Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Meeting
Wednesday, 13 December 2023

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant:	Poh Eng Tan
NMC PIN	80K1996E
Part(s) of the register:	Registered Nurse – Sub Part 1 RN3 – Mental Health Nurse (Level 1) – 22 November 1983 RN1 – Adult Nurse (Level 1) – 22 July 1986
Relevant Location:	Surrey
Type of case:	Misconduct
Panel members:	Gregory Hammond (Chair, lay member) Jillian Claire Rashid (Registrant member) Catherine Cooper (Registrant member)
Legal Assessor:	Robin Hay
Hearings Coordinator:	Franchessca Nyame
Consensual Panel Determination:	Accepted
Facts proved by way of admission:	Charges 1, 2, 3, 4, and the entirety of 5
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Ms Tan's registered email address by secure email on 3 November 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this case was going to be heard at a meeting.

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

Details of charge

That you, a registered nurse, whilst working as a nurse at HMP Highdown on 25 - 26 May 2018, you:

1. On one or more occasions, failed to carry out visual observations of Patient A every 30 minutes and/or twice hourly;

2. On one or more occasions, recorded in the Nursing Observation Sheet that you had carried out visual observations of Patient A when you had not;

3. On one or more occasions, did not accurately record the time you had carried out visual observations of Patient A in the Nursing Observations Sheet;

4. Recorded in the Patient Record that you had observed Patient A 20 to 25 minutes before he was found unresponsive at 04.50 hours with a ligature around his neck when you had not;

5. Your actions at charges 2, 3 and 4 above were dishonest in that you:
   5.1. knew you had not undertaken visual observations of Patient A approximately every 30 minutes and/or twice hourly;
   5.2. knew that you had not accurately recorded the time you had carried out the visual observations of Patient A;
   5.3. knew you had not observed Patient A 20 to 25 minutes before he was found unresponsive at 04:50 hours with a ligature around his neck;
   5.4. took this action with the intention to mislead that checks were carried out every 30 minutes when they had not been;

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Miss Tan.

The agreement, which was put before the panel, sets out Miss Tan's full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking-off order.

The panel considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

> '*The Nursing & Midwifery Council ("the NMC") and Miss Poe Eng Tan ("the Registrant"), PIN 80K1996E, ("collectively the Parties") agree as follows:*

1. The Registrant is aware of the CPD hearing. She does not intend on attending the hearing and is content for it to proceed in her and her representative's absence. The Registrant will endeavour to be available by telephone should clarification on any point be required, or should the panel wish to make amendments to the provisional agreement.

The charge

2. The Registrant admits the following charges:

That you, a registered nurse, whilst working as a nurse at HMP Highdown on 25 - 26 May 2018, you:

1. On one or more occasions, failed to carry out visual observations of Patient A every 30 minutes and/or twice hourly;

2. On one or more occasions, recorded in the Nursing Observation Sheet that you had carried out visual observations of Patient A when you had not;

3. On one or more occasions, did not accurately record the time you had carried out visual observations of Patient A in the Nursing Observations Sheet;

4. Recorded in the Patient Record that you had observed Patient A 20 to 25 minutes before he was found unresponsive at 04.50 hours with a ligature around his neck when you had not;

5. Your actions at charges 2, 3 and 4 above were dishonest in that you:

5.1. knew you had not undertaken visual observations of Patient A approximately every 30 minutes and/or twice hourly;

5.2. knew that you had not accurately recorded the time you had carried out the visual observations of Patient A;

5.3. knew you had not observed Patient A 20 to 25 minutes before he was found unresponsive at 04:50 hours with a ligature around his neck;

5.4. took this action with the intention to mislead that checks were carried out every 30 minutes when they had not been;

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

The facts

3. The Registrant appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered nurse and has been on the NMC register since November 1983.

4. On the nightshift of 25 - 26 May 2018, the Registrant was working as a nurse on the Healthcare Inpatient Unit (HIU) at HMP High Down. She was working alongside two prison officers.

5. The night shift was particularly busy with 17 or 18 of the 23 cells occupied. The Registrant was assigned to take care of all the prisoners. All the prisoners needed hourly observations, save for Patient A who needed 30-minute observations. There was also a terminally ill patient on the unit who needed extra care and support, and a patient who had been very disruptive during the day, shouting and screaming. Staffing levels were within their normal limits, however, acuity was high. The nurse on shift during the day had requested for a second nurse to assist on the night shift. This request was refused.

6. The Registrant did not conduct 30-minute observations of Patient A. Rather, as part of her hourly observations of the other prisoners, she would also look in on Patient A. This meant that his observations were being conducted with the same frequency as the other prisoners, despite his higher level of need.

7. Nonetheless, the registrant created records in Patient A's Nursing Observation Sheet which indicated she had conducted visual observations every 30 minutes, as required. This was dishonest. The Registrant knew she was not checking Patient A every 30 minutes and intended to mislead any subsequent reader to believe she had done so.

8. At 04.50, Patient A was discovered with a ligature around his neck. He was taken to hospital where he later died. Prior to his being discovered, the Registrant had last conducted observations of Patient A at 03.53.

9. In line with the practice set out above, the Registrant had recorded in the Nursing Observation Sheet that she had observed Patient A at 04.20. This was a lie.

10. Upon Patient A being discovered, the Registrant made the following entry in his Patient Record:

> *"Approximately 20 to 25 minutes before the incident, he appeared (sic) to be asleep on his bed, on his right side and movement of his legs were noted."*

11. This too was dishonest. The Registrant knew she had not conducted observations of Patient A 20-25 minutes prior to him being discovered with a ligature around his neck. The subsequent narrative was a work of pure fiction. The entry was intended to mislead any subsequent reader to believe that Patient A had been properly cared for prior to him (ultimately fatally) self-harming.

Misconduct

12. Whilst a matter for the Panel's professional judgment, the Parties agree that the Registrant's failings are so serious that they amount to misconduct. The Registrant accepts that her lack of care and subsequent dishonest actions with regards to the record keeping represent a serious falling short of what be proper in the circumstances and acknowledges that fellow practitioners would consider her actions deplorable.

13. In reaching this agreement, the Parties considered the comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16:

> *'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nursing] practitioner in the particular circumstances.*

the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin):

> *'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

and the comments of Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin):

> *'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*

14. The Parties also considered [The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code)] *noting, per Roylance, that it*

represents the rules and standard ordinarily required to be followed by register nurses. The Parties agree that the following provision were breached in this case:

> ***10 keep clear and accurate records relevant to your practice***
> *To achieve this you must:*
> *10.1 complete records at the time or as soon as possible after an event, recording if the notes are written sometime after the event.*
> *10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*
> *10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*
>
> ***14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place:***
> *To achieve this, you must:*
> *14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly*
>
> ***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,*

15. When considering the seriousness of this case the Parties agree the following features are significant:
15.1 The Registrant's failure to observe Patient A with the frequency required put him at risk of serious harm.
15.2 When that risk manifested the Registrant sought to cover up her earlier poor practice by creating inaccurate documentation.

15.3 The inaccurate documentation created by the Registrant created a misleading picture which she knew at the time of writing could impact on the efficacy of Patient A's subsequent care. For example, the fictitious narrative recorded in Patient A's Patient Record indicated that he could not have tied the ligature more than 25 minutes before he was discovered. The true position was that it could have been tied for up to 57 minutes.

16. The Registrant's conduct both in respect of the dishonesty and failure to conduct observations with the necessary frequency fell so far below the standards expected of a nurse that it amounts to misconduct.

Impairment

17. The Parties agree that the Registrant's fitness to practise is impaired by reason of her misconduct on both the grounds of public protection and in the public interest.

18. The question of impairment needs to be considered as at today's date, i.e., whether the Registrant's fitness to practise is currently impaired.

19. The questions formulated by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) ("Grant") by Cox J are instructive and the Parties agree that all four limbs are engaged as a result of the Registrant's actions.

20. They are;

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 professions 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 professions; and/or

d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future?

21. The Parties agree that the failure to conduct observations with the necessary frequency put Patient A at risk of serious harm. If observations had been carried out

and the patient checked to note any signs of mental deterioration, the risk he posed to himself would have been mitigated. The Registrant's decision to treat Patient A like all of the other prisoners i.e. to conduct observations essentially hourly, created an unwarranted risk.

22. The Registrant's dishonest actions compound the failure to care appropriately for Patient A and her actions when considered in the round have brought the profession into disrepute and breached fundamental tenets of the profession.

23. The Parties considered the case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

- *Whether the conduct that led to the charge(s) is easily remediable.*
- *Whether it has been remedied.*
- *Whether it is highly unlikely to be repeated.*

24. The issues in this case are difficult to remediate. The Registrant made a choice not to provide Patient A with the level of care he required and, when something went wrong, attempted to cover up her poor practice. Dishonesty is inherently more difficult to remediate (per NMC Guidance FTP-3a) and since the Registrant has retired from nursing, the opportunity to demonstrate remediation in her practice is no longer available. In her statement to the NMC on 06/06/2023 she states:

> *"*[PRIVATE] *spending several months a year* [PRIVATE] *and volunteering in my local community and have no intention of returning to nursing."*

25. The Registrant's reflection is superficial and her insight poor. In her most recent reflection she, notwithstanding her acceptance of this CPD, fails to deal with the extent to which her poor practice put Patient A at risk of harm or the considered and self-serving nature of her dishonest conduct. In her statement dated 06/06/2023,she states:

> *"I can now see* [PRIVATE], *put me at a higher risk of making mistakes and had an impact on my fitness to practise.*
>
> *I accept that I did not follow good record keeping practice, which should be*

consistent and accurate at all times, on this shift. I should have documented that some of these observations had not been conducted and were only an approximation and am sincerely sorry for this lapse in my standards of practice.

I had a lack of insight at the time but having spent a considerable amount of time reflecting on this incident and my work around this period. I accept that I failed to follow the NMC Code to protect, promote and maintain the health, safety and wellbeing of the public and patients and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards of these professions, at the time.

I accept full responsibility for my failures, which I deeply regret. I had a long unblemished career as a nurse for 35 years, until this incident."

26. The Registrant has demonstrated limited remorse and, the admissions in the CPD aside, almost no insight into her actions. Accordingly, it cannot be said that it is highly unlikely that the conduct would not be repeated. It cannot be said that, should the Registrant find herself in a similar situation, she would not behave in a way that put people in her care at risk and engage in dishonest conduct to cover up her poor practice, especially if harm resulted. Therefore, a risk of repetition remains.

27. The parties agree that a finding of current impairment should be made on public protection grounds. It cannot be said that it is highly unlikely that the conduct would be repeated.

28. In Grant at paragraph 74 Cox J commented that:

"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."

29. The Parties also agree that a finding of current impairment on public interest grounds should also be made to declare and uphold proper professional standards and protect the reputation of the profession. The Registrant's actions were a serious departure from the standards expected of a nurse and her actions brought the profession into disrepute.

30. Therefore, the Parties agree that a finding of current impairment should be made to protect the public and to uphold standards in the nursing profession and maintain public confidence in the profession.

Sanction

31. The parties agree that the appropriate sanction in this case is a striking off order.

32. The aggravating features of this case are:

- *The Registrant made a considered choice to depart from the level of observation Patient A needed.*
- *When harm arose the Registrant actively sought to cover up her poor practice by writing a fictious narrative in the patient record, an action directly contrary to her duty of candour.*

33. There are no mitigating features in this case. Whilst it is agreed the prison was busy this does not mitigate either the Registrant's decision to act in a way that placed Patient A at unwarranted risk of harm or her repeated decision to dishonestly complete records associated with his care even after harm had resulted and in circumstances where other healthcare professionals needed to understand Patient A's presentation on the night in question.

34. The Parties agree that taking no further action or imposing a caution order would not be appropriate in the light of the public protection and public interest issues.

35. The Parties agree that a conditions of practice would not be suitable given that the Registrant has [PRIVATE].

36. The Parties agree that a suspension order would not be suitable in this case given the dishonesty and the need to uphold standards and public confidence in the NMC and the profession.

37. In the NMC Guidance 'Considering sanctions for serious cases FTP-San-2' it states:

> *"Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore, allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register. However, in every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct that has taken place. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*
>
> - *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
> - *vulnerable victims*
> - *direct risk to patients*
> - *premeditated … deception*

38. The Parties agree that a suspension order simply does not satisfy the public interest and public protection concerns in this case.

39. The Parties agree that a striking off order is the only order that is appropriate in this case. The misconduct raises fundamental questions about the Registrant's professionalism and is incompatible with ongoing registration. Public confidence in the NMC can only be maintained if the Registrant is permanently removed from the register. It is the only sanction available which is sufficient to protect patients, members of the public and maintain professional standards. The Registrant has fallen seriously short of the standard expected of a nurse.

Interim Order

40. It is also necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order of 18 months to cover the appeal period.

41. The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings, impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Ms Tan. The provisional CPD agreement was signed by Ms Tan on 31 October 2023 and the NMC on 2 November 2023.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Ms Tan. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Ms Tan admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Ms Tan admissions as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Ms Tan's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Ms Tan, the panel exercised its own independent judgement in reaching its decision on impairment.

In respect of misconduct, the panel determined that the charges are serious, and that Ms Tan's behaviour was deplorable and breached fundamental tenets of the Code.

In this respect, the panel endorsed paragraphs 12 to 16 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Ms Tan's fitness to practise is currently impaired by reason of misconduct. In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

The panel determined that Ms Tan's fitness to practise is currently impaired as there is no information before it to indication that she has taken steps to remediate, and dishonesty is an attitudinal issue which is difficult to remediate. Ms Tan has also demonstrated very limited insight. As such the panel was not satisfied that Ms Tan's conduct is highly unlikely to be repeated. Further, Ms Tan expressed that she has no intention of returning to nursing. In this respect the panel endorsed paragraphs 17 to 30 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Ms Tan's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel bore 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: Please list from CPD

- The Registrant made a considered choice to depart from the level of observation Patient A needed.
- When harm arose the Registrant actively sought to cover up her poor practice by writing a fictious narrative in the patient record, an action directly contrary to her duty of candour.

The panel also took into account that there are mitigating features in this case.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Tan'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 Ms Tan'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 Ms Tan'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 Ms Tan'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 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 Ms Tan's actions is fundamentally incompatible with Ms Tan 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?*

Ms Tan's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Tan's actions were serious and to allow her 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 agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Tan's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel 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.

Decision and reasons on interim order

The panel 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 Ms Tan's own interest. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interests. 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 agreed with the CPD 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 due to cover the appeal period.

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

This will be confirmed to Ms Tan in writing.

That concludes this determination.