Discipline Policy

1. Purpose

The *Discipline Policy* specifies the principles and minimum requirements with which Health Service Providers must comply to ensure a fair, reasonable and consistent approach to the management of matters that may concern a breach of discipline relevant to Part 11 of the *Health Services Act 2016* (HS Act).

This Policy does not apply to unsatisfactory and substandard performance or grievance matters, the requirements for which are set out in MP 0041/16 *Managing Unsatisfactory and Substandard Performance Policy* and MP 0116/19 *Grievance Resolution Policy* respectively.

For the purpose of this policy a breach of discipline is as defined in section 161 of the HS Act:

> An employee commits a breach of discipline if the employee:
> (a) disobeys or disregards a lawful order; or
> (b) contravenes –
> (i) any provision of this Act applicable to that employee; or
> (ii) any public sector standard or code of ethics; or
> (iii) a policy framework;
> or
> (c) commits an act of misconduct; or
> (d) is negligent or careless in the performance of the employee's functions; or
> (e) commits an act of victimisation within the meaning of the *Public Interest Disclosure Act 2003* section 15.

This Policy is a mandatory requirement under the *Integrity Policy Framework* pursuant to section 26(2)(l) and section 19(1A) of the HS Act.

This Policy supersedes MP 0040/16 *Discipline Policy*.

2. Applicability

This Policy is applicable to all Health Service Provider employees.

Professional conduct matters related to contracted medical practitioners, as Staff Members, are to be managed through MP 0083/18 *Disputes About the Professional Conduct of a Contracted Medical Practitioner Engaged Under a Medical Services Agreement Policy,* which specifies this process.

3. Policy requirements

For all complaints or incidents which may concern a breach of discipline, Health Service Providers must ensure:

- a consistent process for the assessment and management of suspected breaches of discipline is applied
- appropriately skilled officers in the Health Service Provider assess and manage the matters
- the process for all notifiable and reportable conduct and non-reportable or non-notifiable matters that are in the public interest and/or for the protection of patients and/or a serious risk to patient safety, are concluded to a finding and identification of any proposed action, (including Disciplinary Action) as soon as reasonably practicable in accordance with section 163 of the HS Act
- documented arrangements exist for the processes related to the:
  - receipt of complaints, or any information received regarding a staff member's conduct
  - assessment of the information conducted for the purpose of meeting notifying obligations pursuant to MP 0125/19 *Corruption Crime and Misconduct Act 2003* (CCM Act) and the *Notifiable and Reportable Conduct Policy.*
  - investigations
  - appointment of the decision maker and any change to the decision maker
  - recording of all decisions made and that decisions are transparent and capable of review, including the rationale for the decision that reflects their assessment of the seriousness of the matter
  - management of case records.
- all matters that may concern a breach of discipline are recorded in the System Manager Case Management System (CMS), as soon as reasonably practicable, in accordance with the CMS Protocols
- all disciplinary matters are concluded as soon as reasonably practicable
- procedural fairness is applied and as a minimum:
  - all involved officers, including the decision makers and investigators, act fairly and without bias, and do not hold a vested or direct personal interest in the outcome of the process
  - any allegations are provided in writing, in sufficient detail to enable a respondent to know what is alleged and have a reasonable opportunity to present their case in response, prior to the making of a finding
  - the respondent is advised of the proposed disciplinary action and given reasonable opportunity to respond
  - the respondent's response is considered prior to the finalisation of any disciplinary action taken in relation to a finding
  - the respondent is provided with the final outcome in writing
  - decisions are based on logically probative evidence and the balance of probabilities
  - irrelevant considerations are not taken into account in making the decision.
- within 30 days, for all matters pursuant to:
  - section 167(1) of the HS Act, the respondent must be notified

- section 167(2) of the HS Act, the Department CEO must be notified.

All Health Service Providers must ensure their staff members comply with confidentiality requirements if a party to a Discipline Process.

A breach of this mandatory policy by an employee may constitute a breach of discipline.

4. Compliance monitoring

Health Service Providers must provide on a six monthly basis to the Department CEO, via the Chief Executive or Health Service Provider Board, an aggregated report, based on data contained within the System Manager CMS including but not limited to, trend analysis related to discipline.

The System Manager may:

- request from a Health Service Provider a copy of the documented arrangements for the management of conduct which may concern a breach of discipline
- review CMS data associated with matters that may concern a breach of discipline
- in consultation with the Health Service Provider, monitor and review matters for assurance purposes, in relation to:
  - Public Sector Discipline Standard
  - the minimum requirements for Procedural Fairness
  - decision making that is transparent and reviewable.

The System Manager may provide system-wide aggregated reports to oversight agencies of all Health Service Providers about matters which may concern a breach of discipline, in the form the Department CEO sees fit, using the CMS data and in consultation with the Health Service Providers.

5. Related documents

The following documents are mandatory pursuant to this policy:

- N/A

6. Supporting information

The following information is not mandatory but informs and/or supports the implementation of this policy:

- Refer to Health Service Provider Discipline Guide and related documents (WA Health Staff only)
- Notifiable and Reportable Conduct Guide
- Case Management System (CMS) User Document (access restricted to authorised employees only)

7. Definitions

The following definitions are relevant to this Policy.

Term	Definition
balance of probabilities	The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proven to be true on the balance of probabilities if its existence is more probable than not. It is a test that requires a lesser burden of proof than the criminal test of 'beyond reasonable doubt'.
breach of discipline	In accordance with section 161 of the HS Act: An employee commits a breach of discipline if the employee - (a) disobeys or disregards a lawful order; or (b) contravenes – (i) any provision of this Act applicable to that employee; or (ii) any public sector standard or code of ethics; or (iii) a policy framework; or (c) commits an act of misconduct; or (d) is negligent or careless in the performance of the employee's functions; or (e) commits an act of victimisation within the meaning of the *Public Interest Disclosure Act 2003* section 15.
System Manager Case Management System	The database administered by the System Manager provided to the Health Service Providers to enter, track and report cases of conduct that may concern a breach of discipline.
data	Qualitative and quantitative factual information collected to be examined, considered and used as a basis for analysis and reporting. data may be drawn from sources including those requested by Department CEO, but not limited to: • System Manager Case Management System • investigation reports • case files.
decision maker	The person occupying the nominated position authorised under the relevant employing authority's Authorisations Schedule, to commence the disciplinary process, make findings in relation to Disciplinary matters and take Disciplinary Action.
disciplinary action	Pursuant to section 6 of the HS Act in relation to a breach of discipline by an employee, means any one or more of the following: (a) a reprimand;

Term	Definition
	(b) the imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding of the breach of discipline was made; (c) transferring the employee to another Health Service Provider with the consent of the employing authority of that Health Service Provider; (d) if the employee is not a chief executive, transferring the employee to another office in the Health Service Provider in which the employee is employed; (e) reduction in the monetary remuneration of the employee; (f) reduction in the level of classification of the employee; (g) alteration of the employee's scope of practice or duties, or both; or (h) dismissal;
Employee	Pursuant to section 6 of the HS Act an employee means a person employed in a Health Service Provider and includes – (a) the chief executive of the Health Service Provider; (b) a health executive employed in the Health Service Provider; (c) a person employed in the Health Service Provider under section 140; (d) a person seconded to the Health Service Provider under section 136 or 142;
employing authority	Pursuant to section 103 of the HS Act employing authority means – (a) in relation to a chief executive – the Department CEO; (b) in relation to a health executive employed in a Health Service Provider - (i) if the Health Service Provider is a board governed provider – the board; (ii) if the Health Service Provider is a chief executive governed provider – the chief executive; (c) in relation to a Health Service Provider or an employee (other than a chief executive or a health executive) in the Health Service Provider, the chief executive or board on whom the power to employ or engage employees is conferred.
investigation	For the purpose of this Policy, an investigation is a systematic process to discover the facts / particulars relating to the complaint /incident that may concern a breach of discipline and leads to the examination and analysis of the evidence. All investigations must result in or lead to an outcome.

Term	Definition
notifiable and reportable conduct	For the purpose of this Policy, notifiable and reportable conduct means conduct by a staff member that: • *may* be suspected on reasonable grounds to constitute or may constitute Professional Misconduct or Unsatisfactory Professional Performance as defined in accordance with section 5 of the *Health Practitioner Regulation National Law (WA) Act 2010* (National Law) (reportable to the Department CEO pursuant to section 146(1) of the HS Act *and/*or • relates to a charge for a Serious Offence (reportable to the Department CEO pursuant to HS Act*:* Section 146(2): or • *may* concern a suspected breach of discipline sections 160, 161 & 162 of the HS Act *and/*or • *may* concern Suspected Minor or Serious Misconduct as defined in accordance with section 4 of the CCM Act (notifiable to the Corruption and Crime Commission or the Public Sector Commission pursuant to section 28 or 45D of the CCM Act.)
procedural fairness	The right of the respondent to: • know the details of the alleged breach of discipline • be heard and present their case in response to the allegation(s) • have decisions made by an unbiased decision maker who undertakes a proper assessment of the facts • have decisions made based on the evidence and the balance of probabilities • respond to the proposed finding and action before the decision maker confirms their decision and • be provided with the final outcome in writing. The three main rules or principles: **Bias rule** • The decision maker (or person requested to investigate) acts fairly and without bias. • The decision maker (or person requested to investigate) does not hold, or is not perceived to hold, a vested or direct personal interest in the outcome of the process. **Hearing rule** • The respondent is provided with notice of any allegation(s) against them, given a reasonable opportunity to respond to those allegation(s) or decisions affecting him or her, and their response is genuinely considered. **Evidence rule** • Decisions are based on logically probative evidence. • Irrelevant considerations are not taken into account in making the decision.

Term	Definition
respondent(s)	The employing authority's employee(s) against whom an allegation or complaint has been made.
staff member	staff member of a Health Service Provider as defined by the HS Act, means: (a) an employee in the Health Service Provider (b) a person engaged under a contract for services by the Health Service Provider.
victimisation	Intentional unfavourable treatment such as aggression, refusing to provide information, ignoring a person, or not following a direction to have no contact with a person.

8. Policy contact

Enquiries relating to this Policy may be directed to:

Title: Director System-Wide Integrity Services
Directorate: Governance and System Support
Email: SWIS@health.wa.gov.au

9. Document control

Version	Published date	Effective from	Review date	Amendment(s)
MP 0127/20	9 December 2019	2 January 2020	January 2023	Original version
MP 0127/20 v.1.1	12 December 2019	12 December 2019	January 2023	Minor amendments as listed below.
• Removal of Supporting information Case Management System (CMS) – Protocols-Administration of complaints. • Inclusion of supporting information: Case Management System (CMS) User Document Access restricted to authorised employees only.				
MP 0127/20 v.1.2	17 January 2020	17 January 2020	January 2023	Minor amendments listed below.
• Inclusion of correct year in Public Interest Disclosure Act 2003. • Remove reference to MP 0040/16 in the policy document header.				
MP 0127/20 v. 1.3	11 July 2023	11 July 2023	January 2023	Minor amendment as listed below.
• Amendment to the policy purpose to replace reference to section 20 (1)(b) of the *Health Services Act 2016* with section 19 (1A) to reflect the recent amendments to *Health Services Act 2016*.				

10. Approval

Approval by	Dr David Russell-Weisz, Director General, Department of Health
Approval date	6 December 2019

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