

The new Directions from the Department of Health for the management of suspension of doctors and dentists

See www.dh.gov.uk for the full text. On the home page go to A – Z site index, D for Doctors and dentists discipline and suspension. This will take you to the Directions pages. You will also be able to download the Directions.

What follows is a personal assessment and view of the Directions. The capital letters are mine.

Remember the Directions are written for doctors and dentists but are based on ACAS best practice, so the principles apply. Also it is against the Employment Act of 2002 for disciplinary action to be inconsistent within an organisation (see FAQ: Why doesn't the framework apply to other staff?).

Introduction

- The Directions are acceptance by the Department of Health that unnecessary suspension is wasteful in every way, and a response to the National Audit Office report of Nov 6th 2003.
- The only justification for exclusion from work (the preferred term to replace 'suspension', 'gardening leave', 'special leave' etc) is when there is substantial evidence that a staff member is a danger to patients or staff, or there is fear that the staff member might tamper with evidence.
- Since April 2001, the National Clinical Assessment Agency (NCAA) has handled 600 referrals approx and in 85% of cases suspension was avoided.(framework sect:13 and sect:1).

New insights and understandings and better practice.

- MOST FAILURES IN STANDARDS OF CARE ARE CAUSED BY SYSTEMS WEAKNESSES (framework introduction p 2 section 3)
- There is an urgent need to abandon the 'suspension culture' (framework introduction p 2 section 3)
- There is a need for a speedy resolution (if the exclusion is not actively reviewed after 4 weeks, the practitioner is entitled to return to work) p2 section 6
- Exclusion is not a solution (sect: 6).
- It may only now be used for the most exceptional circumstances (sect: 6.)
- There is now a non-punitive and anonymous reporting and learning system by the National Patient Safety Agency for patient-related adverse events, near misses and medical errors ie whistleblowers should be protected. Sect: 11
- The need for the chief executive's involvement means that poor management decisions may be prevented. Action sect: 4
- The appointment of a non-executive board member (sect: 4) gives the hope that there may be some impartiality possible – a major failing of the previous system. The board member can request reports and keep the process moving (restrictions sect 9)

- The defendant may make representations to the board member at any time after a letter with allegations is received (restrictions: sect: 20) ie the defendant has a mediator/advocate.
- The involvement of the NCAA as an impartial outsider to look afresh at the problem, allows the possibility of recognising work systems problems or to see if there is a wider problem, rather than looking at the individual (sect: 9).
- There is much greater fairness for the 'defendant' eg they must see all correspondence, know who will be interviewed. (sect: 13)
- THE PURPOSE OF THE INVESTIGATION IS TO ASCERTAIN THE FACTS IN AN UNBIASED MANNER AND NOT TO SECURE EVIDENCE AGAINST THE PRACTITIONER. Sect:15.
- IT MUST BE FACTUAL INFORMATION (restrictions sect: 12)
- They must involve an outside practitioner if the case is complex. Sect: 16
- A definition of what constitutes serious or repetitive performance difficulties is given(sect: 19).
- EXCLUSION FROM PREMISES IS NO LONGER ALLOWED EXCEPT UNDER EXCEPTIONAL CIRCUMSTANCES (restrictions: sect: 24) so that the staff member can retain contact with colleagues, take part in clinical audit, keep up to date with developments and undertake training and research.
- Exclusions of doctors and dentists will now be monitored by the Department of Health via the strategic health authority from data provided by the board. (restrictions: sect: 38). The board has to ensure these procedures are followed and that the case is being progressed. (We know this is needed for all NHS staff.)
- Recognition that many of the principles in the framework reflect ACAS best practice and can therefore be applied to other NHS groups (FAQs page 2). Under the employment act 2002, disciplinary action has to be consistent.

Omissions from the Directions

- There is recognition that unfounded and malicious allegations must be investigated because of the damage they can do but no action is advocated against the bringers of these allegations when found to be false and/or malicious. What about an equivalent to the police charge of wasting time?
- There is very little recognition of the damage done to the individual; rather it is very cost-focused.

Summary

- This is progress for doctors and dentists because there is recognition that previous processes were very harmful and ineffective.
- The framework provides the possibility of a much fairer investigation.
- DIRECTIONS HAVE TO BE FOLLOWED.
- Discussion is taking place to extend the Directions formally to all NHS staff. Resource implications and reorganisation are causing most of the delay.

Julie Fagan 6.12.04

Some excerpts from Frequently Asked Questions Section of the Directions

Q: Is exclusion a neutral act?

A: Exclusion from work is a temporary expedient and is a neutral act under employment law. This means that exclusion is a precautionary measure and not a disciplinary sanction.

Q: When will exclusion be used?

A: The purpose of exclusion is:

- to protect the interests of patients and other staff
- to assist the investigative process when there is a clear risk that the practitioner's presence would impede the gathering of evidence.

Q: Why are there different criteria for immediate and formal exclusion?

A: Immediate exclusion will be used where there are high risks in allowing a practitioner to continue working pending a considered view about whether other safeguards can be put in place to protect the public whilst the practitioner remains at work.

Q: When will the remaining parts of the framework be published?

In September 2003 the Department and the BMA published the "Agreed Principles on Discipline and Suspension. This will form the basis on discussions in 2004 on procedures to replace circular HC(90)9 and the para 190 appeal to the Secretary of State.

Q: Why doesn't the framework apply to other staff?

Many of the principles in the framework reflect ACAS best practice and can therefore be applied to other groups. Indeed, under the Employment Act 2002, disciplinary action has to be consistent across any employing organisation.

Q. Does the Framework apply to personal conduct as well as professional conduct/performance issues?

A. If the actions of a doctor gives enough cause for concern for an employer to consider excluding them, then the principles in the framework should be followed. The framework says that exclusion should only be used where patients or staff need to be protected, or the exclusion will assist in investigative process. The differentiation between personal/professional misconduct will be removed in the discipline/conduct part of the framework which will be issued shortly - to be replaced with the general heading of misconduct.

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