duty of candour by covering up and falsifying a record.

Ms Taleb submitted that further aggravating factors are: Miss Price's limited insight and reflection; that actual harm was caused to a vulnerable patient. She told the panel that a mitigating factor might be that she has had no other regulatory concerns against her, but submitted that the courts have supported striking off orders when dishonesty is involved.

Ms Taleb submitted that a striking-off order is the most appropriate sanction in this case as it involves serious attitudinal issues and a real risk of repetition.

Decision and reasons on sanction

Having found Miss Price's fitness to practise was currently impaired, the panel went on to consider what sanction, if any, it should impose. The Panel heard and accepted the advice of the legal assessor who referred to the SG and the cases of *Parkinson v NMC [2010] EWHC 1898 (Admin)* and *Lusinga v Nursing and Midwifery Council [2017] EWHC 1458*.

In light of the latter case the Panel was invited to adopt a nuanced approach to dishonesty and consider how serious the dishonesty was.

The panel considered that any sanction imposed had to be appropriate and proportionate. Although sanction is not intended to be punitive in its effect, it may have such consequences. The panel had careful regard to the SG. The decision on sanction was a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- A local support plan was in place at the time the charges occurred
- Lack of insight into failings
- The impact her dishonesty caused to colleagues
- Conduct which caused direct patient harm
- Lack of reflection into the harm caused to the patient

The panel considered whether there were any mitigating factors. Miss Price had a long career as a registered nurse. Although the Miss Price's misconduct took place in a background of no prior regulatory concerns, the SG expressly states that this should not be considered to be a mitigating factor. There was insufficient information, about Miss Price's personal circumstances, for it to be satisfied that there was personal mitigation such as stress or illness.

The panel next considered the level of dishonesty in this case. The panel determined that it was at the high end of the scale for dishonesty. She made a dishonest entry on the MAR chart, persisted in her dishonesty over a sustained period of time, tried to deflect responsibility, and maintained her dishonesty whilst the patient was in pain. This was deliberate dishonesty which concealed her failure in clinical issues and caused actual patient harm to a vulnerable victim.

The Panel then considered which sanction was the most appropriate in light of its findings. In accordance with the SG it started by considering the least restrictive sanction. It recognised that proportionality required it to consider the interests of Miss Price as well as public protection and the public interest.

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

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

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 has insight and does not pose a significant risk of repeating behaviour;*

The panel had regard to all of the bullet points set out in the guidance.

The panel did not consider that the misconduct was a single instance. The evidence surrounding Miss Price's interaction with other professionals, at the time of the misconduct, suggested there was a deep-seated attitudinal problem. Although there was no evidence of repetition this was because the registrant did not appear to have practiced since the events that gave rise to the misconduct charges. The panel was concerned about Miss Price's insight and had already made findings that there was a significant risk of repetition.

The panel also considered the "key" considerations for suspension set out in the SG. It did not consider that a period of suspension would be sufficient to protect the public or the public interest.

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 considered 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 Price's actions were reprehensible and were fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case mean that to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel had already taken into account of the SG in relation to assessing the level of dishonesty. Having found the dishonesty at the upper end of the scale it considered that this was a case, like *Parkinson*, where the absence of Miss Price or any representation meant that there was an absence of any demonstration of remorse and insight. In the absence of any undertaking not to repeat the misconduct there could only be one outcome.

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 was that of a striking-off order. The panel concluded that nothing short of this sanction 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 Miss Price in writing.

Decision and reasons on interim order

After the panel announced its decision on sanction, Ms Taleb invited the panel to make an interim order of suspension for 18 months. She submitted that such an order was necessary to protect the public and was otherwise in the public interest.

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

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 as to do otherwise would be inconsistent with its earlier determination.

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

That concludes this determination.