

Disciplinary Procedure for Employees of the Health Service Executive

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1. Introduction

The Health Act, 2004 established the Health Service Executive which replaced the health boards and subsumed a number of agencies. It also repealed sections 22, 23 (i) (ii) (iii) and 24 of the Health Act, 1970 which dealt with the suspension and dismissal of permanent health board officers. A subsequent agreement with IMPACT provided for revisions to the disciplinary procedure which would provide for protections not any less favourable than those enjoyed under the Health Act, 1970 but would be suitably modified to suit the new circumstances. In this connection a revised Disciplinary Procedure for employees of the HSE was agreed between the HSE-EA and health service unions.

This procedure covers all HSE employees with the following exceptions:

- Probationary employees (see Appendix 1 for procedure to apply to probationary employees). In cases of allegations of serious misconduct being made against a probationary employee, however, the matter will be investigated in accordance with stage 4 of this disciplinary procedure.
- Employees on fixed term/specified purpose contracts whose employment is terminated by reason of the expiry date/cessor of the purpose of the contract.
- Consultants covered by the Common Contract.
- Medical doctors and dentists regarding complaints of professional misconduct and/or clinical capability which will be addressed through a separate procedure.

General Practitioners participating in the General Medical Services (GMS) Scheme and those specialising in substance abuse who are covered by separate procedures outlined in their contract.

This procedure is effective from 1 January 2007 and supersedes the Grievance and Disciplinary Procedure for the Health Service (2004)

Voluntary Hospitals, the Intellectual Disability sector and Specialist Agencies continue to be covered by the Disciplinary Procedure for the Health Service 2004.

2. Purpose of the Disciplinary Procedure

The delivery of a high quality health service requires all employees to adhere to high standards of work performance, conduct and attendance. The purpose of this disciplinary procedure is to ensure that all employees adhere to the required standards by making them aware of any shortcomings and identifying how the necessary improvements can be achieved. The key objective is to assist the employee to maintain the required standards, rather than impose penalties.

Line managers are responsible for making employees aware of the standards of attendance, work and conduct expected from them and for dealing with shortcomings promptly and fairly. In general, the employee's immediate supervisor/manager will deal with deficiencies on an informal basis through discussion, counselling and appropriate assistance rather than through the formal disciplinary procedure. If, following the informal counselling stage, the employee continues to fail to meet the required standards then the disciplinary procedure should be invoked.

Examples of conduct which may lead to disciplinary action under this procedure include:

- Persistent poor timekeeping
- Unsatisfactory attendance record
- Poor work standards
- Breach of health and safety rules
- Bullying, harassment or sexual harassment (following a complaint being upheld under the Dignity at Work Policy)
- Breach of internet/e-mail policy and other electronic communications policy
- Refusal to obey reasonable instructions
- Negligence¹
- Abuse of patient/client (following a complaint being upheld under the Trust in Care Policy)

¹ This is separate from claims of negligence associated with personal injury claims

3. Principles

The following principles apply to all stages of the disciplinary procedure:

- Every effort will be made by the employee's immediate supervisor/manager to address shortcomings in work standards, conduct or attendance through informal counselling without invoking the disciplinary procedure.
- While the disciplinary procedure will normally be operated on a progressive basis, in cases of serious misconduct the manager may bypass stages 1, 2 and 3 of the procedure.
- No decision regarding disciplinary action will be made until a formal disciplinary hearing has been convened and the employee has been afforded an opportunity to respond.
- The employee will be advised of his or her right to be accompanied by a work colleague or trade union representative at any meeting under the disciplinary procedure.
- The employee will be advised in advance of the disciplinary hearing of the precise nature of the complaint against him or her and will be given copies of any relevant documentation.
- The employee will be afforded the opportunity to state his or her case and challenge any evidence that may be relied upon in reaching a decision.
- The manager will not prejudge the outcome of the hearing and will take into account any mitigating circumstances before deciding on appropriate action.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.
- An employee may appeal the outcome of the disciplinary hearing.

4. Pre Procedure – Informal Counselling

Every effort will be made by the employee's immediate supervisor/manager to address shortcomings in work standards, conduct or attendance through informal counselling without invoking the disciplinary procedure. The purpose of counselling is to ensure that employees understand what is expected from them and to provide an opportunity to discuss any aspects of the job which may be causing them difficulties in achieving the required standards. The formal disciplinary procedure is normally only invoked where this fails to bring about the required improvements.

The counselling interview should be conducted as follows:

- The employee shall be given precise details of the specific aspects of his or her attendance, work or conduct that require improvement.
- The employee shall be given an opportunity to respond to complaints and careful consideration shall be given to any explanations given.
- Having made the employee aware of deficiencies in his/her attendance, work or conduct, the supervisor/manager in consultation with the employee shall identify appropriate measures that can be taken to assist the employee and formulate an action plan for achieving the required improvements.
- Details of the counselling interview and any follow-up action agreed shall be documented and signed by both parties.

5. Formal Procedure

Where an employee's conduct, attendance or work does not meet the required standards despite informal counselling, the matter will be dealt with under the disciplinary procedure.

While the disciplinary procedure will normally be operated on a progressive basis, in cases of serious misconduct the manager may bypass stages 1, 2 and 3 of the procedure.

The stages of the disciplinary procedure are as follows:

Stage 1 Oral Warning

An employee whose work/conduct/attendance falls below the required standards will normally be issued with a formal oral warning for a period of six months. The warning will give details of the precise nature of the complaint, the improvements required and the timescale for improvement. S/he will be advised that the warning constitutes the first stage of the disciplinary procedure and failure to improve within the agreed timescale may result in further disciplinary action under stage 2 of the disciplinary procedure. A record of the warning will be kept on the employee's personnel file and will be removed after six months, subject to satisfactory improvement during this period.

The employee will have a right to appeal the oral warning to a level of management higher than the original decision-maker. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.

Stage 2 Written Warning

If the employee fails to make the necessary improvements or if the nature of the unsatisfactory performance/conduct is more serious, s/he will normally be issued with a formal written warning for a period of 9 months. The written warning will give details of the complaint, the improvements required and the timescale for improvement. The employee will also be advised that failure to improve within the agreed timescale may result in the issuing of a final written warning under stage 3 of the disciplinary procedure. The warning will be removed after 9 months, subject to satisfactory improvement during this period.

The employee will have a right to appeal the written warning to a level of management higher than the original decision-maker. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.

Stage 3 Final Written Warning

If the employee fails to make the necessary improvements, s/he will normally be issued with a final written warning for a period of up to 12 months (this period may be extended in exceptional circumstances). The warning will give details of the complaint, the improvements required and the timescale for improvement. The employee will be advised that failure to improve within the agreed timescale may lead to dismissal or some other sanction short of dismissal under stage 4 of the disciplinary procedure. The warning will be removed after the specified period, subject to satisfactory improvement during this period.

The employee will have a right to appeal the final written warning to a level of management higher than the original decision-maker. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.

Stage 4 Dismissal or Action Short of Dismissal

Failure to meet the required standards of work, conduct or attendance following the issuing of a final written warning will lead to a disciplinary hearing under Stage 4. The decision-maker will be the relevant National Director. The National Director, Primary, Community and Continuing Care (PCCC) may delegate authority to the appropriate Assistant National Director. The National Director, National Hospitals Office (NHO) may delegate authority to a Hospital Network Manager. The outcome of the disciplinary hearing may be dismissal or action short of dismissal. The employee may appeal against dismissal decisions or disciplinary sanctions short of dismissal (see Section 6, page 11).

Serious Misconduct

The following are examples of serious misconduct which will be dealt with from the outset under Stage 4:

- Theft
- Deliberate damage to property
- Fraud or deliberate falsification of documents
- Gross negligence² or dereliction of duties
- Gross insubordination
- Incapacity to perform duties due to being under the influence of alcohol, unprescribed drugs or misuse of prescribed medication
- Serious breach of health and safety rules
- Serious abuse of electronic communication policy
- Serious breaches of confidentiality³
- Serious bullying, sexual harassment or harassment
- Serious abuse of a patient/client following a complaint being upheld under the Trust in Care Policy
- Violent behaviour within the scope of the employee's employment
- Sexual assault
- Downloading/disseminating pornographic material from the internet
- Circulation of offensive, obscene or indecent e-mails or text messages

Note: *The above list is not exhaustive.*

2 This is separate from claims of negligence associated with personal injury claims.

3 It is recognised that provisions relating to doctor/patient confidentiality are governed by the *Medical Council's Guide to Ethical Conduct and Behaviour*.

Allegations of serious misconduct will be dealt with as follows:

(i) Notifying the Employee of the Allegation

Upon receiving an allegation of serious misconduct, local senior management will arrange for the gathering of preliminary facts relating to the allegation in order for the precise allegation to be formulated. The employee against whom the allegation is made will be requested to attend a meeting to hear the precise details of the allegation at the earliest juncture and without undue delay. The employee will be advised of his/her right to be accompanied at this meeting by a union representative or work colleague. When dealing with the allegation, management will ensure, insofar as possible, that confidentiality is maintained and the employee against whom the allegation is made is fully protected throughout the process.

(ii) Protective Measures

Pending the outcome of the investigation, management may take whatever protective measures are necessary to ensure that no patient/client or employee is exposed to unacceptable risk. ***These protective measures are neither disciplinary measures nor an indication of guilt and may include:***

- reassigning the employee to other duties
- providing an appropriate level of supervision
- putting the employee off duty with pay

The views of the employee will be taken into consideration when determining the appropriate protective measures to take in the circumstances but the final decision rests with management.

Putting the employee off duty pending the outcome of the investigation will be reserved for only the most exceptional of circumstances. The employee concerned will be advised that the decision to put him/her off duty is a precautionary measure and not a disciplinary sanction or an indication of guilt.

(iii) Investigation

An investigation will be conducted by person(s) who are acceptable to both parties.

The principles governing the conduct of the investigation and the steps in conducting the investigation are set out in Appendix 3.

If the findings of the investigation uphold the allegation of serious misconduct, a disciplinary hearing will be held as follows:

(iv) Disciplinary Hearing

The decision-maker will be the relevant National Director. The National Director, PCCC may delegate authority to the appropriate Regional Assistant National Director. The National Director, NHO may delegate authority to a Hospital Network Manager.

The employee will be informed of the following in writing in advance of the disciplinary hearing:

- The status of the meeting, i.e. that it is a formal disciplinary hearing under Stage 4 (Dismissal or Action Short of Dismissal) of the disciplinary procedure.
- The purpose of the hearing is to consider representations on the employee's behalf and to decide if disciplinary action is appropriate in all the circumstances and the nature of the sanction if any.
- The possible outcome of the hearing, i.e. it may result in a decision to terminate his/her employment.
- Copy of the investigation team's report and all relevant documentation.
- The right to be accompanied by a union representative or work colleague.

The disciplinary hearing will be conducted as follows:

- The employee will be informed of the purpose of the disciplinary hearing, the nature of the allegation and the findings of the investigation.
- The employee and his/her representative will have the opportunity to present his/her case in response to the findings of the investigation.
- The disciplinary hearing is not intended to repeat the investigation but the employee will be able to raise any concerns regarding the investigation

process if s/he feels that these concerns were not given due consideration by the investigation team.

- The hearing will be adjourned to allow the decision-maker to carefully consider the representations made on the employee's behalf.
- The hearing will be reconvened and the employee will be advised of the decision which may include:
 - Decision to dismiss
 - Disciplinary action short of dismissal (e.g. final written warning, suspension without pay, etc.)
 - No further action on the grounds that there were strong mitigating circumstances
 - Non-disciplinary action (e.g. where there were strong mitigating circumstances but the employee's continued employment is conditional on him/her agreeing to seek specialist treatment or other appropriate course of action).

The employee will be advised of his/her right to appeal the decision.

6. Appeals under Stage 4

Appeals Against Disciplinary Sanctions Short of Dismissal

Appeals against disciplinary sanctions short of dismissal will be heard by a manager at a higher level than the manager who made the original decision or an agreed independent adjudicator. The employee will be required to submit the grounds for the appeal in writing within 7 days of being notified of the original decision.

Appeal Against Dismissal Decisions

If the outcome of the disciplinary hearing is a decision to dismiss, the employee may appeal the decision to a committee. The appeal may be on any of the following grounds:

- Mitigating circumstances
- Procedural deficiencies
- Specific evidence submitted
- Severity of the sanction imposed

The employee will be required to submit the grounds for the appeal in writing within 14 days of being notified of the original dismissal decision.

An appeal against dismissal decisions will be heard by a committee comprising persons selected from a nominated panel which has been agreed between the HSE and health service unions. Membership of the committee will consist of:

- A chairperson
- A staff side representative
- A management representative

The Chair will be selected from an agreed panel⁴ of appropriately qualified legal practitioners or other appropriate persons that may be agreed between the parties.

4 The panel will be refreshed and agreed by the HSE and health service unions every three years.

The Committee will adopt its own procedures and may conduct such enquiries as it deems appropriate.

The Committee will decide whether to confirm or vary the original dismissal decision. If the original decision is confirmed, the employee will be removed from the payroll.

Ad Misericordium Appeal

In the event of an appeal against the decision to dismiss being unsuccessful, the employee may make a final “mercy appeal” to the Chief Executive Officer. The grounds for this appeal must be submitted in writing within 21 days of the employee being notified of the Committee’s decision.

An employee who feels that s/he has been unfairly dismissed may refer a case under the Unfair Dismissals Acts, 1977-2005 within 6 months of the date of dismissal.

Appendix 1 Probationary Employees

Where employees are required to serve a probationary period, the contract of employment will specify its duration, terms of notice that apply during the period, the possibility of its extension at the discretion of management and a review of the employee's performance during the period of probation, e.g. *"A probationary period of (one year) shall apply from commencement of employment, during which the contract may be terminated by either party in accordance with the Minimum Notice and Terms of Employment Act, 1973-2001 and the procedure outlined in Appendix 1 of the **Disciplinary Procedure for HSE Employees**. The probationary period may be extended at the discretion of management. Confirmation of your appointment as a permanent employee is subject to the successful completion of the probationary period."*

The objective of the probationary period is to monitor new employees' progress in the job in order to establish their suitability for continued or permanent employment. Although a probationary employee must clearly establish his/her suitability for the job, there is a corresponding obligation on the line manager to ensure that the employee is given the necessary training and assistance to enable him/her to meet the required standards.

Managing the Probationary Process

The employee will be advised of the length of the probationary period and that his/her performance, conduct and attendance will be reviewed on an ongoing basis to determine suitability for continued employment.

The line manager will conduct progress reviews with the employee at regular intervals and keep a formal record of his/her assessment for the period under review. The line manager will also document any follow-up action that was agreed during the discussion.

Where the new employee persistently fails to achieve the required standards, the line manager will advise the employee of his/her deficiencies. The objective at this stage will be to help the employee to improve whilst making it clear that failure to do so will result in his/her employment being terminated.

The line manager will carry out a final overall assessment prior to the end of the probationary period and arrange to meet with the employee to advise him/her of the outcome. In cases where the employee clearly demonstrates his/her unsuitability during the probationary period, his/her employment may be terminated at any stage during the probationary period.

Where the employee does not satisfactorily complete the probationary period, s/he will be given notice that his/her employment will be terminated. ***The employee will be advised of his/her right to appeal this decision in the normal manner to a higher level of management and the right to union representation during the appeals process. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.***

In accordance with the employee's contract of employment, the probationary period may be extended at the discretion of management. However, this provision does not apply automatically to employees who have not successfully completed their probationary/assessment period. The probationary period will only be extended in exceptional circumstances.

In cases where an allegation of serious misconduct is made against a probationary employee, the matter will be dealt with in accordance with stage 4 of the disciplinary procedure.

Nothing in this procedure will affect the employee's statutory rights under the Industrial Relations Acts, 1946-2004 or any other statute.

Appendix 2 Conducting a Disciplinary Hearing

Before a decision is made regarding disciplinary sanction, a disciplinary hearing must be held. The rules of natural justice require that the employee be given an opportunity to respond to the allegation and make representations before a decision is reached. The decision-maker must keep an open mind during the hearing and not form any conclusions until all the facts have been considered.

Notification Requirements

The employee should be informed that s/he is required to attend a disciplinary hearing under the formal disciplinary procedure. The employee should be advised of:

- The reason for the hearing, i.e. outline the specific aspects of the employee's performance, conduct or attendance which have fallen below the required standards
- The possible outcome of the hearing, e.g. issuing of an oral warning under stage 1
- The right to representation by a union representative or work colleague

The employee should be given sufficient notice of the hearing to enable him/her to arrange for representation and prepare for the hearing. The following details should be confirmed in writing:

- The time and place of the hearing
- The status of the meeting (i.e. that it is a formal disciplinary hearing under the disciplinary procedure)
- The precise nature of the complaint
- The right to be accompanied by a union representative or work colleague
- A copy of relevant documentation (e.g. timekeeping/attendance record) should be attached.

Conducting the Disciplinary Hearing

The purpose of the disciplinary hearing is to allow the employee to respond to the allegations before deciding whether or not to take disciplinary action. The employee must be made aware that the outcome of the hearing may result in a disciplinary sanction so that they appreciate the seriousness of the meeting. However, the decision-maker must not pre-empt the outcome of the hearing, for example, by entering the hearing with the warning already written up. The final decision with regard to disciplinary action can only be made when the employee has had the opportunity to state his/her case and plead any mitigating circumstances.

A disciplinary hearing should follow a structured format as follows:

- Introduce those present.
- Confirm that this is a hearing under the formal disciplinary procedure. Specify the stage, e.g. stage 2 – written warning.
- Outline the precise nature of the allegation and refer to any supporting evidence, e.g. attendance record (the employee should have been given a copy of any such relevant documentation in advance).
- Allow the employee to respond to the allegation and give an explanation.
- Invite representations on the employee's behalf.
- Close the hearing by summarising the key points raised.
- Allow the employee to have a final say.
- Adjourn the meeting to allow for careful consideration of the facts and any explanations put forward by the employee or his/her representative. Each case should be considered on its merits before deciding on what sanction, if any, to apply. The outcome of the hearing may be one of the following:
 - A formal warning
 - No further action on the grounds that the employee has given a satisfactory explanation of events or there were strong mitigating circumstances
 - Non-disciplinary action e.g. arrange for the employee to receive coaching/training and set targets for improvement.
- Reconvene the hearing and advise the employee of the decision.

Issuing Warnings Under the Disciplinary Procedure

The primary purpose of a warning under the disciplinary procedure is to give the employee an opportunity to make the required improvements whilst making clear the consequences of failing to do so. A warning (including an oral warning) should contain the following information:

- the stage of the disciplinary procedure which has been invoked
- details of the unsatisfactory attendance, conduct or work standards
- details of the improvements required and timescale for improvement
- measures to assist the employee (e.g. training or coaching)
- duration of the warning
- what further action will be taken if the employee does not make the necessary improvements within the agreed timescale or if there are further instances of unsatisfactory attendance/work/conduct during this period

Follow-up Action

The outcome of the hearing should be confirmed to the employee in writing and copied to his/her representative.

The employee's performance/conduct/attendance should be monitored during the review period and agreed support measures (e.g. coaching) should be put in place without delay.

Removal of Warnings

Where a warning is issued under stages 1-3 and the employee makes the required improvements, the letter of warning and all documentation relating to the disciplinary process itself should be removed from the employee's file.

Where the employee does not make the required improvements and the matter progresses to the next stage of the disciplinary procedure, all documentation relating to the previous warning should be retained.

Appendix 3 Investigation

The investigation into allegations of serious misconduct will be carried out in accordance with the following principles:

- The investigation will be conducted as expeditiously as possible and without inordinate delay.
- The investigation will be carried out in strict accordance with the terms of reference and with due respect for the right of the employee who is the subject of the allegation to be treated in accordance with the principles of natural justice, including a presumption of innocence.
- The investigation team will have the necessary expertise to conduct an investigation impartially and expeditiously.
- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the complainant or any person who participates in the investigation.
- A written record will be kept of all meetings and treated in the strictest confidence.
- The investigation team may interview any person who they feel can assist with the investigation. All employees are obliged to co-operate fully with the investigation process.
- Employees who participate in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness or to attempt to obstruct the investigation process in any way.

Steps in Conducting the Investigation

- The investigation will be conducted by person(s) nominated by senior management and acceptable to both parties.

- The investigation will be governed by predetermined terms of reference based on the alleged misconduct (which will be set out in writing) and any other matters relevant to the allegation. The terms of reference shall specify the following:
 - The timescale within which the investigation will be completed;
 - Scope of the investigation will be confined to deciding whether or not the allegation has been upheld.
- The employee against whom the allegation is made will be advised of the right to representation and given copies of all documentation prior to and during the investigation process, e.g.
 - Details of alleged misconduct
 - Witness statements (if any)
 - Minutes of any interviews held with witnesses
 - Any other evidence of relevance
- The investigation team will interview any witnesses and other relevant persons. Confidentiality will be maintained as far as practicable.
- Persons may be required to attend further meetings to respond to new evidence or provide clarification on any of the issues raised.
- The investigation team will form preliminary conclusions based on the evidence gathered in the course of the investigation and invite the person adversely affected by these conclusions to provide additional information or challenge any aspect of the evidence.
- On completion of the investigation, the investigation team will form its final conclusions based on the balance of probabilities and submit a written report of its findings and recommendations to senior management.
- The employee against whom the allegation is made will be given a copy of the investigation report.

On completion of the investigation, the investigation team will submit a written report in accordance with its terms of reference. However, no decision regarding disciplinary sanction should be decided upon until the decision-maker has held a disciplinary hearing with the employee concerned.



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