

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

**Substantive Hearing
Monday 3 October 2022 – Thursday 6 October 2022
Wednesday 18 January 2023 – Thursday 19 January 2023**

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

Name of registrant:	J Parker
NMC PIN:	99I2035E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – September 2002
Relevant Location:	Liverpool and the Republic of Ireland
Type of case:	Misconduct
Panel members:	John Penhale (Chair, lay member) Jonathan Coombes (Registrant member) Jan Bilton (Lay member)
Legal Assessor:	John Bromley-Davenport
Hearings Coordinator:	Ruth Bass
Nursing and Midwifery Council:	Represented by Conall Bailie, Counsel instructed by the NMC: 3 – 6 October 2022 Michael Smalley: 18 – 19 January 2023
Registrant:	Not present and not represented in absence
Facts proved:	Charges 1a, 2a, 2b, 3a, and 3b
Facts not proved:	Charges 1b and 1c
Fitness to practise:	Impaired
Sanction:	Strike 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 the registrant was not in attendance and that the Notice of Hearing had been sent to their registered email address on 30 August 2022.

Mr Bailie, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rule 11 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that the registrant has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on application for hearing to be held in private

Mr Bailie made an application for parts of this hearing be held in private. He referred the panel to the proceeding in absence bundle and submitted that it was in the registrant's interest that the personal matters referred to in that bundle should be held in private, so as to respect the registrant's right to privacy. The application was made pursuant to Rule 19 of the Rules.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there may be reference to personal matters concerning the registrant throughout the anticipated proceeding in absence application, the panel determined to hold that part of the hearing in private. It further determined to go into private session as and when any matters relating to the registrant's personal circumstances arose.

Decision and reasons on proceeding in the absence of the registrant

[PRIVATE]

Details of charge

'1 On one or more occasions in the Republic of Ireland between 21 July 2016 and 23 July 2018:

1 a) Supplied or sold medication which was not authorised for sale or supply in the Republic of Ireland

1 b) Administered and/or otherwise supplied prescription only medication which had not been prescribed to those to whom you administered and/or otherwise supplied it

1 c) Practised nursing when you were not registered to do so in the Republic of Ireland

2 a) On 22 July 2018 at Liverpool John Lennon Airport, represented to a Police Constable that you were a 'nurse practitioner' and permitted to prescribe when you did not have a prescribing annotation to your NMC Registration.

2 b) Your representation at 2 a) above was dishonest in that you represented that you had prescribing rights when you knew you did not

3 a) On 28 February 2020 during a hearing before the Nursing and Midwifery Council's Investigation Committee, represented that boxes of medication with which you were found at Dublin Airport on 22 July 2018 were empty, when they were not.

3 b) Your representation at 3 a) above was dishonest in that you represented that boxes of medication were empty when you knew that was not true

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

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, including the registrant's written responses. It also had regard to the submissions made by Mr Bailie on behalf of the NMC.

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

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. There is no burden on the registrant to disprove any of the charges.

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

- Witness 1: Enforcement Officer and Authorised Officer of the Health Products Regulatory Authority of Ireland.

- Witness 2: Police Constable with Merseyside Police, stationed at Liverpool John Lennon Airport.

- Witness 3: NMC Investigator at the time of incidents who was involved in conducting the NMC's investigation.

Background

The registrant joined the NMC Register as a Registered Nurse – Adult, on 2 September 2002.

It is alleged that the registrant advertised aesthetics procedures on a social media platform, under the name of '[J] *Parker Aesthetics*' which stated '*Fully trained aesthetic practitioner and trainer. Anti wrinkle injections, dermal fillers, peels, HIFU, LED Masks, Lip Augmentation...*'

On 22 July 2018 the registrant travelled from John Lennon Airport, Liverpool to Dublin Airport. The registrant was stopped at John Lennon Airport by Witness 2. It is alleged that the registrant was spotted wearing a stethoscope and there was suspicion that the registrant may have been in possession of drugs or medication.

The registrant's bag was checked by Witness 2 and another Police Constable, and medication was found in the registrant's bag. Witness 2 activated his body worn camera, and an interview was conducted with the registrant. It is alleged that during this interview the registrant made dishonest representations that they were a '*nurse practitioner*' and permitted to prescribe medication.

The registrant then travelled to Dublin Airport and was stopped by Officers of Irish Revenues Customs Service (customs officers). It is alleged that the registrant was interviewed by customs officers. Witness 1 and his colleague were provided the medicinal products found in the registrant's possession by the customs officers. Witness 1 identified the medicinal products as follows:

- 1 x Unit Botulinum Toxin Type A (Botox)
- 2 x Units Dysport (Turkish script)
- 1 x Unit Hydroxocobalamin
- 1 x Unit Tor-Bac 5ml (Bacteriostatic Saline Solution injection)
- 1 x Unit Sodium Chloride

- 1 x Unit Juvederm VOLIFT with Lidocaine (Injectable gel – 4 unit in total)

Witness 1 and his colleague conducted an interview with the registrant under caution. It is alleged that during this interview the registrant confirmed having travelled to the Republic of Ireland to provide Botox every three to four months over the last two years, and sometimes more frequently to carry out top ups of Botox.

It is further alleged that the registrant made representations to an NMC Investigation Committee that boxes of medication found to be in the possession of the registrant at Dublin Airport were empty and were in their possession to be used as “teaching tools”.

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 and the registrant.

Decision and reasons on application to admit evidence

During the panel’s deliberation on facts, the panel was of the view that a copy of the registrant’s NMC registration status would assist in its finding on the facts. It therefore made enquiries through Mr Bailie if a copy of the registrant’s registration status could be provided to the panel.

In providing a copy of the registrant’s registration status to the panel, Mr Bailie made an application under Rule 31 to allow for an extract from the electronic NMC Register to be placed before the panel as evidence in the case.

Mr Bailie submitted that Rule 31 allowed the panel to admit documentary evidence. He submitted that the document would have been created by an NMC employee in the normal course of their employment and not for any hearing purposes. Mr Bailie further submitted that the extract would not be the sole or decisive evidence in relation to the registrant not having any prescribing qualification, given that they said they had not taken any prescribing course. He further submitted that there was evidence before the panel that the registrant had stated that they were not able to prescribe.

The panel heard and accepted the advice of the legal assessor in relation to Rule 31.

The panel was of the view that it was both fair and relevant to admit the extract of the NMC Register, pertaining to the registrant's registration status, as evidence in the case.

The panel found that this evidence was relevant to clearly identify the registrant's registration status, and was an enquiry to establish a fact. It was satisfied that this would not be the only evidence before it in this regard, noting that the registrant had admitted that they did not have a prescribing annotation to their registration and was not permitted to prescribe.

In considering fairness, the panel was of the view that the information being sought is on a public register, and not evidence that would have not been known or available to the registrant. Again, the panel was conscious of the fact that the registrant had admitted they were not permitted to prescribe, and the panel was of the view that it was right and proper to have the document before it.

It therefore allowed the application and admitted the extract of the NMC Register.

The panel considered each of the charges and made the following findings:

Charge 1a)

1 On one or more occasions in the Republic of Ireland between 21 July 2016 and 23 July 2018:

1 a) Supplied or sold medication which was not authorised for sale or supply in the Republic of Ireland

This charge is found proved.

In considering this charge the panel had regard to the statement under caution, dated 22 July 2018. The panel noted in particular the following exchange between Witness 1 and the registrant:

'Q. What is the purpose of your visit here in Ireland today.

A. To do some Botox and Fillers

Q. What does that mean

A. To see some clients

Q. To see clients for what reason.

A. Botox and fillers, if they are consent able I would inject them with Botox and Dermal fillers.

...

Q. How long have you been coming to Ireland to provide this service.

A. A couple of years.

Q. Why did and when did you come to Ireland.

A. A friend [redacted] who is Irish but lived in Liverpool got me into Ireland. I started providing procedures to her and her family here in Dublin and also in Liverpool.

Q. How much where [sic] you paid.

A. 200 for 3 areas and that's the Botox

Q. How often had you travelled to Dublin or Ireland to provide Botox.

A. It's normally every 3 to 4 months over the last years. But sometimes I have come back more frequently to carry out top ups of Botox.

Q. How many clients do you think you have seen and provided medical treatment too.

A. Roughly 50 clients in total.

Q. These Clients how do you get them.

A. [Redacted] gets them from me.

Q. What does [Redacted] get out of it.

A. I provide free Botox, no money is passed.

Q. Who are the clients

A. As far as I know they are all either immediate family or related somehow. She has a big family.

Q. They all pay for Botox.

A. Yes €200 a pop.

Q. Is it only Botox you do.

A. No, I do fillers as well I do both for €400.

...'

The panel was satisfied from the above exchange that the registrant had supplied and sold medication in the Republic of Ireland. It also had sight of images from the registrant's social media page which evidenced messages with clients booking appointments for aesthetic procedures to include derma fillers and Botox in the UK. It was clear to the panel that the registrant was engaged in the business of selling these types of products.

It was clear to the panel from the evidence before it, that the registrant had been interviewed by both Witness 1 and Witness 2 on 22 July 2018. The registrant had also confirmed in the interview under caution with Witness 1 on 22 July 2018, that they had been administering and supplying Botox and fillers for a period of some two years prior to being stopped by customs officers on 22 July 2018. The panel was therefore satisfied that the registrant had supplied or sold medication in the Republic of Ireland on more than occasion between 21 July 2016 and 23 July 2018.

The panel also had regard to the evidence of Witness 1, an Enforcement Officer and Authorised Officer of the Health Products Regulatory Authority of Ireland. It noted in particular that Witness 1 had conducted the interview with the registrant under caution on 22 July 2018, which was signed by the registrant and witnessed by Witness 1 and another officer. It further noted that a transcript of Witness 1's handwritten notes of the interview under caution, and a formal transcript of those notes, had been provided as evidence in the case. The panel found Witness 1 to be a credible witness whose oral evidence was consistent with his written contemporaneous records. It also found Witness 1 to be knowledgeable of the rules and processes of medicinal products that come into the Republic of Ireland.

The panel had regard to the witness statement of Witness 1 dated 13 February 2020 which states:

'The medical products that J Parker was bringing into Ireland were not authorised for sale or supply in Ireland. In order to be legally placed on the Irish market, a medicine is required to be the subject of a marketing authorisation ("MA") granted by the HPRA for Ireland only, or by the European Commission where the medicine is centrally authorised by the Commission for supply in all European Union (EU) member states. The status (prescription or non-prescription) of a medicine is specified in the MA. Medicines containing Botulinum Toxins, are prescription only. None of the medicinal products detained from J Parker were centrally authorised. The medicinal products detained from J Parker at Dublin Airport on the 22 July 2018 carried either a UK authorisation (product licence "PL") of Turkish livery packaging. This means that medicinal products holding the product licence (PL) are authorised for sale or supply in the UK but not in Ireland. The Turkish Livery Dysport is not authorised for sale or supply in Ireland and, to the best of my knowledge, this product would not be authorised for supply in the UK either.'

The panel also considered Witness 1's supplementary statement dated 15 May 2020 which states:

'In relation to paragraph 7 of my previous statement I can confirm that the medication listed there are prescription only in ROI [Republic of Ireland] with the exception of the Sodium Chloride and Juvederm VIOLIFT with Lidocain. All of the medication listed were not authorised for sale or supply in the ROI.'

Having found Witness 1 to be a credible witness the panel accepted his evidence, that the products sold and supplied by the registrant was not authorised for sale or supply in the Republic of Ireland.

Having found that the registrant had supplied and sold medication which was not authorised for sale or supply in the Republic of Ireland on more than one occasion

between 21 July 2016 and 23 July 2018, the panel was satisfied that this charge is found proved on the balance of probabilities.

Charge 1b)

1 b) Administered and/or otherwise supplied prescription only medication which had not been prescribed to those to whom you administered and/or otherwise supplied it

This charge is found NOT proved.

In considering this charge, the panel had regard to Witness 1's statement dated 13 February 2020 and noted the following:

'The medical products that J Parker was bringing into Ireland were not authorised for sale or supply in Ireland. In order to be legally placed on the Irish market, a medicine is required to be the subject of a marketing authorisation ("MA") granted by the HPRA for Ireland only, or by the European Commission where the medicine is centrally authorised by the Commission for supply in all European Union (EU) member states. The status (prescription or non-prescription) of a medicine is specified in the MA. Medicines containing Botulinum Toxins, are prescription only. None of the medicinal products detained from J Parker were centrally authorised. The medicinal products detained from J Parker at Dublin Airport on the 22 July 2018 carried either a UK authorisation (product licence "PL") of Turkish livery packaging. This means that medicinal products holding the product licence (PL) are authorised for sale or supply in the UK but not in Ireland. The Turkish Livery Dysport is not authorised for sale or supply in Ireland and, to the best of my knowledge, this product would not be authorised for supply in the UK either.'

In Ireland, Botulinum Toxins containing medicinal products are prescription only medicines. They must be prescribed by a registered healthcare practitioner and subsequently supplied and administered by those entitled to do so under regulation.'

The panel was satisfied from the evidence of Witness 1, who it found to be a credible and knowledgeable witness, that some of the medication supplied by the registrant was prescription only medication.

However, in regard to the element of the charge which said '*which had not been prescribed to those whom you administered and/or otherwise supplied*' the panel noted the following exchange in the registrant's statement under caution on 22 July 2018:

Q. How are you prescribed the medicinal product

A. I speak to one of my Doctors, [Dr 4] He is from Rotherham in Leeds.

Q. Have you met him.

A. Yes I ring him and he writes a prescription for me.

Q. Does [Dr 4] meet the patient.

A. No he does remote prescribing

Q. Does [Dr 4] see the medical history of the patient before prescribing.

A. I tell him their history

Q. How does [Dr 4] know the medical history of patients you haven't seen.

A. He doesn't. If I am not happy with a patient I won't carry out the procedure.

...'

Whereas the panel was satisfied from the evidence available, that the registrant had been providing prescription only medication to clients.

The panel determined that there was no evidence before it which identified who the registrant's clients were and whether or not those clients had been given a prescription from Dr 4. It further noted that there had been no challenge from the NMC as to whether Dr 4 had prescribed the registrant's clients with prescriptions for the medication which the registrant administered. The panel therefore could not be satisfied on the balance of

probabilities that the prescription only medication administered and supplied by the registrant had not been prescribed to those clients. It therefore found this charge not proved.

Charge 1c)

1 c) Practised nursing when you were not registered to do so in the Republic of Ireland

This charge is found NOT proved.

In considering this charge, the panel had regard to an exchange between Witness 1 and the registrant recorded in the 'Statement Under Caution' dated 22 July 2018:

'Q. Are you a Medical practitioner

A. No I am not a Doctor, I am A Registered Nurse.

Q. OK when you say you are a Registered Nurse, Where are you registered.

A. In the UK 9912035E

Q. Are you registered here as a Nurse in Ireland.

A. No

Q. Have you applied to be registered here.

A. No.

Q. Are you A Dentist

A. No

Q. Are you trained to provide the treatments you are here to provide.

A. Yes I have certs in Botox and Advanced Botox and Filler and Advanced fillers.'

The panel noted from this exchange that the registrant had confirmed that they were registered as a nurse in the UK, but not in Northern Ireland. It further noted that the registrant purported to have been trained in administering Botox, advanced Botox, fillers and advanced fillers and had the required certificates in respect of this training. The panel also had regard to the website and social media material for [J] Parker Aesthetics which purported that the registrant was a *'fully trained aesthetic practitioner and trainer'*.

The panel had no evidence before it which challenged the registrants claim that they were qualified to carry out the aesthetic procedures. In the absence of such evidence the panel accepted the registrant's evidence that they were trained to carry out aesthetic procedures.

Further, the panel was of the view that the carrying out of the aesthetic procedures by the registrant did not fall solely under the jurisdiction of nursing, and were procedures which one could be accredited for outside of the scope of nursing practice. It was therefore satisfied that the registrant's actions, in conducting aesthetic procedures, was distinct from their nursing practice, and as such had not practised nursing in the Republic of Ireland. It therefore found this charge not proved.

Charge 2a)

2 a) On 22 July 2018 at Liverpool John Lennon Airport, represented to a Police Constable that you were a 'nurse practitioner' and permitted to prescribe when you did not have a prescribing annotation to your NMC Registration.

This charge is found proved.

In considering this charge the panel had regard to the bodycam footage captured on 22 July 2018 which recorded your interaction with Witness 2 as follows:

Witness 2: *"So you're a doctor"*

Registrant: *"I'm a nurse practitioner"*

Witness 2: *"What's the difference?"*

Registrant: *"I can prescribe drugs"*

The panel was satisfied that it had had sight of clear and unequivocal evidence from the video bodycam footage that the registrant had purported to be a *'nurse practitioner'* and was permitted to prescribe. The panel also had sight of the registrant's registration details as recorded on the NMC's Register, which evidenced that the registration did not have a prescribing annotation to their nursing registration.

Having had the benefit of hearing and watching the video footage of the above exchange, and a copy of the registrant's NMC registration status, the panel found this charge proved on the balance of probabilities.

Charge 2b)

2 b) Your representation at 2 a) above was dishonest in that you represented that you had prescribing rights when you knew you did not

This charge is found proved.

In considering this charge the panel had regard to the transcript of the NMC hearing on 28 February 2020 which records the following:

THE CHAIR: ...Are you a nurse prescriber at all [...] Parker?

THE REGISTRANT: No.

THE CHAIR: You're not.

THE REGISTRANT: No.

THE CHAIR: So, you are not -- you do not have a title of either nurse practitioner.

THE REGISTRANT: No.

THE CHAIR: And you are not a nurse prescriber.

THE REGISTRANT: No.

The panel was satisfied, from the above exchange, that the registrant was aware that they did not have a prescribing annotation on their NMC Registration and was not permitted to prescribe. It was therefore satisfied, having seen the bodycam footage recorded on 22 July 2018 where the registrant stated "*I'm a nurse practitioner*" and "*I can prescribe drugs*", that the representation as set out in charge 2b) would be regarded as dishonest by the standards of reasonable and honest members of the nursing profession, and of the public. The panel therefore found this charge proved on the balance of probabilities.

Charge 3a)

3a) On 28 February 2020 during a hearing before the Nursing and Midwifery Council's Investigation Committee, represented that boxes of medication with which you were found at Dublin Airport on 22 July 2018 were empty, when they were not.

This charge is found proved.

In considering this charge, the panel had regard to the transcript of the NMC hearing on 28 February 2020 where the registrant is recorded as having stated *'There was nothing in the boxes, they were all empty products...everything in that bag were products for our teaching school.'*

The panel also had regard to the written and oral evidence of Witness 1 that *'the boxes of medicinal product detained from J Parker's possession on 22 July 2018 were not empty'*.

Witness 1 provided the panel with physical evidence during his oral evidence. Witness 1 provided the panel with a box of Botox and a bottle of Dysport which the panel was able to view and handle. Having had the benefit of seeing the contents of the vials seized by Witness 1 on 22 July 2018, the panel was able to observe that there was product contained therein. It therefore found this charge proved on the basis that the registrant did represent that the bottles were empty, and that there was clear evidence before the panel that the bottles were not empty.

Charge 3b)

3 b) You representation at 3 a) above was dishonest was in that you represented that boxes of medication were empty when you knew that was not true

This charge is found proved.

In considering this charge, the panel had regard to registrant's evidence that the bottles were empty.

The panel also had regard to the registrant's evidence during a hearing of the Investigating Committee of the NMC on 28 February 2020 that the bottles were empty and were being used for teaching purposes. The panel noted that the registrant did not give this account in their '*Statement Under Caution*' on 22 July 2018.

The panel also had regard to its finding in charge 3a) that the bottles of medication in question were not empty. It was of the view that by the registrant stating that the boxes of medication were empty, when they knew this to be untrue, they were being dishonest and would be regarded as dishonest by the standards of reasonable and honest members of the nursing profession, and of the public. The panel therefore found this charge proved on the balance of probabilities.

Decision and reasons on service of Notice of Hearing

Mr Smalley, on behalf of the NMC informed the panel the NMC had served notice of this resuming hearing on the registrant on 28 December 2022. This had been sent to an email address which the registrant had been using to correspond with the NMC. He submitted that notice of service, in accordance with Rule 32 (3), had been complied with by the NMC.

The panel accepted the advice of the legal assessor.

The panel noted that the registrant had responded to the email. In light of all of the information available, the panel was satisfied that the registrant has been served with the required notice in accordance with the Rules.

Decision and reasons on proceeding in the absence of the registrant

The panel next considered whether it should proceed in the absence of the registrant. It had regard to Rule 21 and heard the submissions of Mr Smalley who invited the panel

to continue in the absence of the registrant. He referred the panel to the email sent by the registrant on 29 December 2022, which set out their reason for non-attendance; [PRIVATE]. Mr Smalley submitted that the registrant had voluntarily absented themselves, for the same reasons given at the start of the hearing in October 2022. He submitted that there was a public interest in the disposal of this case which dated back to 2016. Mr Smalley further submitted that an adjournment would serve no useful purpose as the registrant was unlikely to attend given their reasons for not attending today. Mr Smalley invited the panel to find that the registrant was aware of today's resuming hearing and had voluntarily absented themselves from these proceedings.

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.

[PRIVATE]

The panel noted that the registrant had responded to the notice of hearing on 29 December 2022 and was therefore satisfied that the registrant was aware of today's hearing and had made the decision to voluntarily absent themselves [PRIVATE].

The panel had regard to the fact that the charges in this case dated back to 2016, and was of the view that an expeditious disposal of this case was required in the public interest. It was also of the view that an adjournment was unlikely to secure the registrant's attendance on another date, given their reason for non-attendance today. The panel was of the view that, in all the circumstances, it was fair, appropriate and proportionate to proceed in the absence of the registrant.

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 amounted to misconduct and, if so, whether

the registrant'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, the registrant'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 (Roylance) 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 Smalley referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision, and identified specific, relevant standards where he submitted the registrant's actions amounted to misconduct. Mr Smalley submitted that the breaches of the Code identified were serious breaches, and invited the panel to take the view that the facts found proved did amount to misconduct.

Submissions on impairment

Mr Smalley then 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) (Grant).

Mr Smalley submitted that the registrant's fitness to practise is impaired by reason of their misconduct. He submitted that all four limbs of the test set out in *Grant* were engaged.

Mr Smalley submitted that the registrant providing medication, which was not authorised for sale or supply, placed the recipients at unwarranted risk of harm as they would have received that medication without the benefit of all the safeguards that would otherwise be in place. Mr Smalley also submitted that the registrant had acted dishonestly towards police and the NMC. He submitted that the registrant's actions in both factors breached fundamental tenets of the profession and therefore had brought the profession into disrepute.

Mr Smalley further submitted that the registrant had no insight into their misconduct, nor had they been apologetic in their response to the concerns. He submitted that the concerns had not been put right by the registrant and that there was a high risk that the misconduct would be repeated.

Mr Smalley referred the panel to the impairment bundle and set out the 3 previous substantive hearing outcomes as follows:

1. On 10 June 2014 the registrant received a 2-year Caution Order in respect of the following charges:

'1. In or around April 2010, falsely informed Patient A that Individual A was your client.

2. Your actions as set out in charge 1 above were dishonest.

3. On an unknown date around late April 2010, provided "botox" treatment to Patient A:

3.1. when there was not an appropriate prescription in place for this in respect of

Patient A;

3.2. without first explaining to Patient A the procedure itself and/or possible side effects.

4. On an unknown date around early May 2010, provided “botox” treatment to Patient A:

4.1. when there was not an appropriate prescription in place for this in respect of Patient A;

4.2. without first explaining to Patient A the procedure itself and/or possible side effects.

5. On an unknown date in or around June 2010, in respect of Patient A, performed facial sclerotherapy (“the Procedure”) without first:

5.1. fully informing Patient A of the risks of the Procedure;

5.2. obtaining Patient A's informed consent to the Procedure.

6. In performing the Procedure, you injected Sclerovein 1 % into Patient A’s face:

6.1. which was not licensed for such use;

6.2. when there was not an appropriate prescription in place for this in respect of Patient A.

7. Failed to complete and/or retain appropriate records in respect of any and/or all

treatment(s) provided to Patient A.’

2. On 8 April 2016 the registrant received a 3-year Caution Order in respect of the following charge:

‘(1) On one or more occasions between the period April 2015 and June 2015, offered to refund money to Patient A as an incentive to withdraw a referral to the Nursing & Midwifery Council’

3. On 2 June 2017 the registrant received a 5-year Caution Order in respect of the following charges:

‘1. During a Nursing and Midwifery Council Conduct and Competence Committee Substantive Hearing on 7 and 8 April 2016 gave evidence that:

- 1.1. *You had passed and/or completed a Masters in Pharmacology when you had not;*
- 1.2. *You were a prescribing practitioner, when you were not;*
- 1.3. *Your actions as set out in charges 1.1 and/or 1.2 above were dishonest in that you knew this evidence was inaccurate.'*

Mr Smalley submitted that the previous regulatory findings and sanctions supported his submission that there is a real risk of repetition of dishonest behaviour in a regulatory setting when things were not going in the registrant's favour.

Mr Smalley further submitted that a member of the public would be shocked to learn that no action was taken against a nurse who had placed patients at an unwarranted risk of harm and lied to the police and their own professional regulator. He submitted that public confidence in the profession would be undermined if no action were taken.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance*, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin) and *Grant*.

Decision and reasons on misconduct

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

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

'18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs...

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...

23 Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the registrant's actions in relation to all of the charges found proved did amount to serious misconduct.

With regard to charge 1a, the panel was satisfied that the registrant knew that the medication was not authorised for sale in the Republic of Ireland, but sold them in the Republic of Ireland regardless of this restriction. The panel was of the view that this behaviour put patients at a risk of harm and fell far short of the conduct and standard expected of a registered nurse.

With regard to charges 2a and 2b, the panel was of the view that the actions of a registered nurse in lying to the police during questioning, for their own benefit and for financial gain, was particularly shocking behaviour that did fall well below the conduct and standard expected of a registered nurse.

With regard to charges 3a and 3b, the panel had regard to the fact that the registrant had lied to an Investigating Committee of the NMC. It was of the view that the registrant had falsely told the panel that the boxes of medication, which were found on the registrant at Dublin Airport on 22 July 2018, were empty when they were not. The panel was of the view that the registrant's motivation was to mislead the Investigating Committee as to their intention to supply drugs, which were not permitted for sale, in the Republic of Ireland. The panel was again satisfied that this was behaviour that did fall seriously short of the conduct and standards expected of a nurse. The panel was satisfied that all of the charges amounted to misconduct both individually and collectively.

Decision and reasons on impairment

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession

would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that patients were put at risk of harm as a result of the registrant's actions in supplying medication they were not authorised to supply in the Republic of Ireland. The registrant's misconduct breached fundamental tenets of the nursing profession to include acting with honesty and integrity and maintaining the safety of patients under their care. The panel was therefore satisfied that the breach of these fundamental tenets had brought the reputation of the profession into disrepute. It was also satisfied that confidence in the nursing profession would be undermined if its regulator did not take charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that the registrant had denied all of the charges brought in respect of this case, and had not provided any evidence of insight into their misconduct, or apologised for their actions. The panel was therefore of the view that the registrant had no insight into their actions.

The panel noted that the registrant had lied to the police and to their own professional regulator more than once, in an attempt to make outcomes more favourable for themselves. The panel was of the view that this evidenced a pattern of behaviour of lying to authorities for financial gain. The panel was of the view that the registrant's pattern of behaviour is not easily remediable and that there was no evidence before it of any steps the registrant had taken to remediate their practise. The panel also had regard to the pattern of dishonesty in the registrant's previous cases and was of the view that their dishonest behaviour was deep seated and long-standing, and was not something that could be easily addressed. The panel was therefore of the view that there is a high risk of repetition of such behaviour by the registrant based on their lack of insight and remorse, and there being no evidence of the registrant having taken any steps to remedy their practise. 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 are 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 considered that public confidence in the nursing profession would be undermined if it did not find that a nurse who had shown consistent disregard towards authority, who had been dishonest, and who had provided unlicensed medication was currently impaired. The panel therefore determined that a finding of impairment on public interest grounds is also required.

Having regard to all of the above, the panel was satisfied that the registrant'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 the registrant off the register. The effect of this order is that the NMC register will show that the registrant has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been produced in this case and has 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 Smalley set out aggravating factors for the panel to consider, and referred the panel to the SG. Mr Smalley submitted that the only appropriate sanction that would both protect the public and meet the wider public interest was a striking-off order.

Decision and reasons on sanction

Having found the registrant'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:

- The supply of unauthorised drugs in the Republic of Ireland conducted over a sustained period of time while the registrant was subject to a caution order imposed by the NMC
- Repeated dishonesty involving members of the public, the police and the NMC
- The registrant had three previous regulatory findings, 2 of which involved dishonesty

- The registrant was subject to a regulatory sanction at the time of all of the current incidents
- The registrant has demonstrated a lack of insight with regard to their misconduct.

The panel gave careful consideration to identifying any potential mitigating factors, but was unable to identify any 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 and the public protection issues identified. 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 the registrant'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 the registrant'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, and the registrant's disregard of the three previous caution orders imposed. For these reasons 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 the registrant'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 misconduct in this case. It noted that the misconduct found related to non-clinical issues, and was of the view that those areas could not be addressed by training given the registrant's lack of insight, repeated dishonesty and deep seated attitudinal issues in this case; further evidenced by the three previous regulatory findings. The panel was not satisfied the placing of conditions on the registrant's registration would protect the public or adequately address the public interest in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 found that there was no evidence of the above factors being present in this case. It noted that there were multiple instances of dishonesty by the registrant towards a patient, the police and the NMC. The panel was of the view that the registrant had displayed deep seated attitudinal problems, evidenced by their longstanding display of dishonest behaviour. This was compounded by the fact that the registrant's misconduct occurred whilst they were subject to a caution order. The panel was also of the view that in light of the registrant's lack of insight, remediation and remorse, there was a significant risk of them repeating the misconduct found.

The panel was of the view that 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 the registrant's actions, are fundamentally incompatible with the registrant 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?*

The panel was of the view that the findings in this particular case demonstrated that the registrant's actions were serious and to allow them to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. It considered the guidance in determining the seriousness of the misconduct and was satisfied that there had been '*personal financial gain*' by the registrant, a '*direct risk to patients*', and involved a '*premeditated, systematic [and] longstanding deception*'.

The panel determined that the registrant's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with the registrant remaining on the register. The panel was of the view that the findings in this particular case demonstrate that the registrant's actions were serious and to allow them 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, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of the registrant's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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 will be confirmed to the registrant 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 the registrant'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

Mr Smalley made an application for an interim suspension order to be imposed for a period of 18 months. He submitted that an interim suspension order was necessary on the grounds of public protection and in the wider public interest, to cover the 28-day period until the decision made by the panel today comes into effect, or any appeal period.

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

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 due to cover any appeal period.

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

That concludes this determination.