

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

**Substantive Hearing  
Monday 12 – Friday 16 September 2022**

Virtual Hearing

**Name of registrant:** Andrea Zanella

**NMC PIN:** 14G0402C

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – 14 July 2014

**Relevant Location:** East Sussex

**Type of case:** Misconduct

**Panel members:** Janet Fisher (Chair, lay member)  
Terry Shipperley (Registrant member)  
Catherine Cooper (Registrant member)

**Legal Assessor:** Suzanne Palmer

**Hearings Coordinator:** Catherine Acevedo

**Nursing and Midwifery Council:** Represented by Sapan Maini-Thompson, Case  
Presenter

**Mr Zanella:** Not present and not represented

**Facts proved:** Charges 1a(i), 1a(ii), 1a(iii), 1a(iv), 1a(v), 1b(i),  
1b(ii), 2, 3a, 3b

**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 Hearing**

The panel was informed at the start of this hearing that Mr Zanella was not in attendance and that the Notice of Hearing letter had been sent to Mr Zanella's registered email address on 8 August 2022.

Mr Maini-Thompson, 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 link to the virtual hearing and, amongst other things, information about Mr Zanella's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Zanella 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 Mr Zanella**

The panel next considered whether it should proceed in the absence of Mr Zanella. It had regard to Rule 21 and heard the submissions of Mr Maini-Thompson who invited the panel to continue in the absence of Mr Zanella. He submitted that Mr Zanella had voluntarily absented himself.

Mr Maini-Thompson referred the panel to the email correspondence between Mr Zanella and the NMC regarding this hearing. This included Mr Zanella's email response dated 8 August 2022 which stated *"I hope that you gonna read this email because I'm tired to*

*repeat myself twenty times. I'm working as a nurse in another country, so I'm not interested on that."*

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 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 Mr Zanella. In reaching this decision, the panel has considered the submissions of Mr Maini-Thompson 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 Mr Zanella;
- There is no reason to suppose that adjourning would secure Mr Zanella's attendance at some future date;
- On the contrary, his email correspondence clearly shows that he is voluntarily absent and has no intention of participating further in this hearing;
- Four witnesses are due to attend to give live evidence;
- 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 2020;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Zanella in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him, he has made no formal response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his 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. It can do so in light of the representations Mr Zanella made during local proceedings, and it can take those representations into account when reaching its decisions. Furthermore, the limited disadvantage is the consequence of Mr Zanella's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

### **Details of charge**

*That you, a registered nurse:*

- 1) *Breached professional boundaries in respect of Colleague A in that you;*
  - a) *On 2 January 2020;*
    - i) *Approached Colleague A from behind;*
    - ii) *Put your arms around her chest;*
    - iii) *Breathed heavily into her ear;*
    - iv) *Licked her neck and/or kissed her neck;*
    - v) *Said to Colleague A "I can do more than that" or words to that effect.*
  - b) *Between 3 January and 31 January 2020 on a date unknown;*
    - i) *Approached Colleague A from behind;*
    - ii) *Stroked her arm.*

2) *Your conduct at any and/or all of charge 1 above was motivated by the pursuit of sexual gratification.*

3) *On 29 December 2020;*

a) *Taunted Patient A on one or more occasions by saying to Patient A “lean forward then” or words to that effect and/or “go on you can try” or words to that effect and/or “look see you can do it” or word to that effect.*

b) *On one or more occasions pushed Patient A back into bed.*

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

### **Conflict of interest**

The panel were given the bundles of documents to read at the start of the hearing. On reading the documents, one of the members of the panel realised that these incidents had occurred locally to where she had previously worked in the community.

The panel member recognised the name of one of the NMC’s witnesses, although she could recall nothing about that witness, or whether they had met. The panel member explained that she used to run training events, and that it was possible that the witness may have attended one of those. The panel member explained that she had retired from her community role in 2013 and had not worked in the area since.

Mr Maini-Thompson submitted that this does not present a serious issue as there is a significant gap separating the time the panel member worked in Brighton and the events in question at this hearing. He submitted that name recollection was not sufficient to constitute a conflict of interest.

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

The panel considered the nature and extent of any past contact between the panel member and the witness. At its highest, this was fleeting professional contact on a single occasion more than 9 years ago. There was no detailed knowledge or contact, whether personal or professional, which could have any bearing on the panel's decision making in this case. The panel concluded that there was no actual bias. Moreover, given the limited contact and the passage of time, the panel concluded that no objective informed observer would have any perception of bias or prejudice in the decision making in this case. The panel therefore determined that there was no conflict of interest and it was fair to proceed.

## **Background**

Ms Zanella was referred to the NMC on 7 May 2021, by the Head of Nursing at Brighton and Sussex University NHS Trust ('the Trust'). At the time of the alleged concerns, Mr Zanella was working as a registered nurse at Royal Sussex County Hospital ('the Hospital'), part of the Trust.

The alleged facts are as follows: On a nightshift spanning 28 and 29 December 2020, Mr Zanella was witnessed by a Healthcare Assistant (HCA), pushing Patient A back into their bed, taunting them and laughing at them. Patient A was vulnerable and was being treated for alcohol withdrawal and fractured ribs. At the time of the alleged incident, Patient A was delirious, suffering from hallucinations and was repeatedly trying to get out of bed. Earlier in the shift he had tried to grab and throw various objects and had hit and kicked at staff, including kicking Mr Zanella in the stomach.

On 2 January 2020, it is alleged Mr Zanella inappropriately touched and made unwanted comments to Colleague A. It is alleged Mr Zanella came up behind Colleague A, put his arms around her chest, breathed heavily into her ear and licked her neck. It is alleged that whilst walking away, Mr Zanella shouted towards her, "*I can do more than that*".

The NMC alleges the context of the touching and comments suggest they were sexually motivated. Mr Zanella is said to have repeated this inappropriate behaviour towards Colleague A a few weeks later, on a date unknown by stroking her arm from the shoulder down to her hand.

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

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Maini-Thompson on behalf of the NMC.

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

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:

- Colleague A: Registered Nurse at the Hospital
- Ms 1: Matron at the Hospital
- Ms 2: Healthcare Assistant at the Hospital
- Ms 3: Matron at the Hospital

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

### **Charge 1a**

*Breached professional boundaries in respect of Colleague A in that you;*

*On 2 January 2020;*

- i) Approached Colleague A from behind;*
- ii) Put your arms around her chest;*
- iii) Breathed heavily into her ear;*
- iv) Licked her neck and/or kissed her neck;*
- v) Said to Colleague A “ I can do more than that” or words to that effect.*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague A, Ms 3 and Mr Zanella’s written responses.

In his local investigation interview Mr Zanella said that he does not remember the incident at all.

In Colleague A’s contemporaneous account of the event she explained that *“On the morning of the 2.1.20. I was standing facing the wall reading a patient’s notes outside bay 9 when Andreas came up behind me, he put his arms around my shoulders and gripped me firmly in a hold position and to my horror he then then kissed my right cheek and then moved to breath heavily into my ear. I was shocked and I said to him ‘what was that?’ He replied ‘I can do more than that’ and walked off into bay 9”.*

The panel also had sight of Colleague A’s responses recorded in the investigation meeting notes which stated *“I was standing by bay 9 reading some medical notes and [Mr Zanella] came up behind me, put his arms fully around me and then kissed my cheek, breathing in*



*to my ear. He went in to bay 9 and I said "oh what was that" and he said "I can do more than that if you want. I was shocked and I looked around to see if anyone else was there but they weren't".*

*Colleague A said in her NMC statement "I was reading patient notes outside of bay 9 and facing the wall when the Registrant came up behind me and put his arms around my chest. He then breathed heavily into my ear licking my neck just behind my ear. I shrugged the Registrant off and asked what he was doing. He walked away through the bay and shouted "I can do more than that".*

The panel was also shown by Colleague A, during her evidence, the area where she said Mr Zanella had licked/kissed her. This was the area around her ear, jawline and the back of her cheek. She explained that Mr Zanella had made contact with her in that area, and that she had been aware of "wetness" but was unable to say whether it was a kiss or a lick. Colleague A also demonstrated the position of Mr Zanella's arms as he gripped her from behind: His arms were crossed over the front of her chest at the top above breast level. She described the incident as a fleeting one which was over very quickly.

The panel considered that Colleague A's evidence was, for the most part, clear and consistent throughout the different occasions on which she gave her account. Her evidence was balanced and did not appear to be exaggerated. It found her evidence credible and accepted that the incident had occurred as she described. The panel noted that Colleague A's various accounts differed regarding whether Mr Zanella had kissed or licked her neck or cheek and whether he held her around the chest or shoulders. However, the panel considered that the imprecision of her terminology was not an issue and she had done her best to clarify this in oral evidence. The panel accepted from her clear evidence that she felt 'wetness' in the area of her neck and cheek. It also considered that the chest and shoulders could be described as the same area if one was gripped from behind.

The panel accepted Colleague A's evidence that Mr Zanella had approached her from behind, put his arms around her chest and breathed heavily into her ear and licked/kissed her neck as itemised in charge 1a(i-iv).

In relation to charge 1a(v) the panel found Colleague A's evidence to be clear and consistent throughout her written and oral evidence. She recalled for the panel how Mr Zanella's words to the effect of "*I can do more than that*" had shocked her and made her feel uncomfortable. She described the tone of the comment as '*cocky*' and did not see it as making a threat towards her although she found it intimidating.

The panel accepted the evidence of Colleague A. It determined that it is more likely than not that this incident had occurred as described by Colleague A. The panel found Mr Zanella's behaviour to be inappropriate and a breach of professional boundaries. The panel therefore found charge 1a proved in its entirety.

### **Charge 1b**

*Breached professional boundaries in respect of Colleague A in that you;*

*Between 3 January and 31 January 2020 on a date unknown;*

- i) Approached Colleague A from behind;*
- ii) Stroked her arm.*

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

In reaching this decision, the panel took into account the evidence of Colleague A, Ms 3 and Mr Zanella's responses.

In the local investigation meeting notes Mr Zanella stated "*I saw her in the morning and I just came to say "hello, how are you" and I just touched her shoulder. It is from my culture, I was just trying to be polite and friendly*" He also stated "*And then I just went away and*

*after a few minutes when I was on my way back I saw her again and she came and asked to talk to me in private. She told me she felt it was unprofessional and I apologised and said it wasn't my intention".*

In Colleague A's local statement of the events she explained that *"A couple of weeks later I was at the main reception desk on level 9a. Once again, he came up behind me and rubbed my left arm and then walked off down to bay 3. I called him into the corridor and told him that his actions made me very uncomfortable and I asked him not to do it again as it was not appropriate. He quickly said he wouldn't do it again and he left muttering under his breath".*

Colleague A said in her NMC statement *"I was at the main reception desk and the Registrant came up behind me and stroked my arm down from my shoulder. I do not have a record of the specific date of this incident. I felt extremely uncomfortable and, given that I had previously decided to see if the behaviour was repeated, I immediately directly confronted the Registrant by calling him into the corridor. I told him that his actions made me very uncomfortable and I asked him not to do this again as it was not appropriate. The Registrant seemed shocked and said he wouldn't do this again".*

Having found Colleague A to be a credible and reliable witness, the panel accepted her evidence. It determined that it is more likely than not that this incident had occurred as described by Colleague A; that Mr Zanella had approached her from behind and stroked her arm, in a manner which Colleague A described as making her 'skin crawl'. The panel also noted from Mr Zanella's interview response that he accepted that he had stroked Colleague A's arm 'up and down'.

Colleague A told the panel that she was very upset by this incident, having initially decided not to report the earlier incident. Ms 3 confirmed that when Colleague A spoke to her following this second incident, she was still very upset. The panel considered Mr Zanella's behaviour to be inappropriate and a breach of professional boundaries. The panel therefore found charge 1b proved in its entirety.

## **Charge 2**

*Your conduct at any and/or all of charge 1 above was motivated by the pursuit of sexual gratification.*

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

In reaching this decision, the panel took into account that Mr Zanella's conduct outlined in all of the allegations at charge 1a and 1b had been found proved.

The panel took into account Mr Zanella's position is that because of his culture he is very friendly and tactile and that he knows that *"the English don't like that approach"*.

The panel did not accept Mr Zanella's position that he was just being friendly because this was his culture. It considered that Mr Zanella had had many years of experience working on the Ward and would have been aware of cultural norms and what would be considered acceptable behaviour towards colleagues. He acknowledged this in his interview with Ms 3.

The panel noted Mr Zanella's comment that he could "do more than that", apparently implying that he could take the physical contact further. It noted that Colleague A had done nothing to invite his approach, which was from behind on both occasions. There was no prior relationship between them, no history of flirtation and the contact was non-consensual. There was no reason for it to occur in the workplace. Given the nature and context of the physical contact, and the words said on the first occasion, the panel could see no plausible alternative reason or motivation other than the pursuit of sexual gratification. It therefore drew an inference that it was more likely than not that the conduct in charge 1 was not only inappropriate, but was also motivated by the pursuit of sexual gratification. The panel therefore found charge 2 proved.

### **Charge 3a**

On 29 December 2020;

- a) *Taunted Patient A on one or more occasions by saying to Patient A “lean forward then” or words to that effect and/or “go on you can try” or words to that effect and/or “look see you can do it” or word to that effect*

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

In reaching this decision, the panel took into account the evidence of Ms 2, Ms 1 and Mr Zanella’s responses.

Mr Zanella’s response in the investigation meeting notes is that he was trying to make sure that the patient stayed in bed, and he was not being unkind to Patient A. It noted that Mr Zanella denied encouraging Patient A to sit forward and then pushing him back.

Ms 2 said in her contemporaneous written statement *“[Mr Zanella] then began to tease the patient by egging him on to sit forward, saying things like “you want to get up? Go on then” and then when the patient attempted to lean forward, [Mr Zanella] would shove him back to bed quite hard on the chest. He did this 3-4 times, taunting the patient forward and then slamming him back to bed”.*

Ms 2’s evidence was consistent in her investigation meeting on 8 February 2020.

The panel found Ms 2’s evidence to be credible, detailed and consistent. It considered that she had no reason to be dishonest in her account of events.

The panel therefore accepted Ms 2’s evidence. It noted that she had described Mr Zanella’s actions in her oral evidence as a push rather than ‘slamming’ the patient down onto the bed.

The panel had some hesitation in finding that Mr Zanella had been ‘taunting’ when he used the words he did. It noted his explanation at interview, and it therefore considered carefully whether he might, even if it was in an inappropriate and heavy-handed way, had been trying to persuade the patient of the futility of trying to get out of bed. The panel also noted the context of the incident. The patient was in his 40s, delirious, difficult to manage and was repeatedly trying to get up. However, the panel noted Ms 2’s evidence that she thought Mr Zanella was “sniggering” and that he would push the patient down immediately after saying the words. The panel noted that Ms 2’s version of events was consistent across a number of occasions when she was asked for an account, and that Mr Zanella had provided no evidence at this hearing. On balance, the panel concluded that this conduct could properly be characterised as ‘taunting’ Patient A.

The panel therefore accepted Ms 2’s evidence. The panel determined that it was more likely than not that Mr Zanella had taunted Patient A on one or more occasions by saying to Patient A “*lean forward then*” or words to that effect and/or “*go on you can try*” or words to that effect and/or “*look see you can do it*” or words to that effect. The panel therefore found charge 3a proved.

### **Charge 3b**

On 29 December 2020;

- b) On one or more occasions pushed Patient A back into bed.

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

In reaching this decision, the panel took into account the evidence of Ms 2, Ms 1 and Mr Zanella’s responses.

Mr Zanella’s response in the investigation meeting notes is that “*I was trying to make sure that the patient stayed in bed, I was trying to stop him by talking to him and trying to get him to stay in bed*”. He appeared to accept that when Patient A tried to get up, he had

pushed him back down. He also acknowledged during the same meeting that the approach he used was not a recognised or approved manual handling technique.

Ms 2 said in her contemporaneous written statement *“[Mr Zanella] then began to tease the patient by egging him on to sit forward, saying things like “you want to get up? Go on then” and then when the patient attempted to lean forward, [Mr Zanella] would shove him back to bed quite hard on the chest. He did this 3-4 times, taunting the patient forward and then slamming him back to bed”*.

Ms 2’s evidence was consistent in her investigation meeting on 8 February 2020.

The panel found Ms 2’s evidence to be credible, detailed and consistent. It considered that she had no reason to be dishonest in her account of events.

The panel determined that it was more likely than not that Mr Zanella had pushed Patient A back into bed on one or more occasions. The panel therefore found charge 3b 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 Zanella’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. Second, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Zanella'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 Maini-Thompson 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.

Mr Maini-Thompson identified specific, relevant standards where he submitted that Mr Zanella's actions amounted to misconduct. He submitted that Mr Zanella's breaches of the Code are serious in nature and constitute misconduct.

Mr Maini-Thompson submitted that Mr Zanella's failure to treat a patient with kindness, respect and compassion is fundamentally contrary to professional standards and would jeopardise public trust in nursing standards. He also submitted that Mr Zanella repeatedly breached professional boundaries with his colleague in a serious manner, which majorly compromised workplace standards and staff wellbeing.

### **Submissions on impairment**

Mr Maini-Thompson 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Maini-Thompson submitted that Mr Zanella's misconduct is remediable in principle insofar as reflection and transparency may compensate for prior misconduct. He submitted that neither of these criteria are satisfied in this case.

Mr Maini-Thompson submitted that the mild expressions of remorse on the part of Mr Zanella during the local investigation do not amount to remediation. He submitted that this was because there is no meaningful insight into the reasons why his conduct was inappropriate and there is no evidence of any proactive practical steps taken by Mr Zanella to address the harm caused. He submitted that it is the NMC's position that, in absence of remediation, there is a high likelihood of repetition.

The panel accepted the advice of the legal assessor.

### **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 Zanella's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Zanella's actions amounted to breaches of the Code. Specifically:

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

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*1.5 respect and uphold people's human rights*

*6 Always practise in line with the best available evidence*

*To achieve this, you must:*

*6.2 maintain the knowledge and skills you need for safe and effective practice*

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

*To achieve this, you must:*

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

*20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

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

*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...”*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel was of the view that in relation to charge 1a, some of the conduct itemised in charge 1a, in isolation, could have been considered misguided or poor judgement. However, the panel considered that the particulars set out in charge 1a(i-v) were all different facets of the same incident. They also had to be considered in the context of the panel's finding at charge 2, that Mr Zanella's actions were motivated by the pursuit of sexual gratification. Viewed cumulatively in that context, the panel concluded that charge

1a taken as a whole represented a significant breach of professional boundaries with sexual motivation. The panel considered that Mr Zanella's conduct caused distress to his colleague which could have impacted on patient care on the ward. The panel found that Mr Zanella's actions at charge 1a fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel was of the view that in relation to charge 1b, Mr Zanella's conduct, taken on its own, could have been considered misguided or a poor lack of judgement. However, the panel noted that this incident was a repetition of a similar breach of professional boundaries to charge 1a, occurring only a short time afterwards. In addition, the panel had again found that Mr Zanella's actions were motivated by the pursuit of sexual gratification. The incident had again caused distress to his colleague which could have impacted on patient care on the ward. The panel found that Mr Zanella's actions at charge 1b fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel then considered Mr Zanella's conduct at charge 3. In relation to charge 3a, the panel was of the view that the use of the words on its own might not amount to misconduct. However, the panel took into account its finding that Mr Zanella had 'taunted' Patient A using the words detailed in charge 3a. In addition, the words had to be considered as part of the same incident as the pushing referred to in charge 3b. In relation to charge 3b, the panel was of the view that Mr Zanella's conduct by pushing Patient A was serious and was not a recognised or approved manual handling technique. The panel therefore considered Mr Zanella's conduct at charge 3, taken as a whole, was inappropriate, unkind and therefore serious. His behaviour caused Patient A, a vulnerable individual, distress and had the potential to cause significant physical harm in light of the injury previously sustained by Patient A to his ribs. The panel found that Mr Zanella's actions at charge 3 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 whether as a result of the misconduct, Mr Zanella'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. 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) ...'*

The panel found limbs a, b and c engaged in the *Grant* test. The panel found that Patient A and Colleague A were put at risk of being caused physical and/or emotional harm as a result of Mr Zanella's misconduct. The panel found that Mr Zanella's misconduct had breached the fundamental tenets of the nursing profession, in the sense that he failed to treat both a patient and a colleague with dignity and respect. His conduct was therefore such as to bring the reputation of the profession into disrepute.

Regarding insight, the panel considered the Trust's local investigation, and noted that Mr Zanella accepted it was wrong to place his hands on Patient A, in the way that he did. The panel also noted that Mr Zanella had shown some remorse for causing Colleague A distress through his inappropriate advances. However, the panel was of the view that this insight and remorse was limited and there was an absence of any evidence of wider insight into why his conduct was distressing and inappropriate. Neither has he demonstrated any understanding of how his actions put patients at risk of harm, or how his conduct impacted negatively on his colleagues and the reputation of the nursing profession.

The panel was satisfied that the misconduct in this case is theoretically capable of being addressed, although some aspects would be harder to remedy than others. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Zanella has taken steps to strengthen his practice. The panel took into account that Mr Zanella has not provided any evidence at this hearing that he has further reflected on his misconduct or how he would handle similar situations differently in the future. The panel

had also seen no evidence that Mr Zanella has taken steps to address his behaviour by undertaking any training. There was no evidence in relation to Mr Zanella's current circumstances or practice since these incidents. There was no evidence to suggest either that the failings have been addressed or that they can be regarded as out of character.

The panel is of the view that there is a risk of repetition based on the lack of evidence of any meaningful insight and lack of evidence of any steps Mr Zanella has taken to address his misconduct. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Mr Zanella'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 Mr Zanella off the register. The effect of this order is that the NMC register will show that Mr Zanella 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 Maini-Thompson submitted that the most suitable sanction in this case is a striking-off order. He submitted that he was mindful that a striking-off is the most serious sanction available to the panel, but it is the NMC's position the criteria for a striking-off order are satisfied.

Mr Maini-Thompson outlined to the panel what the NMC consider to be the aggravating and mitigating factors in this case. He submitted that Mr Zanella's insight is next to non-existent. He submitted that Mr Zanella has no recognition of the seriousness of the incidents of sexual misconduct and no understanding why his behaviour was inappropriate and how it impacted on his colleague and the workplace. He submitted that Mr Zanella has shown minimal insight for his behaviour where he pushed a patient. He submitted that there was every chance his misconduct would be repeated in the future.

Mr Maini-Thompson submitted that a conditions of practice order would not mitigate the risk of repetition and would therefore not protect the public. He submitted that a suspension order was not appropriate because there is no indication that Mr Zanella has any intention of re-engaging with the NMC and a suspension order would serve no useful purpose given his disengagement.

Mr Maini-Thompson submitted that a striking-off order would be the most suitable order given the pattern of cumulative misconduct.

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

Having found Mr Zanella'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.

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

The panel took into account the following aggravating features:

- Mr Zanella abused his position of trust.
- Mr Zanella's lack of insight or reflection.
- Mr Zanella's unkind treatment of a Patient A caused a vulnerable individual distress and had the potential to cause physical harm, in light of the injury previously sustained by Patient A to his ribs.
- Mr Zanella's sexual misconduct caused distress to his colleague and risked having an impact on the team providing care to patients on the ward.
- The absence of any evidence of training or steps taken to address his misconduct.
- The misconduct in this case involved repeated instances of treating people unkindly and without dignity and respect. It was therefore a pattern of misconduct involving attitudinal and behavioural concerns.

The panel also took into account the following mitigating features:

- Mr Zanella accepted in the Trust's local investigation that he did not use an appropriate manual handling technique on Patient A.
- Mr Zanella had shown some remorse, during the Trust's investigation, for causing his colleague distress through his inappropriate advances. However, it is noted this remorse was disconnected from any wider insight into why it was distressing.



- The difficult working circumstances regarding Patient A's behaviour and that Mr Zanella had been kicked by Patient A prior to the incident.
- Mr Zanella has not repeated sexual misconduct after he was challenged by his colleague.

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, the risk of repetition and the public protection issues identified, an order that does not restrict Mr Zanella'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 Mr Zanella'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 Mr Zanella'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 and the attitudinal concerns arising. The panel had no evidence that Mr Zanella had any willingness to engage with the NMC: on the contrary, his correspondence with the NMC suggests that he would not be willing to engage with a process of addressing the concerns identified in this case. Furthermore, the panel concluded that the placing of conditions Mr Zanella's registration would not adequately address the seriousness of this case and would not protect the public or satisfy the public interest considerations.

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 was of the view that this was not a single instance of misconduct. Mr Zanella had demonstrated a lack of respect and kindness towards a patient and the sexual misconduct towards a colleague occurred on two occasions. The panel considered that there is evidence of attitudinal problems. The panel noted that there was no evidence that Mr Zanella had repeated his behaviour nor that he had addressed it. The panel was of the view that Mr Zanella had demonstrated a lack of insight into his misconduct, and appeared unwilling to engage in a process of addressing his failings. The panel was satisfied that there is a risk of repetition of his behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by Mr Zanella's actions, coupled with the absence of any evidence of remediation or willingness to remedy past failings, is fundamentally incompatible with Mr Zanella 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 Zanella's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that members of the public and colleagues should expect to be treated with respect and dignity at all times, and Mr Zanella's actions had demonstrated a disregard for these fundamental tenets of the nursing profession. The panel was of the view that the findings in this particular case demonstrate that Mr Zanella's actions and attitudinal failings were so serious that 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 effect of Mr Zanella's 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 acknowledged the impact this order will have on Mr Zanella. However, his interests in this regard are outweighed by public protection and public interest considerations. Moreover, in circumstances where he has indicated that he is now working overseas, the impact on him appeared to be limited.

The panel considered that this order was necessary to mark the seriousness of the misconduct in this case, in order to maintain 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 Zanella 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 Zanella's own interests until the striking-off order 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 Maini-Thompson. He submitted that an interim suspension order for 18 months is necessary 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 to cover the period for appeal.

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

That concludes this determination.