

Managing Misconduct

Implementation Guide – Ministry of Health PD2014_042

Policy Number 3.020

Policy Function Human Resources

Issue Date 23 November 2016

Summary This policy sets out the requirements for managing potential and / or substantiated misconduct by staff of the Justice Health & Forensic Mental Health Network and by visiting practitioners in accordance with Ministry of Health PD2014_042 *Managing Misconduct*.

Responsible Officer Executive Director Governance and Commercial Services

Applicable Sites

- Administration Centres
- Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
- Health Centres (Adult Correctional Centres or Police Cells)
- Health Centres (Juvenile Justice Centres)
- Long Bay Hospital
- The Forensic Hospital

Previous Issue(s) Policy 3.020 (June 2012; May 2009)

Change Summary

- The revised policy provides guidance on initial review of allegations, assessing and managing related risks, investigating the allegations, making decisions based on findings, implementing and communicating those decisions, and making mandatory notifications. The process focuses on prompt and timely management of all allegations, risk management, procedural fairness and confidentiality.
- Deletion of JH&FMHN procedures and refer to *Managing Misconduct: Procedures PD2014_042*.
- Update policy title to *Managing Misconduct*.

TRIM Reference POLJH/3020

Authorised by Chief Executive, Justice Health & Forensic Mental Health Network

1. Preface

The disciplinary process is an administrative procedure, based on procedural fairness, used by Justice Health & Forensic Mental Health Network (JH&FMHN) to ensure a standardised approach when addressing the behaviours or actions of a staff member which may fall short of the documented policies, procedures and guidelines or professional standards expected by JH&FMHN.

An effective discipline policy provides managers and staff with a framework for dealing fairly with complaints and unacceptable behaviour. Impartiality, consistency, consultation and effective communication are the key tenets of the policy, and ensure that all staff are treated in the same manner.

This policy sets out the requirements for managing potential and / or substantiated misconduct by staff of the JH&FMHN and by visiting practitioners.

2. Policy Content

2.1 Mandatory Requirements

- The protection of an organisation's patients and clients, including the young people for whom it is responsible, is to be the primary consideration when managing and making decisions related to potential and substantiated misconduct.
- Potential misconduct must be treated seriously and an initial review of any apparent or potential misconduct must take place without delay.
- Where an initial review indicates there is a credible allegation or possibility of misconduct, or that the matter involves a child-related allegation, charge or conviction, further action to pursue the matter in accordance with this policy should take place in a timely manner consistent with the requirements of procedural fairness.
- Any ongoing risks related to potential or substantiated misconduct must be identified, assessed, managed, and regularly reviewed throughout the management process, including any requirements arising from the Service Check Register policy.
- Those involved in a potential misconduct process have both the right to confidentiality and the responsibility for maintaining confidentiality, subject always to the overriding need to be able properly to undertake any inquiries or investigation that may be necessary, and to take the action required by this Policy Directive.
- A person who is subject of a misconduct process must be given adequate opportunity to respond to any allegations, adverse findings, and proposed disciplinary action, prior to any final decision being made.
- A person who is subject of a misconduct process must be afforded the right to a support person being present at any meetings. Other support may also need to be offered to all affected persons, where appropriate.
- Any findings made must be based on relevant available information that is established 'on the balance of probabilities'.

- Any action to be taken as a response to a misconduct finding must be proportionate to the nature of the misconduct, after consideration of any extenuating circumstances, previous work performance and history, and any identified ongoing risks.
- A termination of employment in NSW Health Service following a finding of misconduct will apply to all roles or multiple assignments undertaken as an employee in the NSW Health Service unless the person can show cause as to why this should not occur. NSW Health organisations must provide dismissed staff access to the show cause mechanism outlined in the JH&FMHN Managing Misconduct Procedure Manual.
- Where the appointment of a visiting practitioner is terminated following a finding of misconduct, the relevant Health organisation must notify any other Health organisation(s) where the visiting practitioner also holds an appointment contract to allow them to assess and manage any local risks.
- Any required internal or external notifications concerning potential or substantiated misconduct (such as to registration authorities) must be made without delay in accordance with the relevant statutory and / or policy provisions.
- Appropriate records of all stages of the process (including the initial review and any investigation) and outcomes must be kept and stored securely.
- Disciplinary action must be managed in accordance with MoH [PD2014_042](#) *Managing Misconduct*.

2.2 Implementation – Roles & Responsibilities

The Chief Executive is required to:

- Ensure that this Policy Directive is communicated to, and complied with by staff involved in managing potential or substantiated misconduct.

Workforce Unit is required to:

- Ensure provision of information and advice as necessary to support effective implementation of this policy.

Supervisors / Managers are required to:

- Comply with this Policy Directive in dealing with all cases of potential and substantiated misconduct.
- Promptly notify the CE of any serious allegations

Staff are responsible for

- Fulfilling the conditions of their employment contract and adopting the prescribed standards of conduct and performance as set out by legislation and the JH&FMHN and Ministry of Health Codes of Conduct.

The Director Workforce is responsible for

- Informing the respective Executive/Service/Clinical Director and the Australian Health Practitioner Regulation Agency (AHPRA) in the event of an investigation involving a registered professional.

3. Procedure Content

For comprehensive procedures managing misconduct, staff should refer to [PD2014 042](#) *Managing Misconduct*.

4. Definitions

Must

Indicates a mandatory action required that must be complied with.

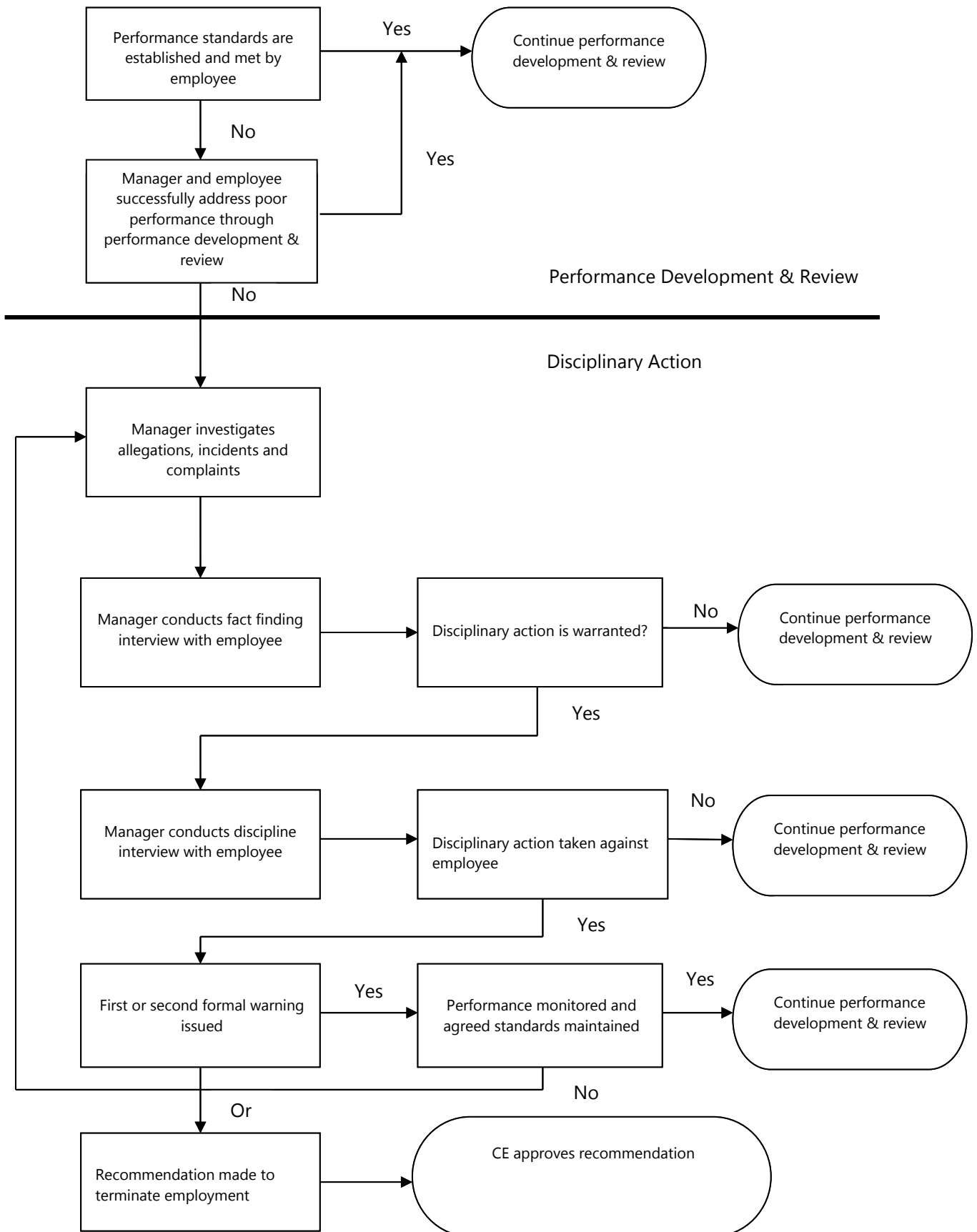
Should

Indicates a recommended action that should be followed unless there are sound reasons for taking a different course of action.

5. Legislation and Related Documents

Legislation	Anti Discrimination Act 1977 Government Sector Employment Act 2013 Health Practitioner Regulation National Law (NSW) Health Services Act 1997 Public Interest Disclosures Act 1994 Privacy and Personal Information Protection Act 1998 Work Health & Safety Act 2011
NSW MoH Policy Directives, and Guidelines	NSW Public Health System Industrial Awards PD2013 036 <i>Service Check Register for NSW Health</i> PD2014 042 <i>Managing Misconduct</i> PD2015 049 <i>NSW Health Code of Conduct</i> PD2016 027 <i>Public Interest Disclosures</i>
JH&FMHN Policies	2.010 <i>Code of Conduct</i> 2.016 <i>Management of a Complaint or Concern about a Clinician</i> 2.140 <i>Public Interest Disclosures</i> 3.115 <i>Management of Staff with Drug & Alcohol Problems</i> 3.132 <i>Performance Development & Review</i> 3.140 <i>Sick Leave Management</i>
Records NSW	General Retention and Disposal Authority – Personnel Records (GDA 12)

Appendix 1 – Disciplinary Framework Flowchart



Note: 1 – The need for further investigation and fact finding interviews will depend on the circumstances