

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

**Substantive Hearing  
Tuesday, 18 April 2023,  
Thursday 20 – 28 April 2023**

Virtual Hearing

**Name of Registrant:** Ignacio Atillo

**NMC PIN** 00H1513O

**Part(s) of the register:** Registered Nurse – Sub-part 1  
Adult Nursing – 1 September 2000

**Relevant Location:** East Sussex

**Type of case:** Misconduct

**Panel members:** Bryan Hume (Chair, lay member)  
Linda Pascall (Registrant member)  
Asmita Naik (Lay member)

**Legal Assessor:** Mike Bell 18/04  
Charles Apthorp

**Hearings Coordinator:** Catherine Acevedo

**Nursing and Midwifery Council:** Represented by Scott Clair, Case Presenter

**Mr Atillo:** Not present and unrepresented

**Facts proved:** Charges 1b, 1c, 1d, 1e, 2a, 2b, 2c, 2d, 3a, 3b(i),  
3b(ii), 4, 5, 6, 7a, 7b, 8a, 8b(i), 8b(ii), 11a, 11b

**Facts not proved:** Charges 1a, 7c, 9a, 9b, 9c, 9d, 10, 12

**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 Atillo was not in attendance and that the Notice of Hearing letter had been sent to Mr Atillo's registered email address by secure email on 15 March 2023.

Mr Clair, 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 that the hearing was to be held virtually and, amongst other things, information about Mr Atillo'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 Atillo 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 Atillo**

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

Mr Clair submitted that there had been no engagement at all by Mr Atillo with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. He also referred

the panel to the email correspondence from the NMC to Mr Atillo dated 14 April 2023 informing him of timetable adjustments to the hearing.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Atillo. In reaching this decision, the panel has considered the submissions of Mr Clair 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 Atillo;
- Mr Atillo has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- There is no reason to suppose that adjourning would secure Mr Atillo's attendance at some future date;
- Three witnesses have attended today to give live evidence, others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred between 2017 and 2021;
- 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 Atillo in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, He has made no 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. Furthermore, the limited disadvantage is the consequence of Mr Atillo'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 to proceed in the absence of Mr Atillo. The panel will draw no adverse inference from Mr Atillo's absence in its findings of fact.

### **Details of charge**

That you a registered nurse;

1. On dates unknown between 1 January 2018 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:
  - (a) On one or more occasions attempted to place Colleague A into sexual positions in front of patients.
  - (b) On one or more occasions touched Colleague A's buttocks.
  - (c) On one or more occasions touched Colleague A's breasts and/or chest area.
  - (d) On one or more occasions attempted to kiss Colleague A.
  - (e) On one or more occasions attempted to lick Colleague A's neck.
  
2. On 10 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A by:
  - (a) Touching and/or grabbing and/or squeezing Colleague A's genitals.

- (b) Attempted to touch Colleague A's breast and/or chest area.
  - (c) Stating to Colleague A, *"Don't be shy, you have nice boobs"* or words to that effect.
  - (d) Stating to Colleague A, *"nice testicles"* or words to that effect.
3. Your conduct in charge 1 and/or charge 2 amounted to harassment of Colleague A in that;
- (a) It was unwanted conduct of a sexual nature, and
  - (b) It had the purpose or effect of:
    - (i) Violating Colleague A's dignity, and/or
    - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.
4. Your conduct in charge 1 and/or charge 2 was sexually motivated in that you were seeking sexual gratification.
5. On dates unknown between 1 January 2018 and 11 May 2021 acted in an unprofessional manner towards Colleague A by stating to Colleague A, *"I am the boss here, you can't do anything"* or words to that effect.
6. Your conduct in charge 5 had the purpose and/or effect of creating an intimidating, unsupportive, hostile, degrading, humiliating or offensive environment for Colleague A.
7. On dates unknown between 1 January 2017 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague B in that:
- (a) On one or more occasions placed your head between Colleague B's breasts.
  - (b) On one or more occasions shook and/or rubbed your head between Colleague B's breasts.
  - (c) On one or more occasions attempted to kiss Colleague B.

8. Your conduct in charge 7 amounted to harassment of Colleague B in that;
  - (a) It was unwanted conduct of a sexual nature, and
  - (b) It had the purpose or effect of:
    - (i) Violating Colleague B's dignity, and/or
    - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.
  
9. On dates unknown between 1 January 2017 and 11 May 2021 behaved in an unprofessional manner towards Colleague B by;
  - (a) Stating in front of colleagues on 22 February 2021, "*[Colleague B] the patient called your name and fell dead*" or words to that effect.
  - (b) Stating on a date in December 2020, "*It is acceptable for you to work Christmas day as you have no children*" or words to that effect.
  - (c) Stating on a date in April 2021, "*I cannot deal with you anymore, I have problems at home, you are challenging me, and I will send you back to Conquest*" or words to that effect.
  - (d) Instructing staff at VAT Eastbourne to, "*not allow you to book afternoon appointments for outpatients*" or words to that effect.
  
10. Your conduct in charge 9 had the purpose and/or effect of creating an intimidating, hostile, unsupportive, degrading, humiliating, undermining or offensive environment for Colleague B.
  
11. On dates unknown behaved in an inappropriate and/or unprofessional manner towards Colleague C by:
  - (a) On one or more occasions placed your head between Colleague C's breasts.
  - (b) On one or more occasions shook your head between Colleague C's breasts.
  
12. Your conduct in charge 11 was sexual in nature and had the purpose and/or effect of violating Colleague C's dignity.

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

## **Background**

The charges arose whilst Mr Atillo was employed by East Sussex Healthcare and worked within Eastbourne District General Hospital. From June 2010 Mr Atillo had worked in a senior (Band 7) nursing role, as Lead Nurse for the Vascular Access Team (VAT).

It is alleged that on 10 May 2021, Mr Atillo sexually assaulted Colleague A, in the location of the Coronary Care Unit ('CCU') by grabbing Colleague A's genitals.

It is alleged that between 2018 and 2021, Mr Atillo repeatedly subjected Colleague A to sexual comments and harassment. It is said Mr Atillo would repeatedly touch Colleague A's breasts and buttocks, kiss his neck and place him in sexual positions.

It was alleged that Mr Atillo also subjected two female members of staff to similar behaviour whereby he would put his head between their breasts and shake it.

## **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 Clair on behalf of the NMC.

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

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
- Colleague B
- Colleague C
- Witness 1: Staff nurse at Eastbourne General Hospital on the Coronary Care Unit (CCU) East Sussex Healthcare NHS Trust.
- Witness 2: Sister at Eastbourne General Hospital on the Coronary Care Unit (CCU) East Sussex Healthcare NHS Trust.
- Witness 3: Matron at Eastbourne General Hospital on the Coronary Care Unit (CCU) East Sussex Healthcare NHS Trust.

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

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

### **Charge 1a**

On dates unknown between 1 January 2018 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:

- a) On one or more occasions attempted to place Colleague A into sexual positions in front of patients.

**This charge is found not proved.**

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A describes his encounters with Mr Atillo in his witness statement “[Mr Atillo] would do things like try to put me in some sexual positions in front of the patients.”

The panel considered that it had not been provided with sufficient evidence to determine what was meant by ‘sexual positions’ and whether this occurred in front of patients. The panel therefore determined that it could not find that Mr Atillo had behaved in an inappropriate or unprofessional manner towards Colleague A and found charge 1a not proved.

**Charge 1b and 1c**

On dates unknown between 1 January 2018 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:

- b) On one or more occasions touched Colleague A’s buttocks.
- c) On one or more occasions touched Colleague A’s breasts and/or chest area.

**These charges are found proved.**

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A stated in his witness statement *“He would also try to touch my body, like grabbing my boobs or one time my genitals”*. Colleague A’s oral evidence was consistent with his written statement.

The panel found Colleague A’s evidence to be credible and sufficiently detailed and it accepted his account of the incidents described in charges 1b and 1c.

The panel found on the balance of probabilities that on one or more occasions Mr Atillo touched Colleague A’s buttocks and/or chest area. The panel determined that touching a colleague’s buttocks or chest area was inappropriate and or unprofessional behaviour toward Colleague A by Mr Atillo. The panel therefore found charges 1b and 1c proved.

#### **Charge 1d and 1e**

On dates unknown between 1 January 2018 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:

- d) On one or more occasions attempted to kiss Colleague A.
- e) On one or more occasions attempted to lick Colleague A’s neck.

#### **These charges are found proved.**

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A stated in his witness statement *“He would also try to kiss me and lick my neck”*. Colleague A’s oral evidence was consistent with his written statement.

Having found Colleague A’s evidence to be credible and reliable and sufficiently detailed, the panel accepted his account of the incidents described in charges 1d and 1e.

The panel found on the balance of probabilities that on one or more occasions Mr Atillo behaved in an inappropriate and/or unprofessional manner towards Colleague A by

attempting to kiss Colleague A and attempting to lick Colleague A's neck. The panel therefore found charges 1d and 1e proved.

### **Charge 2a and 2b**

On 10 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A by:

- a) Touching and/or grabbing and/or squeezing Colleague A's genitals.
- b) Attempted to touch Colleague A's breast and/or chest area.

### **These charges are found proved.**

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

Colleague A stated in his written statement *"There was an incident on 10 May 2021 that really affected me. I was in the nurse's station and the phone rang so I answered it. It was a patient wanting to ask questions so I couldn't help them as I am not a nurse. Sister [Witness 2] was also in the room so I passed the phone to her. She needed access to the computer to be able to answer the patient's questions so I helped her move the telephone closer. As I did this, the cable for the phone ended up between my legs. As I lifter my leg to get, the cable out from underneath me, [Mr Atillo] went and grabbed my genitals. He laughed as he did this but it shocked me. He then let go of my genitals and tried to touch my boobs"*.

Having found Colleague A's evidence to be credible and consistent and sufficiently detailed, the panel accepted his account of the incidents described in charges 2a and 2b.

Witness 1 was a witness to this incident and stated in her local investigation interview *"I was sat at the nursing station and [Mr Atillo] was there and [Colleague A]. Someone was on the phone and [Colleague A] had to step over the telephone cord. [Mr Atillo] grabbed*

*him between the legs and laughed*". The panel found Witness 1's evidence was credible and consistent and it accepted her account of the incident.

The panel found on the balance of probabilities that Mr Atillo touched and/or squeezed Colleague A's genital area and he attempted to touch Colleague A's breast and/or chest area. The panel determined that touching and attempting to touch a colleague in this manner was inappropriate and or unprofessional behaviour toward Colleague by Mr Atillo. The panel therefore found charges 2a and 2b proved.

### **Charge 2c and 2d**

On 10 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague A by:

- c. Stating to Colleague A, *"Don't be shy, you have nice boobs"* or words to that effect.
- d. Stating to Colleague A, *"nice testicles"* or words to that effect.

### **These charges are found proved.**

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

Colleague A stated in his written statement *"I tried to turn away and stop him so he started saying things like, 'Don't be shy, you have nice boobs' Nurse [Witness 1] was also there and saw what happened"*.

Having found Colleague A's evidence to be credible and consistent and sufficiently detailed, the panel accepted his account of what Mr Atillo had said to him during the incidents described in charges 2c and 2d.

Witness 1 was a witness to this incident and stated in her local investigation interview “[Mr Atillo] told staff in the staff room what he had done to [Colleague A] like it was a joke”. The panel found Witness 1’s evidence was credible and consistent and it accepted her account of the incident.

The panel found on the balance of probabilities that Mr Atillo stated to Colleague A, “Don’t be shy, you have nice boobs” and “nice testicles” or words to this effect. The panel determined that speaking to a colleague in this manner was inappropriate and or unprofessional behaviour toward Colleague by Mr Atillo. The panel therefore found charges 2c and 2d proved.

### **Charge 3a**

Your conduct in charge 1 and/or charge 2 amounted to harassment of Colleague A in that;

- a) It was unwanted conduct of a sexual nature,

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

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A said in his written statement “*I didn’t feel very good after this incident happened. I am a big, tall guy and I don’t get scared of things but when [Mr Atillo] did these things, others looked at me and it made me feel uncomfortable and embarrassed. I felt that maybe they thought I liked [Mr Atillo] doing these things to me. I have my wife and child and did not want this attention from [Mr Atillo]*”. Colleague A’s oral evidence was consistent with his written statement. He said he thought that Mr Atillo acted this way towards be because he thought he was attracted to him and that he did not want this attention from Mr Atillo.

Having found Colleague A's evidence to be credible and consistent and sufficiently detailed, the panel accepted his account of how Mr Atillo had made him feel when he had behaved inappropriately/unprofessionally towards him.

The panel found on the balance of probabilities that Mr Atillo's conduct towards Colleague A was unwanted and of a sexual nature. The panel determined that Mr Atillo's behaviour by repeatedly touching Colleague A in the genitals and chest areas and saying inappropriate things to Colleague A demonstrated a pattern of behaviour which amounted to harassment. The panel therefore found charges 3a proved.

### **Charge 3b(i) and 3b(ii)**

Your conduct in charge 1 and/or charge 2 amounted to harassment of Colleague A in that;

- b) It had the purpose or effect of:
  - i) Violating Colleague A's dignity, and/or
  - ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

### **These charges are found proved.**

In reaching this decision, the panel took into account the evidence of Colleague A.

The panel had no evidence from Mr Atillo to determine what the purpose of his behaviour towards Colleague A was. It heard evidence that Mr Atillo was 'touchy' and 'cuddly' with colleagues.

The panel accepted Colleague A's evidence regarding the impact Mr Atillo's behaviour had on him. The panel heard that Colleague A felt uncomfortable and embarrassed by Mr Atillo's conduct and he tried to avoid Mr Atillo at work. Colleague A said some of the staff

would make jokes and were aware of what Mr Atillo was doing to him. This was supported by Witness 1 who stated that she believed that Mr Atillo had gone too far in his actions.

Having found Colleague A's and Witness 1's evidence to be credible and consistent and sufficiently detailed, the panel accepted the account of how Mr Atillo had made Colleague A feel when he had behaved inappropriately/unprofessionally towards him.

The panel determined that on the balance of probabilities Mr Atillo's conduct at charges 1 and 2 had the effect of violating Colleague A's dignity, and created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A. The panel determined that Mr Atillo's behaviour by repeatedly touching Colleague A in the genitals and chest areas and saying inappropriate things to Colleague A demonstrated a pattern of behaviour which amounted to harassment. The panel therefore found charge 3b(i) and 3b(ii) proved.

The panel noted the public sector equality duty, section 149 of the equality act 2020 to ensure harassment doesn't take place. This engages section 26 of the EqA Harassment.

#### **Charge 4**

Your conduct in charge 1 and/or charge 2 was sexually motivated in that you were seeking sexual gratification.

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

The panel took into account that it found Mr Atillo's conduct to be unwanted and of a sexual nature and that he had demonstrated a pattern of behaviour towards Colleague A which amounted to harassment. The panel determined on the balance of probabilities that Mr Atillo's conduct was sexually motivated and that touching of Colleague A's genitals and chest areas could only have been for his sexual gratification. The panel therefore found charge 4 proved.



## **Charge 5**

On dates unknown between 1 January 2018 and 11 May 2021 acted in an unprofessional manner towards Colleague A by stating to Colleague A, *“I am the boss here, you can’t do anything”* or words to that effect.

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

In reaching this decision, the panel took into account Colleague A’s evidence.

Colleague A said in his witness statement *“I would say to [Mr Atillo] ‘Please don’t do this, I don’t like this’ But [Mr Atillo] would say things like, ‘I am boss here, you can’t do anything. My wife was training to be anurse in the same hospital and I was scared if I did anything like report what [Mr Atillo] was doing that he would jeopardize this.”* Colleague A’s oral evidence was consistent with his written statement.

Having found Colleague A’s evidence to be credible and reliable and sufficiently detailed, the panel accepted his account of the incident described in charges 5.

The panel determined that on the balance of probabilities Mr Atillo’s acted in an unprofessional manner towards Colleague A by stating, *“I am the boss here, you can’t do anything”* or words to that effect. The panel therefore found charge 5 proved.

## **Charge 6**

Your conduct in charge 5 had the purpose and/or effect of creating an intimidating, unsupportive, hostile, degrading, humiliating or offensive environment for Colleague A.

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

In reaching this decision, the panel took into account Colleague A's evidence.

The panel had no evidence from Mr Atillo to determine what the purpose was of stating "*I am the boss here, you can't do anything*" towards Colleague A.

Having already found Colleague A's evidence to be credible, the panel accepted Colleague A's account regarding the impact Mr Atillo's behaviour had on him. The panel heard that Colleague A felt he could not report Mr Atillo's behaviour to anyone. Colleague A said he just wanted to be able to do his job in peace without causing trouble to anyone else.

The panel determined that on the balance of probabilities Mr Atillo's conduct at charge 5 had the effect of creating an intimidating, unsupportive, hostile, degrading, humiliating and offensive environment for Colleague A. The panel therefore found charge 6 proved.

### **Charge 7a and 7b**

On dates unknown between 1 January 2017 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague B in that:

- a) On one or more occasions placed your head between Colleague B's breasts.
- b) On one or more occasions shook and/or rubbed your head between Colleague B's breasts.

### **These charges are found proved.**

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B stated in her witness statement "*[Mr Atillo] also did inappropriate things to me. He would come over to me and put his head between my boobs and shake it*".

Colleague B's oral evidence was consistent with her written evidence.

The panel found Colleague B's evidence to be credible and reliable and it accepted her account of the incidents described in charges 7a and 7b.

The panel found on the balance of probabilities that on one or more occasions Mr Atillo placed his head between Colleague B's breasts and shook and/or rubbed his head between Colleague B's breasts. The panel determined that Mr Atillo's behaviour towards Colleague B was inappropriate and or unprofessional. The panel therefore found charges 7a and 7b proved.

### **Charge 7c**

On dates unknown between 1 January 2017 and 11 May 2021 behaved in an inappropriate and/or unprofessional manner towards Colleague B in that:

- c) On one or more occasions attempted to kiss Colleague B.

**This charge is found not proved.**

The panel determined that there was no evidence before it in relation to this charge. The panel therefore found charge 7c not proved.

### **Charge 8a**

1. Your conduct in charge 7 amounted to harassment of Colleague B in that;
  - a) It was unwanted conduct of a sexual nature,

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B said in her written statement *"When [Mr Atillo] did this to me I felt embarrassed, upset and abused. It was really inappropriate behaviour towards me. He*

*made me feel terrible and his general behaviour towards me lead to me going off sick with stress. I felt I was having to keep a secret from my husband so I told him about it and my husband was shocked and told me to push [Mr Atillo] away. I would try tell [Mr Atillo] to stop and push him away but he continued to do it. It really affected me and I spoke to..., Head of Nursing about it who was very supportive.”* Colleague B’s oral evidence was consistent with her written statement. She said she did not want this attention from Mr Atillo and she would try to push him away.

Having already found Colleague B’s evidence to be credible, consistent and sufficiently detailed, the panel accepted her account of how Mr Atillo had made her feel when he had behaved inappropriately/unprofessionally towards her.

The panel found, on the balance of probabilities, that Mr Atillo’s conduct towards Colleague B was unwanted and of a sexual nature. The panel determined that Mr Atillo’s behaviour by placing his head between Colleague B’s breasts and shaking his head, on more than one occasion, demonstrated a pattern of behaviour which amounted to harassment. The panel therefore found charge 8a proved.

### **Charge 8b(i) and 8b(ii)**

Your conduct in charge 7 amounted to harassment of Colleague B in that;  
It had the purpose or effect of:

- ii) Violating Colleague B’s dignity, and/or
- iii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

**These charges are found proved.**

In reaching this decision, the panel took into account the evidence of Colleague B.

The panel had no evidence from Mr Atillo to determine what the purpose of his behaviour towards Colleague B was. It heard evidence that Mr Atillo was 'touchy' and 'cuddly' with colleagues.

The panel accepted Colleague B's evidence regarding the impact Mr Atillo's behaviour had on her.

Having found Colleague B's evidence to be credible and consistent and sufficiently detailed, the panel accepted her account of how Mr Atillo had made her feel when he had behaved inappropriately/unprofessionally towards her.

The panel determined that on the balance of probabilities Mr Atillo's conduct at charges 7 had the effect of violating Colleague B's dignity, and created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B. The panel determined that Mr Atillo's behaviour by placing his head between Colleague B's breasts and shaking his head, on more than one occasion, demonstrated a pattern of behaviour towards Colleague B which amounted to harassment. The panel therefore found charge 8b(i) and 8b(ii) proved.

### **Charge 9a**

On dates unknown between 1 January 2017 and 11 May 2021 behaved in an unprofessional manner towards Colleague B by;

- a) Stating in front of colleagues on 22 February 2021, "*[Colleague B] the patient called your name and fell dead*" or words to that effect.
- b) Stating on a date in December 2020, "*It is acceptable for you to work Christmas day as you have no children*" or words to that effect.
- c) Stating on a date in April 2021, "*I cannot deal with you anymore, I have problems at home, you are challenging me, and I will send you back to Conquest*" or words to that effect.

- d) Instructing staff at VAT Eastbourne to, “not allow you to book afternoon appointments for outpatients” or words to that effect.

**This charge is found not proved.**

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B said in her supplementary witness statement:

*“In May 2021 (unable to recall specific date), I was working a Friday shift and I was not able to insert a Peripheral Inserted of Central Catheter (“PICC”) line as the patient did not have all the documentation ready. I documented for [Mr Atillo] to follow this up over the weekend. On the following Monday's Huddle I asked [Mr Atillo] if he managed to place the PICC line in the patient. Instead of being professional, [Mr Atillo] said in front of everyone that the patient called my name and fell dead. All of my colleagues started laughing. I said to [Mr Atillo] "what do you mean found dead", to which [Mr Atillo] replied that the patient wasn't actually found dead and it was just a joke. This incident was extremely triggering for me. After this I went on sick leave due to stress”.*

Colleague B stated in her local investigation interview:

*“[Mr Atillo] said to me ‘It is acceptable for me to work Christmas day as I have no children’, I would like to mention that I have a son and husband, in 4 years since I joined VAT, I already have worked 2 Christmas days.*

*April this year again I raised concern about my requests on healthroster to [Mr Atillo] and I have been told by him ‘I cannot deal with you anymore, I have problems at home, you are challenging me, and I will send you back to Conquest”*

*I would also like to mention that that since I have been moved to Eastbourne, I can only speak with [Mr Atillo] regarding any issues as Ray said he is not my lead.*

*[Mr Atillo] instructed VAT Eastbourne site to not book any outpatient (e.g. from MRI, CT...) after 12pm. I tried to speak with him about this and explain there it may be a good reason why the patients must attend an afternoon appointment, but he instructed VAT Eastbourne staff in special the support practitioner to remind me and to not let me to book appointments”.*

The panel had no evidence from Mr Atillo to determine the context in which these comments were made.

The panel considered the comments in charge 9 were not unprofessional but were comments that had the potential to be taken out of context. Namely, that they could be statements which had the potential of more than one interpretation and meaning and/or that they constituted legitimate difference in opinion on day to day issues over which Mr Atillo had management responsibility.

The panel therefore found charges 9a, 9b, 9c and 9d not proved.

### **Charge 10**

Your conduct in charge 9 had the purpose and/or effect of creating an intimidating, hostile, unsupportive, degrading, humiliating, undermining or offensive environment for Colleague B.

**These charges are found not proved.**

Having found charge 9 not proved in its entirety, the panel determined that charge 10 fell away and was found not proved.

## **Charge 11a and 11b**

On dates unknown behaved in an inappropriate and/or unprofessional manner towards Colleague C by:

- a) On one or more occasions placed your head between Colleague C's breasts.  
Clear evidence from colleague c that this
- b) On one or more occasions shook your head between Colleague C's breasts.

### **These charges are found proved.**

In reaching this decision, the panel took into account the evidence of Colleague C.

Colleague C stated in her witness statement "*[Mr Atillo] would sometimes come up to me and put his head in between my breasts and shake his head, but it didn't bother me*". She later confirmed that this occurred on one occasion only. Colleague C's oral evidence was consistent with her written evidence.

The panel found Colleague C's evidence to be credible and reliable and it accepted her account of the incidents described in charges 11a and 11b.

The panel found on the balance of probabilities that on one occasion Mr Atillo placed his head between Colleague C's breasts and shook his head. The panel determined that Mr Atillo's behaviour towards Colleague B was inappropriate and unprofessional. The panel therefore found charges 11a and 11b proved.

## **Charge 12**

Your conduct in charge 11 was sexual in nature and had the purpose and/or effect of violating Colleague C's dignity.

### **This charge is found not proved.**



In reaching this decision, the panel took into account the evidence of Colleague C.

Colleague C stated in her witness statement:

*“I have known [Mr Atillo] for years, since he started at the hospital. My husband who was also a nurse also knew [Mr Atillo]. I don’t remember what year it was I met him but it was a long time ago. [Mr Atillo] and I worked well together.*

*I got on really well with him and I liked him. [Mr Atillo] was very sociable flamboyant, openly camp and has his camp ways but that’s just [Mr Atillo]. When I was Matron he would come in and acknowledge me as Matron, was very polite and respectful. I only knew [Mr Atillo] in a professional capacity, I did not interact with him outside of work.*

*[Mr Atillo] would sometimes come up to me and put his head in between my breasts and shake his head, but it didn’t bother me. He would also say things like he loves me and my husband. I never worried about these things, felt threatened or embarrassed, it was just [Mr Atillo] and his ways. It wasn’t a regular behaviour that [Mr Atillo] did this, only every now and again”.*

Having already found Colleague C’s evidence to be credible and reliable and it accepted her evidence that she did not feel worried or threatened by Mr Atillo’s behaviour towards her.

The panel had no evidence from Mr Atillo to determine what the purpose was of his behaviour towards Colleague C.

The panel determined, on the balance of probabilities, that Mr Atillo’s conduct in charge 11 was not sexual in nature and did not have the effect of violating Colleague C’s dignity. The panel therefore found charge 12 not 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 Atillo'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, Mr Atillo'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 Clair invited the panel to take the view that the facts found proved amount to misconduct. The panel was referred to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) (Updated to reflect the regulation of nursing associates: 10 October 2018). Mr Clair identified the specific, relevant standards where Mr Atillo's actions amounted to misconduct.

Mr Clair submitted that the charges found proved involving inappropriate sexual conduct towards colleagues are sufficiently serious to amount to misconduct.

Mr Clair referred the panel to the Trust's, Anti-Harassment and Bullying (Dignity at work) Policy (the Policy) and submitted that Mr Atillo has breached the Policy by his conduct. The policy states that the Trust is committed to providing employees with working in an environment free from harassment and bullying, and ensuring all staff are treated and treat others with dignity and respect. He submitted that the definition of harassment in the Policy is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them and a single incident can amount to harassment. He submitted that the policy states that harassment may include, unwanted physical conduct or hoarsely, including touching, pinching, pushing or grabbing and unwelcome sexual advances or suggestive behaviour which the harasser may perceive as harmless.

Mr Clair invited the panel to find that the charges found proved do amount, individually and collectively, to serious misconduct and fell below the standards expected of a reasonable and competent nurse.

### **Submissions on impairment**

Mr Clair 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 Clair submitted that there are no concerns in relation to Mr Atillo's clinical practise therefore, a finding of impairment is primarily sought on public interest grounds. He submitted that in terms of public protection, the panel should consider that although no patients were involved, these incidents did occur within a clinical setting and, as members of the public, Colleague A and Colleague B were entitled to feel safe in a healthcare environment.

Mr Clair submitted that Mr Atillo's actions have brought the nursing profession into disrepute and by not maintaining professional boundaries, he breached one of the fundamental tenets of the nursing profession. He submitted that the public do not expect nurses to behave in this way with colleagues and would be shocked to hear what happened between Mr Atillo and Colleague A and Colleague B particularly on hospital premises.

Mr Clair submitted that the conduct found proved in this case involve behavioural concerns in part from inappropriate sexual conduct and could be considered conduct that is difficult to remediate. He referred the panel to the NMC guidance on serious concerns which are more difficult to put right.

Mr Clair submitted that there is no evidence before the panel, that Mr Atillo has properly reflected upon the conduct found proved or that he has shown remorse or regret for what happened. He submitted that Mr Atillo has not engaged with these proceedings and has not shown insight into the concerns, particularly the impact that his actions could have had on colleagues and the wider public. The panel may consider that the concerns have not been remediated so that there is still a risk of repetition.

Mr Clair submitted that in order to protect the public and to maintain public confidence in the profession as well as in declaring and uphold proper standards of conduct and behaviour, a finding of current impairment is required.

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

### ***"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*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Atillo's conduct found proved in the charges, were serious and involved inappropriate physical contact and comments made by Mr Atillo towards Colleague A and Colleague B and were of a sexual nature. It found that Mr Atillo's conduct had the effect of violating their dignity and creating an

intimidating, hostile, degrading, humiliating or offensive workplace environment and amounted to harassment.

The panel noted that Mr Atillo's the issues raised did not involve his clinical practice. However, Mr Atillo's conduct caused emotional harm to Colleague A and Colleague B and occurred in a healthcare setting which put patients at the Trust at risk of harm. The panel considered that Mr Atillo's behaviour had the potential of impacting on Colleague A and Colleague B's ability to carry out their jobs safely and effectively.

The panel found that Mr Atillo's actions at each charge, taken individually and collectively, fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Mr Atillo'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 were engaged in the *Grant* test. The panel found that patients were put at risk of potential harm by Mr Atillo's actions and that this risk could continue in the future. The panel found Mr Atillo's misconduct brought the nursing profession into disrepute by not maintaining professional boundaries and breached one of the fundamental tenets of the nursing profession.

Regarding insight, the panel noted that Mr Atillo had not engaged with proceedings and has therefore not provided any evidence that he has developed insight into his misconduct

and how his behaviour could have impacted negatively on patients, his colleagues and on the reputation of the nursing. The panel noted that there is also no evidence of remorse from Mr Atillo or evidence about he would act differently in the future.

The panel considered that the misconduct was of a sexual nature and being behavioural was more difficult to address. The panel carefully considered the evidence before it in determining whether or not Mr Atillo has taken steps to address his misconduct. The panel took into account that there was no evidence before it of any remedial steps taken by Mr Atillo by way of a reflective statement or training courses.

The panel is of the view that there is a risk of repetition based on the absence of any evidence of insight and remediation. 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Atillo's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Atillo'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 Atillo off the register. The effect of this order is that the NMC register will show that Mr Atillo 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 Clair submitted that the panel should consider all the sanctions available, starting with the least restrictive. He outlined what the NMC consider to be the aggravating and mitigating factors of the case.

Mr Clair submitted that Mr Atillo's misconduct was not at the lower end of the spectrum and therefore a no further action or a caution order would be inappropriate in view of the seriousness of this case.

In relation to a conditions of practice order, Mr Clair submitted that the panel have recognised that the behaviour is not easily remediable. He submitted that it would be difficult to formulate conditions that adequately address the concerns in this case. He submitted that the misconduct is not something that can be addressed through retraining and given that the concerns are potential behavioural and attitudinal.

In relation to a suspension order, Mr Clair submitted that the charges range over a prolonged period of time and several incidents demonstrating a pattern of consistent unprofessional behaviour and misconduct. He submitted that Mr Atillo has not demonstrated insight and there is a risk of repetition. He submitted that because of the serious breach of boundaries, and possible behavioural and attitudinal concerns, a suspension order is inappropriate.

With regard to a striking-off order, Mr Clair submitted that the panel may consider that in light of the seriousness of the behaviour, the harm that's been caused and the real

potential for harm that could have been caused, that public confidence in the profession can only be maintained if Mr Atillo is removed from the register. He submitted that a striking off-order is the only sanction sufficient to protect members of the public and maintain professional standards.

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

Having found Mr Atillo'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 took into account the following aggravating features:

- Mr Atillo was in a managerial role and breached a position of trust.
- That there was a serious breach of professional boundaries.
- Mr Atillo's conduct involved multiple victims and occurred over a prolonged period of time, demonstrating a pattern of conduct.
- There has been no evidence of insight from Mr Atillo in relation to recognising the potential impact that his actions have had on Colleagues A and Colleague B and could have had on other colleagues, the nursing profession and the wider public.
- There has been no evidence that Mr Atillo has remedied the concerns.

The panel also took into account the following mitigating feature:

- Mr Atillo was working within an environment where his behaviour was normalised and enabled by being considered acceptable.

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 neither protect the public nor be in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Atillo'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 Atillo'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 Atillo'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 through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Atillo's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

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

The panel considered that this was not a single instance of misconduct but a pattern of behaviour towards colleagues over a prolonged period of time which occurred whilst he was in a managerial role. The panel considered that there was evidence of possible harmful deep seated or attitudinal issues. The panel saw no evidence that Mr Atillo has repeated his misconduct. However, there was no evidence of insight for the panel to be able to determine that Mr Atillo does not pose a risk of repeating 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 noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Atillo's actions is fundamentally incompatible with Mr Atillo 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 Atillo'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 the findings in this particular case demonstrate that Mr Atillo's actions

were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Atillo'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 considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This decision will be confirmed to Mr Atillo 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 Atillo's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Clair. He submitted that an interim order is necessary for a period of 18 months to cover the period for appeal. He submitted that an interim suspension order would be the appropriate order given the panel's findings.

## **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 appeal period.

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

That concludes this determination.