



DISCIPLINARY, CONDUCT AND CAPABILITY POLICY AND PROCEDURES – MEDICAL STAFF

Reference No:	128	Version No:	1	Previous Trust / LHB Ref No:	329
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Documents to read alongside this Procedure	NHS Wales Disciplinary Policy NHS Wales Sickness and Absence Policy Alcohol and Substance Misuse Policy Cardiff and Vale NHS Trust Disciplinary Policy
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Classification of document:	Employment Policy
Area for Circulation:	UHB Wide
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Executive Lead:	Director of Workforce and Organisational Development
Group Consulted Via/ Committee:	Local Negotiating Committee
Approved by:	Workforce and Organisational Development Committee
Date of Approval:	17 July 2012
Date of Review:	17 July 2013
Date Published:	08 August 2012

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Version Number	Date of Review Approved	Date Published	Summary of Amendments
Tr329	1998	1998	
UHB 1			<ul style="list-style-type: none"> • Updated by UHB format • References to Trust changed to UHB • SAS Grades referenced as appropriate <p>Changes completed by HR Policy and Compliance team. This does not constitute a full policy review</p>

**DISCIPLINARY, CONDUCT & CAPABILITY POLICY
AND PROCEDURES - MEDICAL STAFF**

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**DISCIPLINARY, CONDUCT & CAPABILITY POLICY
AND PROCEDURES - MEDICAL STAFF**

1. DEFINITIONS

1.1 The following are definitions of issues which may lead to the use of the attached procedures.

- **PERSONAL CONDUCT** - Performance or behaviour of practitioners due to factors other than those associated with the exercise of medical skills
- **PROFESSIONAL CONDUCT** - Performance or behaviour of practitioners arising from the exercise of medical skills
- **PROFESSIONAL COMPETENCE** - Adequacy of performance of practitioners related to the exercise of their medical skills and professional judgement

1.2 A decision must be reached into which category the conduct under consideration falls. This decision is the responsibility of the UHB and will be made by the Medical Director (or Associate Medical Director) and the Divisional Director.

2. SCOPE

This procedure will apply to all grades of medical staff unless stated that sections apply only to specific grades.

3. INFORMAL ACTION

3.1 For minor issues it may be appropriate for informal action (for example, counselling) to be considered. This will be decided by the Medical Director (or Associate Medical Director where appropriate) in consultation with the Clinical Director.

3.2 Health related issues will be dealt with in accordance with paragraph 7

4. SUSPENSION

Under certain circumstances it may be necessary to suspend a member of the medical staff. Suspension is **not** disciplinary action and the procedure for carrying out suspension is outlined in **Annexure I**.

5. **PERSONAL CONDUCT**

- 5.1 All issues relating to personal conduct will be dealt with in accordance with the former Trust's Disciplinary Policy, a copy of which is available from the Medical Director or Workforce Department.
- 5.2 The Disciplinary Rules of the UHB apply equally to all staff in matters of personal conduct.

6. **PROFESSIONAL CONDUCT/COMPETENCE**

In dealing with issues of professional conduct and/or competence the following procedures will be used. The exception is in cases of serious allegations where there is no dispute as to the facts. In these instances the former Trust's Disciplinary Policy will be used.

6.1 **Preliminary Investigation (Annexure II)**

Any issue which is deemed to be a matter involving professional conduct/competence will be the subject of a preliminary investigation.

6.2 **Intermediate Procedure (Annexure III)**

For use in dealing with less serious allegations concerning professional conduct or competence or where problems arise from differing professional views within a department.

6.3 **Full Inquiry (Annexure IV)**

For use in dealing with serious allegations concerning professional conduct or competence where the outcome could result in dismissal.

6.4 **Professional Review Machinery (Annexure V)**

6.4.1 This procedure is an informal mechanism for reviewing the conduct of consultants who are alleged to have failed to honour their contractual commitments.

6.4.2 Where it has not been possible to solve the problem via this mechanism the matter will be referred to the former Trust's Disciplinary Policy.

7. HEALTH ISSUES

- 7.1 Where a health related problem has been identified the matter should be dealt with in accordance with the NHS Wales Sickness and Absence Policy. .
- 7.2 In addition to the above policy, where appropriate, health issues may be referred for consideration under the 'Three Wise Men' procedure (**AnnexureVI**).

8. APPEALS PROCEDURE

- 8.1 Appeals against disciplinary action short of dismissal. These will be in accordance with the former Trust's Disciplinary Policy and Appeals Procedure.
- 8.2 Appeals against dismissal.
 - 8.2.a This procedure applies to staff in the Consultant, Associate Specialist, Hospital Practitioner, Staff and Clinical Assistant Grades appointed on or after 1 April 1995. Staff appointed prior to this date preserve the right of appeal to the Secretary of State in accordance with paragraph 190 of the national Terms and Conditions of Service.
 - 8.2.b The procedure gives the right of appeal to an independent appeal panel convened by the UHB where a doctor feels that his or her employment has been unfairly terminated.
 - 8.2.c The appeals mechanism is outlined in Annexure VII.
 - 8.2.d This right of appeal does not apply where termination is on the sole ground of personal misconduct. In this case the former Trust's Disciplinary Policy and Appeals Procedure will apply with the added provision that the appeal committee will include one professional member from outside the UHB at the same grade and in the same (or related) specialty as the practitioner concerned, nominated by the Joint Consultants Committee and enjoying equal status with the other appeal committee members.
 - 8.2.e A practitioner who considers that his or her appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his or her conduct could reasonably be so described may appeal to the appeal panel outlined in 8.2.d for adjudication. If it is deemed that the categorisation is accurate, the Appeal would then proceed. If

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the decision of the panel is that the termination is not on the sole ground of personal misconduct, the practitioner may then appeal against dismissal as outlined in Annexure VII.

- 8.2.f Appeals for staff in training grades will be in accordance with the Appeals Procedure outlined in the former Trust's Disciplinary Policy. A copy is available from the Medical Director or the Workforce Department.

ANNEXURE 1

Suspension (DGM (95) 44)

1. Suspension is not disciplinary action and this should be made clear when the suspension is being carried out. Suspension may be considered in order to:
 - protect the interests of patients or staff
 - protect the interests of the practitioner concerned
 - assist in the investigative process.
2. Authority to suspend will be with the Medical Director (or Associated Medical Director/Divisional Director in the absence of the Medical Director) in consultation with the appropriate Clinical Director and supervising Consultant in respect of doctors responsible to a Consultant.
3. Suspension will be on full pay and will be confirmed in writing no later than the following working day.
4. Details of the allegations should, where possible, be provided to the practitioner within ten days. Where this is not possible the practitioner should be informed of the reason and when such details will be provided.
5. **Review of Suspension**
 - 5.1 Suspension should not be prolonged and should not last longer than necessary.
 - 5.2 A review of the suspension should be carried out at least every two weeks. This review will be undertaken by the Medical Director and reported to the Chairman. The practitioner will be informed of the outcome after each review.
 - 5.3 If the suspension continues up to three months a report must be made to the UHB stating the reason for delay and indicating how long it is expected to continue.
 - 5.4 If the suspension continues after three months reports should be made to each subsequent UHB Board meeting.
6. Lifting of suspension will be confirmed in writing to the individual concerned.

ANNEXURE II

Preliminary Investigation

1. The purpose of the preliminary investigation is for the UHB Chairman to decide whether there is a prima facie case which if well founded could result in serious disciplinary action.
2. If it is decided at this stage that the allegations are less serious it may be appropriate to use the Intermediate Procedure (Annexure III).
3. Preliminary enquires will be conducted by the Medical Director (or Clinical Director who will report to the Medical Director).
4. The findings of the preliminary enquiries should be presented to the Chairman for consideration.
5. Unless it is decided immediately that there is no prima facie case, the practitioner should be informed in writing of the nature of the allegation(s). Copies of all relevant correspondence should be forwarded and the practitioner informed that any comments made by him/her will be placed before the Chairman and any investigating panel appointed.
6. The practitioner should be given reasonable time to make representations and seek advice before any final decision is taken on whether an inquiry is necessary.
7. With reference to the allegation(s) together with any comments from the practitioner in response to the letter referred to in paragraph 4, the Chairman will decide whether a prima facie case exists.
8. If it is decided that a prima facie case exists, but there is no substantial dispute as to the facts, the former Trust's Disciplinary Policy will be used.
9. If it is decided that a prima facie case exists and that there is a dispute as to the facts the UHB will proceed to an inquiry under Annexure III or IV.

ANNEXURE III

Intermediate Procedure
(for use with Consultants only)

1. Preliminary Enquiries

Following a preliminary investigation (see Annexure I) if it is decided that the allegations about professional conduct or competence do not warrant the use of the Investigating panel, the intermediate procedure will be used. This procedure will also be used in cases where there are problems arising from differing professional views within a department.

2. Joint Consultants Committee

The Medical Director will write to the Joint Consultants Committee giving details of the consultant's specialty and job plan together with a brief outline of the problem. The Medical Director will inform the consultant concerned together with the relevant manager that this action has been taken.

3. Assessors

3.1 The Joint Consultants Committee will nominate impartial assessors from another UHB (normally two with at least one from the same specialty as the consultant concerned).

3.2 When the Medical Director has agreed the assessors a detailed statement of case will be provided by the Medical Director and will be copied to the consultant (s) concerned. This will take place within one month of the assessors being agreed.

3.3 The assessors will firstly examine the statement and consider whether or not it is appropriate to this procedure. If they consider that it falls into the provisions of another section of this policy they will discuss this with the Medical Director. After receiving advice from the assessors the Medical Director will decide how to proceed.

4. Investigation

4.1 The assessors will complete an investigation within three months of the statement being received. The investigation will take the following form

- the assessors may wish to meet with the Medical Director for a preliminary discussion

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- the assessors will provide the Medical Director with a list of those to be interviewed
 - the assessors will ask the consultant (s) concerned whether they would like anyone to be interviewed
 - the assessors will have no powers to compel individuals to meet with them
 - all staff interviewed will be expected to provide a written statement or to sign an agreed record of the interview copies of these records will be given to the consultant (s) concerned
 - the consultant (s) concerned will be invited to meet the assessors and may be accompanied by a representative of their professional organisation or a friend
 - secretarial support will be provided to the assessors
- 4.2 An investigation report will be produced in two parts. Part one will contain the findings but not recommendations as to action. Part two will contain a view as to whether and to what degree the consultant (s) involved is/are at fault and may also contain recommendations regarding, for example, organisational matters within the Department or advice to be given to the consultant.
- 4.3 A copy of part one of the report will be sent to the Medical Director and the consultant (s) involved. A period of 14 days will be allowed to receive comments from the consultant (s) involved on its factual accuracy.

A copy of the full report (parts one and two) will then be submitted to the Medical Director.

5. Further Action

The Medical Director will decide what further action is necessary and will inform the consultant (s) involved. Further action may include a disciplinary warning. The degree and duration of warnings will be as outlined in the former Trust's Disciplinary Policy.

ANNEXURE IV

Inquiry

1. Investigating Panel

1.1 An investigating panel will be set up by the Chairman of the UHB. The panel will normally comprise three people as follows:

- Legally qualified Chairperson nominated by the UHB Chairman from a panel nominated by the Lord Chancellor.

AND

- Equal numbers of professional and lay persons (where professional conduct only is involved)
- Wholly or predominantly professional members (where the issue (s) relate to the relationship between a practitioner and his/her professional colleagues)
- Wholly professional members, including one from the same specialty as the practitioner concerned (where professional competence only is involved)

1.2 For senior hospital doctors only professional members of any panel set up should be chosen in consultation with the JCC.

1.3 The investigating panel will not itself have any disciplinary powers.

2. Payment

2.1 The Chairperson and panel members will be paid a fee by the UHB for all work connected with the enquiry together with payment of subsistence/travel expenses in accordance with the UHB's procedures.

2.2 The fees payable will be agreed prior to commencement of the inquiry.

3. Terms of Reference

Terms of Reference for the investigation panel should be agreed with the UHB Chairman. These will include a statement of the nature of the allegation (s) against the practitioner.

4. Process

- 4.1 The practitioner should be informed that the investigating panel has been set up.
- 4.2 The practitioner should be given not less than 21 days to prepare his/her case. The following information should be provided.
- copy of the terms of reference
 - copies of relevant correspondence and written statements
 - list of witnesses and main points of their evidence (if requested)
- 4.3 In exceptional circumstances the Chairperson of the panel may give authority to withhold the names of witnesses prior to the hearing.
- 4.4 The investigating panel will be held in private and should establish the relevant facts of the case. Witnesses should be asked to give factual evidence and not impressions or opinions.
- 4.5 As in 4.2 above a list of witnesses should be drawn up together with the main points on which they will give evidence.
- 4.6 The UHB Legal Adviser or nominated officer will present the case and conduct the examination of witnesses and the practitioner concerned before the panel.
- 4.7 The practitioner will have the right to:
- appear personally before the panel
 - be represented (legally or otherwise)
 - hear all evidence to the panel
 - cross examine witnesses
 - produce own witnesses
- 4.8 The Chairperson should:
- determine the rules and procedures for the admission of evidence (a preliminary hearing with both parties may be held by the Chairperson if he so wishes, for the purpose)
 - make the decision on any application for adjournment (for example, illness or absence of the practitioner or a witness).

5. Investigating Panel Report

5.1 A written report should be prepared by the panel and presented in two parts:

- Part 1 - setting out all the relevant facts of the case, but with no recommendation as to action
- Part 2- setting out the panel's view as to whether the practitioner is at fault

6. Decision

6.1. The UHB Board will receive the full report of the panel and will decide what action to take.

6.2 If the practitioner has been found to be at fault by the panel the practitioner will be given a copy of a summary of the panel's views including a summary of Part 2 of the report.

6.3 The practitioner will be given the opportunity to put any plea that he/she may wish to make to the Board in writing or in person.

6.4 The Board will make a decision as to whether disciplinary action up to and including dismissal is appropriate and whether or not notice should be given. Any disciplinary action short of dismissal (for example warning) will be as outlined in the former Trust's Disciplinary Policy.

6.5 The decision of the Board will be communicated, in writing, to the practitioner within 7 days of the date of the UHB Board Meeting.

7. Timescales

7.1 In all cases investigations, inquiry and hearings should be completed in the shortest possible time.

7.2 An indicative timetable is outlined in circular WHC (90) 22 and will be followed as far as is practicable in the particular circumstances.

ANNEXURE V

Professional Review Machinery
(For use with Consultants and Associate Specialists)

1. This procedure will be operated by a panel comprising:
 - Chairman of the UHB's Senior Medical Staff Committee (who will act as chairman of the panel).
 - Two consultants (one whole time, one part-time) nominated by the Medical Staff Committee for a period of not more than two years
 - A fourth member co-opted by the chairman of the panel from the same or an allied discipline as the consultant concerned but employed in another Health Board.
2. Allegations may be referred to the panel directly by Consultants or the Medical Director, (or Associate Medical Director). All other staff should submit allegation (s) to their Divisional Director who will refer them to the Medical Director. Medical staff other than consultants may choose to make allegation (s) via a consultant.
3. The Medical Director, on receipt of an allegation will decide whether any action is required. The anonymity of those making the allegation (s) will be preserved if the individuals so wish.
4. If appropriate the Medical Director will refer the allegation (s) to the Chairman of the panel who will inform the consultant verbally and provide a copy of any written representations received.
5. The consultant will be invited to meet the panel alone (constituted in accordance with paragraph 1). The matter will be discussed informally. If it is concluded that there is substance to the allegation (s) the consultant will be advised accordingly and invited to meet the panel within six months to review the advice given.
6. If after a second meeting the panel considers that there has been no improvement and a problem remains the matter will be referred to the Medical Director who will decide what further action is to be taken in accordance with this policy.

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7. The Medical Director will be informed by the Chairman of the panel of all referrals to the panel and the outcome of each case. This will include any instances where a consultant has refused to meet the panel. In these instances the Medical Director will decide on further action in accordance with the former Trust's Disciplinary Policy.
8. The Chairman of the panel will keep a note of meetings held comprising a factual statement of the complaint received and a statement that the consultant has been advised by the panel. No other record of the meeting will be kept.

ANNEXURE VI

Procedure to Protect Patients from Harm

1. The purpose of this procedure is to ensure that precautionary measures can be taken to protect patients from harm which may arise from incapacity of medical staff due to physical or mental disability, including addiction.
2. The aim will be to encourage a sick doctor to accept treatment. The NHS Wales Sickness & Absence Policy and Drug & Alcohol Abuse policy will also be used where appropriate.
3. Where medical staff have reason to suspect that such circumstances exist it is their duty to do what they can to ensure that the safety of patients is not threatened.
4. The following panel will be set up to consider such issues:
 - Professor of Medicine
 - Professor of Psychological Medicine
 - Associate Medical Director (Chairman)

(The Senior Medical Staff committee will also nominate deputies for the Professors of Medicine and Psychological Medicine).
5. An individual receiving information as outlined in paragraph 1 should report this to the appropriate Associate Medical Director.
6. The Associate Medical Director will convene the panel as outlined in paragraph 4.
7. If immediate action is required in the interests of patient safety and other panel members are not available, the panel member who has received the information should take the action necessary and report to the Chairmen of the panel as soon as possible.
8. If it is necessary to suspend a doctor the provisions of Annexure I will be followed.
9. The panel will make confidential enquiries to verify the accuracy of the report.
10. If the panel is satisfied that the report has substance, the doctor concerned should be informed, and be given the opportunity to be interviewed by the panel. A professional colleague of the doctor concern's choice may also be present at this interview. The panel will inform the doctor that the interview is under the terms of this procedure.

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11. If the panel feels that the possibility of harm to patients cannot be excluded by the exercise of their influence the matter will be referred to the Medical Director.
12. The Medical Director will decide what further action is required in accordance with the overall policy

ANNEXURE VII

APPEALS PROCEDURE

(For use with Consultants, Associate Specialists, Hospital Practitioners, SAS Grades, Staff Grades & Clinical Assistants)

1. The notice of appeal must be submitted to the Chairman of the UHB within 21 days of receipt of the notice of the termination of contract.
2. On receipt of the appeal the UHB Chairman will convene an appeal panel comprising:
 - an independent member of the UHB Board
 - a professional representative nominated by the Joint Consultants Committee *
 - a legally qualified Chairperson nominated by the UHB Chairman from a panel appointed by the Law Society/ACAS/Lord Chancellor's Office *
3. A statement of case must be submitted by the practitioner appealing to the chairman of the appeal panel within a period of six weeks from the date of receipt of the notice of termination.
4. The UHB Chairman will submit the UHB's statement of case to the Chairperson of the panel within six weeks from the date on which the practitioner received notice.
5. Both parties are required to submit statements of case within the required time period. The chairperson may accept a later submission from either party if he/she is satisfied that it was not reasonably practicably for the statement to be submitted in the specified period.
6. An Appeal Hearing will be convened and the parties given adequate notice of the arrangements and date of the hearing.
7. the Appeal Hearing:
 - 7.1 The Chairman of the appeal panel will determine the procedure to be observed at the hearing.
 - 7.2 The appellant will have the right to appear personally before the appeal panel.

* via the Welsh Office

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- 7.3 The appellant may be accompanied by a representative of a Trade Union, Professional Organisation Staff Association or any other person. He/she may elect to be legally represented but if so will be responsible for costs incurred and in such circumstances the UHB may also elect to be legally represented.
- 7.4 Either side may call witnesses at the hearing.
- 7.5 The appeal panel will communicate its decision to the UHB Chairman and the appellant within two weeks of the hearing.
8. Where it appears to the panel that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall;
- ascertain as far as possible the extent to which such a solution is likely to be accepted by the consultant and the UHB
 - include in the decision given to the Chairman of the UHB any advice to arrange such a solution.
9. The termination of the practitioner's appointment shall not take effect while an appeal duly made in accordance with this policy is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice period shall be extended by the UHB until the decision is given.
10. It is the intention, except in exceptional circumstances, that the Appeal process will be completed within 6 months of the receipt of notice of termination.