

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

**Substantive Order Review Hearing
Wednesday, 14 February 2024 – Friday, 16 February 2024**

Virtual Hearing

Name of Registrant: **Valerie Lebby**

NMC PIN 08G1274E

Part(s) of the register: Registered Nurse - Sub Part 1
RNC: Children's Nurse L1 – July 2009

Relevant Location: London

Type of case: Lack of competence

Panel members: Wayne Miller (Chair, lay member)
Mark Gibson (Registrant member)
John Vellacott (Lay member)

Legal Assessor: Patricia Crossin

Hearings Coordinator: Yewande Oluwalana

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Miss Lebby: Present and represented by Hywel Evans,
instructed by the Royal College of Nursing (RCN)

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect immediately in accordance with Article 30 (2)**

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

At the outset of the hearing, Mr Evans on your behalf made an application that parts of this hearing be held in private on the basis that proper exploration of your case involves some reference to [PRIVATE] when witnesses give evidence in this case. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Webb on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the application.

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.

The panel determined to go into private session whenever matters relating to your [PRIVATE] are raised in order to preserve the confidential nature of those matters.

Introduction and background

This is an early review of the substantive order imposed on 15 November 2013. This review is being held at your request because you have successfully completed a 'Return to Practice' programme. Also, the NMC received new information regarding a potential breach of the conditions with an alleged allied concern of dishonesty which the panel will need to consider.

This is the ninth review of a substantive conditions of practice order originally imposed for a period of two years by a Conduct and Competence Committee on 15 November 2013. The order was reviewed on 12 October 2015 where it was replaced with a suspension order for four months. The order was then reviewed on 7 December 2015 where it was again replaced with a conditions of practice order for 12 months. This order was next reviewed on 11 November 2016 where it was extended for 12 months, and again reviewed on 9 November 2017 and extended for

a further 12 months. This was further reviewed on 12 November 2018 where the conditions were varied and then extended for 18 months, and again on 12 May 2020 where it was extended for another 18 months. This order was further reviewed on 16 November 2021 where it was extended for 12 months. This order was last reviewed on 7 October 2022 where it was extended for a further 18 months.

The current order is due to expire at the end of 18 June 2024.

The panel is reviewing the order pursuant to Article 30(2) of the Order.

The charges found proved by way of a Consensual Panel Determination (CPD) at the substantive hearing were as follows:

'That between 8 February 2010 and 2 November 2010, whilst employed as a Band 5 staff nurse by the Kings College Hospital NHS Foundation Trust ("the Trust"), you failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision as a Band 5 staff nurse in that:

- a) On 8 February 2010 you undertook and failed a Drug Administration Programme Health Assessment Paper, scoring 18% when the pass mark was 80%.*
- b) On 29 March 2010 you were unable to explain in sufficient detail what a pneumothorax was.*
- c) On 12 April 2010 you undertook and failed a Drug Administration Programme Health Assessment Paper, scoring 29% when the pass mark was 80%.*
- d) On 20 April 2010 scored 15 points out of a maximum of 45 points during a New Staff Assessment.*
- e) On 12 July 2010 you undertook and failed a Drug Administration Programme Health Assessment Paper, scoring 51% when the pass mark was 80%.*
- f) Whilst subject to the Trust's formal capability procedure between 19 July 2010 and 2 November 2010 you were unable to*

demonstrate that you could work to the level required of a Band 5 Staff Nurse in that you.

- i. On or around 30 July 2010 whilst discussing a handover, did not know what TSF Frame was.*
- ii. Did not provide sufficient detail to colleagues when handing over patients.*
- iii. Failed to have any competencies signed off under the capability procedure.*
- iv. Did not demonstrate sufficient knowledge about malrotation and short gut.*
- v. Were unable to sufficiently describe and explain what Gastroschisis was.*
- vi. Failed to record the full observations carried out on a patient in a timely manner.*

And that in light of the above your fitness to practise is impaired by reason of your lack of competence'

The eighth reviewing panel on 7 October 2022 determined the following with regard to impairment:

'The panel noted that the last reviewing panel considered that you had been out of nursing practice for a long period of time, and therefore have not had the opportunity to demonstrate your capability of resuming unrestricted practice. At this hearing, the panel noted that you still remain out of nursing practice, but have managed to enrol onto a 'Return to Practice' programme at City University of London, which you are due to start on 27 October 2022. The panel could also see that you managed to secure a clinical placement at Whittington Hospital as part of this course.

The panel noted that there was no information before it to demonstrate steps you have taken to remedy or strengthen your

practice, for example additional training or learning in the areas of concern. In addition, there were no up to date employment references, as recommended by the previous reviewing panel. However, the panel noted that you have been unable to work for some time for reasons which include matters relating [PRIVATE]. It was not critical of you in this regard, but noted that, despite your good insight, you have been unable to demonstrate any progress to date in addressing the past concerns about your practice.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel determined that you remain liable to repeat matters of the kind found proved. This is because there was no evidence to suggest that your failings have been remedied in any way. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required. A reasonable and informed member of the public would be concerned, if a nurse who had admitted a lack of competence in basic nursing knowledge, were found to be fit to practise without restriction, without evidence of remediation.

For these reasons, the panel finds that your fitness to practise remains impaired.'

The eighth reviewing panel on 7 October 2022 determined the following with regard to sanction:

'The panel next considered whether extending the conditions of practice order on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel accepted that you have been unable to comply with the conditions of practice order due to your circumstances. It acknowledged your engagement with the NMC and willingness to comply with any conditions imposed. The panel acknowledged that you are soon to commence your 'Return to Practice' course which, on successful completion, would allow you to seek employment and comply with the remaining conditions. The panel considered that it was to your credit that you have been consistent over a long period about your desire to return to a nursing career, and have been tenacious in pursuing this despite the obstacles which you have faced. The panel was satisfied that the current conditions remain appropriate, workable and sufficiently cover all areas of the concerns identified in relation to your practice. The panel was also reassured that the conditions will extend beyond your completion of the 'Return to Practice' course and allow your practice to continue to be monitored as you progress into a nursing role.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and to satisfy the wider public interest considerations, noting as the original panel did that there was no evidence of deep seated attitudinal problems. In this case, the failings are remediable and there are workable conditions which would protect patients during the period they are in force, and provide you with support and supervision as you seek to resume your nursing career.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response given the circumstances of your case and your active engagement with the NMC and determination to return to

nursing. The panel further considered that it was in the public interest to allow a nurse keen to return to safe practice to attempt to do so.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 18 December 2022. The panel considered that this length of time was reasonable as it would likely accommodate the time it will take you to complete the 'Return to Practice' course, secure employment within a clinical environment, work under supervision during any probationary or preceptorship period and then move into independent practice, in order to demonstrate to a future panel the progress you have made in working safely under the conditions imposed.

It decided that the following conditions in place remain appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. Before you return to registered practice you must successfully undertake and pass a return to practice programme approved by the NMC.*
- 2. You must notify the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*

3. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in the following areas of your practice:*
 - *Medicines management*
 - *Intravenous drug administration*
 - *Record keeping*
 - *Handover and communication*
 - *Observations*

Achievement of successful outcomes of these competencies to be signed off by your line manager, mentor or supervisor (or their nominated deputy).

4. *You must forward to the NMC a copy of your Personal Development Plan within 28 days of the date on which you take up an appointment.*
5. *At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer. Such supervision to consist of meeting with your line manager, mentor or supervisor (or their nominated deputy) at least every week to discuss the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan.*
6. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan to the NMC*

every 6 months and at least 14 days before any NMC review hearing or meeting.

- 7. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.*

- 8. You must inform the NMC of any professional investigation started against you and any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*

- 9. You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (9) above, to them:*
 - a) Any organisation or person employing, contracting with, or using you to undertake nursing work;*
 - b) Any agency you are registered with or apply to be registered with (at the time of application);*
 - c) Any prospective employer (at the time of application);*
 - d) Any educational establishment at which you are undertaking a course of study connected with nursing, or any such establishment to which you apply to take such a course (at the time of application).'*

The period of this order is for 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 18 December 2022 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Evidence of on-going training and learning (either physical or virtual), that addresses the areas of concern identified in the conditions of practice order; and*
- *Any up to date references from paid or unpaid nursing or health care work.'*

Fact finding in relation to new alleged concerns about breach of condition 9

Prior to conducting the early review of the current conditions of practice order, the panel was asked to make findings of fact in respect of new alleged concerns raised by your prospective employer the Whittington Health NHS Trust (the Trust). The NMC alleges that these concerns, if proved, amount to a breach of your current conditions of practice. The alleged concerns are:

- *Breach of condition 9 of your conditions of practice order in that you did not disclose to your prospective employer, the Whittington Health NHS Trust (at the time of application) that you were subject to a conditions of practice order.*
- *Dishonesty in relation to the non - disclosure of the conditions of practice order to your prospective employer, the Whittington Health NHS Trust.*

Mr Webb submitted that the NMC had become aware of concerns raised by your prospective employer, which in the view of the NMC, indicated a potential breach of condition 9 of the conditions of practice order currently imposed on your registration.

He outlined the background of the case and drew the panel's attention to the documentation contained within the bundles.

In relation to the new concerns, Mr Webb said the NMC received a referral from the Trust on 4 October 2023. You had applied for a Band 5 nursing post at the Trust. Mr Webb drew the panel's attention to the witness statements of Witness 1 and Witness 2, your application form to the Trust, interview notes of Witness 1 and Witness 2, email correspondence between you and Witness 2 from 12 - 13 July 2023. Email dated 25 July 2023, in which the Trust highlighted the reasons why you had been unsuccessful in your application for a position as a Band 5 Nurse at the Trust.

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

- Witness 1: District Nurse Team Manager
at the Trust
- Witness 2: Lead Nurse for Band 5 UK and
Graduate Nurse recruitment at
the Trust

You also gave evidence under oath.

The panel heard you completed an online application for a post of a community staff nurse at the Trust district nursing service. Witness 1 and Witness 2 conducted a job interview with you on 10 July 2023. They both took contemporaneous handwritten interview notes of the questions and answers given at the interview.

Witness 1 gave evidence that you were asked at interview about the gap in your practice [PRIVATE]. [PRIVATE]. Witness 1 said you did not say at the interview that you were subject to any NMC conditions of practice. Interview notes written by Witness 1 noted you answered "no" when asked if you had ever been dismissed or subject to disciplinary action in a clinical role.

Witness 2 gave evidence that at the start of the job interview you said you had come out of nursing practice and that the NMC had advised you to complete a return to practice course. Witness 2 gave evidence you did not say you were subject to a conditions of practice order. She gave evidence you answered “no” when asked if you had ever been dismissed or subject to disciplinary action in a clinical role.

The panel heard evidence from you and took into account your reflective piece provided to the panel. You told the panel that whilst on a placement with your return to practice course a colleague had advised you the Trust were seeking band 5 nurses. You gave evidence that due to the short timeframe to apply you completed the online application in haste. You said you did not have your application proof-read by someone else and used an old application format by way of cutting and pasting. You told the panel that you would not do this again. You gave evidence you believed that as you had advised the Trust about your conditions of practice order before commencing your return to practice course, you believed they would be aware of this for the purposes of the application. You gave evidence that you mistakenly answered “no” to the question to previous disciplinary matters and dismissal. You said that you told the interviewers about the NMC conditions of practice. You said you had no intention of being dishonest and now understood the obligation to inform the interview panel was yours. You said that there was no way you could hide the conditions of practice as these would “pop up” against your pin.

Mr Webb on behalf of the NMC submitted that Witness 1 and Witness 2 had no reason to be “untruthful” to the panel in what you had told them during the interview. He said it was more likely than not that both Witness 1 and Witness 2 would have remembered if you had mentioned restrictions to them. Both witnesses gave evidence that no conditions of practice or restrictions on your NMC PIN were discussed. He further stated that there were opportunities on your application form for you to mention your conditions of practice, but chose not to disclose this. He referred the panel to the relevant pages in the bundle, where you had not mentioned the NMC as your professional body, or that you had been dismissed in 2010. Reference to your dismissal was ‘*I stopped work as a band 5 nurse about 9 years ago following a decision by the Trust to allow me further opportunity...*’.

Mr Webb submitted that there was a deliberate attempt by you to mislead the Trust and this was evidenced by the email to Witness 2, where you did not mention your NMC restrictions when your PIN was requested. He said that you are aware of the conditions of practice order and have been subject to substantive order reviews and would know what was required of you. He said it was clear that you failed to disclose your conditions and that it was the NMC's position that you were dishonest for your own gain to obtain a nursing post.

Mr Evans on your behalf said, that it was for the NMC to prove its case and not for you to disprove that you have allegedly breached the conditions. He said that the panel's decision will rest on credibility of all the evidence that it has heard. Mr Evans submitted that you are credible and honest, he highlighted that at the early outset of your case you admitted to all the charges. He said that if you made a mistake, you always own up to the consequences.

In relation to the alleged concerns, Mr Evans submitted that both Witness 1 and Witness 2 indicated that their recollection of the interview is based on their interview notes and advised the panel to exercise caution when considering the evidence. He said that Witness 2, in her evidence said that if an answer is not written down on the interview notes, then the interviewee did not say it. However, Mr Evans said that this is not true as when looking at the interview notes of both Witness 1 and Witness 2 the notes were not the same and therefore cannot be taken as verbatim of what you had said.

Mr Evans submitted that there were inconsistencies in the evidence by Witness 1 and Witness 2, he said that Witness 2 indicated that the NMC and return to practice, drug administration were mentioned, while Witness 1 in her evidence said that the NMC was not mentioned. Both witnesses admitted that the interview notes were written at the time of interview. Mr Evans said there was insufficient evidence that the NMC conditions were not discussed. He further said that Witness 1 in her evidence did not expect a PIN to be written on the application form because you were undertaking a return to practice course.

Mr Evans submitted that the panel have to decide whether you were dishonest and referred the panel to the test of *Ivey v Genting Casinos*. Mr Evans said the panel need to consider the following:

- What was the defendant's actual state of knowledge or belief as to the facts;
- Whether that belief was genuinely held; and
- Was the conduct dishonest by the standards of ordinary decent people?

Mr Evans said that you have been consistent in your evidence, in that you completed the application form in haste and that you genuinely believe that you had mentioned your conditions at interview but were not asked to elaborate. He also said you had the genuine belief that as you were on placement at the Trust, that the Trust would have had all your information, and that this information would have been shared when applying for this post. Mr Evans submitted that this conduct was not dishonest and the evidence in so far as the NMC's case was weak. Mr Evans said that an ordinary person would not consider this to be dishonesty if taken at its highest and that this was a mistake. You expressed your regret as to your mistake and apologised to the panel.

The panel was mindful that the factual disputes before it were not formal charges. However, it was being asked to make findings of fact in relation to new alleged issues of concern, said to amount to a breach of your current conditions. These were matters relevant to its subsequent consideration of the issues of current impairment and sanction, for the purposes of the substantive order review.

It was therefore required to have regard to the burden and standard of proof which apply in respect of findings of fact. The NMC was required to prove that the new matters of alleged concern had taken place. The panel therefore bore in mind, as it would be required to do when making any findings of fact, that you are not required to prove or disprove anything, and that the standard of proof which it must apply is the balance of probabilities. This test means that the panel must decide whether it is more likely than not that the facts occurred as alleged.

Findings in respect of the alleged concerns

The alleged concerns are:

- *'Breach of condition 9 of your conditions of practice order in that you did not disclose to your prospective employer, the Whittington Health NHS Trust (at the time of application) that you were subject to a conditions of practice order*
- *Dishonesty in relation to the non - disclosure of the conditions of practice order to your prospective employer, the Whittington Health NHS Trust.'*

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67. The panel considered all the evidence which had been placed before it. This included documentary evidence - the NMC's bundle, the bundle produced on your behalf. It also included oral evidence from Witness 1, Witness 2 and evidence from you. The panel took into account the submissions made by both representatives in relation to the disputed facts.

In respect of the alleged breach of condition 9 the panel found that on the balance of probabilities this is proved. It was of the view, that you did not immediately disclose that you were subject to a conditions of practice order when making your application to the Trust. The panel determined that you have been subject to a conditions of practice order since 2013 and should know that you have a responsibility to let any prospective employer know that you are subject to a conditions of practice order at application, and this was not done by you. In relation to this, there were plenty of opportunities to disclose this in the relevant sections of the application form, at the interview, and in subsequent email correspondence.

In respect of the alleged concern regarding dishonesty. The panel bore in mind the evidence of Witness 1, Witness 2, your evidence and all documentary evidence before it. It noted that there were some inconsistencies between Witness 1 and

Witness 2, however, it was of the view that these inconsistencies were minor and could be reconciled. The panel noted Witness 1 and Witness 2's interview notes were made during your interview and deemed them contemporaneous and an accurate record of the interview. It therefore placed more weight on this evidence, alongside your application form. The panel also considered that both Witness 1 and Witness 2 had no motive to be untruthful when giving their evidence and the panel found that they were credible.

The panel noted that you had admitted the original charges. It was clear from your oral evidence that you had knowledge of your conditions and what was expected of you. It considered that you had a belief that because you were on placement at the Trust, that the information you provided for your return to practice course would have been shared. However, the panel was not convinced that this was a well held belief, as the onus was on you to disclose and provide your conditions of practice to the Trust when you were applying. The panel also noted that on your application form you had answered "no" to the following questions '*b) Are you currently subject to any disciplinary action? c) Have you ever been dismissed from previous employment?*'. There was further opportunity to disclose the reasons for your dismissal in the supporting information box, but this was not mentioned rather you were economical with the truth by saying '*I stopped work as a band 5 nurse about 9 years ago following a decision by the Trust to allow me further opportunity to improve my competence in the area of drug administration, general clinical knowledge and communication?*'. Whilst the interview notes record you mentioning drug administration errors there is no record of you elaborating on this or mentioning of your dismissal from the Trust or mention of your NMC conditions of practice. You told the panel that you "*copied and pasted*" your answer into this box and that it was done "*in haste*". It bore in mind that you had opportunities to disclose your NMC conditions of practice within the application form, at the interview, and in the follow up emails to Witness 2, when you were asked for your PIN. It deemed that it was your responsibility as set out in condition 9 to duly notify the Trust of your conditions.

The panel found that your answers as recorded in the interview notes also contradicted your oral evidence, in that you believed the interviewers "*they did not*

understand me” *“it was an error”* and that you know *“better now”*. In these circumstances the panel determined that you knew the information you were giving to the Trust was incomplete and in doing so you sought to mislead the Trust by disguising your conditions of practice. The panel preferred the evidence of Witness 1 and Witness 2 to your evidence and was of the view that you were knowingly dishonest throughout the application process. The panel determined that this was for your own gain to obtain a nursing post and that ordinary decent people would consider your conduct dishonest.

In respect of *‘Dishonesty in relation to the non - disclosure of the conditions of practice order to your prospective employer, the Whittington Health NHS Trust’*, the panel found that on the balance of probabilities, that it is more likely than not that this concern is proved, and that your actions were dishonest.

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own professional judgement as to current impairment.

The panel had regard to your evidence, the documents provided at the fact-finding stage, which included the NMC bundle, your reflection statement, evidence of training undertaken, your return to nursing portfolio, and positive testimonials from patients and tutors relating to your work on the return to practice course.

The panel has taken account of the submissions made by Mr Webb on behalf of the NMC. He submitted that following the decisions of the fact- finding stage that you had breached the conditions of practice order and were dishonest in doing so. He advised the panel that they may consider your conduct fell seriously short of what was expected of a registered nurse and in turn you had breached The Code:

Professional standards of practice and behaviour for nurses and midwives (2015' (the Code). Mr Webb highlighted that you had breached the following parts of the Code:

'20 Uphold the reputation of your profession at all times

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'.

Mr Webb submitted that it was the NMC's position that no patient suffered any harm or that your dishonest behaviour caused harm. However, a nurse acting dishonestly has the potential to impact the care of patients in the future. He told the panel that the original conditions of practice order related to your clinical competence and that these concerns had not been addressed fully.

Mr Webb acknowledged that you have attended a return to practice course and have fully engaged with the NMC at these proceedings, with the longstanding regulatory history. He also mentioned that the panel heard evidence from you, accepting you had not fully complied with the conditions.

Mr Webb submitted that you have not demonstrated safe practice as a nurse as you have not addressed the pre-existing concerns regarding your competence. He said that there is now an additional finding that the conditions have been breached and that there was dishonest behaviour behind that breach. He submitted that the NMC say that the panel should conclude that unrestricted practise by you presents a risk of harm and that therefore a finding of current impairment remains necessary on both public protection grounds and is otherwise in the public interest.

In respect of sanctions, Mr Webb submitted that taking no further action or a caution order would go against the findings of the previous panels and that there is nothing to contradict that. In relation to a continuation of a conditions of practice, following a finding that you had breached a conditions of practice order and that there is dishonesty related to it. He submitted that conditions would no longer be workable. It was the view of the NMC that the panel should impose an order that restricts your

practise for a period of time and that the panel should consider either a 12 month suspension order with a review or a striking off order.

The panel also had regard to submissions made by Mr Evans on your behalf. He highlighted to the panel your continued remorse and regret regarding the original concerns and the new concerns found proved. He said that you have been apologetic throughout the proceedings.

Mr Evans submitted that you have addressed the original concerns for which the conditions of practice order were first imposed, in that you have started to combat those lack of competencies. He referred the panel to evidence of passing the drug administration test at the interview with the Trust. He said there was further evidence in the bundle where you have fulfilled different learning criteria, and this was also evidenced in your return to practice portfolio. He referred the panel to positive testimonials from patients and your tutors contained within your return to practice portfolio, that demonstrated your continual development to address the concerns.

Mr Evans submitted that the risk to the public has been met by your engagement with the conditions in place and that it has been minimised and managed. He referred the panel to further evidence of you completing '*Duty of Candour Training*' on 7 February 2024. He said this demonstrated your continual development of your competence despite the new concerns that were raised against you.

Mr Evans further submitted that the public would be protected by the continuation of the conditions in place and public confidence would not be undermined. He said that you have shown genuine remorse and insight into your failings and that the conditions of practice order should remain to deal with the issues identified.

The panel heard and accepted the advice of the legal assessor. The legal assessor referred the panel to the following cases: *Meadow v General Medical Council* [2006] EWCA Civ 1390, *CHRE v NMC & Grant* [2001] 5th Shipman Report, *The General Medical Council v Donadio* [2021] EWHC 562 (Admin),

The panel had careful regard to the evidence, the submissions from both parties and the advice of the legal assessor.

The panel took account of its findings as regards to your breach of condition 9 of the conditions of practice order and your dishonesty in doing so. The panel determined that the breach of the conditions of practice order was serious and deliberate, and the non-disclosure of the conditions of practice order was not only dishonest but a further breach of the explicit requirements of the order.

In reaching its decision, the panel directed itself to the original decision in the Consensual Panel Determination in November 2013 where the conditions of practice order was first imposed. It noted the panel's decision in respect of the breaches of the 2008 NMC Code: Standards of conduct, performance and ethics for nurses. However, in these circumstances the panel had to consider whether the further breach of your conditions allied with the dishonest behaviour amounted to a breach of the Code. The panel determined that the further concerns found proved did amount to a breach of the Code, specifically 20, 20.1 and 20.2 as set out above, and that your actions fell well below the standards expected of a registered nurse and was serious. The panel concluded your actions brought the nursing profession into disrepute.

The panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel noted that you have made attempts to strengthen your practice, and this was demonstrated by you undertaking a return to practice course as part of your conditions of practice of order. It noted your positive testimonials and your genuine remorse. However, the panel was of the view that your insight into your failings is still developing, and coupled with the finding that you have breached your conditions and your actions were dishonest, you have not been given the opportunity to address

these concerns. You have not yet been able to demonstrate your ability to work safely as a nurse as you have not worked as a registered nurse for some time. In respect of the return to practise course, you have provided a portfolio that has yet to be fully signed off.

In light of all the information before the panel, it determined that there remains a risk of repetition of the concerns raised if your practice was not restricted. It also determined that there is a potential risk of harm to patients, as there is no evidence that you are able to practice safely, kindly and professionally. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, following the further concerns raised regarding breach of conditions and your dishonest actions, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

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 new findings at today's hearing. 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 your 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 your behaviour was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel next considered the continuation or variation of the current conditions of practice order. The panel noted that you have been subject to conditions since November 2013 and have not practised as a nurse since. It acknowledges you have undertaken a return to practise course. However, following the finding that you have breached your conditions and that your actions were dishonest regarding this, the panel determined that a conditions of practice order would no longer be appropriate in this case as it would not address the issues of public protection and public interest of the panel's findings above.

The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest following the finding that you had breached your conditions and were dishonest.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public, satisfy the wider public interest and mark the seriousness of your breaching of conditions and dishonest actions. The panel gave particular attention to the NMC's sanction guidance in relation to suspension orders and the guidance on dishonesty. The panel determined that your actions related to a one-off incident for which there was no actual gain. The panel determined that your

actions did not present a risk to patients at the time nor has there been any repetition since. It took into account your expressions of remorse and regret and what you said you had learnt from what had happened. The panel also accepted that there was no evidence of a deep-seated attitudinal problem. It noted that you still wish to return to safe nursing practice and that you are willing to take the steps necessary to achieve this. It considered that the failings identified in this case remain remediable if you can take the necessary steps including strengthening your practice and demonstrating full insight into your dishonesty.

The panel went on to consider whether a striking-off order would be appropriate and proportionate in this case. It noted that although conditions of practice have been in place for a number of years, you have only recently completed a return to practice course. The panel considered the sanctions guidance and found that your conduct was a one-off and there was no evidence that this action had been repeated. There were no deep-seated or attitudinal concerns that would make it incompatible for you to remain on the NMC register. The panel determined that in these circumstances that a striking-off order would neither be appropriate or proportionate in this matter and would be punitive if imposed.

Accordingly, the panel determined to impose a suspension order for the period of six months which would provide you with an opportunity to strengthen your practice by addressing the breach of the conditions of practice order, your dishonesty, the competency concerns, and by your continued engagement with the NMC. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will replace the current conditions of practice order with immediate effect in accordance with Article 30(2).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Updated reflective piece that demonstrates your insight into your breaching of the conditions of practice order and your associated dishonesty;
- Continued engagement with the NMC and attending any future hearings;
- Evidence of on-going training and learning (either physical or virtual), that addresses the areas of concern identified in the previous conditions of practice order; and
- Up to date references from paid or unpaid nursing or health care work.

This will be confirmed to you in writing.

That concludes this determination.