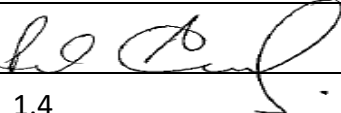


# STANDARD OPERATIONAL POLICY AND PROCEDURES



|                |                                                                                   |               |              |
|----------------|-----------------------------------------------------------------------------------|---------------|--------------|
| TOPIC          | Disciplinary Procedure – SOPP 35.33                                               |               |              |
| RESPONSIBILITY | Human Resources                                                                   |               |              |
| AUTHORISATION  | Chief Executive                                                                   |               |              |
| SIGNED         |  | DATE          | 27/10/2021   |
| VERSION        | 1.4                                                                               | LAST REVIEWED | October 2021 |
| EFFECTIVE      | October 2014                                                                      | NEXT REVIEW   | October 2024 |

## 1. PURPOSE

Overriding any discipline issue is the requirement that there is a duty of respect required for the Health Service and the employee.

- East Grampians Health Service (EGHS) will always have as first priority, to retain employees, and to resolve errant behaviour and/or action towards complying with the Health Service's Values.
- The procedures outlined in this policy are designed to ensure that any employee subject to disciplinary proceedings will be treated fairly, with dignity and respect and in accordance with the requirement of the Fair Work Australia provisions, relevant Enterprise Agreements and Awards, and Code of Conduct for Victorian Public Sector Employees (No.1) 2007
- Every incident that may result in action under this policy will be investigated before a decision is made on the appropriate course of action.
- This policy applies to all EGHS staff, regardless of level within the organisation.

## 2. POLICY

The purpose of this policy is to inform EGHS employees of the disciplinary procedure.

The required standards of performance and behaviour will be judged against the Health Service's Values. This policy will be enacted where an employee, following an investigation, has had claims of bullying, harassment or serious misconduct substantiated. This policy will also apply to staff who after three performance counselling meetings, have not been able to achieve the agreed performance improvements required to fulfil their roles and responsibilities and/or EGHS performance standards.

This policy represents the formal procedure necessary to stress the importance and seriousness of an individual's behaviour or actions, and bring about an appropriate resolution.

**It should be noted that the behaviour of individuals within a team or department rests with the supervisory staff of that team. Therefore, constructive counselling and improvement planning for adverse behaviour initially rests with the person in charge of the employee at the time they become aware of the errant conduct.**



### 3. DISCIPLINARY PROCEDURE

Based on if the matter is related to repeat unsatisfactory work performance following an unsuccessful Improving Performance Program (IPP) process or misconduct as noted in [Serious Misconduct, Harassment, Sexual Harassment, Bullying - SOPP 35.18](#), the following procedures are to be followed.

Note: Prior to commencing this process check with Human Resources to ascertain if the employees Enterprise Agreement requires the following of a specific EBA procedure, otherwise follow the procedure noted below.

The manager will write to the employee, advising them of the following:

- They are required to attend a formal disciplinary meeting at a nominated time and place.
- The purpose of the meeting will be to discuss a matter of unsatisfactory work performance/misconduct.
- Dependant on the seriousness of the disciplinary matter, a formal investigation may be required to be completed (see investigation procedure below).
- That the outcome of the meeting (*see meeting outcomes below*) may result in the employee being issued with a disciplinary warning.
- The right to representation by a union official or other support person at the meeting.

The manager will chair the disciplinary meeting and have a director or a Human Resources representative present as a witness and/or for support.

The manager should ensure that the meeting attends to the following items of business:

- If the employee has presented to the meeting without representation, they should be reminded of the right to have a representative present. The manager should confirm the employee's willingness to proceed without representation and advise them that the waiving of representation will be noted in the record of interview.
- Re-affirm that the meeting is a formal disciplinary meeting.
- Specifically identify the unsatisfactory work performance or inappropriate behaviour which is of concern and give reference to any previous meetings, discussions, improvement plans and attempts to resolve the matter.
- The manager must keep an open mind and consider fully the employee's response. The information provided by the employee may cause the manager to decide not to proceed down a disciplinary path, or to suspend the interview to allow sufficient time to conduct further investigation or give further consideration to the matter.
- Identify the required standard of work performance (refer to IPPs completed) or conduct.
- Discuss any support or assistance the employee may require in order to meet required standards.
- Set a review period where appropriate
- Advise the consequences of further failure to meeting the required standard of performance or conduct.
- Prior to concluding the meeting ask if the employee has any queries or concerns about the disciplinary meeting.

#### **4. INVESTIGATION**

The purpose of an investigation is to conclude whether, on balance, concerns regarding conduct or performance are well-founded and supported by evidence. An investigation must be fair including proper regard to procedural fairness.

The Human Resource Manager will advise in writing the parties involved of the appointment of the investigator within 24 hours of the appointment and include the allegations relating to the investigation. EGHS will take all reasonable steps to ensure confidentiality for all parties involved in the investigation.

Investigations will be completed within 21 days. If additional time is required due to the appointment of an external investigator, or extenuating circumstances, EGHS will aim to complete the investigation as soon as is practical.

Human Resources will appoint an investigator who can impartially determine the facts, this will not be a person who will decide the action that will be taken EGHS in response to the investigation findings. Human Resources will provide resources and support to the investigator while keeping matters relating to the investigation confidential.

The investigator may be:

- An EGHS Representative (Human Resources).
- A trained Health Service's investigator.
- A person external to the organisation, skilled in investigation procedures.

The investigator will ensure reasonable steps are taken to investigate the employee's response. Investigations should be expediently managed to ensure the investigation is completed as soon as is possible. The investigator will report their findings to Human Resources.

Standing down an employee on full pay during an investigation must be approved by the relevant Executive Director and only where the alleged misconduct is serious, or the employee's presence in the workplace may harm patient care; EGHS' reputation; or interfere with the investigation.

#### **5. POST INVESTIGATION**

At the completion of the investigation the incident(s) will either be substantiated or not.

##### **5.1 Substantiated incident(s)**

Disciplinary Procedure will be enacted within two working days of the completed investigation. The Human Resource Manager will notify all parties in writing of the outcome of the investigation at this time.

##### **5.2 Unsubstantiated incident(s)**

All parties involved will be advised in writing by the Human Resources Manager of the outcome, within one week of the investigation closing.

A grievance may not be able to be substantiated because of a lack of witnesses or evidence. However, there still may be a problem in the workplace and the relevant Management Group will, in these circumstances, consider:

- Provision of further opportunities for the Complainant to seek support.
- Assess if there is a need for specific training in the work area.

- Closely monitor the situation for a period of time.

## **6. MEETING OUTCOMES (Warning Process)**

The warning process allows for up to three warnings to be issued to an employee in relation to repeated unsatisfactory work performance or misconduct that could not be corrected via the constructive counselling and improvement plan process. A matter may however, be referred to the relevant Director for investigation with a view to dismissal at any stage should the seriousness of the incident warrant such action. It is not necessary that three warnings be issued sequentially before a recommendation to terminate employment is made if the matter is deemed serious enough to warrant such action.

Following the three step sequential process of disciplinary warnings is the usual method applied to the management of work performance issues, and to unsatisfactory behaviour of a less serious nature.

The manager must consult with their Director or Human Resources prior to initiating any disciplinary action.

All warnings must be provided to the employee in writing.

### **6.1 First Disciplinary Warning (Verbal)**

Despite being a first 'verbal' warning, a first warning must be documented in the same way as any other disciplinary warning.

NB: A template for this letter is available from Human Resources.

A confirmation letter must be forwarded to the employee and where applicable, the union, confirming that a first verbal warning has been issued and continuation of the unsatisfactory performance or a repeat of the misconduct may result further disciplinary action.

Warnings will remain on the personal file for a period of 12 months after which time they will be removed if no further incidents of a similar nature have occurred in that time.

### **6.2 Second Disciplinary Warning (Written)**

If the employee fails to meet the required standard of work performance within the agreed timeframe, or where there is a recurrence of inappropriate behaviour after a first 'verbal' warning, the manager should continue the disciplinary process by issuing a second 'written' warning.

The second written warning should refer to and follow the first warning.

The process to be followed in administering a second disciplinary warning is consistent with that described for a first warning (letter of notice, formal interview, documented record), the only exception being that all references will relate to a second warning.

### **6.3 Final Warning**

The manager must consult with the relevant Department Director and the Human Resources Department before issuing a final warning.

If the employee fails to meet the required standard of work performance or fails to change their behaviour within the agreed timeframe, or where there is a recurrence of inappropriate behaviour within 12 months of a second warning, (or 18 months for employees under the

Nurses and Midwives (Victorian Public Health Sector) (Single Interest Employers) Enterprise Agreement 2016-2020), the manager should obtain the necessary authorisation from their Director and continue the disciplinary process by issuing a final warning.

The Department Director and the Human Resources Manager must be present at any meeting where a final disciplinary warning may be issued.

If the employee has not previously engaged the support of a representative, they should be strongly encouraged to do so prior to conducting an interview which may result in a final warning being issued.

Where the employee has engaged the support of their union, copies of all correspondence and reports relating to the issuing of the final warning should be forwarded to the union by the Human Resources Department.

The process to be followed in administering a final disciplinary warning is consistent with that described for a first warning (letter of notice, formal interview, documented record), the only exception being that all references will relate to a final warning.

A confirmation letter must be forwarded to the employee and where applicable, the union, confirming that a final warning has been issued and continuation of the unsatisfactory performance or a repeat of the misconduct will result in a recommendation to terminate employment.

At the first available time the manager must make a detailed written record of the incident (what happened, when, what was said, who witnessed the event etcetera). The record should be signed and dated at the time of compilation.

#### **6.4 First and Final Warning**

Where the action or actions of the employee are shown to be a direct breach of policy and/ or procedure that either places a patient/fellow employee in danger (breach of safety) or places EGHS or the employee in breach of the law, the matter may be escalated direct to a First and Final nature.

#### **6.5 Dismissal**

No employee will be dismissed without the express authority of the Chief Executive. Staff members may be instantly dismissed upon discovery of serious misconduct, harassment, sexual harassment or bullying.

Grounds for termination shall be specific, substantiated and initially communicated to the staff member verbally.

Unless a specific delegation has been given, the relevant Director and Chief Executive shall be consulted before termination of employment takes place. A final decision is to be assessed and weighed against a staff member's length of service and conduct during employment.

A decision as to whether a matter is to be reported to police shall be made by the Chief Executive in accordance with relevant legal obligations placed on the individual and organisation.

#### **6.6 Documentation**

Comprehensive, timely and accurate documentation is an essential element of the effective handling of any disciplinary matter. Managers should be mindful of the fact that such

documentation may be subjected to external scrutiny and placed on the public record. Every effort must be made to ensure that the standard of all documentation relating to disciplinary matters meets the following criteria:

- 'Old' issues or matters that were not dealt with must not be brought in to current issues under investigation or discussion.
- Hearsay must not be relied upon as fact.
- The notations must be accurate, consistent and specific;
- A record of facts which can be substantiated and not opinions;
- A record of directly observed and/or verifiable work behaviours, actions, statements and results. It should not include statements which would imply subjective judgement, or prejudice about the employee's personality, character or motives.
- Notations should be made as action occurs or as soon as is practicable thereafter.
- Document appropriate information only.

### 6.7 General Rights and Conditions

- The **employer** has the right and obligation to treat each case on its own merits. Therefore, the above process may vary according to the circumstances as they present.
- The **employee** has the right to a fair hearing and a genuine right of reply to respond to the allegations made against them.
- The **employee** has the right to be represented, and/or to a support person of their choosing at any stage during the formal counselling process.
- Although the employee has the right to natural justice (the right to defend themselves), they do not have the right to know the name of a person or persons raising the issue, or providing information against the employee. In all respects, it is EGHS that is making the claim against the employee.
- Information and investigations will be based on "the balance of probability".

## 7. REFERENCES

Fair Work Act 2009

Aged Care Quality Standards – Standard Seven

National Safety and Quality Health Service Standards – Standard One

Nurses and Midwives (Victorian Public Health Sector) (Single Interest Employers) Enterprise Agreement 2016-2020

Victorian Public Health Sector (Health and Allied Services, Managers and Administrative Workers) Single Interest Enterprise Agreement 2016 – 2020

Managing Misconduct – Charles Power, Partner, Holding Redlich Lawyers, Portner Press 2017  
Disciplinary Policy – Beechworth Health Service

## 8. RELATED DOCUMENTS

[Employee Complaint Form – 35.12.00](#)

[Employee Complaints and Grievance – SOPP 35.12](#)

[Improving Performance Plan - 35.12.01](#)

[Serious Misconduct/Harassment/Sexual Harassment/Bullying – SOPP 35.18](#)

[Improving Performance Guide](#)