



SCOTTISH EXECUTIVE

Health Department
Human Resources Directorate

Dear Colleague

DISCIPLINE PROCEDURES: CLASSIFICATION OF CONDUCT

Summary

1. A working group, consisting of representatives of the British Medical Association and NHS Trust Management in Scotland, has agreed a new procedure to resolve differences between an employer and an individual medical or dental practitioner about whether a disciplinary procedure is considered one of personal or professional conduct. The aim of this new procedure is to ensure that such matters are resolved as quickly as possible.

Action

2. Employers are required to:-
 - take note of the guidance on deciding the classification of conduct
3. Details of what is required are set out below in the attached Annex and Appendix.

Yours sincerely

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Addresses

For action

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Introduction

NHS Circular PCS(DD)1994/11 contained guidance on the suspension of hospital medical and dental and community medical staff. The aim of the guidance was to ensure that:

- “a. avoidable suspensions do not happen; and
- b. if practitioners are suspended, it should be for the minimum necessary period of time.”

NHS Circular PCS(DD)1996/6 extended the guidance to community dental staff.

A short-life Working Group was set up by the Minister of Health in 1998 to review procedures that operate in Scotland for handling suspensions of hospital medical and dental staff, community medical and dental staff and doctors in public health medicine.* The Working Group’s report was disseminated to the service through NHS Circular PCS(DD)1999/7. This circular also amended NHS Circular PCS(DD)1994/11, and updated NHS Circular 1990(PCS)8.

The Working Group identified that there were inconsistencies in the way that Trusts and Health Boards determined whether alleged misconduct was personal or professional. The Group recommended (recommendation 19) that an agreed uniform appeal mechanism should be produced to operate across all Trusts and Health Boards within Scotland. A further Group was therefore set up, consisting of representatives of the British Medical Association and NHS Management in Scotland, to draw up a new procedure to determine the classification of conduct. This is described in the Appendix.

Background

The existing arrangements for dealing with allegations against medical staff are contained within NHS Circular 1990(PCS)8, as amended by NHS Circular 1990(PCS)32. The circular refers to four procedures.

1. **Professional Review Machinery** (Annex A)

This sets out an informal mechanism for reviewing the conduct of hospital consultants (doctors and dentists) who are alleged to have repeatedly failed to honour their contractual commitments.

2. **Intermediate Procedure – Disciplinary Action Short of Dismissal** (Annex B)

This applies to cases of professional conduct or professional competence of consultants, directors of public health and other public health medicine consultants.

* reference in this circular to Doctors and Dentists includes those holding honorary contracts

3. Serious Disciplinary Procedures (Annex C)

This applies to professional conduct and professional competence of all hospital doctors and dentists and community doctors and those in public health medicine.

4. Appeals against Dismissal to Secretary of State (now Scottish Ministers) (Annexes D and E)

These provisions are available to senior medical staff (as defined in the Annexes) who wish to appeal on the grounds that their employment has been unfairly terminated. This right of appeal is not available to senior hospital medical staff who:-

- i. have been dismissed summarily;
- ii. are contracted for five notional half-days or less and whose income from other NHS (medical) employment is at least equivalent to the income received from the contract being terminated;
- iii. have had their employment terminated on the grounds of Personal conduct;
- iv. began employment after 1 April 1993.

This procedure is reproduced within paragraph 190 of the Terms and Conditions of Service and is known as the "Paragraph 190" right of appeal.

The need for Classification of Conduct

NHS Circular 1990(PCS)8 contains the definitions, which were agreed to assist the service to classify conduct in particular cases. The definitions are as follows:-

Personal Conduct: performance or behaviour of practitioners not associated with the exercise of medical or dental skills.

Professional Conduct: performance or behaviour of practitioners arising from the exercise of their medical or dental skills.

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

The existing four procedures contain specific procedural safeguards which are not automatically available when disciplinary action is being considered or taken on the grounds of personal conduct.

It is therefore necessary to draw a distinction between personal conduct, professional conduct and professional competence to determine:-

1. the right of a practitioner to access the Intermediate Procedure;
2. the right of a practitioner to access the Serious Disciplinary Procedure;

3. the right of practitioners, who would otherwise satisfy the criteria, to access the right of appeal against dismissal to the Secretary of State (now Scottish Ministers).

For those practitioners who otherwise meet the “Paragraph 190” criteria, the procedure for resolving differences about which of the definitions applies is contained within Annexes D and E. In regard to the Annex B and Annex C procedures (i.e. access to the Intermediate Procedure and Serious Disciplinary Procedure) there is no national mechanism for resolving such differences. Such differences should therefore be resolved by a separate and new procedure. This is described in the Attached Appendix.

APPENDIX

PROCEDURE FOR RESOLVING DIFFERENCES AS TO WHETHER ALLEGATIONS SHOULD BE CONSIDERED UNDER PERSONAL CONDUCT, PROFESSIONAL CONDUCT OR PROFESSIONAL COMPETENCE

The Medical Director/Director of Public Health in considering whether formal disciplinary proceedings should be taken against a practitioner will consider which of the three definitions is applicable in that case. If he/she considers that the allegations relate to professional conduct or professional competence the matter will be dealt with under either the intermediate procedure or the serious disciplinary procedure. If he/she 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 Classification Appeal Committee.

The Classification Appeal Committee will be convened and will be constituted as follows:-

1. A Chairman, to be drawn from an agreed list, who will be a solicitor and not in the employment of the NHS or the Central Legal Office.
2. A Medical Director from another Trust/Director of Public Health from another Health Board.
3. A medically (or dentally in appropriate cases) qualified professional who is not a member of the Trust Board or employed by the Trust (or employed by the Health Board), and who has been nominated by the BMA Local Negotiating Committee/Scottish Committee for Public Health Medicine and Community Health (SCPHMCH) following consultation with the Scottish Secretary of the BMA or Scottish Secretary of the BDA, as appropriate.

All three members must be acceptable to the Trust and to the Local Negotiating Committee/Health Board and to the SCPHMCH.

The practitioner may be accompanied at the appeal by his/her representative. The normal rules of natural justice will apply to the appeal proceedings. The proceedings should normally be completed and the decision confirmed with one month of the first meeting of the Classification Appeal Committee. The Committee's decision shall be binding on both parties.

A formal record of the proceedings, including the reasons for the decision reached, shall be sent to both parties.