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## **Practice name & logo**

# **DISCIPLINARY CODE AND PROCEDURES**

## **1. Objective**

The objective of the disciplinary code and procedure is to:

- 1.1 Is adopted both for the fair treatment of employees (who should be aware of the standards expected of them) and the success of the Practice/Company;
- 1.2 Minimise potential conflict between the Practice/Company and employees and as such creating a harmonious working environment;
- 1.3 Ensure that employees are treated fairly and in accordance with the standards set by the Practice/Company;
- 1.4 Create a fair and equitable mechanism for dealing with actionable behaviour, whether in the form of, amongst others, misconduct, incapacity, poor work performance, incompetence or negligence. To provide for the consistent and fair handling of misconduct in the workplace within the guidelines of schedule 8 of the Labour Relations Act No 66 of 1995;
- 1.5 Correct unacceptable behaviour through progressive discipline.;
- 1.6 Encourage timely education and corrective action in the event that an employee's behaviour or performance proves to be unsatisfactory or unacceptable;
- 1.7 Inform all employees as to what conduct constitutes disciplinary transgressions, the potential associated penalties and the disciplinary procedures that will be followed when dealing with those.

## **2. Definitions**

For the purpose of this procedure, the following definitions apply:

- "Abuse of sick leave" means pattern trend in regard to sick leave by an employee who over a period of 6 month, applies for leave on Mondays, Fridays a day before or after a public holiday, a day before or after payday. It may also refer to situations where sick leave days are exhausted within a year for minor unrelated illnesses in a sick leave cycle.
- "Conflict of Interest" means a situation where someone in a position of trust has competing or personal interests that conflict with the Practices/Company's business interests.
- "Confidential" means any information given to an employee by the Practice or the patients in confidence during their employment and where such information is not intended for public or general use

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- “Desertion” means absence for more than 3 days without any communication to the Practice/Company.
- “Dereliction of duties” means wilful negligence and/or tendencies to be negligent or uncaring about your duties.
- “Disciplinary action” includes discussions with an employee that s/he has broken a workplace rule and disciplinary hearings.
- “Disciplinary discussion” means an informal disciplinary meeting conducted by the responsible supervisor or manager and does not constitute a disciplinary hearing.
- “Disciplinary hearing” means a formally constituted meeting where serious or dismissible conduct is investigated and heard, and conducted in terms of this Code and applicable legal provisions.
- “Gross Negligence” means a conscious and voluntary disregard of the need to use a reasonable care in carrying out ones duties.
- “Insubordination” means when an employee wilfully fails to obey an instruction given to them by the Practice/Company.
- “Negligence” means failure to exercise reasonable care in carrying out one’s duties- or a failure to act with prudence that a reasonable person would exercise under the same circumstances.

### **3. Guiding Principles (Policy rules)**

- 3.1 The basic guiding principal should be for anyone who is facilitating any disciplinary process, be it formal or informal, to apply the principles of natural justice, in particular the *audi alterma partem* (hear the other side) rule and the presumption of innocence until proven guilty.
- 3.2 The essence of this is that an employee must be given an opportunity to state his/her case prior to the action being taken against him/her and that employees must be presumed innocent until they have been proven guilty on a balance of probabilities.
- 3.3 The Practice/Company is expected to show just cause for taking disciplinary actions (by conducting investigations) and dismissals taken against employees, and to ensure that proper corrective and disciplinary procedures have been followed.
- 3.4 Employees may not lodge a grievance following an outcome of a disciplinary hearing, other measures such as appeal may be used in that regard. No grievance can be lodged after receipt of formal notification of a disciplinary inquiry/hearing or during a hearing process.
- 3.5 Disciplinary actions must be preventative and corrective; only in cases where the transgression is of a serious nature and therefore correction is impossible; or

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where the transgressor fails to react positively to corrective discipline, may punitive measures be taken. Discipline must be applied consistently.

- 3.6 Punitive action shall only be taken when educative or corrective steps have proved ineffectual, or where the transgression is so material that it becomes intolerable to continue with the employment relationship. Less serious transgressions must be handled through discussions, coaching and counselling, and only if that fails should the Practice invoke a formal disciplinary process.
- 3.7 All disciplinary action must both be procedurally and substantially fair.
- 3.8 The conduct expected of employees are found within generally accepted standards of behaviour, and/or those specifically set in the context of the employee's employment contract, performance targets, work relations and/or any policy set by the employer.
- 3.9 The Code also applies to the conduct of employees after hours and off the Practice/Company premises, as long as the conduct occurs within the context of the employee's work.
- 3.10 A list of potential transgressions and possible sanctions is attached to this Code, which serve as a guideline to all employees to illustrate the effect and the seriousness of such on the employment relationship. However, each case will be considered on its merits. In appropriate circumstances, a departure from the provisions of this Code may be justified. The list of transgressions is not exhaustive and employees may be disciplined for other forms of misconduct, which are not necessarily captured in the list of transgressions attached.
- 3.11 Disciplinary action relating to poor work performance should be preceded by clear instructions or tasks or duties being communicated to the employee, where after the employee should be afforded, if s/he fails, the opportunity and the tools to improve his/her performance within a reasonable time, failing which, disciplinary action may be taken.
- 3.12 Comprehensive and accurate record keeping of disciplinary actions and hearings in particular, are essential. A tape recorder may be used to record hearing proceedings and summary of the minutes must be prepared by the chairperson once the hearing has been completed (as part of the findings).
- 3.13 The employee's disciplinary record may only be considered during the sanction phase of the disciplinary process, i.e. after guilt has been established. However, where there is a link between transgressions, e.g. repeated absences from work, or where warnings have not expired, these are all relevant in disciplinary action.
- 3.14 Mitigating circumstances and evidence should in all cases be assessed and taken into account, the employee's interests.

#### **4. Disciplinary Procedure**

The following disciplinary procedures will be followed:

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#### 4.1 **Verbal disciplinary discussion**

- 4.1.1 This encompasses normal day-to-day corrective instruction, discussion and counselling given by a person of authority to an employee or employees.
- 4.1.2 The disciplinary discussion shall be attended by the employee's supervisor/manager and the employee concerned, and, if requested by the employee, a representative of the employee.
- 4.1.3 The supervisor/manager shall inform the employee concerned, during the discussion, of the reason for the discussion and of the alleged transgression/s. The rule that has allegedly been violated should be clearly outlined. It is concerned with identifying a practice or behaviour, which is incorrect, or a standard which is incorrect or a standard which is not being met.
- 4.1.4 The employee and/or his representative shall be given an opportunity to answer to the alleged transgression and once the supervisor/manager has established the facts relating to the incident he may, depending on the nature of the incident and taking cognisance of the Practice's disciplinary code, communicate to the employee his/her decision, which could include that no action be taken, that the employee be subjected to certain supervisory mechanisms, counselling, a verbal warning, a written warning or a final written warning or a notice of a formal hearing.
- 4.1.5 Any discussion should include reference to the corrective action that the employee is expected to take in order to remedy, and prevent future transgressions. The verbal discussion informs employees of the possible consequence of a repeat of the misconduct.

#### 4.2 **Written warning**

- 4.2.1 A written warning may be given where attempts at correction as detailed in paragraph 4.1 above have failed or where misconduct is considered so serious that a verbal explanation or informal reprimand would not be adequate.
- 4.2.2 Issued warnings will endure as set out below, where after all records of such warnings will be destroyed, and it may not be considered during any subsequent disciplinary action, or any other employee evaluation or measurement. Should an employee, however, commit a similar transgression again, the penalty or action outlined in the warning will materialise.

Verbal warning:           3 months  
Formal written warning: 6 months  
Final written warning: 12 months

- 4.2.3 Final written warnings should not be given without formal disciplinary hearing unless otherwise agreed to with the employee concerned.

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4.2.4 Only Practice management/Company management are duly authorised to issue final written warnings and to effect disciplinary action more serious than a verbal warning.

4.2.5 Employees must be given fair opportunity to state their case prior to the issuing of any form of warning be it informal, written or a final warning. The principles of fairness must apply.

4.2.6 A written warning that is issued to an employee must be signed by such employee as proof of acceptance thereof, and where an employee wishes to challenge the issuing of the warning, the employee must still acknowledge receipt of the warning.

4.2.7 In the event of an employee refusing to sign for any warning the fact that such warning was given to him/her may be proven by other means.

### 4.3 **Suspension**

4.3.1 The Employer has the responsibility to suspend an employee following a preliminary investigation.

4.3.2 Suspensions are affected only when the presence of an employee/s will interfere with on going investigations or cause workplace instability. Such suspension should be fully paid unless it is a sanction alternative to dismissal. Such sanction should be agreed with the employee.

4.3.3 Suspension periods should be reasonable depending on the investigations.

4.3.4 The employee may be required to return all Practice/Company/Close Corporation property to the Practice/Company/Close Corporation, and, if applicable, to refrain from contacting other employees who may be potential witnesses or involved in the matter.

### 4.4 **Dismissals**

4.4.1 No dismissals will be effected without a fair disciplinary hearing that is substantively and procedurally fair. Unfair dismissals are costly to the Practice and violate the rights of employees. This is not in line with the Practice and the principles for which it stands for.

### 4.5 **Disciplinary Records**

4.5.1 A record will be kept of a formal verbal or written warning, so as to keep track of corrective steps taken to assist an employee correct his/her behaviour and to assist the employee to meet a certain standard of performance and or behaviour.

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4.5.2 An employee has the right to appeal against any disciplinary action or record if he/she considers it to be unfair.

#### 4.6 **Disciplinary hearing**

4.6.1 No employee may be dismissed without being granted a formal disciplinary hearing, save for in circumstances where:

- an employee absconds and/or is unwilling to return to work; or
- an employee refuses to attend a disciplinary hearing after being notified thereof; or
- where, in exceptional circumstances, the Practice/Company/Close Corporation cannot reasonably be expected to hold a formal hearing.

4.6.2 A disciplinary hearing shall be held with at least 3 (three) working days' notice to the employee concerned upon conclusion of the investigation, unless otherwise agreed between the parties.

4.6.3 An employee who is on suspension must always be at the disposal of the employer and must avail himself/herself upon the employers demand. Such an employee must be available for a disciplinary hearing when the employer demands and must be notified in writing of the date of such hearing.

4.6.4 The employee concerned must be advised in writing as per paragraph 4.6.2 in the following format of the hearing:

- The nature of the alleged transgression, with sufficient detail as to the dates and locations where such transgression is alleged to have taken place;
- The time and place of the hearing, which may be not less than 48 hours prior to the hearing, but may need to be more, in order to afford the employee sufficient time to prepare for the hearing;
- Notified of his/her right to be represented by any person who is also an employee of the Practice/Company/Close Corporation at the time; it will be his/her sole responsibility to arrange this. No legal representation or outside representation will be allowed at a the Practice/Company/Close Corporation hearing;
- The possible consequences of being found guilty;
- The right to be present at the disciplinary hearing, but also informing the employee that if s/he waives this right, the hearing may proceed in his/her absence.
- The right to state his/her case in defence by presenting evidence, cross-examining the Practice/Company/Close Corporation representative and/or witnesses and by calling witnesses;
- The right to appeal the disciplinary findings and action to the CCMA;
- The right to be supported and/or represented by another employee during the process.

4.6.5 The disciplinary hearing shall be attended by the employee concerned; the employee's representative, if requested by the employee; the employee's supervisor or direct

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manager, if applicable; and a Director/owner of the Practice/Company/Close Corporation, if applicable.

4.6.6 The Practice/Company/Close Corporation will appoint an impartial person to chair the hearing, who may be a third party, such as a labour consultant or lawyer.

4.6.7 The chairperson must inform all at the hearing of how the process will unfold.

4.6.8 The chairperson will make a finding that includes reasons for such finding, and which will include, if applicable, an appropriate sanction, taking into account this Code and all relevant factors.

4.6.9 The following people should attend the disciplinary hearing: the accused person, his/her representative, if desired by him/her, the initiator, an interpreter (if so required), a representative from the Practice and the Chairperson of the hearing.

4.6.10 Save where proceedings are electronically or mechanically recorded, the hearing shall be minuted and the Chairperson must take his/her own notes.

4.6.11 A written decision pursuant to the hearing shall be given to the employee with reasons within 3 (three) working days from the hearing, and he/she shall at the same time be advised in writing of his/her right to appeal such decision or to refer the matter to the appropriate outside tribunal eg the CCMA.

#### 4.7 Conditions of Hearing

4.7.1 The disciplinary hearing shall be held where the proceedings can take place without interference or interruption. It is the Chairperson's responsibility to create a conducive environment for a fair hearing. Witnesses shall wait outside the hearing until called upon to give evidence.

4.7.2 An employee is entitled to a bundle of documents to be used by the employer at least 3 days prior to the hearing.

4.7.3 Employee's representatives are expected to express themselves freely and must not be victimised as a result of their involvement in a disciplinary hearing even if they acted as a witness against the Practice/Company/Close Corporation.

4.7.4 The employee has a right to be informed of his/her rights. The employee prior to the commencement of the hearing, be fully informed of his /her rights to:-

- Be fully informed and appraised of the allegations and evidence against him/her ;
- Call any relevant witnesses to support their evidence;
- Be represented by a co-employee and have an interpreter to assist him/her. Any argument for legal representation must be heard by the Chairperson and an appropriate ruling made;
- To state their case in response to any allegation/s;
- To cross-examine the Practice's/Company's/Close Corporation's witnesses; and

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- To appeal against the outcome of any disciplinary process as set out in paragraph 6.

## 5. Disciplinary Sanctions

The following constitutes further possible sanctions, other than those already mentioned, where an employee has been found guilty in any form of disciplinary action:

- 5.2 **Counselling or participation in a specific employee assistance programme**, depending on the nature of the transgression.
- 5.3 **Demotion** entails an adjustment of the conditions of employment, however, the employee has to consent to this, and it would only be regarded as an appropriate sanction in exceptional cases, and often as an alternative to dismissal.
- 5.4 **Dismissal**, in serious cases and/or where other previous corrective and preventative actions have failed. Dismissal may follow after a final written warning had been issued and the transgression has been repeated.
- 5.5 **Deferment of disciplinary sanction** occurs in cases of, for example, incompetence or negligence, an employee may be found guilty and the imposition of disciplinary measures be deferred pending corrective action, training, coaching, supervision, rehabilitation, etc.

## 6. Appeal [this would only apply in larger practices, for smaller practices aggrieved employees must approach the CCMA or a smaller employer can appoint outside persons to undertake the appeal, such as EKC.]

6.1 An employee who feels that the disciplinary action taken against him/her pursuant to a disciplinary hearing is unfair may as of right, lodge a written appeal within 3 (three) working days of being advised of the outcome of the disciplinary hearing. An appeal will be valid for the following reasons:

- The disciplinary hearing did not follow the policy and procedure laid down in this disciplinary procedure;
- New facts came to light that were not taken into account by the Chairperson of the hearing;
- The penalty meted out does not fit the offence/conduct for such an incident (substantive fairness) or contravenes disciplinary code; or
- The conduct of the Chairperson was biased towards the employee.

6.2 The employer will determine whether an appeal can be granted or not, based on the reasons stated above and will advise the employee accordingly.

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- 6.3 Appeal hearings are granted only if the employee has sufficient and valid grounds, this is determined by substantive and procedural grounds. It is also important for employees to note the appeal hearings are not retrials. The Chairperson of the appeal only focuses on the points that the employee alleges to be unfair.
- 6.4 The Chairperson of a disciplinary hearing must not preside on the appeal process in order to review his/her own decision.
- 6.5 The Chairperson of disciplinary hearings, appeal and grievance procedures must guard against acting *ultra vires* and always defer to the disciplinary code.

## 7. Guide of offences and severity of possible sanctions

W = Warning (verbal, written or final written). It should however be noted that repeated offences labelled in this way, may result in disciplinary hearing and more serious sanctions, such as dismissal.

S = Serious (could result in disciplinary hearing and possible dismissal – with notice or summary dismissal i.e. without notice)

TRANSGRESSION TYPE	DEFINITION OF TRANSGRESSION	POSSIBLE SANCTION
Absenteeism	Failure to report absence or illness to manager on first day of illness and regularly for the duration of the illness	W
	Failure to report illness to manager at all where illness is of the duration of 3 or more days	S
	Failure to present medical certificate to manager for absence due to illness in respect of more than 2 days; or the day before or after a weekend, public holiday or period of authorised leave; or when requested to do so after absences of more than 2 occasions during an 8 week period	W
	Failure to obtain the necessary authorisation from manager for any absence from work	W
	Absence for more than 3 consecutive days without prior authorisation or validation for the absence in the form of a medical certificate	S
	Failure to report to work for extended period of time without prior authorisation (AWOL)	S
	Dishonesty in that a fraudulent medical certificate was produced	S
	Ongoing and persistent absenteeism (misconduct)	S
Timekeeping	Late for work or leaving early; or extended breaks	W
	Absence from work station or work area without authorisation and/or permission or without a valid reason	W
	Failure to report for overtime work when agreed to do so	W
Dishonest Conduct	Fraud	S
	Forgery	S
	Bribery	S
	Theft or attempted theft of Practice property or the property of patients, clients, business liaisons or employees of the Practice	S
	Misappropriation or attempted misappropriation or unauthorised possession or use of Practice property or the property of clients, patients or employees of the Practice	S
	Consumption or use of the Practice property without the proper authorisation	S
	Presenting fraudulent or falsely concluded patient, supplier or other information to the Practice or to any third party, such as a medical scheme, administrator, manufacturer or any other entity.	S

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TRANSGRESSION TYPE	DEFINITION OF TRANSGRESSION	POSSIBLE SANCTION
	Receiving gifts from patients, clients, suppliers or others in contravention of the Practice's policy, and/or without declaring such gifts to the Practice.	
Grossly offensive and/or unsafe behaviour	Derogatory, discriminatory- or obscene language and/or behaviour	S
	Intimidation and/or victimisation of any person	S
	Unauthorised possession of dangerous weapons in the workplace and/or threatening to use or using a dangerous weapon	S
	Wilful and/or malicious damage to the property of the Practice, the Practice's patients, clients or the Practice's employees	S
	Assault (threatened, attempted or actual), including treatment of a patient without their informed consent	S
	Sexual harassment of any employee of the Practice or employee of a client of the Practice (including unwanted suggestions, hints or gestures and/or touching without consent or by force)	S
	Being in possession of, arriving at work, or being under the influence of, or consuming drugs or alcohol whilst on duty	W
	Driving under the influence of drugs or alcohol in a the Practice vehicle	S
	Inability to perform duties due to drugs or alcohol	W
	Non-compliance with health legislation aimed at ensuring safe practices, such as medicine- and health and safety legislation, as well as regulations relating to the disposal of medical equipment and waste.	S
Wilful disruption of the business of the Practice	Wilful and intentional sabotage of Practice property	S
	Conducting unauthorised meetings during office time and/or on the Practice property	S
	Participation in unprotected industrial action	S
Failure to act in the best interests of the Practice	Acting in conflict with the business interests of the Practice or failure to promote the Practice's business interests	S
	Disclosure of confidential information of the Practice, its clients, patients, suppliers or any others without specific authorisation (refer Confidentiality Policy)	S
	Conviction of a criminal offence which is detrimental to the Practice, its image or reputation or which affects the employee's suitability for the job	S
	Engaging in any business, or doing any other work during and/or after working hours, other than that authorised by the Practice e.g. moonlighting	S
	Placing oneself in a conflict of interest situation in relation to the Practice's business interests, , including conflicts of interest in terms of shareholding, the awarding of tenders or contracts, selection of suppliers, granting of access to representatives, etc.(also refer Conflict of Interest Policy)	S
	Incompatibility with other staff causing performance disruptions and the Practice and/or people morale	S / W
Insubordination and failure and/or refusal to obey legitimate work instructions	Failure and/or refusal to carry out reasonable and lawful work related instructions	S / W
	Gross insubordination which amounts to the defiance of, or challenge to, the authority of a superior, including but not limited to a refusal or failure to carry out reasonable and lawful work related instructions	S
Gross negligence	Gross neglect, loss or misuse of property or products of the Practice or patients or clients of the Practice	S
	Gross negligence in carrying out of work duties and responsibilities	S
	Failure or refusal to comply with material and serious safety and security regulations and instructions	S
	Failure to comply with legal requirements to which the the Practice is bound in the carrying out of certain responsibilities	S
Work performance	Unsatisfactory work output or poor work performance	W
	Wilful failure to work to the required standards	W
	Incompetence in performing work to the required standards	W
	Negligence whilst performing work duties and responsibilities where the resultant effect is of a minor nature	W
	Continuous poor performance and not meeting the required work standards	S

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TRANSGRESSION TYPE	DEFINITION OF TRANSGRESSION	POSSIBLE SANCTION
Breach of the Practice policies and/or rules	Failure or refusal to adhere to the Practice's policies and/or rules	S / W
	Driving a the Practice vehicle without authorisation and/or permission	W
	Violation of the Practice's IT or telephone policy	
	Failing to report an accident or injury or damage to the Practice property	W
	Posting or distributing notices, posters, etc on the Practice premises and/or property without written authorisation	W
	Gambling or money lending whilst on duty	S
	Smoking in a no-smoking area	W

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