

5.0 CODE OF BEHAVIOUR

This section is to provide employees with acceptable and unacceptable standards of behaviour and to outline what are considered to be breaches of the code and processes to follow when this occurs.

5.1 Staff Behaviour

5.1.1 The Organisations Code of Behaviour provides that employees should act reasonably at all times having regard to the patients, clients and the public they serve, the welfare of colleagues, the interests of the organisation and their conditions of appointment.

5.1.2 Employees have an obligation to:

- a) be present at work as required and to be absent from the workplace only with proper authorisation;
- b) to conduct themselves in a professional manner at all times. For professionally qualified or registered staff this means complying with their own code of professional conduct;
- b) maintain expected standards of performance. Employees should carry out their duties in an efficient and competent manner, and avoid behaviour, which might impair their work performance;
- c) display loyalty to the organisation and use their best endeavours to assist the organisation to meet its objectives;
- d) respect the rights of others. In performing their duties, employees should respect the rights of the public and their colleagues. In meeting this obligation, employees are expected to:
 - ÿ avoid behaviour which might endanger , cause distress or be deemed bullying or harassing to other employees, or otherwise contribute to disruption of the workplace;
 - ÿ not allow workplace relationships to adversely affect the performance of official duties;
 - ÿ respect the privacy of individuals when dealing with personal information;
 - ÿ not discriminate against or harass patients, clients, visitors, colleagues, or others because of their sex, age, marital status, ethnicity, disability, religious or ethical beliefs, colour, race, political opinion, employment status, family status or sexual orientation;
 - ÿ respect the cultural background of patients, clients the public and colleagues in all official dealings;
 - ÿ establish and maintain professional relationships with patients/clients receiving care. This is the employees' responsibility and not the responsibility of the patient;
 - ÿ have due regard for the safety of others in the use of the organisations property and resources;
- e) obey all lawful and reasonable Employer instructions and policies and to work as directed.

Implicit in this is an obligation to obey the law;

- f) maintain proper standards of integrity and behaviour in the performance of their duties and in their private lives, where it may reflect badly upon the organisation;
- g) show reasonable care, and neither use, nor allow the use of the organisations property, resources, or funds for anything other than authorised purposes;
- h) incur no liability on the part of the Employer without proper authorisation;
- i) maintain all necessary qualifications (including registration and annual practising certificates) to enable employees to perform their duties legally and efficiently;
- j) not to demand, claim or accept any fee, gratuity, commission or benefit from any person or persons other than the Employer in payment for any matter or thing concerned with the employee's duties and responsibilities, except with the prior written consent of the Employer;
- k) ensure that not at any time during their employment or following termination do they knowingly or without due care disclose confidential information, or information relating to any of the business affairs, software, property or other activities of the Employer and shall use his/her best endeavours to prevent the publication or disclosure of same;
- l) not engage in alternative employment with/or be a member of an organisation, except with the prior written approval of the Employer, which may impinge on the proper performance of the employee's employment or be in conflict with the interests of the organisation.

5.1.3 The standards set guidelines for staff to ensure that:

- a) the organisation runs efficiently and effectively;
- b) staff are treated fairly and equitably;
- c) disciplinary action does not come as a surprise to staff.

5.2 Definitions

The following are types of misconduct, which constitute a breach of the Organisations Code of Behaviour. These lists should not be regarded as exhaustive. Any other matters of a similarly serious nature may lead to disciplinary action being taken.

As a general rule misconduct usually falls into one of the following categories:

- absenteeism;
- dishonesty;
- willful disobedience;
- misconduct;
- unsatisfactory work performance.

However for the purpose of this Code of Behaviour, misconduct is divided into three areas:

- a) **Misconduct** - these items of misconduct will usually lead to the disciplinary procedures being invoked.
- b) **Serious Misconduct** - these items will usually lead to the disciplinary procedures being invoked

- which can include a written warning, final written warning, or dismissal.
- c) **Behaviour Detrimental to the Best Interests of the Organisation** - these items will usually lead to the disciplinary procedures being invoked which can include a written warning, final written warning, or dismissal.

Important Notes:

Behaviour generally defined under misconduct may be regarded as serious misconduct if these actions are such that they could lead to substantial risks to patients, harm to employees or major ramifications for the organisation.

It should be noted that all cases of professional incompetence/misconduct must be managed by the Group Manager of the service (or the Chief Executive) in consultation with the relevant Professional Advisor and the Human Resource Department.

In confirmed cases of professional incompetence/incapacity/misconduct Tairawhiti District Health may be legally required to report these to the appropriate registration authority.

Drugs and Alcohol

- a) **Drugs** - The term “drugs” refers to drugs as scheduled within the Misuse of Drugs Act 1975 or prescription drugs that may cause impairment in the workplace.
- b) **Alcohol** - The term “alcohol” refers to any beverage that contains ethyl alcohol (ethanol), including but not limited to beer, wine and distilled spirits.

Misconduct

Misconduct comprises of actions or omissions which regarded in isolation do not warrant severe disciplinary action, such as dismissal.

Instances of such behaviour may include, but are not confined to, the following examples:

- ÿ Failing to follow organisational policies, standard procedures and By-laws and/or a legitimate instruction given by a supervisor or other authorised person, e.g. the smoking policy.
- ÿ Failing to maintain an acceptable level of work performance, for example, incompetence, carelessness, inefficiency, wasting time, tardiness.
- ÿ Failing, without good reason, to notify his/her supervisor or other authorised person that he/she is unable to commence work at the usual time.
- ÿ Habitually arriving late for duty.
- ÿ Being absent from his/her assigned place of work during working hours without authority or without legitimate excuse.
- ÿ Sleeping while on duty.
- ÿ Unauthorised gambling on the organisations premises.
- ÿ Improper use, wastage or damage of the organisations property, stores, tools and equipment.
- ÿ Reporting for work unsuitably dressed or in such a condition that he/she is unable to perform the required duties in a safe and proper manner.
- ÿ Being unable to perform the required duties in a safe and proper manner due to being under the

influence of drugs.

- ÿ Being unable to perform the required duties in a safe and proper manner due to being under the influence of alcohol.
- ÿ Smoking on the premises.
- ÿ Inappropriate and/or disruptive behaviour at the place of work.
- ÿ Posting offensive notices or pictures on the notice boards or elsewhere on the premises.
- ÿ Unreasonable behaviour towards a patient, resident, visitor or employee of the organisation. This will include the use of abusive language or any other behaviour, which is likely to cause distress or offence.
- ÿ Failing to report a fire or the use of fire equipment, failing to observe safety rules; working in an unsafe manner or failing to make proper use of safety equipment when such equipment is installed or provided.
- ÿ Failing to report to his/her supervisor any accident involving personal injury to a staff member, patient or visitor, or damage to the organisations or patient property.

Serious Misconduct

Serious Misconduct is behaviour, which undermines the contractual relationship between the employee and the Employer, and/or seriously threatens the wellbeing of the organisation, the patients or clients, or the staff.

Instances of such offensive behaviour are deemed to include, but are not confined to, the following examples:

- ÿ Refusing to perform properly specified duties or to carry out lawful instructions of clinical leaders, managers or supervisors, or 'walking off the job'.
- ÿ Unless an Employment Agreement provides otherwise, being absent for three consecutive working days without authorisation (abandonment of employment).
- ÿ The unauthorised bringing of alcohol on to the organisations premises.
- ÿ Consuming alcohol on the organisations premises during the employee's normal working day or when the employee is required to be on call.
- ÿ The use of, or being in possession of non-prescribed prohibited drugs while on the organisations premises during the employees normal working day or when the employee is required to be on call.
- ÿ Being unable to perform the required duties in a safe and proper manner due to being under the influence of alcohol or drugs.
- ÿ Behaviour causing safety risks to patients or staff, such as smoking in areas specifically designated as hazardous (eg., where oxygen equipment is stored or in use) or unauthorised use of fire protection or safety equipment.
- ÿ Assaulting or threatening to assault any patient, resident, visitor, or employee on the organisations premises.
- ÿ Acts or omissions which jeopardise the safety of another staff member, patient, resident or visitor, or which are detrimental to the quality and efficiency of the service.
- ÿ Not being in possession of an annual practising certificate or any other professional practising

requirement where required by legislation and claiming reimbursement from the organisation.

- ÿ Falsifying any claim for reimbursement or remuneration.
- ÿ Failing to report to his/her supervisor any accident involving a patient's welfare.
- ÿ Unreasonable behaviour towards other employees of the organisation. This will include the use of abusive or offensive language, sexually suggestive behaviour, racially offensive behaviour, bullying or harassing behaviour or any other behaviour, which is likely to cause distress or offence.
- ÿ Romantic (dating) or sexual relationships, or any type of relationship with a patient/clients which aims to meet your own personal needs.
- ÿ Unauthorised possession of a patient's, residents, visitors or the organisations property. Possession or removal of another employee's property without the employee's consent.
- ÿ Deliberate falsification of an organisational record.
- ÿ Misrepresenting the organisation for personal gain.
- ÿ Disclosing to an unauthorised person any confidential information concerning any patient, resident, visitor or employee or disclosing any other information, which is confidential to the organisation.
- ÿ Deliberate or negligent actions or omissions resulting in serious damage to the organisations property.
- ÿ Coercive sexual or racial harassment of patients, visitors, or other staff members.
- ÿ Behaviour such as to bring or expose the organisation or the standing of the profession into disrepute. Such behaviour may be, but is not restricted to unprofessional practice, practising without appropriate registration, a conviction in a Court of Law or an offence which is punishable by a penalty of two or more years imprisonment, a conviction in a Court of Law or an offence relating to possession, receiving and/or supplying drugs, or a conviction in a Court of Law related to, or affecting the practice of an employee's profession, regardless of whether the conviction occurred as a result of employment in the organisation or private employment.

Behaviour Detrimental to the Best Interests of the Organisation

As a general principle, personal behaviour is no concern to the organisation, **except** where it interferes with the performance of official duties or reflects on the standing or integrity of the organisation or the employee's profession or trade. Therefore employees should not bring their Employer or profession into disrepute through their private activities.

Whether such actions fall into the category of Misconduct or Serious Misconduct will depend on the circumstances in each case. In making judgments of this kind, regard should be had to the following factors:

- ÿ the nature and circumstances of the activity;
- ÿ the position, duties and responsibilities of the employee;
- ÿ the consequences of the activity on the employee to fulfil her or his duties and responsibilities;
- ÿ the effects of the activity or its consequences on working relationships with colleagues, patients, outside contacts and the general public.

5.3 Correctional Interviews

When appropriate, correctional interviews should take place prior to instigating a formal investigative or disciplinary procedure.

Correction interviews are designed to get an employee back on track following performance problems or minor misconduct problems. This may include counselling, further training or whatever is necessary to modify behaviour or performance. The results of the correction interview are to be recorded on the employee's personal file.

If matters do not improve within a specified timeframe as a result of this process, the manager may proceed down a formal investigation process and if required the disciplinary procedure.

5.4 Investigations

It is a requirement not to instigate formal disciplinary proceedings until an investigation has taken place.

The employee's immediate Manager/Team Leader is responsible for conducting an investigatory process, and if applicable this may lead to the disciplinary procedure being invoked.

Managers/Team Leaders must consult with the Human Resource Department along with the relevant Professional Advisor before commencing an investigation.

During the investigation there will be a role for an employee representative/support person. Representation ensures that the employee's viewpoint is properly presented and that the organisations procedures are fair and seen to be fair.

Procedure

- Employees under investigation must be fully informed of the specific details of the allegations that have been made, so that they have a chance to consider them prior to the meeting occurring. Therefore the employee is to be advised in writing that an investigation is required, and the date and time that a meeting will occur. They are to be informed of the reason for the investigation and who will be present at the meeting.
- The employee is entitled not only to all of the details about the allegations made against them, but also access to all of the supporting evidence that the Manager will use to make their decision. This should include copies of any statements made by other employees if they are interviewed as part of the investigation.
- The Manager/Team Leader is to have a witness present and the employee must be advised to have a representative.
- At the meeting the Manager/Team Leader must outline the reasons why the investigation is required.
- It is a requirement that the Manager/Team Leader outlines an alleged breach of either organisational policy/procedure or guidelines, lack of performance giving clear examples, or outlines the alleged risk from the employee continuing to work in the organisation.

- The Manager/Team Leader must establish the facts with the employee along with any relevant witnesses. Second-hand information must not be relied upon.
- The Manager/Team Leader must establish:
 - Was there a risk to the patients or employees?
 - Did the employee do the specific allegation?
- The Manager/Team Leader must establish that the employee is aware of the Policies, Procedures and professional responsibilities/accountabilities required from the employee.
- The Manager/Team Leader must consider other factors such as:
 - Has the Employer contributed to the situation?
 - Has the employee received training?
 - Has the employee received proper supervision?
 - Has the employee received an unclear or wrong instruction?
 - Has this matter been allowed to go on unchecked?
 - Has the Employer condoned the action in the past?
- The employee must be allowed adequate time to respond to each allegation. The employees reasons must be carefully measured giving due consideration for the employees previous record.
- No decisions should be made before the investigation is completed, and a decision on the outcome of the investigation must be verbally reported to the employee. The employee must be given an opportunity to add any further evidence to support their position.
- If the explanations are clear-cut and there is an admission, then the Manager/Team Leader may decide on appropriate action and this should be verbally conveyed to the employee.
- Having fully investigated the matter, having interviewed the employee, having further investigated the matter and considered the explanations given by the employee, the Manager/Team Leader has the following options to consider:
 - Corrective action within a reasonable timeframe
 - Training or reallocation of work/duties
 - Rehabilitation
 - Directive to take leave
 - Medical retirement
 - Disciplinary action which may include, a written warning, a final written warning, or dismissal. Dismissal decisions should not be taken until other disciplinary options are considered and should only be considered in cases of serious misconduct or where the appropriate prior warning procedure has been carried out.
- If further investigation is required, this should be conveyed to the employee.
- The Manager/Team Leader must confirm with the employee that they fully understand the outcome of the investigation, and understand the consequences of future breaches, or corrective action not being achieved.

- If the investigation concludes that no corrective action or further disciplinary procedures are required, this should be put in writing and a copy given to the employee. The matter is now closed.
- The outcome from the investigation must be recorded in writing and placed on the employee's personal file. It is imperative that the consequences of future breaches, or corrective action not being achieved is clearly outlined. The letter must be given to employee and a copy placed on their personnel file.

5.5 Disciplinary Proceedings

If as a result of an investigation, disciplinary procedures are required, then the employee's immediate Manager/Team Leader is responsible for conducting this in consultation with their Direct Report, relevant Professional Advisor and the Human Resource Department.

During the disciplinary process, it is imperative that there will be a role for an employee representative/support person.

The primary objective of disciplinary action is to change or modify the employees behaviour ie., improve their performance, or ensure employee compliance with his/her responsibilities or the Employer requirements.

Only the Chief Executive and Direct Reports have authority to terminate an employee's employment in consultation with the Human Resource Department.

These provisions need not be restricted to repetitions of a specific offence but may be applied to offences of a dissimilar type of nature, eg., performance, behavioural. These procedures place the responsibility equally on managers and employees to understand their obligations.

The golden rules of discipline are "**be fair and be consistent**".

Procedural fairness

The main requirements of procedural fairness:

1. The employees must know the rules that govern their employment and the relevant warning procedure.
2. The employee must be informed of the specific allegations and the action which will be taken by the Employer if the allegations are substantiated.
3. The employee must be given the opportunity to explain or deny the alleged misconduct, have a chance to be heard, explain his/her version of the events, offer any excuses or provide any mitigating factors. On all occasions the employee should have the right to have a support person present.
4. There must be full consideration of any explanations offered prior to a decision to discipline being taken (i.e. no signs of prejudice, pre-determination or hasty decision making).
5. An impeccable past record on the employee's part may warrant leniency.
6. The severity and circumstances of each individual case will determine the action to be taken.
7. Discipline for one employee should be consistent with previous cases.

It is also important to act promptly, but at the same time not in haste. So this may involve advising the employee that you have noticed and recorded their action(s), shall be investigating the matter and getting back to them in due course.

If in doubt, seek advice from the Human Resource Department

Given the factors of fairness, the methods of investigation of any allegation of misconduct fall into four stages:

1. Investigation of the alleged misconduct.
2. Based on the investigation findings determine whether or not disciplinary proceedings should follow.
3. If applicable implement the disciplinary process, taking into account the employee's explanation or rebuttal.
4. After due consideration of the employee's response, convey the decision and consequences to the employee.

Remember "The onus of proof is on the Employer."

Procedure

If the investigation shows that the event constitutes misconduct or serious misconduct then the Manager/Team Leader must follow the disciplinary procedures outlined below.

As a result of the investigation the Manager/Team Leader may deem it appropriate to proceed directly to a Final Written Warning.

The warning procedure may be applied to offences of a dissimilar nature and not restricted to the repetition of a specific form of offence.

Written Warning

- The investigation is completed and a breach established.
- The employee is to be informed of the breach, the nature of the breach, and its date and time.
- Where appropriate, include reasons as to why this behaviour or work performance is unacceptable.
- Allow the employee time to respond, this may include meeting with the employee at their next earliest convenience to give time to obtain further justification or evidence to support their position. Advise the employee of the result of the investigation taking into account their evidence or that of their representative.
- State the timeframe for corrective action to be taken.
- Advise the employee of the corrective action required including the decision to give a written warning.

- Identify the consequences of future breaches including the possibility of dismissal.
- The warning must be recorded in writing and placed on the employee's personal file. A copy must be given to employee.

Final Warning

- The investigation is completed and a breach established.
- The employee is to be informed of the breach, the nature of the breach, and its date and time.
- Where appropriate, include reasons as to why this behaviour or work performance is unacceptable.
- Allow the employee time to respond, this may include meeting with the employee at their next earliest convenience to give time to obtain further justification or evidence to support their position. Advise the employee of the result of the investigation taking into account their evidence or that of their representative. Advise the employee of the corrective action required including the decision to give a full and final written warning.
- Reference to the previous warning(s) if appropriate or applicable.
- Consideration must be given to the employee's record.
- Advise the employee of the corrective action required including the decision to give a full and final written warning.
- Identify the consequences of future breaches including the possibility of dismissal.
- The warning must be recorded in writing and placed on the employee's personal file. A copy must be given to employee.

Dismissal

Dismissal should only occur in cases:

- Of serious misconduct.
- Where the appropriate warning procedure has been carried out and warnings do not have to equate to similar offences.
- When employees have been given the opportunity to state their case prior to considering dismissal.
- Where the Human Resource Department have been full advised.
- When notice has been given subject to the appropriate Employment Agreement.
- Above all, having followed the correct procedure.

a) Dismissal on Notice

This step is appropriate at the culmination of the disciplinary procedure.

The period of notice required is specified in the relevant Individual or Collective Employment

Agreement. Payment in lieu of notice may be appropriate.

b) Instant Dismissal

Instant dismissal may be appropriate where the offence having been investigated and proven, constitutes serious misconduct.

Remember though be **fair and consistent**, and **if in any doubt seek advice from the Human Resource Department**.

Procedure

- The investigation is completed and a breach established.
- The employee is to be informed of the breach, the nature of the breach, and its date and time.
- Where appropriate, include reasons as to why this behaviour or work performance is unacceptable and why it is considered to be serious misconduct.
- Allow the employee time to respond, this may include meeting with the employee at their next earliest convenience to give time to obtain further justification or evidence to support their position. Advise the employee of the result of the investigation taking into account their evidence or that of their representative.
- Reference to the previous warning(s) if appropriate.
- Advise the employee of the reasons for dismissal.
- The warning must be recorded in writing and placed on the employee's personal file. A copy must be given to employee and if required the relevant registering body.

5.6 Records

The process and results of any disciplinary action are to be recorded in writing, copied to the employee and placed on his/her personal file.

5.7 Expiry of Warnings

It is not appropriate that warnings for less serious breaches remain in force indefinitely, although a copy is to be retained on the employee's personal file.

Where specific actions by the employee are a condition on the warning, it is the Manager/Team Leaders responsibility to communicate in writing confirming the employee as met their obligations.

5.8 Suspension

When investigating what is believed to be a case of serious misconduct, suspending an employee with or without pay may be required.

Procedure

- When considering suspending an employee the manager must ensure procedural fairness and consult the Human Resource Department.
- Consider other options as well as suspension eg., temporary redeployment, temporary withdrawal of responsibilities, paid leave.

- Discuss the suspension with the employee and their representative.
- Consider their input before making a final decision.
- Specify in writing the time of the suspension and the conditions applying to it. Do not suspend indefinitely.

5.9 Guidelines for Employees raising a complaint against a colleague

Employees who feel that they have been harassed or victimised by a colleague and believe that this amounts to a breach of the Code of Behaviour are encouraged to:

- a) Raise the issue directly with the colleague or;
- b) Raise the issue formally (in writing) with their Manager/Team Leader outlining the details of the incident, any witness to the incident and a statement of how you would like this addressed. The Manager/Team Leader is required to investigate the complaint.

5.10 Guidelines for Employees on the investigation/disciplinary procedure

If a complaint is made about a possible act of misconduct/serious misconduct by an employee, the Manager/Team Leader must assess whether the allegation has the potential to have substance and require further investigation.

If the assessment finds that the allegation is well-founded, an investigation should follow.

Ideally the employee should be informed verbally of the investigation proceeding and details must be confirmed in writing. The letter to the employee must include details on the allegation that is being investigated, who will be involved in conducting the investigation, and the possible consequences for the employee (ie., dismissal).

The employee should be informed that as part of the investigation they will be asked to respond to the allegations and given a reasonable time to do so at an arranged meeting that suits all the parties.

Employees under investigation must be fully informed of the specific details of the allegations that have been made, so that they have a chance to consider them prior to the meeting occurring.

The employee is entitled not only to all of the allegations made against them, but also access to all of the supporting evidence that the Manager will use to make their decision. This should include copies of any statements made by other employees if they are interviewed as part of the investigation.

Fairness and procedure requires that the employee knows exactly who will be involved at any stage of the investigation, what will be required of the employee and that the employee must be given the opportunity, and should be encouraged to use legal or union representation at any stage in the process.

At the investigative interview/s (there may be more than one), the employee must be advised of all matters that have arisen out of the investigation, then given a full a proper opportunity to give an account of events, or to mitigate his or her conduct.

The interview/s must be carried out with an unbiased attitude, and Manager/Team Leader must genuinely take account of an employee's responses.

The Manager/Team Leader must give validity to the employee's explanations.

At all times throughout the investigation/disciplinary process, the Manager/Team Leader must comply with the processes outlined in this Code of Behaviour.

Having completed a full and fair investigation, the Manager/Team Leader must then decide if the employee's misconduct/serious misconduct constitutes ending the investigation without consequence i.e., the matter is closed, or alternatively based on the outcome of the investigation issue a warning, final warning, or decide if the employee is to be dismissed.

Even if serious misconduct is confirmed, the Manager/Team Leader must consider other sanctions or the possibility of using behavioural correctives as alternatives to dismissal. Employees must be given the opportunity to learn from their unsatisfactory acts or omissions. However, if the Manager/Team Leader does confirm that dismissal is fair and reasonable, then such a decision will be justified.

The employee will be required to meet with the Manager/Team Leader to be given feedback on what decision has been made. The employee must be given reasonable time to give further feedback or evidence to support their position. A further meeting will then be held, which will be a disciplinary meeting to give the employee formal notification of the outcome of the investigation.

Remember that throughout all the stages of the process the employee must be given the opportunity, and should be encouraged to use legal or union representation.

Updated: September 2007