



MAT Health Clinic

POLICY NUMBER: **MHC/DIS001**

NAME: **Discipline Policy**

APPROVED BY: Practice Principal

SECTION 1 - INTRODUCTION

Objectives

This policy aims to establish a fair, equitable and consistent process for addressing unsatisfactory work performance and behaviour at MAT Health Clinic (MHC).

Scope

This policy applies to all employees of MHC.

Employee's Rights

An employee of MHC shall:

- have access to their personnel files and may take notes and/or obtain copies of the contents of the file;
- be entitled to sight, note and/or respond to any information placed on their personnel file which may be regarded as adverse;
- be entitled to make application to delete or amend any disciplinary or other record mentioned on their personal file which the employee believes is incorrect, out-of-date, incomplete or misleading;
- be entitled to request the presence of a representative and/or the involvement of their union at any stage;
- be entitled to make application for accrued leave for whole or part of any suspension during the investigation process.

Employer's Rights and Obligations

MHC shall:

- be entitled to suspend an employee with or without pay during the investigation process, provided that:
 - suspension without pay during an investigation shall be for a period of not more than two weeks, except where the progress of the investigation is delayed due to the unavailability of the employee and/or their representative in which case the period of suspension without pay may be extended for a further period of up to 7 days or such greater period by agreement.
 - if, after investigation, the reasons for the suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension;
 - the suspension shall not affect the employee's continuity of service for the purposes of accruing leave entitlements;
 - MHC shall not unreasonably refuse an application for paid leave under this provision;

SECTION 2 – PROCEDURE

1. Poor performance

At MAT Health Clinic, it is the team leader's responsibility to address poor performance issues with their team members as soon as possible in order to correct the behaviours and try to resolve any issues the team member may be facing.

Team leaders must follow the following process when addressing a performance issue with one of their team members:

- Schedule a private meeting
- Explain what you've noticed and why you're concerned
- Stick to facts and share examples
- Give the team member an opportunity to explain
- Listen carefully to identify the root cause
- Be compassionate, but stay professional
- Determine a plan of action

2. Reasons for disciplinary action

Disciplinary action may be taken in a number of different circumstances. Normally the grounds for disciplinary action will relate to misconduct or a failure to perform tasks and requirements of the position to an acceptable standard.

Gross misconduct will normally lead to dismissal without notice for a first offence. This is a list of examples of conduct that will be treated as gross misconduct, but this list is not exhaustive.

- (a) Wilful omission of information or provision of false information to gain employment.
- (b) Infringement of statutory duties, for example loss of professional registration or driving license where required for employment.
- (c) Being unfit for duty because of misuse/consumption of drugs or alcohol.
- (d) Misuse/consumption of drugs during working hours or on work premises.
- (e) Consumption of alcohol during working hours or on work premises other than occasions when authorised by the General Manager or senior member of staff.
- (f) Physical/verbal abuse of members of the public, visitors or staff.
- (g) Incompetence, failure to apply sound professional judgment or neglect of duties resulting in serious, or potentially serious, consequences for the safety of visitors and staff, compromises the business or security of MHC, the functions within it or the reputation of the MHC.
- (h) Theft, including unauthorised possession of property belonging to the MHC, members of the public, visitors and staff.
- (i) Theft/fraud involving MHC finances by the falsification of records or any other means.
- (j) Discrimination, harassment or bullying that contravenes the MHC Equal

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Employment Opportunity Policy, or victimization of an employee who makes an informal or formal complaint of discrimination, bullying or harassment.

- (k) Wilful or neglectful disclosure of confidential information to unauthorized persons.
- (l) Wilful or neglectful contravention of the MHC policies and procedures that results in serious or potentially serious consequences for the safety of visitors and staff, or compromises the business or security of the MHC, or the functions within it.
- (m) Refusal to carry out a reasonable management instruction that is within the individual's capabilities and which would be seen to be in the interests of the MHC.
- (n) Wilful damage to the MHC property.

3. Suspension

Suspension in itself is not a disciplinary act and does not prove that there has been any misconduct. It is a neutral act enabling the individual to be released from her/his place of work, pending an investigation of allegations made. If it is undesirable for the employee to remain on the premises in a case of serious misconduct, or other cause, e.g. health and safety, then she/he should be suspended.

Normally the authority to suspend will be given only to those managers who have authority to dismiss, but during their absence, the most senior manager on duty will have the authority to suspend an employee on full pay in consultation with Human Resources Manager wherever possible.

The suspension must be confirmed in writing to the employee or their nominated representative and the reason(s) for the suspension stated.

The suspended employee is not allowed to return to the MHC premises without the prior authorisation of the suspending manager, and should also notify the manager before contacting any MHC employees they intend to use as witnesses.

4. Procedure for formal investigation

The suspending manager should carry out a formal investigation. If the Practice Manager determines it is not appropriate for the suspending manager to carry out the formal investigation, an alternative manager may be appointed. This manager may involve others to assist with the investigation process (e.g. a Human Resources Manager). All the relevant facts should be gathered promptly as soon as is practicable.

If required, statements should be taken from the employee and witnesses at the earliest opportunity. All statements should be signed and dated. Any physical evidence should be retained if reasonable to do so.

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The investigating manager should meet with the employee and all witnesses, and notes of these meetings should be taken. The employee and witnesses are entitled to be accompanied by a representative, union official or equivalent professional representative at these meetings.

At the end of the investigation, a report should be prepared that outlines the facts of the case and a chronology of the investigation. The report should outline the investigating manager's recommendations, which may be to:

- a) Take no further action against the employee
- b) Recommend counselling for the employee
- c) Issue a verbal warning
- d) Proceed to a disciplinary hearing where formal disciplinary action shall be considered. The investigating manager should meet with the employee to inform them of the outcome of the investigation. If a meeting were not possible, it would be acceptable to notify the employee in writing.

5. Rights of employees at all formal stages

The employee will have the right to be accompanied by a union representative or equivalent professional representative at all formal stages of the procedure.

An employee will be allowed to state his/her case at a formal hearing before any decision is made. They may do so with the assistance of a union representative or equivalent professional representative.

To ensure consistency, the Human Resources Manager may be present at all formal hearings.

6. Police or legal proceedings

MHC may report an employee to the police if it is felt that the misconduct is also potentially illegal.

Where MHC is aware of an employee being charged or convicted of a criminal offence and considers that the offence has a bearing on the employee's job, it may be necessary to instigate an investigation under this procedure. Convictions for offences not connected with employment, nor affecting the employee's ability to carry out his/her duties will not normally provide grounds for disciplinary action. If however, the employee is subsequently sentenced to a period of detention, this may be grounds for the termination of employment.

In the event that an employee is under police or legal proceedings, MHC reserves the right to take appropriate action in accordance with MHC procedures, prior to the outcome of those external proceedings being reached. This means that internal investigations may continue and where there is found to be a case to answer, disciplinary proceedings may be instigated and the appropriate disciplinary penalty imposed.

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In some cases, an employee's solicitor or legal adviser may advise not to answer any questions or provide statements for the internal investigation due to the matter being under police investigation. In this situation, the MHC reserves the right to follow its internal procedures, if necessary, in the absence of the employee. Any decision taken regarding the future employment of that employee would be based on the information available to the MHC at that time. The employee will be kept informed of all meetings/hearings and given the opportunity to attend or, if this is not possible, to send a representative who is acceptable to the MHC. The employee will be notified in writing of the outcome of the investigations and any disciplinary proceedings.

7. Formal disciplinary hearings

The employee and their union or professional representative should where possible receive a copy of the investigation report including witness statements at least five working days before the date of the hearing.

The relevant representative of the Human Resources Department should where possible receive the employee's response to the management statements at least two days before the hearing. It should also include details of any witnesses who will be called at the hearing and witness statements.

Every effort should be made to agree on a mutually convenient date and time for the hearing. When a date has been arranged a request from the employee for the hearing to be adjourned will only be considered once and may lead to the hearing proceeding in the employee's absence.

At each stage of the procedure, a formal hearing will be held. The appropriate manager, accompanied by a representative of the Human Resources Department, will chair the hearing. In cases that may lead to dismissal, the appropriate manager will be a member of the Senior Management Team.

The formal disciplinary procedure consists of four stages.

8. Stages within the procedure

7.1. Stage 1 – Verbal Warning

A verbal warning is appropriate when it is necessary for the manager to take action against an employee for any minor failing or minor misconduct. The employee will be advised of the reason for the warning, the improvement required, that it is the first stage of the Disciplinary Procedure and the manager will confirm the fact that further disciplinary action may follow if there is no satisfactory improvement within an agreed timescale. The manager will keep a file note of the verbal warning.

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7.2 Stage 2 – First Written Warning

A first written warning is appropriate when:

- a) A verbal warning has not been heeded and the misconduct is either repeated or performance has not improved as previously agreed; or
- b) An offence is of a more serious nature for which a written warning is more appropriate.

The warning will give details of the improvement required and the timescale for review and the manager will confirm the fact that further disciplinary action may follow if there is no satisfactory improvement.

7.3 Stage 3 – Final Written Warning

A final written warning is appropriate when:

- a) An employee's offence is of a serious nature falling short of one justifying dismissal; or
- b) An employee persists in the misconduct or performance that previously warranted a lesser warning.

The warning should give details of the complaint and warn that dismissal may result if there is no satisfactory improvement within a notified timescale. A copy of the final written warning will be kept on the employee's record of employment.

7.4 Stage 4 – Dismissal

Dismissal is appropriate when:

- a) An employee's actions are considered to be gross misconduct.
- b) An employee's misconduct/performance has persisted, exhausting all other lines of the disciplinary procedure.

9. Rights of appeal

An employee who wishes to appeal against formal disciplinary action should do so within ten working days of receiving details of the penalty in writing. The basis of an appeal should address why the resulting disciplinary action was inappropriate.

10. Fair Work Act

The Fair Work Act 2009 and Fair Work Regulations 2009 govern the employee/employer relationship in Australia. They provide a safety net of minimum entitlements, enable flexible working arrangements and fairness at work and prevent discrimination against employees. The Fair Work Act provides details of what an employer can and cannot do to manage poor work performance. Information on what should be included in warning letters, unfair dismissal or serious misconduct.

Appendix 1

Suspension Guidelines

1. Introduction

These guidelines have been produced for employees who have been suspended from work and aims to provide them with relevant information about the suspension and the support available to them.

2. What is suspension?

Suspension is the temporary removal of an employee from his/her place of work. Staff can be suspended from duties for a variety of reasons, the most common being to allow an investigation to take place following an allegation of misconduct, usually of a very serious nature.

3. Outline of Suspension Process

An employee can be suspended at the outset of an investigation following receipt of an allegation, or during an investigation where it becomes apparent that the allegation is more serious than initially thought, or where the employee's presence is causing difficulty in the investigation being carried out effectively. Whatever the situation is which has resulted in the suspension, the following provides a guide to the process that should be followed.

At the suspension meeting, the employee should have the opportunity to be accompanied by a union representative or equivalent professional representative. However, in an emergency where the immediate removal of the employee is required, this may not be possible.

If the employee has not already done so, they are advised to consult their representative from the union or professional body at the earliest opportunity.

The suspension will be confirmed in writing and should be sent to the employee within 3 days of the suspension taking place.

The employee will be given the opportunity to meet with the investigating manager to discuss the circumstances surrounding the allegation(s) and state their case. The investigating manager may also request that the employee submit a written statement confirming their version of events.

The employee will be expected to make themselves available to attend any investigation meeting that may take place and to co-operate in the investigation process whilst they are on suspension.

The employee will be notified, in writing, of the outcome of the investigation and any subsequent actions that are proposed. The length of the suspension will be kept under regular review and the employee will be notified of any circumstances that may affect the continuation of the suspension.

4. Police involvement

In the event that an employee is under police or legal proceedings the MHC reserves the right to take appropriate action in accordance with MHC procedures, prior to the outcome of those external proceedings being reached. This means that internal investigations may continue and where there is found to be a case to answer, disciplinary proceedings may be instigated and the appropriate disciplinary penalty imposed.

In some cases, an employee's solicitor or legal adviser may advise not to answer any questions or provide statements for the internal investigation due to the matter being under police investigation. In this situation, the MHC reserves the right to follow our internal procedures, if necessary, in the absence of the employee. Any decision taken regarding the future employment of that employee would be based on the information available to the MHC at that time. The employee will be kept informed of all meetings/hearings and given the opportunity to attend or, where this is not possible, to send a representative acceptable to the MHC, and will be notified in writing of the outcome of the investigations and any disciplinary proceedings.

5. Employee support & information services

It is recognised that suspension can be a very stressful time for employees and the MHC endeavours to provide employees with the necessary support and information required during this period. There are a number of sources from where you can obtain support or information. MHC has an Employee Assistance Program Provider (EAP) that can be contacted through MHC's Human Resource Department.

5.1 The Human Resources Department

Where health problems are considered to be a contributing factor to difficulties with conduct this may result in a referral to the Human Resources Department. The Human Resources Manager will refer the employees to the MHC's Doctor for an assessment of the extent of the health problems and any treatment used that may have contributed to the employee's behaviour or actions.

Where violent or abusive actions have been the circumstances that have resulted in the suspension, the Human Resources Department and Management will be notified at the earliest opportunity.

The employee should contact the Human Resources Manager if they have any queries regarding the procedure to be followed or the application of MHC procedures.

5.2. Other External Contacts

If the employee belongs to a union or professional organisation, it is advisable that the employee contact them at the earliest opportunity. Most unions/professional organisations have a range of support and advice services available to their members.

Appendix 2 Suspension Letter

Private & Confidential

Dear [*name*],

MHC is writing to confirm the outcome of the disciplinary meeting of [*date*], attended by [*name, job title of each attendee*]. It was explained that disciplinary action was being taken regarding the following matters:

- (i)
- (ii)
- (iii)

[following sentence is not applicable if meeting attended by representative, union official or equivalent professional representative]

You were informed that you were entitled to be accompanied by a representative, union official or equivalent professional representative and you confirmed that you were willing to go ahead with the meeting without a representative.

This is a very serious matter and MHC has decided that you should be suspended from duty with effect from [*date*], until an investigation has been carried out in accordance with MHC Disciplinary Policy & Procedure, a copy of which was given to you at the meeting

MHC would like to emphasise that suspension is not a disciplinary act and does not prove that there has been any misconduct. It is a neutral act enabling you to be released from your place of work, pending an investigation into an allegation made or an investigation into conduct that resulted in disciplinary action being instigated.

MHC reminds you that whilst on suspension you are not allowed to return to the MHC premises without the prior authorisation of the suspending manager, and you should also notify the manager prior to contacting any MHC employees you intend to use as witnesses.

As explained at our meeting, MHC wants to ensure that this matter is resolved as quickly as possible and also that the [*allegations/concerns raised*] are thoroughly investigated.

You may therefore be required to attend an investigation meeting and MHC will inform you of a date for this meeting and subsequently the outcome of the investigation at the earliest opportunity.



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Your attention is directed to Clause 32 of the Health Professionals and Support Services Award [MA000027], which deals with Disciplinary Procedures, rights and obligations and penalties under the Award. The Health Professionals and Support Services Award [MA000027] applies in full and its application is not limited to the sections specifically referred to in this letter **(optional)**

During your suspension, please feel free to contact MHC's [insert officers position title and name] if you have any queries.

Alternatively you may contact [MHC's EAP Provider] for basic support and guidance. The Human Resources Coordinator is also available to provide additional support.

Yours faithfully

Manager's Name & Job Title

cc: All Attendees