

Performance Management and Disciplinary Procedure

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• 1. Objective

The Royal Children's Hospital (**RCH**) recognises that, during the employment relationship, there may be times when performance management and/or disciplinary action will be required. The principal objective of the procedure is to encourage improvement in the work performance and/or conduct of employees through professional development and education, where reasonably practicable.

The RCH is committed to carrying out necessary performance management and disciplinary processes fairly, acting in accordance with all relevant industrial instrument provisions and legislative requirements and to ensuring that the RCH and its patients and staff are protected.

The RCH also recognises that processes instituted under this procedure may cause employees a level of distress. RCH is committed to the safety and well-being of its staff and encourages the use of the RCH Employee Assistance Program in such circumstances. Employees should be aware that performance management and/or disciplinary action taken in accordance with this procedure is considered to be reasonable management action. While staff may be uneasy during these processes, these reasonable actions may not form the basis of a stress or bullying complaint.

The procedure will be guided by the following standards:

- The procedure is accessible to staff via the policies and procedures section of the RCH intranet;
- sanctions, if imposed, are appropriate;
- Decisions and processes embody the principles of *natural justice*;
- Decisions are documented; and
- Appropriate confidentiality is maintained.

2. Definitions

Natural justice

In the employment context, natural justice refers to the principle that:

- The employee has the right to know the substance of the allegations made against them and is given the opportunity to put forward their version of events and respond to those allegations;
- Issues are investigated impartially; and
- The decision maker is unbiased and will act without self-interest.

Misconduct

Misconduct is a wrong or improper act which usually involves something more than a mere error of judgement or innocent mistake. Misconduct includes a failure to act in accordance with required standards of behaviour, including as set out in the RCH Code of Conduct. Misconduct usually implies an act done wilfully or with a wrong intention. Below is a list of examples of misconduct. Some of these behaviours and conduct, depending on the circumstances, would also constitute 'serious misconduct'.

- Breach of RCH policies and procedures or accepted standards of behaviour, including breaches of the RCH Code Of Conduct;
- Unprofessional or inappropriate behaviour;
- Bullying, abuse or sexual harassment of another staff member, patient or member of the public;
- Threatened or actual assault of another staff member, patient or member of the public;
- Conflicts of interest;
- Damage to, or misuse of, RCH property and facilities;
- Failure to observe occupational health, safety and welfare policies, instructions and requirements;
- Failure to abide by professional codes of conduct;
- Breaches of privacy and/or confidentiality;
- Accessing patient or staff information other than for the performance of hospital duties;
- Breach of Information Technology security by providing RCH passwords to other persons;
- Accessing pornography at work;
- Yelling at staff or patients;
- Smoking on RCH premises;
- Persistent lack of punctuality;
- Abandoning work without justified reason, and/or
- Making false, frivolous or vexatious allegations.

Serious Misconduct

Serious misconduct is misconduct of a more serious or significant nature. It is conduct that usually justifies termination of employment without notice.

Serious misconduct may include a number of incidents of misconduct, a single offence frequently repeated or a single serious incident.

Whether conduct is ‘serious misconduct’ warranting summary dismissal will depend on the facts and circumstances of each case.

Serious misconduct includes wilful, or deliberate, behaviour by an employee that is inconsistent with the continuation of the contract of employment. Examples of serious misconduct include:

- Refusal to comply with lawful and reasonable instructions;
- Serious, significant breaches of RCH policy, including of the RCH Code of Conduct;
- Dishonesty in the course of employment;
- Repeated misconduct following warnings and/or counselling;
- Knowingly falsifying timesheets or falsely claiming payment from RCH;
- Deliberate removal of RCH property without authorisation;
- Theft or fraud;
- Fighting, threats of physical violence or assault;
- A serious, persistent dereliction of duties;
- Using illicit drugs at work;
- Being under the influence of illicit drugs or alcohol at work;
- Serious misbehaviour that constitutes
 - a serious or imminent risk to the health and safety of a person;
 - a serious risk to the reputation or viability of the RCH;

Unsatisfactory performance

Unsatisfactory performance is the failure to meet the standard of work expected for the position in which the employee is engaged. Unsatisfactory performance may include (but is not limited to) the failure to adhere to deadlines, failure to complete work at the required standard and/or work performance that is careless or negligent.

3. Application of Procedure

This procedure applies to staff members of the RCH.

Performance management and/or disciplinary action may occur where the RCH has a concern about an employee's *unsatisfactory performance* or there is an allegation of *misconduct or serious misconduct against an employee*.

Managers and Supervisors should confer with People and Culture prior to application of this procedure.

4. Procedure

4.1 Assessing the complaint or conducting an investigation

The manager may undertake a preliminary assessment where a complaint about an employee has been brought to his or her attention. The complaint may relate to the conduct of the employee or to a set of circumstances that may indicate improper conduct.

Not every complaint which has been assessed by a manager will require an investigation. The majority of concerns should be able to be resolved at an informal level by supervisors or managers, or through other internal processes.

Managers should assess information relating to misconduct or improper behaviour to ensure that the complaint is genuine, and if correct, should be dealt with under this procedure.

Where a manager forms the view that a formal investigation is required, they must report the matter to their divisional Executive Director, who will liaise with the Legal Department and People and Culture to confirm whether an investigation will occur and to determine the appropriate method of investigation. The investigation should be initiated/managed by the Legal Department to ensure that legal professional privilege is retained.

4.2 Performance Management and Misconduct

Prior to initiating performance management or a disciplinary process, the relevant manager should first consult with People and Culture.

The following process will apply in circumstances of unsatisfactory performance or misconduct. For instances of alleged serious misconduct, please refer to section 4.3 below for information on that process.

Each of the following steps will generally be applied by RCH. However the circumstances and seriousness of each case need to be considered and where reasonable and appropriate, a written warning or final written warning may apply, notwithstanding that previous counselling or warnings have not applied.

4.2.1 Informal counselling

As the first step, where a manager has a concern with an employee's performance or conduct, the manager should consider an informal counselling session.. Before undertaking this step, the manager should consult with People and Culture.

At the informal counselling the manager should:

- provide details of the behaviour of concern;
- give the employee an opportunity to respond to the concern and to raise any other matters that the employee feels is relevant;
- discuss and implement a strategy for dealing with the problem. For example, the employee may require training or other assistance to help him or her overcome the problem, or there may be underlying issues which may be resolved by counselling through the Employment Assistance Program;
- notify the employee that failure to improve performance in line with the expectations established as part of the counselling process may lead to further formal disciplinary action; and
- keep a diary note of the discussion and the action plan.

After the informal counselling, the manager should review the situation within an agreed time frame, and, if appropriate, repeat the informal counselling prior to taking any formal disciplinary action.

4.2.2 Formal disciplinary action

Where an employee's performance or conduct does not improve after counselling, or where the behaviour at issue is of a sufficiently serious nature to require immediate formal action, formal disciplinary action will occur. Such action may include:

- (a) On the first occasion where disciplinary action may be necessary, a verbal warning may be issued (**verbal warning**). In the event that the employee's response is unsatisfactory or a verbal warning is not appropriate in the circumstances, a written warning may be issued. This warning will be recorded on the employee's personnel file (**first written warning**).
- (b) If unsatisfactory performance or misconduct continues, and if appropriate, a further formal warning in writing will be given to the employee and recorded on the employee's personnel file (**second and final written warning**).
- (c) In the event of further unsatisfactory performance or misconduct occurring, then the employment of the employee may be terminated after the matters have been investigated and reasons sought from the employee.

4.2.3 Where formal disciplinary action is contemplated as set out above, the following process should be followed as far as reasonably practicable:

- (a) the employee be provided with a letter containing a written outline of the allegations. The employee be asked to attend a meeting to respond to the allegations. The employee be given the opportunity to have a support person of his or her choice attend the meeting;
- (b) if the employee requests that the meeting be delayed due to the reasonable unavailability of his or her support person, the RCH should agree to a change of time and date provided that this is within one week (except in special circumstances) of the original stipulated time;
- (c) the meeting should be attended by a Director/Head of Department level equivalent of the RCH and another person on the RCH's behalf (who may be a legal or industrial representative of the RCH). One of these persons will act as note-taker to record events;
- (d) at the meeting, the employee will be given an opportunity to respond to the allegations;
- (e) following the meeting, the RCH should take time to consider the response and come to a decision as to whether to give the employee a written warning, and/or whether other action should be taken (e.g. further training), or whether no action should be taken at all.

(f) the RCH should again meet with the employee, usually within 48 hours (subject to availability), to advise of the RCH's decision. A written record of the decision should be handed to the employee and placed on the employee's file;

(g) warnings should set out the required standards to be met, the timeframe within which the employee is to meet them and will state that the consequences of repeating the behaviour or conduct, which may include further disciplinary action up to and including termination of employment.

4.2.4 Actions taken by the RCH in accordance with this Policy do not constitute bullying provided they are carried out in a reasonable manner.

4.3 Serious Misconduct and Summary Dismissal

4.3.1 In cases of serious misconduct, the RCH may elect to summarily dismiss an employee.

4.3.2 The RCH representatives will investigate and carefully consider the facts of any situation where serious misconduct has been alleged, to ensure that serious misconduct has occurred and summary dismissal is justified.

4.3.3 Depending on the facts, summary dismissal **may** be justified where any misconduct is deemed by the RCH to be of a serious nature.

4.3.4 In cases of serious misconduct, the following process should be followed as far as reasonably practicable:

(a) a meeting be convened by the relevant divisional Executive Director. The employee be provided with a letter containing a written outline of the allegations. The employee be asked to attend the meeting to respond to the allegations. The employee be given the opportunity to have a representative of his or her choice attend the meeting;

(b) the employee may be stood down with full pay pending the meeting and/or following the meeting;

(c) if the employee requests that the meeting be delayed due to the reasonable unavailability of his or her representative, the RCH will agree to a change of time and date provided that this is within one week (except in special circumstances) of the original stipulated time;

(d) the meeting should be attended by the divisional Executive Director and another person on the RCH's behalf (one of whom may be a legal or industrial representative of the RCH). One of these persons will act as note-taker to record events;

(e) at the meeting, the employee will be given an opportunity to respond to the allegations;

(f) following the meeting, the RCH will consider the employee's response and will then make a decision as to whether to dismiss the employee, or to take other action such as issuing a final written warning, providing further training, or whether no action should be taken at all. In making the decision, the RCH may also consider all of the circumstances and factors such as the employee's prior record and length of service;

(g) the RCH should meet with the employee again, usually within 48 hours (subject to availability), to advise of the RCH's decision. A written record of the decision should be handed to the employee and placed on the employee's file;

(h) if dismissal occurs, the employee will be provided with a statement of service containing details of duties performed and date of commencement and cessation of work. No further reference will be provided. The employee will be provided with a termination payment constituting accrued entitlements during the next pay period;

(i) if a final written warning is issued, the employee will be advised that any further instances of misconduct or serious misconduct will render the employee liable to summary dismissal.

5. Suspension and dismissal of medical practitioners

5.1 Prior to dismissing or suspending any medical practitioner employed or engaged by the RCH, the RCH must:

5.1.1 conduct an investigation of the allegations made against the medical practitioner; and

5.1.2 provide the medical practitioner with an opportunity to be heard by the Board in relation to the allegations.

6. Additional Procedure Where Individual Concerned Has Made a Protected Disclosure

6.1 If disciplinary action is being contemplated in relation to an individual who is known to have made a protected disclosure, the RCH CEO will make the final decision as to whether disciplinary or other action will be taken. In all cases where disciplinary or other action is being contemplated in relation to an individual who is known to have made a protected disclosure, the RCH CEO must be satisfied that the following can be demonstrated:

6.1.1 the fact that the employee has made a protected disclosure is not a substantial reason for the taking of the action against the employee;

6.1.2 there are good and sufficient grounds that would fully justify action against any other person in the same circumstances; and

6.1.3 there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

6.2 The RCH CEO or delegate will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken and the reasons why the action is not in retribution for the making of the disclosure.

6.3 The RCH CEO or delegate will clearly advise the individual of the proposed action to be taken, and of any mitigating factors that have been taken into account.

6.4 All RCH employees and officers are reminded that the identity of a person who has made a protected disclosure must be kept confidential and that a breach of confidentiality may result in criminal penalties including fines and imprisonment for up to 12 months.

7. Revision of the Policy

7.1 This policy will be reviewed every 3 years or earlier if required.