

Nene Clinical Commissioning Group

DISCIPLINARY POLICY

NENE CCG: HR04

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Ratified by:	CCG Governing Body
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Name of responsible committee/individual:	CCG Corporate Services
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ASSISTANCE WITH THE APPLICATION OF THIS POLICY AND UPDATES

This policy has been prepared so as to reflect the law as at 1 June 2013. The policy will require periodic review to reflect subsequent changes to the law. Changes to employment law have generally been made on 1 February, 1 April and 1 October in any given year.

For advice and assistance in relation to the application of this policy and to obtain updates please contact:

Your line manager in the first instance or Corporate Services, Nene CCG, Francis Crick House, Summerhouse Road, Moulton Park, Northampton, NN3 6BF

VERSION CONTROL SHEET

VERSION No.	DATE	WHO	STATUS	COMMENT
1	16.07.13	Stephen Wright	Draft	
2	21.08.13	Julie Fitzpatrick	Draft	
3	31.12.13	Julie Fitzpatrick	Final	Post Union Consultation
4	02.03.14	Julie Fitzpatrick	Final	Post Equality review

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1. POLICY STATEMENT

- 1.1 The aims of this Disciplinary Policy and Procedure are to set out the standards of conduct expected of all staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct, and to encourage improvement where necessary. The Disciplinary Policy and Procedure has been developed to encourage you to reach and maintain the standards of conduct expected of you at work and to ensure you are treated fairly if your standard of conduct falls below our expectations.
- 1.2 It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give you the opportunity to respond before taking any formal action.
- 1.3 This Policy and Procedure has been agreed following consultation with the Staff side Partnership Forum and the CCG Executive Board.
- 1.4 This procedure does not form part of your contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.
- 1.5 The principles of the policy are:
 - We will operate the procedure without unreasonable delay.
 - We will keep concerns raised about your conduct as confidential as we can, although in many cases we will need to carry out investigations that may involve other employees. We will of course carry out our investigations with discretion.
 - Before any disciplinary meeting we will tell you in writing what allegations have been made about your conduct and you will have time to prepare your response.
 - At each stage of the procedure you will have a chance to put forward your views at a meeting.
 - We will arrange meetings at reasonable times and locations.

- The procedure is intended to establish the facts quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until all the circumstances have been fully investigated.
- Our aim in using this policy and procedure is to give you every opportunity to improve your behaviour to the standard we expect. However, it is your responsibility to ensure that your conduct meets the required standards. If you continually fail to meet those standards we may dismiss you. If we are considering dismissal, we will warn you of this in advance of any action being taken.
- You have the right of appeal against any disciplinary decision.

2. WHO IS COVERED BY THE PROCEDURE?

- 2.1 This policy and procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

3. WHAT IS COVERED BY THE PROCEDURE?

- 3.1 This policy and procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or unsatisfactory work performance. In those cases reference should be made to the appropriate policy or procedure a copy of which can be obtained from Corporate Services.
- 3.2 Minor conduct issues can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file. In some cases an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 3.3 You will not normally be dismissed for a first act of misconduct, unless we consider it amounts to gross misconduct or you have not yet completed your probationary period (where applicable).
- 3.4 If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager or an HR representative as soon as possible.

4. EXAMPLES OF GROSS MISCONDUCT

4.1 The following is a list of examples of conduct that is normally considered to be gross misconduct. It is not intended to be a complete list.

- violence, either threatened or actual;
- wilful breach of member practices' Code of Conduct resulting in the member practice deciding that you cannot work at that location;
- theft or unauthorised removal or use of CCG property;
- malicious and/or negligent damage to CCG property;
- fraud, dishonesty, falsification of CCG records or documents;
- unauthorised disclosure of confidential CCG and/or patient information;
- acts of discrimination or harassment on the grounds of race, colour, nationality, ethnic or national origins, sex, sexual orientation, relationship status, age, disability, religion or belief, gender reassignment or pregnancy/maternity status against any other employee;
- taking, consuming or knowingly being under the influence of alcohol or drugs (other than medically prescribed) whilst at work;
- unlawful possession of, or dealing in, drugs;
- unauthorised use or copying of Computer software, and/or network; abuse of the CCG's e-mail or internet policy;
- gross negligence;
- any acts of aggression or serious discourtesy or rudeness towards;
- flagrant or serious acts of insubordination or the refusal to carry out a reasonable instruction;
- breach of health and safety rules;
- failure to maintain required professional registration;

- bringing the organisation into disrepute;
- accessing internet sites with offensive or obscene content, including downloading and / or distributing offensive or obscene material.

5. CONFIDENTIALITY

- 5.1 Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 5.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure; and doing so may amount to a disciplinary offence.
- 5.3 You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

6. INVESTIGATIONS

- 6.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. The Head of Department will appoint an impartial Investigating Officer to carry out the investigation.
- 6.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 6.3 All employees must co-operate fully and promptly with any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

7. CRIMINAL CHARGES

- 7.1 Where your conduct is the subject of a criminal investigation, charge or conviction the CCG will investigate the facts before deciding whether to take formal disciplinary action.
- 7.2 We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we will have to take a decision based on the available evidence.
- 7.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment, e.g. a threat to reputational damage

8. SUSPENSION

- 8.1 In some circumstances we may need to suspend you from work (for example, for issues of suspected gross misconduct, sensitive cases involving bullying and harassment, or where your presence may impede the investigation). Suspension is a neutral act. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing. While suspended you should not visit CCG premises or contact any of our patients, clients, customers, suppliers, contractors or staff or access any CCG IT systems.
- 8.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your full basic salary and benefits during the period of suspension.
- 8.3 We will keep you informed of the progress of the investigation and will let you know, as soon as we can, what, if any, further action will be taken and when you should come back to work.

9. NOTIFICATION OF A HEARING

- 9.1 Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, the right to representation, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:
 - (a) a summary of relevant information gathered during the investigation;

- (b) a copy of any relevant documents which will be used at the disciplinary hearing; and
- (c) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

9.2 We will give you written notice of the date, time and place of the disciplinary hearing, together with details of the composition of the panel. The hearing will be held as soon as reasonably practicable, although you will be given at least 10 working days in advance of the hearing to prepare your case based on the information we have given you. You must respond to the bundle within 3 working days before the hearing.

9.3 If, following the investigation, no further action is warranted, no adverse record will be placed on your personnel file. You will be informed in writing of this. You will be provided with support should you require this to enable you to return to your normal duties. If so, this will include appropriate feedback and discussion of the learning points.

10. THE RIGHT TO BE ACCOMPANIED

10.1 You may bring a companion to any investigation hearing, disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell the Panel Chair who your chosen companion is, 5 working days before the hearing.

10.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

10.3 If your choice of companion is unreasonable we may ask you to choose someone else, for example:

- (a) if in our opinion your companion may have a conflict of interest or may prejudice the meeting; or
- (b) if your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards.

10.4 If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason on two occasions the hearing will proceed in your absence and we will also take a decision in your absence based on the evidence available at the time.

- 10.5 We will, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.

11. PROCEDURE AT DISCIPLINARY HEARINGS

- 11.1 The hearing will be chaired by a Senior Manager who has not been involved in the investigations who will be assisted by representative member of GEM CSU HR Business Partner team. The Investigating Officer will also be present along with any other relevant witnesses.
- 11.2 At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but may not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.
- 11.3 You may ask relevant witnesses to appear at the hearing, provided you give us no less than 5 working days advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.
- 11.4 We will adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 11.5 We will inform you in writing of our decision and our reasons for it, usually within 10 working days of the disciplinary hearing. Where possible we will also explain this information to you in person.

12. DISCIPLINARY PENALTIES

- 12.1 The penalties which may be imposed for misconduct are set out below. No penalty will be imposed without a hearing with the exception of the circumstances set out at paragraph 10.4 above.
- 12.2 When making our decision, we will review your disciplinary and general record to decide whether the intended action is reasonable in all the

circumstances. We will also consider any mitigating circumstances raised by you.

- 12.3 **Informal Action** – If the original concerns are substantiated but due to mitigation or other factors are found to be insufficiently serious to warrant formal action, informal action may be taken instead. This may involve, although not an exhaustive list, monitoring performance, retraining or a development plan. A written record will be kept and used for monitoring and review over the mutually agreed timeframe. Failure to improve could lead to formal action being instigated.
- 12.4 **Stage 1 – Formal Verbal Warning** - In the case of minor offences, you may be given a Formal Verbal Warning. This will be confirmed in writing and recorded on your personnel file. You will be told of the reason for the warning and the improvements you are expected to make. This warning will remain active for 6 months. This period may be extended for an additional period of no more than 6 months in exceptional circumstances at the discretion of your line manager.
- 12.5 **Stage 2 - First Written Warning.** A First Written Warning will be authorised by a senior Head of Department. It will be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record, if further misconduct occurs while you are still subject to a Formal Verbal Warning, or if you commit a more serious offence. You will be told of the reason for the warning and the improvements you are expected to make. The First Written Warning will be recorded on your personnel file and will remain active for 6 months. This period may be extended for an additional period of no more than 6 months in exceptional circumstances at the discretion of a Senior Manager or Head of Department.
- 12.6 **Stage 3 - Final Written Warning.** A Final Written Warning may be authorised by a Senior Manager or Head of Department . It will usually be appropriate for:
- (a) misconduct where there is already an active written warning on your record; or
 - (b) misconduct that we consider sufficiently serious to warrant a Final Written Warning even though there are no other active warnings on your record.

You will be told of the reason for the warning and the improvements you are expected to make. You will be warned that if there are any further incidents of

misconduct you may be dismissed. The Final Written Warning will remain active for 12 months. This period may be extended for an additional period of no more than 6 months in exceptional circumstances at the discretion of Chief Officer or equivalent senior director.

12.7 **Stage 4- Dismissal.** Dismissal will be authorised by a Head of Department. It will only be appropriate for:

- (a) any misconduct during your probationary period;
- (b) further misconduct where there is an active Final Written Warning on your record; or
- (c) any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

12.8 **Alternatives to dismissal.** In some cases we will at our discretion consider alternatives to dismissal. These will be authorised by a Head of Department and will usually be accompanied by a final written warning. Examples include:

- (a) Demotion. (Remuneration will be in line with new job band)
- (b) Transfer to another department or job.
- (c) Loss of seniority.
- (d) Loss of future pay increment.

13. THE EFFECT OF A WARNING

13.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

13.2 A First Written Warning will remain active for 6 months and a Final Written Warning will remain active for 12 months. Your conduct may be reviewed at the end of a warning's active period. If your conduct has not improved sufficiently this period may be extended for an additional period of no more than 6 months in exceptional circumstances at the discretion of the Chief Officer or equivalent senior Director.

13.3 After the active period, the warning will remain permanently on your personnel file. This will be kept in a confidential envelope.

14. APPEALS AGAINST DISCIPLINARY ACTION

- 14.1 If you feel that the disciplinary action taken against you is wrong you may appeal in writing, stating your full grounds of appeal (enclosing any relevant documents), to the Chief Executive Officer within 5 working days of the date on which you were informed of the decision. Appeals may only be made on the basis of a failure to follow the proper procedure or where new evidence becomes available that could not reasonably have been available at the original hearing.
- 14.2 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.
- 14.3 If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.
- 14.4 We will give you written notice of the date, time and place of the appeal hearing. This notice will normally be within 10 working days after we receive your full grounds of appeal together with any relevant documents.
- 14.5 Where possible, the appeal hearing will be conducted impartially by a senior manager who has not been previously involved in the case who will be assisted by a Human Resources representative. The Investigating Officer and the manager who conducted the disciplinary hearing will also usually be present. You may bring a companion with you to the appeal hearing (see paragraph 10).
- 14.6 We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 14.7 Following the appeal hearing we will:
- (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) substitute a different penalty.

14.8 We will inform you in writing of our final decision within 10 working days of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

15. DUE REGARD

This policy has been reviewed in relation to having due regard to the Public Sector Equality Duty (PSED) of the Equality Act 2010 to eliminate discrimination, harassment, victimisation; to advance equality of opportunity; and foster good relations.

16. EQUALITY STATEMENT

Nene Clinical Commissioning Group (CCG) aims to design and implement policy documents that meet the diverse needs of our services, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no-one receives less favourable treatment due to their reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. Appropriate consideration has also been given to gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.

In carrying out its functions, Nene CCG must have due regard to the Public Sector Equality Duty (PSED). This applies to all the activities for which Nene CCG is responsible, including policy development, review and implementation.

17. HELP AND ADVICE

If you need more information about this disciplinary procedure you should ask your line manager or Head of Corporate Services who will be pleased to help.