

NHS TAYSIDE

DISCIPLINARY PROCEDURES

FOR

HOSPITAL MEDICAL AND DENTAL IN THE FOLLOWING GRADES

ASSOCIATE SPECIALIST

CLINICAL MEDICAL OFFICER

COMMUNITY DENTAL STAFF

CONSULTANT

HOSPITAL PRACTITIONER

HOUSE OFFICER

PART-TIME MEDICAL OFFICER (also known as Clinical Assistant or Para 94)

SENIOR CLINICAL MEDICAL OFFICER

SENIOR HOUSE OFFICER

SENIOR REGISTRAR

SPECIALIST REGISTRAR

STAFF GRADE

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SECTION 1

PERSONAL CONDUCT

Key Documents:	Standards of Behaviour and Disciplinary Policy – Medical & Dental Staff (APPENDIX A) Scheme of Delegation (APPENDIX B) Annex to PCS (DD) 2001/9 – Procedure for resolving differences as to whether allegations should be considered under personal conduct, professional conduct or professional competence.
Definition:	Personal Conduct is defined as performance or behaviour due to factors others than those associated with the exercise of medical and dental skills.

The policy applies to all grades, as follows:

Consultant
 Associate Specialist
 Hospital Practitioner
 Staff Grade
 Senior Registrar
 Specialist Registrar
 Registrar
 Part-time Medical Officer (also known as Clinical Assistant or Para 94)
 Senior House Officer
 House Officer.

SECTION 2

PROFESSIONAL CONDUCT OR COMPETENCE

Key Documents:

- NHS Circular No 1990 (PCS) 8 (**APPENDIX C**)
- NHS Circular No 1990 (PCS) 32 (**APPENDIX D**)
- Standards of Behaviour & Disciplinary Policy – Medical & Dental Staff (Appendix A & B)
- Annex to PCS (DD) 2001/9 – Procedure for resolving differences as to whether allegations should be considered under personal conduct, professional conduct or professional competence

Definitions:

Professional Conduct is defined as performance or behaviour of practitioners arising from the exercise of medical or dental skills.

Professional Competence is defined as adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgement.

For Consultant staff all disciplinary action relating to professional conduct or competence should be dealt with under Circular 1990 (PCS) 8 and 32 (either Annex A, B or C – see below).

For all other grades of Hospital Medical & Dental staff, where the outcome of disciplinary action could be dismissal, Circular 1990 (PCS) 8 and 32 (Annex C) would apply. Where the outcome may not be dismissal, then the Board Standards of Behaviour and Disciplinary Policy would apply.

ANNEX A - Professional Review Machinery (CONSULTANTS ONLY)

The professional review machinery is an informal mechanism for reviewing the conduct of hospital consultants who are alleged to have repeatedly failed to honour their contractual commitments.

ANNEX B – Intermediate Procedure of Less Serious Matters Involving Professional Conduct of Competence (CONSULTANTS ONLY)

The intermediate procedure involves the use of independent professional assessors to investigate and advise the Medical Director on less serious matters involving the professional conduct or competence of consultants.

ANNEX C – Procedures for Serious Disciplinary Cases (ALL GRADES OF HOSPITAL AND COMMUNITY MEDICAL STAFF AND HOSPITAL DENTAL STAFF)

The guidance should be followed where the outcome of the disciplinary action could be the dismissal of the medical or dental practitioner concerned. Suspension may be necessary as a precaution to safeguard the interests of the service while matters are being investigated (see Section 3).

SECTION 3

SUSPENSION

Key Documents

Standards of Behaviour and Disciplinary Policy – Medical and Dental Staff
(APPENDIX A)

Definition

Suspension occurs when a member of staff is immediately removed from NHS premises in order to protect the interests of patients, other staff, or the practitioner and / or to assist the investigation process.

When necessary, an employee may be suspended on full pay pending completion of an investigation. Suspension with pay is not a disciplinary measure. Periods of suspension will vary depending on the circumstances but will be kept to an absolute minimum.

SECTION 4

APPEAL AGAINST DISMISSAL (PERSONAL)

Key Documents Standards of Behaviour and Disciplinary Policy – Medical and Dental Staff
(**APPENDIX A**)

Scheme of Delegation (**APPENDIX B**)

Definition An appeal against dismissal on grounds of personal misconduct occurs when an employee who considers that his / her employment has been unfairly terminated as a result of disciplinary action lodges a written notice of appeal to the Chairman of the Board, within 21 days of receiving the letter of dismissal.

For the following grades of medical / dental staff, an Independent Appeal Panel would be set up: -

Consultant

Associate Specialist

Hospital Practitioner

Clinical Medical Officer

Staff Grade

Senior Registrar, Specialist Registrar, Registrar

Part-time Medical Officer/Clinical Assistant/Para 94.

For the following grades, an Ad Hoc Committee would be set up as noted on page 6 of (**APPENDIX A**): -

House Officer

Senior House Officer.

SECTION 5

APPEAL AGAINST DISMISSAL (PROFESSIONAL)

Key Documents Standards of Behaviour and Disciplinary Policy – Medical and Dental Staff
(APPENDIX A)

Para 190 from Hospital Medical & Dental Handbook (APPENDIX B)

Definition An appeal against dismissal on grounds of professional misconduct or incompetence occurs when an employee who considers that his / her appointment has been unfairly terminated as a result of disciplinary action lodges a written notice of appeal.

Consultants (on or above 6th point of scale), Association Specialists and Hospital Practitioners, appointed by Tayside Health Board:

Appeal is in writing to the Secretary of State, who will convene a professional committee to review the case (APPENDIX E).

Consultants, Associate Specialists and Hospital Practitioners, appointed on / after 1 April 1993:

Appeal is in writing to the Board Chairman who will convene an Independent Appeal Panel Board Policy.

Staff Grade, SR, SpR, Reg, P/T Medical Officer / Clinical Assistance/Para 94, SHO, HO:

Appeal is in writing to the Board Chairman who will convene an Independent Appeal Panel (APPENDIX A).

Signed
On behalf of NHS Tayside

.....

Date

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Signed
On behalf of the British Medical Association

.....

Date

.....

APPENDIX A

NHS TAYSIDE

**“STANDARDS OF BEHAVIOUR AND DISCIPLINARY POLICY –
MEDICAL & DENTAL STAFF”**

NHS TAYSIDE

STANDARDS OF BEHAVIOUR AND DISCIPLINARY POLICY – MEDICAL & DENTAL STAFF

1. INTRODUCTION

NHS Tayside recognises the importance of implementing and monitoring a concise and effective Standards of Behaviour and Disciplinary Policy and Procedure if employees are to be treated in a consistently fair manner in cases of alleged failure to meet standards of personal conduct.

2. EMPLOYEES COVERED BY THE PROCEDURE

This Standards of Behaviour and Disciplinary Policy and Procedure applies to all Medical and Dental employees of NHS Tayside. The Policy and Procedure observes the protocols as set out in Section 42 of the General Whitley Council Terms and Conditions of Service, and replaces sub-sections D and E of paragraph 190 of the Hospital Medical and Dental Staff (Scotland) Whitley Council Terms and Conditions, as amended by NHS Circulars 1990 (PCS) 8 and 1990 (PCS) 32.

3. GENERAL PRINCIPLES

3.1 Personal Conduct

The procedures apply to the personal conduct of medical and dental staff. Personal misconduct is defined as performance or behaviour due to factors other than those associated with the exercise of medical or dental skills. At the outset of the procedure there will be a means of determining whether the case is one of personal or professional misconduct.

3.2 Professional Conduct / Competence

The procedures apply to the professional conduct / competence of medical and dental staff not otherwise covered by the terms of paragraph 190 of the terms of conditions of service of hospital medical and dental staff. For action short of dismissal refer to NHS Circulars 1990 (PCS) 8 and 1990 (PCS) 32.

Professional conduct is defined as performance or behaviour due to factors associated with the exercise of medical and dental skills. Professional competence is defined as adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgement.

3.3 Standards

Each employee has a responsibility to achieve acceptable standards of personal conduct. If an employee is giving cause for dissatisfaction, the employee should be given the opportunity to improve. Standard setting should be used to reaffirm and clarify existing standards to secure the necessary improvement in personal conduct without having recourse to the formal procedure. A record of the standard setting interview should be held by the senior clinical manager.

3.4 Investigation

Disciplinary action will not be taken until a full investigation has been carried out. The investigation will involve interviewing relevant witnesses and the production of written statements where possible. The investigation will include the opportunity for the employee to state his / her case. Where the

investigation leads to a disciplinary hearing copies of written statements to be submitted in evidence should be made available in advance of the hearing wherever practicable.

Where there is cause to suspect that a criminal offence has been committed involving public funds or property, account should be taken of circular 1989 (GEN) 3 "Financial Control: Procedures where criminal offences are suspected" and any local procedural guidance agreed.

3.5 Application of Policy

The Board reserves the right to enter the disciplinary procedure at any level dependent on the severity of the alleged misconduct.

3.6 Prompt Handling of Case

All cases will be dealt with as quickly as possible. The term "working day" is used to describe any day between Monday to Friday inclusive with the exception of statutory public holidays.

3.7 Accredited Representatives

No disciplinary action should be taken against an accredited representative of a professional organisation until the circumstances of the case have been discussed with a full time officer of that organisation.

3.8 Personnel Input

Senior clinical managers contemplating disciplinary action are required to give full consideration to the wider organisational aspects and implications of their action. It is therefore imperative that the appropriate HR Manager / Officer is consulted before any action is taken.

Standards of conduct, behaviour, attendance and job performance which are required by NHS Tayside of its employees will be made clear to employees and the procedure contained in this paper is designed to help and encourage employees of the Board to achieve and maintain these standards.

Any employee who is giving cause for dissatisfaction will be given the opportunity to achieve the required improvement in behaviour or performance unless his or her conduct is adjudged to be gross misconduct justifying dismissal without prior warning.

It is important that minor isolated breaches of conduct be dealt with as close to the working situation as possible and that serious breaches of conduct are brought to the attention of senior managers as soon as possible. It is the responsibility of the manager dealing with any disciplinary matter to investigate the matter fully before any decision is taken.

Counselling of employees should be undertaken before the formal procedure is used. Counselling does not constitute disciplinary action and should be carried out by the employee's immediate superior. It should be informal in character and designed to assist the employee to reach the required standards of performance or behaviour. It should aim at analysing problems and bringing about improvement.

Where the formal procedure is used it should not be viewed primarily as a means of imposing sanctions but should also be designed to emphasise and encourage improvements in individual conduct.

3.9 Level of Dismissal

Disciplinary authority is delegated to the appropriate level of management in accordance with the Scheme of Delegation. However, the Board will adhere to the established principle that, whenever the organisational structure permits, the dismissing level will be one level above that which has issued previous warnings.

4. REPRESENTATION

Every employee has the right to be represented at any formal stage of this procedure by an official of his or her trades union or professional association, or by any other person of his or her choice. Employees may choose to be legally represented and where this right is exercised, the Board reserves the right also to be legally represented.

5. PROCEDURE

- 5.1 Following investigation, a decision on whether or not to convene a formal disciplinary hearing must be taken. Where a disciplinary hearing is convened, the employee must be advised of its purpose before it commences and must be given reasonable time to arrange representation and the preparation of his / her case.
- 5.2 The hearing should be conducted by the line manager authorised to take disciplinary action accompanied by HR designated for this purpose.
- 5.3 At the hearing the employee must be informed of the details of the offence or misconduct under consideration and given an opportunity to state his / her case either in person or through a representative.
- 5.4 After considering the employees' statement and all other relevant facts the manager should adjourn the hearing and seek to agree what course of action is to be taken with the HR Manager present. If agreement cannot be reached the hearing should be suspended. Otherwise the employee and his / her representative should be re-called and informed of the action to be taken.
- 5.5 Where disciplinary action of any kind is taken this must be confirmed in writing within 7 working days of the hearing. The letter to the employee should contain details of the disciplinary action, the reasons for this decision, any previous warnings which were taken into account, the right of appeal and the implications of recurrence of the misconduct. In the case of dismissal the letter must state the effective date of termination of employment.

6. LEVELS OF DISCIPLINARY ACTION

- 6.1 This procedure provides for 4 levels of disciplinary action:-
 - Verbal warning
 - First written warning
 - Second written warning / first and final written warning
 - Dismissal.

- 6.2 Verbal warnings, first written warnings and second written warnings will normally be issued in respect of less serious misconduct, taking into account the individual circumstances and seriousness and any relevant previous warnings.
- 6.3 A first and final written warning will be appropriate where any employee's conduct is considered to be serious but not sufficient to justify dismissal or where it is considered that there are mitigating circumstances.
- 6.4 Dismissal is appropriate:-
- In cases of gross misconduct
 - In cases of serious misconduct following a first and final written warning
 - Where there is a recurrent of misconduct or failure where a second written warning is still current.

7. SUSPENSION

- 7.1 There will be cases where it is necessary to suspend an employee from duty pending possible disciplinary action. Suspension should always be on full pay and such suspension shall not in any way constitute disciplinary action. The employee should be informed, in writing, of the date of the start of the period of suspension, arrangements to end the period of suspension and the right of appeal.
- 7.2 Where verbal notification of suspension is given initially, written confirmation will be sent as soon as possible within 3 working days.
- 7.3 It is the responsibility of management to ensure that suspension periods are as short as possible. When a period of suspension lasts for 4 weeks, the situation will be reviewed to determine whether continued suspension is justified. In exceptional circumstances when suspension is of more than 4 weeks duration, reviews will be carried out at 4-weekly intervals.
- 7.4 If the suspension lasts for more than 8 weeks the employee has the right of appeal against the suspension to the appropriate Executive Director. The appeal should be made in writing within 5 working days following the eighth week of suspension. The manager hearing the appeal may extend the period of suspension or order the employee's return to duty.
- 7.5 The employee must be informed in writing of the decision within 7 working days or his / her appeal.

8. LEVEL OF DISMISSAL

Disciplinary authority is delegated to the appropriate level of management in accordance with the Scheme of Delegation. As far as possible, this aims to adhere to the principle that the dismissing level will be one level above that which has issued previous warnings.

9. SCHEME OF DELEGATION

Details of the Board's Scheme of Delegation for medical and dental staff are attached at *Appendix B*.

10. REVIEW

This policy and procedure will be subject to review and amendment in consultation with the professional organisations in the light of experience of their operation.

APPEALS

An employee wishing to exercise his / her right of appeal must do so in writing within 21 days of receiving the disciplinary warning or letter of dismissal.

An appeal hearing must be held within 5 weeks of receipt of notification of the appeal. It may be necessary to extend this period in exceptional circumstances, by mutual agreement. The employee must be given at least 10 working days notice of the date of appeal. This can be extended by mutual agreement.

There should be a maximum of two levels of internal appeal. The appeal should always be heard at a level higher than that which took the disciplinary action, as per the attached Scheme of Delegation. The procedure to be followed at all appeal hearings should be as outlined in Section 3 "Conduct and Procedure at Disciplinary Hearing and Appeals" of the attached "Notes for Guidance on Standards of Behaviour and Disciplinary Policy".

APPEALS AGAINST DISMISSAL

An employee who considers that his / her appointment has been unfairly terminated as a result of disciplinary action may lodge an appeal, as described above, to the Board Chairman.

On receipt of a written notice of appeal, the Board Chairman will arrange for the setting up of the appropriate appeal mechanism as follows:

1. **Consultant Associate Specialist, Clinical Medical Officer, Staff Grade, Senior Registrar, Registrar, Hospital Practitioner, Part-time Medical Officers (Para 94) and Specialist Registrar:**

An independent appeal panel will be established to review the dismissal. The appeal panel will comprise the following members: a representative appointed by the Board; a professional representative appointed by the Scottish Joint Consultants Committee (SJCC); and chaired by a Queen's Counsel or solicitor not in the employment of the government legal service or any Board / Health Authority, who will be nominated in each case which arises by the Divisional / CHP or Board Chairman from a panel appointed by the Lord Advocate. The findings of the Appeal Panel will be determined by the Board.

2. **Senior House Officer / House Officer**

Appeals will be heard by an Ad Hoc Committee of the Board.

The Ad Hoc Committee will be chaired by the Board Chairman (or his/her nominated representative) and will include an Executive and a Non-Executive Director, neither of whom will have been involved previously in the case.

NOTES FOR GUIDANCE ON STANDARDS OF BEHAVIOUR AND DISCIPLINARY POLICY

1. STANDARD SETTING

- 1.1 In all cases senior clinical managers should make clear and discuss in what way the current personal conduct fails to meet the required standard. Every effort must be made to ascertain any contributory factors which may have led to the employee's failure and the employee should be informed that it is in his / her interest to make any mitigating circumstances known. The manager should offer assistance, where possible, to help the employee overcome any problem or difficulty.
- 1.2 During the course of the interview the employee should be made aware of the acceptable standard of personal conduct and informed that progress will be monitored and reviewed. The employee must be told the duration of such monitoring and review process and that continued failure to meet an acceptable standard will result in further action being taken which could ultimately lead to dismissal.
- 1.3 A written record of the standards set should go to the employee. Improvements achieved by the employee during the monitoring and review process should also be recorded.

2. DETERMINATION OF PROCEDURE TO BE FOLLOWED

2.1 Investigation

The purpose of investigation is to establish, prior to a disciplinary hearing taking place, as many facts as possible and to establish whether a prima-facie case exists. This investigation will be conducted under the direction of the Director of Medical Services in order to determine whether:-

- (i) There is no substance to the allegations and therefore no further action is necessary.
- (ii) The case is a minor one, which the Medical Director and/or the appropriate senior clinical manager considers suitable to be dealt with on an informal basis.
- (iii) The procedure for sick doctors set out in NHS Circular 1982 (PCS) 8 might be appropriate.
- (iv) The allegation is of personal misconduct, in which case the disciplinary provisions set out in this document should be followed.
- (v) The case is appropriate to be dealt with under separate procedures for professional conduct and/or competence.

During the investigation the Medical Director and / or appropriate Senior Clinical Manager will normally wish to discuss the issues with the employee involved. If the Medical Director considers that the allegations relate to personal conduct he / she will write to the practitioner with an outline of the allegations and inform the practitioner of the decision. If the practitioner is dissatisfied with the decision he / she may appeal within seven days of receipt of the formal notification to the Classifications Appeal Committee convened and constituted in accordance with the Appendix to PCS (DD) 2001/9.

3. CONDUCT AND PROCEDURE AT DISCIPLINARY HEARINGS AND APPEALS

3.1 Conduct

- 3.1.1 Consideration should be given to the following factors:-

- any relevant disciplinary record and whether the employee concerned was aware of standards of personal conduct required;
- employees age, position, length of service and general personal conduct;
- whether proposed action is reasonable after due consideration of any circumstances or whether there are mitigating factors;
- the action taken in similar cases in the recent past.

3.1.2 In all cases before any disciplinary action is taken a hearing will be conducted. An HR Manager / Officer should always be involved.

The employee should be informed in writing of the allegations of his / her right to representation and be given time to prepare for the hearing.

Those conducting disciplinary hearings must establish:-

- what actually happened, when and where, obtaining statements and calling witnesses as appropriate;
- who was involved;
- what rules, if any were broken and whether they had been clearly made known;
- what was the employee's explanation;
- whether there were any mitigating circumstances.

Examples of mitigating circumstances could be:-

- a previously unblemished record of personal conduct;
- insufficient instructions; lack of previous warnings;
- management inconsistency in dealing with staff.

3.1.3 Details of any disciplinary action will be given in writing to the employee. A copy should be retained by the manager. The letter will specify:-

- the precise nature of the personal misconduct or failure;
- details of any previous warnings if possible;
- the disciplinary penalty and how long it will last where appropriate;
- any period of time given for improvement and the improvement expected (except dismissal letters);
- the consequence of further personal misconduct or failure (except dismissal);
- the timescale for lodging an appeal and how it should be made;
- specify any payment due (only dismissal letters).

Warnings should be disregarded for future disciplinary purposes following the periods of satisfactory personal conduct specified in this procedure. On occasions where an employee's personal conduct is satisfactory throughout the period when a warning is in force, only to lapse very soon thereafter and a pattern emerges where there is evidence of abuse of the disciplinary process, the employee's disciplinary record should be borne in mind in deciding how long any current warning should last. Warnings should be removed from the personal file on expiry.