

HEALTH AND SOCIAL CARE TRUST

**DISCIPLINARY
PROCEDURE FOR
HOSPITAL AND
COMMUNITY MEDICAL &
DENTAL STAFF**

25 November 1999

39b-024-089

LC-SLT

**DISCIPLINARY PROCEDURE
FOR HOSPITAL AND COMMUNITY MEDICAL AND DENTAL STAFF**

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*PRODUCED BY PERSONNEL POLICY DESIGN GROUP
WESTCARE BUSINESS SERVICES*

39b-024-091

INTRODUCTORY SECTION

Disciplinary Procedure for Hospital and Community Medical & Dental Staff

395-024-09292

SECRET

DISCIPLINARY PROCEDURES FOR HOSPITAL AND COMMUNITY MEDICAL AND DENTAL STAFF

SCOPE AND APPLICATION

These procedures apply to all Hospital and Community Medical and Dental Staff in Sperrin Lakeland Trust. It consolidates guidance under TC(8) 15/91 and replaces Annex B in relation to Personal Conduct.

The term "he" has been used throughout the procedure for ease of reference, it should be taken as meaning "he / she".

These procedures are effective from 25 November 1999.

SUMMARY OF AMENDMENTS

The procedure has been updated in relation to the following:-

- ◆ The following changes in terminology have been incorporated
Medical Director replaces Director of Public Health /Director of Dental Services
Health and Social Services Executive replaces Management Executive
- ◆ Amendments to the positions of text to ensure ease of reference.
- ◆ Section divisions inserted
- ◆ Contents Index inserted
- ◆ Personal Conduct applicable to all employing authority staff replaces paragraph 7 to 15 from HSS TC(8) 15/91
- ◆ Annex C Paragraph 190 which dealt with Hospital and Community Medical and Dental staff in three separate sections under HSS TC(8) 15/91 has now been incorporated into one section.
- ◆ Some text has been rearranged within the procedure

DEFINITIONS

The procedure to be followed following allegations of misconduct will depend on the nature of the allegation. It is recognised that Sperrin Lakeland Trust sometimes has great difficulty defining the nature of the conduct which is the subject of an allegation, and the following definitions have been agreed between the Department and the professions:

PERSONAL CONDUCT - Performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills.

PROFESSIONAL CONDUCT - Performance or behaviour of practitioners arising from the exercise of medical or dental skills.

PROFESSIONAL COMPETENCE - Adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgement.

ENQUIRIES

Enquiries on the implementation of these procedures should be addressed to Sperrin Lakeland Trust's Personnel Department at Strathdene House, Tyrone & Fermanagh Hospital, Omagh.

ANNEX A

JOINT WORKING PARTY RECOMMENDATIONS 1987

Disciplinary Procedure for Hospital and Community Medical & Dental Staff

39b-024-094

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SUMMARY OF WORKING PARTY RECOMMENDATIONS 1987

Recommendation 1: The introduction of Professional Review Machinery in all health authorities.

Recommendation 2: Health Authorities should review their disciplinary procedures in respect of personal misconduct to ensure that they include doctors and dentists adequately.

Recommendation 3: The intermediate procedure should be introduced subject to detailed negotiation between the parties.

Recommendation 4: There should be improved guidance designed to make the HM(61)112 procedure less cumbersome and ensure that it is applied more uniformly.

Recommendation 5*: Legal representation at HM(61)112 hearings should be amended, so that both the practitioner and the health authority concerned employ solicitors rather than barristers.

* Following further consideration it has been agreed that this recommendation would not be implemented at this time. Authorities and practitioners are asked, however, to make efforts generally to reduce the formality of the proceedings and the time they take as a consequence.

Recommendation 6: Indicative time limits for HM(61)112 enquiries should be introduced.

Recommendation 7: There should be a central standing panel of lawyers acceptable to both sides and readily available - perhaps including those recently retired - to chair investigating panels in HM(61)112 cases.

Recommendation 8: Paragraph 190 rights should not apply to dismissal on grounds of personal misconduct.

Recommendation 9: Professional committees (in paragraph 190 cases) should in future be assisted by a legal assessor or adviser.

Recommendation 10: The professional committee in paragraph 190 cases to test the acceptability of a third solution with both parties to try to ensure that a decision is not delayed by the Secretary of State suggesting a third solution when it is unlikely to be feasible.

Recommendation 11: It is inappropriate for certain practitioners with a limited work commitment with health authorities and with a significant alternative source of medical or dental income, to retain rights under paragraph 190.

Recommendation 12: Time limits should be introduced for the paragraph 190 procedure.

Recommendation 13*: The possibility of arrangements for voluntary early retirement in the interests of the service should be considered in the appropriate negotiating forum.

Recommendation 14: Arrangements for monitoring the new procedures, including the regular collection of data, should be introduced and the effectiveness of the procedures should be reviewed after a period of 3 years from the date of implementation.

* Discussions on this recommendation are to take place soon between the Departments and the Profession. Details will be issued when these discussions are concluded.

ANNEX B

- GUIDANCE
- GENERAL PRINCIPLES
- RESPONSIBILITY FOR DISCIPLINARY ACTION

SECTION 1

- CASES INVOLVING PERSONAL CONDUCT

SECTION 2

- CASES INVOLVING PROFESSIONAL CONDUCT AND PROFESSIONAL COMPETENCE

DISCIPLINARY PROCEEDINGS IN CASES RELATING TO HOSPITAL MEDICAL AND DENTAL STAFF, DOCTORS IN PUBLIC HEALTH MEDICINE AND THE COMMUNITY HEALTH SERVICE. ADMINISTRATIVE DENTAL OFFICERS AND COMMUNITY CLINICAL DENTAL OFFICERS

SUMMARY

Guidance is given on the procedure to be followed in serious disciplinary cases involving hospital, public health and community health doctors or dentists. The procedure does not apply to holders of joint appointments by Sperrin Lakeland Trust and the Queen's University of Belfast.

Disciplinary action for the purposes of this procedure shall include:-

- *Counselling*
- *Informal warning*
- *Formal warning*
- *Final warning*
- *Financial Penalty (eg. no pay award, withholding of an increment or allowances)*
- *Downgrading*
- *Dismissal*

GENERAL

- 1 This annex replaces HSS(TC8) 3/75 and outlines the procedures which Sperrin Lakeland Trust should use when handling serious disciplinary charges, for example, where the outcome of disciplinary action could be the dismissal of the medical or dental practitioner concerned. The lines of procedure proposed are designed to ensure that justice is done and seen to be done and injustice avoided in respect of all the parties concerned (patient, practitioner and employer).
- 2 The arrangements described below are without prejudice to the right of Sperrin Lakeland Trust to take immediate action (eg. suspension from duty) where this is required in cases of a very serious nature.
- 3 There are broadly 3 types of case which may involve medical or dental staff:
 - a Cases involving personal conduct Annex B Section 1
 - b Cases involving professional conduct Annex B Section 2
 - c Cases involving professional competence Annex B Section 2

It is for Sperrin Lakeland Trust to decide under which category a case falls. Guidance on the definition of each category is given below:-

DEFINITIONS

The procedure to be adopted following allegations of misconduct will depend on the nature of the allegation. It is recognised that Sperrin Lakeland Trust sometimes has great difficulty defining the nature of the conduct which is the subject of an allegation, and the following definitions have been agreed between the Department and the professions:

PERSONAL CONDUCT - Performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills.

PROFESSIONAL CONDUCT - Performance or behaviour of practitioners arising from the exercise of medical or dental skills.

PROFESSIONAL COMPETENCE - Adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgement.

GENERAL PRINCIPLES

- 4 The following general principles are applicable to all formal disciplinary cases:-
 - a Employees shall be made fully aware in writing of any adverse report giving rise to the question of formal disciplinary action and shall be given every opportunity to answer it. The employee should be issued with a copy of this procedure at this stage.
 - b At all stages, disciplinary proceedings shall be completed as quickly as is compatible with the need to ensure that justice is done and seen to be done.
 - c Any disciplinary action shall be appropriate to the insubordination, incompetence, inefficiency or misconduct established.
 - d Any relevant mitigating circumstances including previous record of service of the employee concerned shall be taken into account by the disciplinary panel.

RESPONSIBILITY FOR DISCIPLINARY ACTION

- 5 Disciplinary action shall be the responsibility of the Disciplinary Authority (ie. Sperrin Lakeland Trust). The Disciplinary Authority shall appoint a Disciplinary Committee of 2 persons in cases of personal conduct and shall appoint a Disciplinary Committee of 3 persons in cases of professional conduct and professional competence to which disciplinary powers will be delegated. In cases involving professional conduct or professional competence the committee should include where possible a medical or dental representative as appropriate.

ANNEX B:- SECTION 1

CASES INVOLVING PERSONAL CONDUCT

1 PERSONAL CONDUCT

- 1.1 The aim of this disciplinary procedure is to provide a fair and consistent method of dealing with problems of conduct and maintenance of satisfactory standards.
- 1.2 It is designed to emphasise and encourage improvement in individual conduct and should not be viewed in a purely negative perspective for producing sanctions on individuals.
- 1.3 The procedure to be followed following allegations of misconduct will depend on the nature of the allegation. It is recognised that Sperrin Lakeland Trust sometimes has great difficulty defining the nature of the conduct which is the subject of an allegation, and the following definition has been agreed between the Department and the professions:
- 1.4 **PERSONAL CONDUCT** - Performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills.

2 SCOPE AND APPLICATION

- 2.1 These procedures apply to all Hospital and Community Medical and Dental Staff in Sperrin Lakeland Trust where the issue is one of personal conduct. It consolidates guidance under TC(8) 15/91 and replaces Annex B in relation to Personal Conduct.
- 2.2 These procedures are effective from 25 November 1999.

3 RESPONSIBILITY FOR DISCIPLINARY ACTION

- 3.1 Disciplinary action shall be the responsibility of Sperrin Lakeland Trust. The level of management responsible for disciplinary action in respect of offences are set out as follows:

TYPE OF STAFF GROUP	DISCIPLINARY AUTHORITY
Medical And Dental	Senior Manager and Appropriate Personnel Manager
Medical Director	Chief Executive Non Executive Director

* It is recommended that a Senior Personnel Manager is in attendance when not a panel member

4 CATEGORIES OF MISCONDUCT

- 4.1 Categories of misconduct are detailed on page 17 and are not an exhaustive list. It is important that each case of misconduct is considered on its individual merits to determine its category.

5 HANDLING A DISCIPLINARY MATTER

- 5.1 It is management's responsibility to investigate any disciplinary matter. The investigating officer may take action such as interviewing staff or witnesses or members of the public. obtaining statements and examining documentation. Management should then be in a position to decide whether or not there is a disciplinary case to be answered by the employee concerned.

Suspension

- 5.2 Where relevant a precautionary suspension may immediately be imposed by an appropriate Senior Manager pending formal investigation of the alleged offence. In normal circumstances employees will only be suspended by the appropriate person having the authority to suspend. There may, however, be exceptional circumstances in which the senior person available on duty at the time, having control of the particular work place may assume the authority to suspend until the appropriate designated person can be obtained to confirm or set aside the suspension. In all such cases the employee should continue to receive full, normal remuneration even though in some cases suspension may necessarily be for a period which cannot be determined in advance. Suspension may be appropriate eg. where gross misconduct is suspected or alleged, where continued working may give rise to further misconduct or interference with the process of fair investigation. It should be made clear to the employee that suspension is not a disciplinary sanction nor is it a presumption of guilt.

Account should be taken of Circular HSS (TC8) 3/95 which gives guidance on suspension, and is attached at Appendix 1.

6 COUNSELLING

- 6.1 Employees should be counselled by their immediate line manager and it is only if the faults are repeated that informal warnings or formal disciplinary action may be implemented.
- 6.2 This counselling does not in any way prevent the Line Manager from instigating formal disciplinary action if appropriate.
- 6.3 Counselling should be conducted in a fair and reasonable manner and the Line Manager should ensure that confidentiality is maintained. It is the Line Manager's responsibility to ensure that any notes taken of the counselling meeting are stored securely.

7 INFORMAL WARNINGS

- 7.1 Minor offences should be dealt with by the employee's immediate line manager as they come to notice and may involve the issue of an informal warning. This must be recorded by the Manager and a confirmatory note sent to the employee clarifying that this is an informal warning which will be deleted from the Line Manager's records after a period not exceeding 6 months.
- 7.2 Should an informal warning prove ineffective, then the matter should be reported to the appropriate disciplinary authority for consideration as to whether formal disciplinary action should be taken.
- 7.3 In normal circumstances disciplinary action beyond an informal warning will not be taken against a recognised trade union representative until a full-time Trade Union Official has been notified.

8 FORMAL DISCIPLINARY ACTION

- 8.1 The Investigating Officer should be satisfied as to whether or not a formal disciplinary case exists.
- 8.2 This investigation process should be completed within fourteen calendar days or as soon as is practicably possible thereafter. Where disciplinary action is appropriate, the employee must be called to a formal disciplinary hearing.
- 8.3 The employee must be informed in writing in advance of the disciplinary charges and have the right to be represented by a recognised trade union /staff association (*thereafter referred to as trade union*) or fellow employee.
- 8.4 A disciplinary panel shall be constituted in accordance with Paragraph 3.1. The Chairperson of the panel shall conduct the disciplinary hearing.

9 PROCEDURE AT FORMAL DISCIPLINARY HEARING

- 9.1 At the hearing the case against the employee shall be presented first and any witness called in support of the case. The management presenting officer, trade union and panel members have the right to question the witness(es). The employee shall be present during the hearing of all the evidence put before the panel and shall have opportunity personally or through the representative to question the witness(es). The employee should be permitted to call witnesses if required and Sperrin Lakeland Trust should release any member of staff taking account of the needs of the service. If an essential witness is unable to attend the hearing, either party may request an adjournment. The hearing should be reconvened at the earliest possible opportunity. The employee and any witnesses called by the employee will be questioned by the Trade Union, management presenting officer and the disciplinary panel members.

- 9.2 After all witnesses have been heard and the management presenting officer and then the employee or his/her representative have had an opportunity of making a summary statement, all parties except the panel members and the panel secretary shall withdraw.
- 9.3 Before the decision is made, the panel shall have the right to recall any witness, but if this is done all parties shall have the right to ask questions of the witness.

10 RANGE OF POSSIBLE DISCIPLINARY ACTIONS

- 10.1 The disciplinary panel may take any one or a combination of the following disciplinary actions:-
- Counselling
 - Informal warning
 - Formal warning
 - Final warning
 - Financial Penalty (eg. no pay award, withholding of an increment or allowances)
 - Downgrading
 - Dismissal

11 ISSUE OF DISCIPLINARY DECISION

- 11.1 Employees who are the subject of any disciplinary action should be provided with the disciplinary decision normally within seven working days stating the nature of any disciplinary action together with the reasons on which the decision is based. The employee must also be informed of the right and method of appeal against any formal disciplinary action. A copy of the decision should be sent to the employee's trade union representative.
- 11.2 When the disciplinary action results in the withholding of an increment or other financial penalty, the employee shall also be informed that its restoration shall be dependent on and become effective after the satisfactory performance of duties over a specified period.
- 11.3 Formal warnings should be accompanied or followed by advice to the employee of the consequence of repetition or continuance of the offence giving rise to this disciplinary action. Such warnings shall be deleted from the employee's records after a period not exceeding 12 month's satisfactory conduct.
- 11.4 Where a final warning is to be issued, advice shall be given as to the implications of continued repetition of this offence which could lead to dismissal. A final warning shall remain on the personal file for a period not exceeding two year's satisfactory conduct.
- 11.5 In cases of Gross Misconduct, the disciplinary authority has the right of summary dismissal without notice or warning.
- 11.6 An employee may appeal against dismissal in the normal way but the dismissal shall not be set aside pending the outcome of the appeal.

12 DISCIPLINARY APPEALS PROCEDURE

- 12.1 The Chairperson of the disciplinary panel shall inform the employee of the right to appeal the disciplinary action taken and this appeal should be lodged in writing with the Chief Executive of Sperrin Lakeland Trust within seven calendar days of receipt of the decision stating the grounds of the appeal.
- 12.2 The hearing of the appeal should be set up within three calendar weeks of receipt of the appeal or as soon as is reasonably possible thereafter.
- 12.3 Employees shall be given at least seven calendar days notice of the date of the hearing together with a clear statement of their right to appear with a representative of their trade union, or a fellow employee.

13 COMPOSITION OF THE DISCIPLINARY APPEAL PANEL

- 13.1 The Chief Executive of Sperrin Lakeland Trust shall convene an appropriate appeal panel which should consist of :-

TYPE OF STAFF GROUP	APPEAL AUTHORITY
Medical And Dental	3 Directors or equivalent level (One Should Be An Executive Director Plus A Non-Executive Director)
Medical Director	Trust Chairman 2 Non Executive Directors

* It is recommended that a Senior Personnel Manager is in attendance when not a panel member

14 PROCEDURE OF FORMAL DISCIPLINARY APPEAL HEARING

- 14.1 A member or officer of Sperrin Lakeland Trust who is directly involved in the disciplinary proceedings shall not take any part in the hearing except as a witness or as the presenting officer.
- 14.2 At the hearing the case against the appellant shall be presented first and any witness called in support of the case should also be examined at this stage. The Chairman of the appeal panel shall conduct the case and examine the witnesses although other members of the panel may put further questions.
- 14.3 The appellant should be present during the hearing of all the evidence put before the appeal panel and shall have full opportunity through their representative to question any witness. The

appellant should also be permitted to call witnesses and Sperrin Lakeland Trust should release any member of staff taking account of the needs of the service.

- 14.4 After all witnesses have been heard, and the management presenting officer, appellant or the person accompanying the appellant have had the opportunity of addressing the appeal panel, all parties except members of the appeal panel, and the panel Secretary shall withdraw.
- 14.5 The appeal panel shall have the right to recall any witness but if this is done the appellant, representative and the management presenting officer should have the right to be present whilst the witness is further questioned.

15 DECISION OF DISCIPLINARY APPEAL PANEL

- 15.1 The appellant shall be notified in writing without delay of the decision of the appeal panel and its operative date shall be stated. A copy of the decision should be sent to the employee's trade union representative.

1.0 CATEGORIES OF MISCONDUCT

The list below is illustrative of the types of misconduct which may fall into the various categories and is not exhaustive. However, it is important that each case is considered on its individual merits to determine its category.

1.1 MINOR MISCONDUCT

- Absenteeism
- Lateness
- Careless work and poor effort at work
- Ignoring safety/hygiene/security rules
- Extended tea and meal breaks
- Failure to maintain a tidy and safe working environment
- Misuse of telephone
- Excessive time away from the job
- Failure to wear any uniform provided
- Failure to complete time/stock or work sheets as instructed
- Harassment

1.2 MAJOR MISCONDUCT

- Unauthorised absence
- Dangerous physical horseplay
- Neglect causing damage to or loss of Trust's clients, or other employee's property /equipment /tools
- Serious neglect of safety/hygiene/security rules
- Smoking in prohibited areas
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission
- Entry into any unauthorised areas
- Wilful or excessive wastage of materials
- Unsatisfactory attitude to clients
- Use of foul language
- Gambling on the premises
- Insubordination
- Harassment

I.3 GROSS MISCONDUCT

- Theft
- Physically violent behaviour
- Leaving the premises without permission
- Deliberately ignoring safety/hygiene/security rules and thereby endangering ones own or another's physical well-being or safety
- Obscene behaviour
- Intoxication induced by alcohol or drugs
- Fraud
- Disclosing confidential business information to a third party
- Wilful damage to or gross negligence of Trust's / client's/ Patient's / or employee's property/equipment/tools
- Undertaking work in competition with own employer
- Falsification of records
- Unauthorised use of Trust vehicle
- Clocking offences
- Harassment

ANNEX B:-SECTION 2

CASES INVOLVING
PROFESSIONAL CONDUCT
AND
PROFESSIONAL COMPETENCE

CASES INVOLVING PROFESSIONAL CONDUCT AND PROFESSIONAL COMPETENCE

1. Preliminary Investigation - Establishment of Prima Facie Case

Procedure

On receiving an allegation from any source the Medical Director will need to make some preliminary enquiries in order to determine whether:

- a there was no substance in the allegations and therefore no further action was necessary.
- b the case was a minor one which the Medical Director thought suitable to deal with on an informal basis.
- c it was a case appropriate to Professional Review Machinery:-Annex D.
- d the procedures set out in HSS(TC8) 1/84 might be appropriate, or the Medical Director wished to advise that it was a suitable case to refer to the sick doctors' scheme.
- e it was personal misconduct, in which case the disciplinary guidance outlined in Annex B:- Section 1 Personal Conduct would be followed.
- f it involved serious allegations about professional conduct or competence and, if so, whether or not it was serious enough to warrant procedures under annex B of this circular.
- g it involved less serious allegations about professional conduct or competence, and was suitable for the intermediate procedure:-Annex E.

During these preliminary enquiries, the Medical Director will normally wish to have a discussion with the doctor involved.

1.1 Does a Prima Facie Case Exist

The first step where an incident occurs or a complaint is made involving the professional conduct or competence of a medical or dental officer should be for the Chairman of Sperrin Lakeland Trust to decide whether there is a prima facie case which, if well founded, could result in serious disciplinary action such as dismissal. Such preliminary inquiries if any as are necessary before this decision is reached should be in the hands of the Medical Director as appropriate. In appropriate cases, the legal adviser or solicitor to Sperrin Lakeland Trust should be called in to assist.

Where the matter arises from an incident for which an accident report has been made the Chairman, before reaching his decision, should have regard to the accident report, but normally no subsequent use should be made of the report in the proceedings, except insofar as it is used by the Trust's legal advisers in preparing the case to be presented to the investigating panel (see paragraph 2.1 below).

1.2 Practitioner Advised in Writing

Unless the Chairman decides forthwith that there is no prima facie case, the doctor or dentist should be warned in writing immediately of the nature of the incident which has been alleged, or of the complaint which has been made, and that the question of an inquiry, which might lead to serious disciplinary action, is under consideration. Copies of all relevant correspondence should be sent to the practitioner, and he should be informed that any comments made by him will be placed before the Chairman and any investigating panel which may be appointed. The

practitioner should be given reasonable time to make representations and to seek advice if he so wishes before any final decision is taken on whether an inquiry is necessary.

1.3 **Prima Facie Case Exists and Facts Disputed**

If, on considering the allegation or complaint made and the practitioner's comments, if any, in reply to the written warning given in accordance with paragraph 1.2, the Chairman decided that a prima facie case exists, and that there is a dispute as to the facts, Sperrin Lakeland Trust should proceed to an inquiry, as in paragraphs 2.1 -2.9.

1.4 **Prima Facie Case Exists and there is no Dispute to Facts**

If the Chairman decides that a prima facie case exists, but there is no substantial dispute as to the facts, any subsequent disciplinary action which Sperrin Lakeland may take should comply with the guidance contained in Annex B:- Section 1 Personal Conduct.

1.5 **Issue Subject of Criminal Charges or Established by Public Inquiry**

An inquiry on the lines laid down in paragraphs 2.1 -2.9 below would normally be unnecessary also where, in a matter affecting the practitioner's professional conduct or competence, the facts in question have been the subject of a criminal charge on which he has been found guilty in a court of law or have been established by a public inquiry set up by the Government. Where the facts have been established by a public enquiry and there is a dispute as to whether further facts need to be established or as to the conclusion to be drawn from the facts, an investigating panel set up in accordance with paragraphs 2.1 - 2.4 below will consider if a further inquiry is required (in which case they will proceed in accordance with paragraphs 2.5-2.9 below). Where the panel consider that no further inquiry is required they will proceed in accordance with paragraphs 2.9-2.12 below.

2. **INQUIRY**

2.1 **Investigating Panel**

An investigating panel, the composition of which should differ with the type of inquiry, should be set up by Sperrin Lakeland Trust who is responsible for appointing the practitioner. No member of the panel should be associated with the hospital(s) in which he works, or, in the case of a doctor in Public Health Medicine or the community Health Service or community dentist, in Sperrin Lakeland Trust in which the practitioner concerned works. In all cases the panel should be small, normally 3 persons, including a legally qualified Chairman, not being either an officer of the Department of Health and Social Services or a member or officer of Sperrin Lakeland Trust, who will be nominated in each case which arises by the Department of Health and Social Services from a panel appointed by the Lord Chief Justice.

2.2 **Professional Conduct Cases**

In cases involving professional conduct, the members other than the Chairman should contain an equal proportion of professional and lay persons, unless the charges relate only to relationships between a doctor or a dentist and his professional colleagues, when it would clearly be appropriate to have a panel wholly or predominately of professional members, apart from the Chairman.

2.3 Professional Competence Cases

In cases involving solely professional competence, all the other members should be professionally qualified, and it will probably be appropriate that at least one of their number should be in the same speciality as the practitioner whose professional competence has been called in question; it may also be appropriate that one of them should be a practitioner from another hospital in the same grade. Before the professional members are chosen, there should be consultation in the case of a medical practitioner with the British Medical Association and in the case of a dental practitioner with the British Dental Association.

2.4 Panel Fees

Payment should be made by Sperrin Lakeland Trust to the Chairman and members of the panel at a rate determined from time to time. This fee covers any preparatory work required and any time spent on preparation of reports. Travelling and subsistence expenses of both the Chairman and members of the panel should be payable in accordance with the Payment of Travelling and other Allowances to Members Determination (Northern Ireland) 1989.

2.5 Panel Terms of Reference

The terms of reference of the panel should include the nature of the incident or complaint against the practitioner, who should be informed of the setting up of the panel and its terms of reference and given not less than 21 days' notice in order to prepare his case. He should be provided as soon as possible with any copies of correspondence or written statements made. A copy of the list of witnesses referred to in paragraph 2.7, and the main points on which they can give evidence, should be furnished to the practitioner as long as possible before the hearing if he so requests, unless for any exceptional reason the Chairman of the panel gives authority for the names of the witnesses not to be provided in advance of the hearing.

2.6 Panel Proceedings

The investigating panel should be held in private, and should establish all the relevant facts of the case. To that end, the panel should ensure, as far as possible, that colleagues of the practitioner should be asked to give factual evidence, rather than personal impressions or opinions. A list of witnesses should be drawn up with the main points on which they are to give evidence; this task may be undertaken by the legal adviser or solicitor to Sperrin Lakeland Trust assisted by the Medical Director. Subsequently at the hearing, the case should be presented by the legal adviser or solicitor, who should conduct an examination of the witnesses before the investigating panel. Sperrin Lakeland Trust and/or the practitioner may be represented before the panel by a lawyer, although both sides should make efforts to reduce the formality of the proceedings and the consequent time they take.

2.7 Practitioners Role in Inquiry

The practitioner should have the right to appear personally before the investigating panel and to be represented (either by a lawyer in accordance with paragraph 2.6 above, or otherwise), and to hear all the evidence presented to the panel. He should have the right to cross-examine all witnesses and to produce his own witnesses, and they and he may also be subjected to cross-examination. The question of what is to happen upon any application for adjournment in the event of the illness or unavoidable absence of the practitioner, or any witness, should be a matter for the Chairman of the Panel to decide in accordance with the normal procedures for similar inquiries.

2.8 Evidence

The procedure and rules as regards the admission of evidence before the investigating panel should be determined by the Chairman who may, if he wishes, hold a preliminary hearing with the parties (or their representatives) for the purpose.

2.9 Inquiry Report

The report of the investigating panel should be presented in 2 parts. The first part should set out the committee's findings and all the relevant facts of the case, but contain no recommendations as to action. The second part should contain a view as to whether the practitioner is at fault, and may, at the request of the Authority appointing the panel, contain recommendations as to disciplinary action. In no circumstances should the investigating panel itself be given disciplinary powers.

The panel should send the practitioner a copy of the first part of their report, and should allow a period of 4 weeks for the submission to them of any proposals for corrections of fact, or for setting out in greater detail the facts on any particular matter which has arisen. It would be for the panel to decide whether to accept any proposed amendments and whether any further hearing was necessary to enable them thus to decide. Subject to this procedure, the facts as set out in the panel's report should be accepted as established in any subsequent consideration of the matter.

2.10 Sperrin Lakeland Trust's Role

Sperrin Lakeland Trust should then receive the full report of the investigating panel and decide what action to take. In the event of the investigating panel finding that the practitioner is at fault, the substance of their views on the case and recommendations in the second part of their report should be made available to him in good time in order to allow him/her adequate time to make any plea in mitigation before Sperrin Lakeland Trust reaches any conclusion as to action.

2.11 Time Limits Applicable to Inquiry Stages

The Health and Social Services Executive and the professions are concerned at the length of time some hearings take before conclusion. In all cases, it has been agreed with the professions that the following time limits will apply to each stage, and in all cases, the time taken from the decision that there is a prima facie case to referral to Sperrin Lakeland Trust should not exceed 32 weeks:

- | | | |
|---|--|-------------------|
| a | Chairman decides that there is a prima facie case and informs the practitioner. | |
| b | Practitioner comments on the case | - within 4 weeks. |
| c | After receipt of comments,
Sperrin Lakeland Trust decide to follow this procedure | - within 2 weeks |
| d | Sperrin Lakeland Trust appoints Chairman and rest of
inquiry panel; and panel meets | - within 3 months |
| e | Hearing is concluded | - within 1 week. |
| f | Report is produced and factual part sent to practitioner | - within 4 weeks |
| g | Practitioner makes comments | - within 4 weeks |
| h | Report goes to Sperrin Lakeland Trust | - within 4 weeks |

2.12 Provisions of paragraph 190

These provisions are without prejudice to the provisions of paragraph 190 of the Terms and Conditions of Service of Hospital Medical and Dental Staff, Doctors in Community Medicine and the Community Health Service and Administrative and Community Dental Officers.

ANNEX C PARAGRAPH 190

PARAGRAPH 190: Annex C details changes to paragraph 190 of the Terms and Conditions of Service for Hospital Medical and Dental Staff, Doctors in Community Medicine and the Community Health Service and Administrative and Community Dental Officers. These changes have been determined by the Department in accordance with paragraph 12 of Part II of Schedule I to the Health and Personal Social Services (Northern Ireland) Order 1972. The new procedure will apply to appeals lodged with the Department after 1 January 1992. Replacement pages for the respective handbooks will be issued in due course.

REVISED VERSION OF PARAGRAPH 190 OF THE TERMS AND CONDITIONS OF SERVICE FOR:-

- *HOSPITAL MEDICAL AND DENTAL STAFF*
- *DOCTORS IN COMMUNITY MEDICINE AND THE COMMUNITY HEALTH SERVICE*
- *ADMINISTRATIVE DENTAL OFFICERS AND COMMUNITY CLINICAL DENTAL OFFICERS*

Appeal to Department against Termination of Appointment

190a. Subject to sub-paragraph (c),

- a consultant, SHMO, SHDO, AS or Hospital Practitioner
- a Director of Public Health, a consultant in Public Health Medicine, a Senior Clinical Medical Officer, or a Clinical Medical Officer on or above the 6th point of the salary scale
- an administrative or clinical dental officer

who considers that his appointment is being unfairly terminated may appeal to the Department against the termination by sending to the Department a notice of appeal at any time during the period of notice of termination of his appointment.

Time Limits for Appeal to Department

b A practitioner / appealing under sub-paragraph (a) shall also send a full statement of the facts of his case to the Department within:-

- i The period of 4 months beginning with the date on which he received notice of termination of his contract, or
- ii Where the Department is satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as the department may permit.

If he fails to do so, the appeal shall be treated as having been determined by a decision confirming the termination of his appointment.

Exclusion from Appeal against Termination of Appointment

c There is no right of appeal under sub-paragraph (a) in the following circumstances:-

i Hospital Medical and Dental Staff

The practitioner is ordinarily required to work in the hospital and community health service (HCHS) for no more than 5 NHDS and he has income from other Health Service medical or dental work equal to or greater than the income from the appointment being terminated, or

Doctors in Community Medicine and the Community Health Service

The practitioner is ordinarily required to work in the hospital and community health service (HCHS) for no more than 17.5 hours and he has income from other Health Service medical or dental work equal to or greater than the income from the appointment being terminated*, or

Administrative Dental Officers and Community Clinical Dental Officers

The administrative or clinical dental officer is ordinarily required to work in the community dental service for no more than 17.5 hours and he has income from other Health Service medical or dental work equal to or greater than the income from the appointment being terminated*, or

ii Subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct.*

"Personal Misconduct": for the purposes of this paragraph shall mean "performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills.

* Annex B:- Section 1 provides a mechanism for appeal where the practitioner is excluded by this provision from an appeal under paragraph 190.

Termination of Appointment:- Personal Misconduct

d A practitioner who considers that his appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of 1 month beginning with the date on which he received notice of termination of his employment, require the Department to refer to a panel the question whether his appointment is being terminated on the sole ground of personal misconduct.

Panel Decision on whether or not Termination is on sole grounds of Personal Misconduct

e The panel shall comprise for cases involving

Hospital Medical and Dental Staff

the Chief Medical Officer or Chief Dental Officer of the Department (as appropriate), the Chairman of the NICHMS, or HDSC (as appropriate), or their deputies, and a barrister or solicitor not in the employment of the government legal service or any Health and Social Services Board.

Doctors in Community Medicine and the Community Health Service
the Chief Medical Officer of the Department, the Chairman of the NICCM/CH or their deputies, and a barrister or solicitor not in the employment of the government legal service or any Health and Social Services Board.

Administrative Dental Officers and Community Clinical Dental Officers
the Chief Dental Officer of the Department, the Chairman of the Community Dental Services Committee and a barrister or solicitor not in the employment of the government legal service or any Health and Social Services Board.

The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the practitioner and the Employing Authority terminating the appointment accordingly. If the panel decides that the termination is not on the sole ground of personal misconduct, the practitioner / officer may (if he has not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to him of the panel's decision and the time allowed for the purpose of sub-paragraph (b) shall be 2 months from the date of such notification.

Departments Role

- f On receipt of a notice of appeal from a practitioner / officer entitled under sub-paragraph (a) and (c) to appeal the Department shall -
- i request the Employing Authority to give its written views on the case;
 - ii refer the case for advice to a professional committee consisting of representatives of the Department and Representatives of the practitioner's profession and chaired by the Chief Medical Officer or Chief Dental Officer of the Department or his/her deputy.

Employing Authority Role

- g The Employing Authority shall send to the Department its written views within the period of 2 months following the date of the request made in accordance with sub-paragraph (f) (i) ("the request date"). If the Employing Authority fails to do so and unless the Department extends the period for such further period as it thinks reasonable in a case where it is satisfied that it was not reasonably practicable for the Employing Authority's views to be presented within 2 months from the request date, the appeal shall be treated as having been determined by a decision to direct that the practitioner's / officer's appointment be continued.

Professional Committees Role

- h The professional committee -
- i shall be assisted by a barrister or solicitor;
 - ii may, if it thinks fit, interview the practitioner and representatives of the Employing Authority;
 - iii Shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than 3 months, after receipt by the Department of the Employing Authority's views;

- iv Shall give its advice to the Department.

Professional Committee Appropriate Decision

- i Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall;
- i ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the Employing Authority; and
- ii include in any advice given to the Department to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Employing Authority.

Departmental Decision

- j In the light of the professional committee's advice, the Department shall, as far as is reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
- i confirm the termination of the practitioner's/ officer's appointment;
- ii direct that the practitioner's / officer's appointment continue; or
- iii arrange some other solution agreeable to the practitioner / officer and the Employing Authority.

Practitioners Termination during Appeal Procedure

- k The termination of the practitioner's / officer's appointment shall not have effect while an appeal duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Employing Authority until the decision is given (and in the case of a referral under sub-paragraph (d) until any time allowed by sub-paragraph (e) for appealing has expired. If the Department so directs, the period of notice shall be further extended as it may direct in a case where it gives a decision to arrange a solution other than confirming the termination of the practitioner's / officer's appointment or directing that his appointment continue.

ANNEX D PROFESSIONAL REVIEW MACHINERY

PROFESSIONAL REVIEW MACHINERY

PROFESSIONAL REVIEW MACHINERY: Annex D introduces informal "pre-disciplinary" machinery for reviewing the conduct of hospital consultants who are alleged to have failed repeatedly to honour their contractual commitments. The procedure is in addition to, and does not replace, either Employing Authorities existing powers to take disciplinary action or the arrangements for dealing with sick doctors outlined in HSS(TC8) 1/84. This procedure shall apply from the date of this circular and may include the investigation of acts or omissions which have occurred before this date.

Summary

This Annex introduces informal machinery for reviewing the conduct of hospital consultants who are alleged to have repeatedly failed to honour their contractual commitments.

1. Procedure

The Area Medical Advisory Committee (AMAC) or the Area Dental Advisory Committee (ADAC) as appropriate, or their equivalent, will establish a professional panel to operate the procedure. The panel will normally consist of the Chairman of the AMAC or ADAC, and two other consultants nominated by the AMAC or ADAC for a period of not more than two years. A fourth member will be added to assist with each case, as set out in paragraph 6 below.

2. Referral

Allegations may be brought to the attention of the panel as follows:

- i directly:
 - by consultants
 - by the Medical Director (or the equivalent medical or dental officer in other employing authorities).
- ii all other staff should submit allegations to their manager who will submit them to the Medical Director. Medical or dental staff other than consultants may choose to make their allegations via a consultant.

3. Allegation: Consideration of Actions and Procedures

When the Medical Director receives an allegation, he will decide whether any action is needed and, if so, under which procedure. He may decide to use the intermediate procedure, to institute formal disciplinary procedures, to use the procedure set out in HSS(TC8) 1/84, or to refer the matter to the chairman of the professional panel constituted in accordance with paragraph 1 above. Medical Director notifying allegations to the panel, and consultants making allegations to the panel will do so in writing.

4. Anonymity of those making allegations

The Medical Director will preserve the anonymity of those making the allegations, if they so wish. The legal position of those who pass on information is that an action for defamation is not likely to succeed against persons passing on information which in their opinion should be

brought to the notice of the recipients, since these persons would, unless actuated by malice, be able to rely on the defence of qualified privilege. This defence applies to a statement made in pursuance of a legal, moral or social duty to a person who has a corresponding duty to receive it.

5. **Proceedings Establish that Act is in Accordance with Recommended Procedure**

If proceedings are brought which establish that the defendants have acted in accordance with the recommended procedure, in good faith, and with reasonable care, the Employing Authority should meet the cost of their defence and of any damages or costs ordered to be paid in those proceedings.

6. **Practitioner Advised**

When the Chairman of the panel receives an allegation, he will inform the consultant concerned verbally, and provide him with a copy of any written representations received. The panel will co-opt a fourth member, from the same or an allied speciality as the consultant against whom the allegations have been received, but employed in another area: he will be co-opted on the recommendation of the Chairman of the AMAC or ADAC, or equivalent in that area.

7. **Informal Discussions: Allegation**

The consultant will then be invited to meet the panel and discuss the allegation. The matter will be discussed informally with the consultant, and no friends or representatives will be present. In the light of these informal discussions, the panel may conclude that the allegation is unfounded, in which case no further action will be necessary. If they conclude that there is substance to the allegations, the consultant will be advised accordingly, and invited to meet the panel within six months to review the advice given. If, after this second meeting, the panel considers that there has been no improvement, and there remains a problem, the matter will be referred to the Medical Director.

8. **Medical Director Informed**

The Medical Director will be informed of all referrals to the panel and the outcome in each case, including those where the consultant concerned refused to meet the panel.

9. **Maintenance of Records**

The Chairman will keep a note of the meeting, consisting of a factual statement of the complaint received, and a statement that the consultant has been advised by the panel. No other record of the meeting should be kept.

ANNEX E

INTERMEDIATE PROCEDURE

INTERMEDIATE PROCEDURE

Annex E introduces a new procedure for dealing with cases of professional misconduct and professional incompetence which warrant disciplinary action short of dismissal. This procedure shall apply from the date of this circular and may include the investigation of acts or omissions which have occurred before this date.

Introduction

This new procedure involves the use of independent professional assessors, nominated by the British Medical Association or British Dental Association who would be invited by the Medical Director (on behalf of the employing authority) to investigate and advise him on matters involving professional conduct or competence. The assessors themselves would have no disciplinary powers. The procedure could be used both in cases where there is a specific disciplinary allegation against a consultant or consultants and where there are problems arising from differing professional views within a department.

The following procedure will require commitment from the profession that they would have to find suitable assessors speedily and there would have to be sufficient volunteers to act as assessors; there will also need to be commitment from Employing Authorities in releasing assessors, including perhaps by allowing locum cover. Travelling and subsistence expenses of the assessors are payable in accordance with the Payment of Travelling and other Allowances to Members Determination (Northern Ireland) 1989.

1. Procedure

On receiving an allegation from any source the Medical Director will need to make some preliminary enquiries in order to determine whether:

- a there was no substance in the allegations and therefore no further action was necessary.
- b the case was a minor one which the Medical Director thought suitable to deal with on an informal basis.
- c it was a case appropriate to Professional Review Machinery:- Annex D
- d the procedures set out in HSS(TC8) 1/84 might be appropriate, or the Medical Director wished to advise that it was a suitable case to refer to the sick doctors' scheme.
- e it was personal misconduct, in which case the disciplinary guidance outlined in Annex B:- Section 1 Personal Conduct would be followed.
- f it involved serious allegations about professional conduct or competence and, if so, whether or not it was serious enough to warrant procedures under annex B of this circular.
- g it involved less serious allegations about professional conduct or competence, and was suitable for the intermediate procedure:- Annex E

During these preliminary enquiries, the Medical Director will normally wish to have a discussion with the doctor involved.

2 Case applicable to Category G

If the Medical Director decided that the case(s) falls into category 1(g), he will normally write to the BMA or BDA with details of the practitioner's speciality and the Area(s) and the hospital(s) where he/she works, together with a very brief indication of the problem (eg. whether there are doubts about a consultant's clinical practice or a clash of professional views). At the same time, the Medical Director will inform the doctor(s) or dentist(s) involved and others he thinks appropriate that he has taken this action.

3. Impartial Assessors

The BMA or BDA will nominate impartial assessors from another Area/Region (normally two, with at least one from the same speciality as the consultant concerned and at least one from outside Northern Ireland), and agree their appointment with the Medical Director. The BMA or BDA will aim to provide the names of assessors within one month.

4 Assessors provided with statement of case

When the Medical Director receives notification of the assessors and agrees their appointment, he will provide them with a detailed statement of the case within one month, copying it at the same time to the doctor(s) or dentist(s) involved. The assessors will examine the statement and first consider whether or not it is appropriate to this procedure.

5 Assessors Role

- i The assessors may wish to meet the Medical Director at this stage for a preliminary discussion or if they need further background information.
- ii If they consider that it falls into categories 1(c), (d) or (e) or is so serious that Annex B procedure is clearly appropriate, they will discuss with the Medical Director how best to proceed.
- iii Otherwise, the assessors will determine whom they wish to interview; through the Medical Director services they will provide the doctor(s) or dentist(s) involved with the list of those to be interviewed and ask the doctor(s) whether he would like anybody to be interviewed by the assessors.
- iv The assessors will visit the Employing Authority area and undertake the necessary investigations. They will not be able to compel anybody - including the doctor(s) involved - to meet them, and refusal to do so should not frustrate the enquiry. Anybody who is interviewed should be informed that they will be expected to provide a written statement or to sign an agreed record of the interview, and that copies of these records and statements will be passed to the doctor(s) involved.
- v The doctor(s) or dentist(s) involved will be invited to meet the assessors and may do so either alone or accompanied by a representative of their professional organisation or a friend.
- vi During the period of the investigation and preparation of the report, the Medical Director will arrange for the provision of secretarial and administrative assistance for the assessors.

6. Assessors Report

As far as possible, the investigation will be completed within three months of the assessors receiving the statement of the case from the Medical Director. The assessors will prepare a report, which shall be divided into 2 parts. The first part shall set out the assessors' findings on all the relevant facts of the case, but contain no recommendations as to action. The second part shall contain a view as to whether and to what degree the doctor(s) involved is/are at fault and may also contain recommendations regarding, eg. organisational matters within the department or advice to be given to the consultant. In no circumstances should the assessors themselves be given disciplinary powers.

The assessors will send the doctor(s) or dentist(s) involved and the Medical Director a copy of the first part of their report and should allow a period of 14 days for the submission to them of the doctor(s) or dentist(s) comments on its factual accuracy. The assessors will then submit the full report to the Medical Director.

7. Medical Directors Decision on Further Action.

The Medical Director will then decide what further action is necessary, and will inform the doctor(s) or dentist(s) involved accordingly. If he decides that disciplinary action is necessary eg. a warning is appropriate, the local procedures based on paragraphs 12(i) and (ii) of the LRA Code of Practice would be followed. If the doctor(s) or dentist(s) involved wishes to appeal against any disciplinary action, the appeal will be to the Employing Authority using similar procedures as set out in Annex B:-Section 1 paragraph 12-15 Personal Conduct. It is recommended that the Appeal Committee might be made up of the Chairman of the Board (or a deputy), a non executive member of the Board (if possible a doctor or dentist as appropriate), and another doctor or dentist in the same or associated speciality as the doctor or dentist involved. The appointment of the latter would normally be made from outside the Employing Authority area but, in appropriate cases, could be made from within the Employing Authority area.

8. Cases where Medical Director is subject of allegations

This procedure shall also apply to Medical Directors, other consultants in public health medicine and administrative dental officers and community clinical dental officers. Where the subject of the allegation is the Medical Director a reference to "Medical Director" shall be to "General Manager/ Chief Executive" who will seek appropriate professional advice.

25/09/96

DISCIPLINARY PROCEDURE FOR MEDICAL & DENTAL STAFF

SPERRIN LAKE LAND HEALTH AND SOCIAL SERVICES TRUST

TYPE OF STAFF GROUP	TYPE OF OFFENCE	DISCIPLINARY PROCEDURE	DISCIPLINARY AUTHORITY	APPEAL AUTHORITY
Medical And Dental	PERSONAL CONDUCT	The Revised Procedure	Senior Manager and Appropriate Personnel Manager	3 Directors or equivalent level (One Should Be An Executive Director Plus A Non-Executive Director)
Medical Director	PERSONAL CONDUCT	The Revised Procedure	Chief Executive Non Executive Director	Trust Chairman 2 Non Executive Directors
Medical And Dental	PROFESSIONAL CONDUCT & PROFESSIONAL COMPETENCE	The Revised Procedure	Medical Director or Deputy Executive Director Non-Executive Director External Adviser from Appropriate Speciality	Chief Executive or Deputy 2 Non-Executive Directors External Adviser from Appropriate Speciality Legally Qualified Adviser in Cases of Dismissal Appeals
Cases Involving Medical Director	PROFESSIONAL CONDUCT & PROFESSIONAL COMPETENCE	The Revised Procedure	Chief Executive 2 Non-Executive Directors External Adviser from Appropriate Speciality	Trust Chairman 2 Non-Executive Directors External Adviser from Appropriate Speciality Legally Qualified Adviser in Cases of Dismissal Appeals

* It is recommended that a Senior Personnel Manager is in attendance when not a panel member

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LC-SLT



Management Executive

Human Resources Directorate

The General Manager/Chief Executive and each
Unit General Manager of each Health and Social
Services Board, the General Manager of the
Central Services Agency and the Chief Executive
of each HSS Trust

SP2307/91

17 November 1995

Dear Sir/Madam

DISCIPLINARY PROCEDURES FOR HOSPITAL AND COMMUNITY MEDICAL AND HOSPITAL DENTAL STAFF - SUSPENSIONS SUMMARY

Occasionally it is necessary to suspend a medical or dental practitioner. However, the misuse of this power can result in individual injustice and major waste of public money. Recent cases in the United Kingdom have highlighted that this in turn leads to erosion of public confidence in the HPSS.

Attached to this Circular is an Annex which gives guidance on the suspension of hospital medical and dental and community medical staff which is strongly commended for incorporation into local procedures. The terms of this Circular have been agreed with local representatives of the profession.

This circular gives guidance which has been agreed by a joint Working Party in England which has been reviewing the guidance to Health Authorities on disciplinary procedures for medical and dental staff issued in March 1990 (Health Circular HC(90)9). The Northern Ireland equivalent of this Circular was HSS(TC8)15/91 issued in December 1991.

Action

HSS Trusts and Employing Authorities should ensure that the attached guidance is taken into account in drawing up local procedures for handling the suspension of hospital medical and dental and community medical staff.

Yours faithfully

T A McNEILL
Assistant Director

[HSG(94)49]

LC 37 A

Health and Personal Social Services Northern Ireland
Castle Buildings, Upper Newtownards Road, Belfast BT4 3SL. Tel: 520500

Copied to:
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Tina
396-024-129

LC-SLT

APPENDICES

Suspension of Hospital and Community Medical and Hospital Dental Staff

1. The aim of this guidance is to ensure that:
 - (a) Avoidable suspensions do not happen; and
 - (b) If practitioners are suspended, it should be for the minimum necessary period of time.
2. These guidelines, together with the indicative timetable below, are strongly commended to HPSS employers for incorporation into any local procedures they may draw up in consultation with their staff.
3. Suspension should be seen as a neutral act, rather than a disciplinary sanction. It is intended to protect the interests of patients, other staff, or the practitioner and/or to assist the investigative process. It is a measure which has potentially serious consequences in both human and financial terms, especially where the suspension proves to be a lengthy one. It is therefore in the interests of all concerned to ensure that alternatives to suspension, for example, the practitioner continuing to work on limited or alternative duties where practicable, are carefully considered. When suspension is appropriate, it is essential that adequate resources are committed to ensure the speedy resolution of the case.
4. All those concerned in such cases will benefit from clear procedures setting out the principles to be applied in the consideration and handling of suspensions. The following approach is commended to employing bodies in handling individual cases or in formulating local procedures.
 - (a) Suspension may be considered when a member of staff needs to be immediately removed from the employing body's premises to protect the interests of patients, other staff, or the practitioner, and/or to assist in the investigative process.
 - (b) The authority to suspend, or extend a suspension period, should be invested in a nominated officer of the employing body, normally the Medical Director or equivalent. The practitioner should be advised of his or her rights by the suspending officer. The oral suspension order should be served in private, with a witness present, stating the content of the allegations. The Chairman of the employing body or a nominated Non-executive Director should be informed at the earliest opportunity.
 - (c) The suspension order should be immediately confirmed in writing, clearly stating the effective date and time, the content of the allegations and that full investigation will follow.
 - (d) The suspension should be on full pay.
 - (e) The particulars of the allegations should be substantiated within ten days. Where this is not possible, the practitioner should be told why and informed when the particulars will be provided.

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- (f) There should be provision in all cases for review of the suspension as the enquiries continue. At each review careful consideration should be given as to whether the interests of patients, other staff, or the practitioner, and/or the needs of the investigative process continues to necessitate suspension. This process should also take into account the option of the practitioner returning to limited or alternative duties where practicable.
- (g) A review of the position should normally be undertaken at least every two weeks and the outcome reported to the Chairman or Non-Executive Director.
- (h) The practitioner concerned should be informed of the outcome of each review.
- (i) If the investigation has not been completed within three months of the date of suspension, a report should be made to the employing authority outlining the reason for the delay and indicating how long the suspension is expected to continue and including a plan for completion of the investigation.
- (j) If the suspension continues, reports should be made to the employing authority at each meeting thereafter.
- (k) If at any time after the practitioner has been suspended, investigation shows that either the allegations are without foundation or that further investigation can continue with the practitioner working normally, the suspension should be lifted and the practitioner allowed to return to work as soon as practicable.
- (l) Whilst it is impractical to lay down strict time limits for the overall length of suspension because of, for example, legal factors or police investigations, this should be kept to an absolute minimum in all cases.

Indicative Timetable

- 5. Employing bodies are urged to adopt the indicative timetable below.

Decision taken to suspend practitioner

Every 2 weeks -

Review by a designated person

Practitioner to be informed of state of investigation after each review

3 months -

Report to employing authority

Each meeting thereafter -

Further report to employing authority

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6. Assessors Report

As far as possible, the investigation will be completed within three months of the assessors receiving the statement of the case from the Medical Director. The assessors will prepare a report, which shall be divided into 2 parts. The first part shall set out the assessors' findings on all the relevant facts of the case, but contain no recommendations as to action. The second part shall contain a view as to whether and to what degree the doctor(s) involved is/are at fault and may also contain recommendations regarding, eg. organisational matters within the department or advice to be given to the consultant. In no circumstances should the assessors themselves be given disciplinary powers.

The assessors will send the doctor(s) or dentist(s) involved and the Medical Director a copy of the first part of their report and should allow a period of 14 days for the submission to them of the doctor(s) or dentist(s) comments on its factual accuracy. The assessors will then submit the full report to the Medical Director.

7. Medical Directors Decision on Further Action.

The Medical Director will then decide what further action is necessary, and will inform the doctor(s) or dentist(s) involved accordingly. If he decides that disciplinary action is necessary eg. a warning is appropriate, the local procedures based on paragraphs 12(i) and (ii) of the LRA Code of Practice would be followed. If the doctor(s) or dentist(s) involved wishes to appeal against any disciplinary action, the appeal will be to the Employing Authority using similar procedures as set out in Annex B: Section 1 paragraph 12-15 Personal Conduct. It is recommended that the Appeal Committee might be made up of the Chairman of the Board (or a deputy), a non executive member of the Board (if possible a doctor or dentist as appropriate), and another doctor or dentist in the same or associated speciality as the doctor or dentist involved. The appointment of the latter would normally be made from outside the Employing Authority area but, in appropriate cases, could be made from within the Employing Authority area.

8. Cases where Medical Director is subject of allegations

This procedure shall also apply to Medical Directors, other consultants in public health medicine and administrative dental officers and community clinical dental officers. Where the subject of the allegation is the Medical Director a reference to "Medical Director" shall be to "General Manager/ Chief Executive" who will seek appropriate professional advice.

2 Case applicable to Category C

If the Medical Director decided that the case(s) falls into category 1(g), he will normally write to the BMA or BDA with details of the practitioner's speciality and the Area(s) and the hospital(s) where he/she works, together with a very brief indication of the problem (eg. whether there are doubts about a consultant's clinical practice or a clash of professional views). At the same time, the Medical Director will inform the doctor(s) or dentist(s) involved and others he thinks appropriate that he has taken this action.

3 Impartial Assessors

The BMA or BDA will nominate impartial assessors from another Area/Region (normally two, with at least one from the same speciality as the consultant concerned and at least one from outside Northern Ireland), and agree their appointment with the Medical Director. The BMA or BDA will aim to provide the names of assessors within one month.

4 Assessors provided with statement of case

When the Medical Director receives notification of the assessors and agrees their appointment, he will provide them with a detailed statement of the case within one month, copying it at the same time to the doctor(s) or dentist(s) involved. The assessors will examine the statement and first consider whether or not it is appropriate to this procedure.

5 Assessors Role

- i The assessors may wish to meet the Medical Director at this stage for a preliminary discussion or if they need further background information.
- ii If they consider that it falls into categories 1(c), (d) or (e) or is so serious that Annex B procedure is clearly appropriate, they will discuss with the Medical Director how best to proceed.
- iii Otherwise, the assessors will determine whom they wish to interview; through the Medical Director services they will provide the doctor(s) or dentist(s) involved with the list of those to be interviewed and ask the doctor(s) whether he would like anybody to be interviewed by the assessors.
- iv The assessors will visit the Employing Authority area and undertake the necessary investigations. They will not be able to compel anybody - including the doctor(s) involved - to meet them, and refusal to do so should not frustrate the enquiry. Anybody who is interviewed should be informed that they will be expected to provide a written statement or to sign an agreed record of the interview, and that copies of these records and statements will be passed to the doctor(s) involved.
- v The doctor(s) or dentist(s) involved will be invited to meet the assessors and may do so either alone or accompanied by a representative of their professional organisation or a friend.
- vi During the period of the investigation and preparation of the report, the Medical Director will arrange for the provision of secretarial and administrative assistance for the assessors.

Report to the Management Executive

6. If the investigation has not been completed within 6 months of the date of suspension, a position report should be made to the Management Executive indicating the actual and anticipated costs, the reason for the delay, and the anticipated timescale for completing the process.
7. Every attempt should be made to conclude the investigation and, where appropriate, the subsequent disciplinary process, as speedily as possible.

39b-024-135

FORM OF AGREEMENT

The preceding Disciplinary Procedures for Hospital and Community Medical and Dental Staff has been agreed between Sperrin Lakeland Health and Social Care Trust and the recognised Trade Unions with effect from 25 November 1999.

MANAGEMENT SIDE

Chief Executive:

Angela S. Little

Date:

25th Nov. 99

STAFF SIDE

Representative:

Richard Bayd

(on behalf of BMA and BDA)

Date:

27/10/99

39b-024-136