

 Medical Human Resources (Pty) Ltd	<b>Document:</b> Medical Human Resources – Policy	<b>Date:</b> 01/07/2006
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## Disciplinary Code

### Purpose

The purpose of the Disciplinary Code is to inform employees of the workplace rules and conduct which is acceptable in the workplace. The code also assists line management in dealing with employee misconduct in a consistent and fair manner.

### Scope

This policy applies to

- MHR Management
- Medi-Nurse/Staff panel members
- Clinical Trainers
- Medi-Nurse coordinators
- Medi-Staff placement consultants

### Definitions

Term	Definition
Disciplinary procedure	Provides a step-by-step guideline on dealing with misconduct in the workplace
Disciplinary Sanctions	Sanctions that can be imposed by the chairperson of a disciplinary process after the employee has been found guilty of misconduct on a balance of probability

### Policy Statement

- The *Management team* must ensure that workplace discipline is maintained.
- Management must be consistent in their application of discipline and should not treat employees differently based on any arbitrary or unjustifiable grounds.
- Management must familiarise themselves with the Disciplinary Code.
- The *Employees* are responsible for complying with rules, regulations and obligations in terms of their contract of employment and for observing and maintaining the code of conduct of the company. Employees are further obligated to comply with managerial sanctioned practices that may apply from time to time.
- The application and purpose of the Code is not to punish employees for misconduct. Instead, disciplinary measures are instituted, maintained and enforced for the purpose of correcting and employee's conduct.
- Consistency is another important principle of the code. Although each case has its own merits. Such cases must be handled in a consistent, fair and equitable manner.

## Policy Statement

- Disciplinary action against any employee must be procedurally and substantively fair as per the requirements of the existing labour legislation. Procedural fairness requires a fair procedure to be followed and the opportunity for the employee to state his/her case. In determining substantive fairness, the following should be considered:
    - Whether or not the employee contravened a rule or a standard regulating conduct in, or of relevance to, the workplace
    - If a rule or standard was contravened, whether or not
      - the rule was a valid or reasonable rule or standard
      - the employee was aware, or could reasonably be expected to have been aware, of the rule or standard
      - the rule or standard has been consistently applied by the employer and the disciplinary sanction is the appropriate sanction for the contravention of the rule or standard.
  - Disciplinary proceedings and records must be kept confidential.
  - Poor work performance of an employee should not be addressed via the Disciplinary Code unless such poor performance is found to be wilful and intentional. A separate process is in place to deal with poor work performance in the work place and is based on the Code of Good Practice in the Labour Relations Act
  - Disciplinary steps must be taken as soon as possible after the alleged misconduct took place. The ideal time is within 5 working days after the alleged offence has come to the attention of management. However, this is a mere guideline and should not be rigidly interpreted, especially in cases where a disciplinary investigation is necessary and takes time or in situations where the alleged offence was discovered or reported after a time period has lapse.
  - After a disciplinary offence has been transgressed, management may decide to suspend the services of the employee pending the disciplinary hearing. The period should be as short as possible as it has financial and operational implications for the employer. The documentation in respect of the suspension should also be complete and copies be kept for the disciplinary proceedings. Employees may be suspended where the continued presence of the that employee may:
    - Cause disruption in the workplace
    - Has the potential of disrupting the investigation of the alleged misconduct
    - Tamper with the evidence
    - Has the potential of threatening other employees
    - Where other employees are likely to be intimidated by the employee charge with the misconduct
    - Where the offence was of such a serious nature that a big possibility exist that the disciplinary process may lead to dismissal
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## Procedure

Medical Human Resources has certain rules of conduct and standards by which all employees are obliged to comply with. The rules and standards are not limited to those reflected in this Code, but also include MHR house rules and rules / standards of the reasonable employer.

The disciplinary procedure is invoked when disciplinary rules of Medical Human Resources are transgressed. It is the line manager's responsibility to invoke the procedure, in conjunction with the local HR Department. However, as the Code is based on progressive discipline, due consideration must be given to the seriousness of the alleged offence.

Management can convene a *Disciplinary Interview* for less serious offences and a *Disciplinary Hearing* for more serious offences.

### The Disciplinary Interview

The disciplinary interview is part of the Code and a less formal procedure in comparison with a disciplinary hearing. This process is more suited for less serious offences where great emphasis is placed on corrective action. Although the procedure is less formal, the same procedure, as in the case of a disciplinary hearing, must still be followed. The interview is further the appropriate forum where there is little or no dispute of facts.

Step	Action
1.	At least 24 hours written notice, indicating the charge(s) and rights of an employee (see addendum 1), must be given to the employee in order to prepare himself / herself against the allegations.
2.	The parties in the disciplinary interview are the employee, his/her direct manager and a HR Representative.
3.	Complete records of these proceedings must also be kept and filed on the employee's file.
4.	The manager, in conjunction with the HR Representative, can issue any disciplinary action up to a Written Warnings (6 months) during the interview.
5.	In the event where, during the interview, a serious dispute exist and where no concrete evidence exist or where more information come to light which might justify a disciplinary hearing, the interview may be suspended and a disciplinary hearing scheduled in accordance with the Code.

### Disciplinary hearing

It is important that disciplinary steps are taken as soon as possible after the alleged misconduct took place.

After a disciplinary offence has been transgressed, management may decide to suspend the services of the employee pending the disciplinary hearing.

Step	Action
1.	In order for an employee to defend himself / herself, reasonable written notice must be given in respect of the charges brought against him / her.
2.	The charges must be clearly formulated for the employee to understand and must relate to the specific incident.

Step	Action
3.	The charge must contain sufficient information to indicate to the employee the case he / she has to defend.
4.	The written notification, containing the charge(s) and rights of the employee (See Addendum 1), must be given to the employee at least 48 hours prior to the hearing.
5.	The employee has the right to be represented by a fellow employee or a shop steward, where Medical Human Resources has a valid and binding collective agreement with the representative trade union. No officials or office bearers of the trade union have the right to representation unless the employee is a shop steward of that specific trade union and where a valid and binding collective agreement exists.
6.	Legal representation is not allowed in terms of this Code.
7.	<p>Participants in the Disciplinary Hearing is as follows:</p> <ul style="list-style-type: none"> <li>▪ The Chairperson (appointed by management)</li> <li>▪ The Employee being disciplined</li> <li>▪ The Representative of the employee</li> <li>▪ The Complainant</li> <li>▪ HR Representative</li> <li>▪ Interpreter (if required)</li> <li>▪ Witnesses</li> <li>▪ Observer (with consent of both parties as part of training)</li> </ul>
8.	<p>The Chairperson of the hearing should be objective and neutral in respect of both the employee and the complainant</p> <p>The Chairperson should not be involved in the formulation of the disciplinary charges</p> <p>The Chairperson bears the ultimately responsibility to ensure that the employee receives a fair hearing</p> <p>The Chairperson should be someone from the management ranks or a person designated by them and in a position higher than the employee charged with the misconduct</p> <p>The Chairperson must maintain order in the disciplinary hearing</p> <p>The Chairperson is under no obligation to take any decision in respect of the finding and sanction immediately, but may take reasonable time to consider the decision.</p> <p>The Chairperson should refrain from discussing the matter with anyone, except with the HR Representative and the IR Department.</p>
9.	<p>Disciplinary action can lead to any one of the six disciplinary sanctions (see Annexure 2 for descriptions), depending on the merits of the case. The warnings are valid for a specified period and form part of the disciplinary record of an employee.</p> <ul style="list-style-type: none"> <li>▪ Verbal Warning (3 months)</li> <li>▪ Written Warning (6 months)</li> <li>▪ Final Written Warning (9 months)</li> <li>▪ Suspension without Pay (Employee must give consent)</li> <li>▪ Demotion (Employee must give consent)</li> <li>▪ Dismissal</li> </ul>
10.	Employees have the right to appeal in terms of the Appeal Code and the request for appeal must be submitted, on the prescribed form, within 3 days of the hearing outcome. The Complainant is not entitled to appeal against the sanction of the disciplinary hearing.

Step	Action
11.	Complete records must be kept of all disciplinary proceedings (informal and formal) against an employee. These records must be kept in the HR Department and on the employee's file. The minutes of the proceedings should be as comprehensive as possible and parties to the disciplinary action must sign the minutes. The standard IR Documents (" <i>Record of Disciplinary Outcome</i> ") should be used for completing the administrative part of the proceedings in respect of the Disciplinary Sanctions.

## Disciplinary Offences

The following are a list of disciplinary offences. Please take note that this Code serve as a guideline and that the circumstances of each incident should be considered. The list of disciplinary offences in the Code is not exhaustive and disciplinary action may be taken against an employee in terms of any other house rules or rules which are reasonable to expect from an employee to comply with in an employment relationship.

### Very Serious Misconduct

The following are examples of first offences that might lead to dismissal.

- Dishonesty of any kind including, but not limited to, theft, fraud, bribery, corruption, forging, making of false declarations, corporate espionage, misappropriation of funds, unauthorized removal, possession or use of company, colleagues or clients property, blackmail or misrepresentation
- Victimisation, unfair discrimination or harassment of any kind, including, but not limited to, sexual harassment (the use of words or gestures with sexual connotations), racial discrimination (the use of hate speech) or immoral and indecent behaviour towards the employer, fellow employee, client or service provider
- Violation of confidentiality regarding medical reports, personal information or company business, in general or for personal gain
- Participating or inciting personnel to participate in any unprotected / illegal or unprocedural action for example strikes, go-slows, stayaways, demonstrations or participation in unrest
- Any action that leads to the violation of the trust relationship implied by the contract of employment
- Refusal to measure up to prescribed or fixed procedures, policy, regulations and rules applicable from time to time, and which behaviour leads to serious or potentially serious consequences
- Deliberate damage, abuse or wastage of company, client's or fellow employee's property
- Gross negligence or non-compliance to safety and security regulations or any other procedures, where the consequences resulting from this behaviour, could be serious
- Any threats to use violence or to do another person harm, fighting, intimidation or the inciting of other personnel to violence
- Refusal to execute reasonable instructions without a valid reason. Employee must justify the reasons for not complying
- Sabotage or any other purposeful or angry behaviour that will jeopardize the normal activities of the company by damaging any machinery or equipment, or by interrupting any supply of necessary power, material or services
- Being under the influence of alcohol or drugs whilst on duty
- Illegal buying or selling of drugs or alcohol
- Unauthorised and / or uncommunicated absence without a valid and acceptable reason for 5 consecutive days or longer.

**Very Serious Misconduct (cont)**

- Improper possession of property belonging to other employees, clients, professional personnel, the company or visitors to the company
- Any grounds pertaining to the common law that would be grounds for dismissal
- Insubordination or rebelliousness against supervisors
- Conviction in a criminal court of a common law or statutory offence, which, according to the employer, could have a negative effect on the employer-employee relationship.
- Sleeping on duty, where such behaviour has serious or potentially serious consequences
- Unauthorized disclosure of company information and / or trade secrets
- Misrepresentation of facts, qualifications and or previous employment history
- Abuse of the company computer network, including e-mail and internet facilities, which includes, but is not restricted to, the transmitting, retrieving, storage or display of the following:
  - Material of a discriminatory nature
    - Obscene or pornographic materials
    - Derogatory or inflammatory remarks of any nature
    - Abusive, profane or offensive language
    - Chain letters and petitions
    - Political or religious viewpoints or content
    - Material or language that might be deemed to constitute harassment
    - Video, voice clips and/or picture files unconnected to our business.

**Serious Misconduct**

The following are examples of serious first offences that may lead to a Final Written Warning. A 2nd offence of a similar nature may lead to dismissal.

- Negligence, including, but not limited to, the negligent driving of a company car
- Refusal to meet the prescribed or fixed procedures, policy, regulations and rules that are applicable from time to time
- Damaging or misuse of company, client's or employee's property
- Non-compliance with safety and security regulations or other safety procedures
- A history of periodical absences over short periods of time
- Sleeping on duty, where such behaviour has serious or potentially serious consequences
- In possession of unauthorized weapons or any other dangerous weapon on a client's or company premises
- Leaving post without authorization or relief

**Less Serious Misconduct**

The following are examples of less serious first offences that may lead to a Verbal or Written Warning. A 2nd offence of a similar nature may lead to a Final written warning or Dismissal if continually transgressed.

- The use of derogatory or disparaging language or signs
- Behaviour that disturbs good interpersonal relationships
- Breaking of house rules
- Poor time-keeping including reporting late for duty and leaving early
- Careless or sloppy work
- Non-compliance with schedules working hours, including coming late for work or leaving early
- Unauthorised and/or uncommunicated absence without a valid and acceptable reason for one working day. The employee must justify the absence and the reason why the employer was not notified

**Less Serious Misconduct (cont)**

- The distribution, display, or putting up of notices, posters, slogans, etc. on the premises without prior consent from the company
- Unacceptable personal / tidiness / hygienic appearance which could be embarrassing to the company as well as colleagues
- Other work for self gain without prior approval from management
- Wastage of materials and resources
- Smoking in a non-designated area

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**Associated Documents**

Title	Location/Number
Medical Human Resources Agreement	MHR office
Labour Relations Act (No. 66 of 1995)	MHR office

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## Addendum 1

### Employee Rights:

The Employee has the following rights

- The right to be disciplined timeously
- The right to be told in writing the nature of the offence or misconduct with relevant particulars of the charge in order to be able to defend himself / herself against the allegations
- The right to be given reasonable written notice to prepare for the hearing
- The right to an impartial and objective Chairperson
- The right to be represented as outlined in Clause 3.5
- The right to state his / her case and defend himself / herself
- The right to call witnesses
- The right to cross-examination of the Complainant's witnesses
- The right to an interpreter
- The right to be present throughout the proceedings
- The right to be advised of the finding
- The right to be told the reason for the finding in writing
- The right to have previous service and personal circumstances considered in mitigation
- The right to appeal to a higher level of management
- The right to waive the right of appeal
- The right to records pertaining to the disciplinary hearing

## Addendum 2

### Disciplinary Sanctions

Sanction	Description				
<b>Corrective Counselling</b>	<p>In some instances where disciplinary offences are minor and do not justify formal disciplinary steps, the more appropriate forum to address such offences will be through corrective counselling. Corrective counselling is a first step for offences of a less serious nature and the employee should be informed accordingly. The corrective counselling takes the form of a formal discussion between the employee and his/her immediate supervisor. The focus during this session is primarily "corrective action". Complete records of the discussion should be kept and filed on the employee's personal file.</p>				
<b>Warnings</b>	<p>Warnings are clear and unambiguous notice to an employee that the employer regard certain conduct of behaviour as unacceptable and that the employee should correct his/her behaviour to be in line with company rules and regulations.</p> <p>Depending on the seriousness of the disciplinary offence, a warning can range from a verbal warning to a final written warning, just short of a dismissal.</p> <p>Warnings are valid for the relevant period as from the issued date of such warnings.</p> <p>Although the Code is premised on the notion of progressive discipline, it does not mean that an employee must first get all the warnings before he/she may be dismissed.</p> <p>The seriousness of the alleged disciplinary offence and the principle of fairness will determine the most appropriate sanction, even dismissal for the first offence, depending on the nature of the offence.</p> <p>Warnings have specific time frames attached to it and are kept on the personal file of the employees. The lapse of a warning does not equate to the removal of such a warning from the file as it form part of the disciplinary history of the employee.</p> <p>Warnings that are not valid anymore cannot be taken into consideration during a disciplinary hearing.</p> <p>However, if a pattern of disciplinary offences, of whatever nature is developed, over a period of time, then a holistic view of such a disciplinary history may impact the sanction of a disciplinary hearing.</p> <p>There is six disciplinary sanctions:</p> <table border="1" data-bbox="472 1392 1383 1864"> <tbody> <tr> <td data-bbox="472 1392 721 1646"><b>Verbal Warning</b></td> <td data-bbox="721 1392 1383 1646">The immediate manager may issue a verbal warning to the employee for minor offences with the view of correcting unacceptable behaviour. Verbal warnings may be issued during a corrective counselling process or a disciplinary interview, in which the employee was also given an opportunity to state his/her case. Verbal warnings should be recorded on placed on the employee's file.</td> </tr> <tr> <td data-bbox="472 1646 721 1864"><b>Written Warning</b></td> <td data-bbox="721 1646 1383 1864">A written warning may be issued where a disciplinary hearing or a disciplinary interview has recommended it. Such a warning can also be issued for insufficient improvement in behaviour after a verbal warning. Complete records of the proceeding should be kept on the employee's file. Written warnings remain valid for a period of 6 months.</td> </tr> </tbody> </table>	<b>Verbal Warning</b>	The immediate manager may issue a verbal warning to the employee for minor offences with the view of correcting unacceptable behaviour. Verbal warnings may be issued during a corrective counselling process or a disciplinary interview, in which the employee was also given an opportunity to state his/her case. Verbal warnings should be recorded on placed on the employee's file.	<b>Written Warning</b>	A written warning may be issued where a disciplinary hearing or a disciplinary interview has recommended it. Such a warning can also be issued for insufficient improvement in behaviour after a verbal warning. Complete records of the proceeding should be kept on the employee's file. Written warnings remain valid for a period of 6 months.
<b>Verbal Warning</b>	The immediate manager may issue a verbal warning to the employee for minor offences with the view of correcting unacceptable behaviour. Verbal warnings may be issued during a corrective counselling process or a disciplinary interview, in which the employee was also given an opportunity to state his/her case. Verbal warnings should be recorded on placed on the employee's file.				
<b>Written Warning</b>	A written warning may be issued where a disciplinary hearing or a disciplinary interview has recommended it. Such a warning can also be issued for insufficient improvement in behaviour after a verbal warning. Complete records of the proceeding should be kept on the employee's file. Written warnings remain valid for a period of 6 months.				

Sanction	Description	
<b>Warning</b>	<b>Final Written Warning</b>	A final written warning may be issued when an employee commits a serious disciplinary offence and a FWW was recommended after a disciplinary hearing. A FWW can also be issued when there is insufficient improvement in behaviour after a written warning. Final Written Warning is valid for a period of 9 months. The final written warning should be recorded and kept on the employee's file.
	<b>Suspension without pay</b>	The chairperson should only use this sanction in exceptional cases and is only applicable to contract workers placed for a period at a client. It is advised that this sanction should be imposed as an alternative to dismissal, when sufficient mitigation exists. This sanction may only be imposed with the consent of the employee. The consent given by the employee should be in writing as he/she agrees to the changes in conditions of employment proposed by the employer.
	<b>Demotion</b>	The chairperson of the disciplinary hearing may also propose demotion to the employee as alternative to dismissal. Demotion means whereby the employee accepts a lower placed position with the remuneration and benefits attached to that lower placed position. This sanction may only be imposed with the written consent of the employee.
	<b>Dismissal</b>	Dismissal is the most severe disciplinary sanction that can be imposed in terms of the code. The service of an employee may be terminated after insufficient improvement in behaviour after an employee commits serious misconduct and a disciplinary hearing has recommended such a sanction. A dismissal can also be effected after insufficient improvement in behaviour after a final written warning has been issued. Dismissal will in most circumstances be with notice pay. However, employees may also be summarily dismissed without notice pay for gross misconduct of a serious nature i.e. fraud, theft, assault, etc.