

**WHITING FORENSIC HOSPITAL
OPERATIONAL PROCEDURE MANUAL**

SECTION II:	ORGANIZATION FOCUSED FUNCTIONS
CHAPTER 8:	Management of Human Resources
PROCEDURE 8.34:	Investigation of Alleged Violations of DMHAS Policies, Procedures, Regulations or Work Rules
Governing Body Approval:	April 29, 2018
REVISED:	

PURPOSE: To ensure a consistent investigation of alleged violations of DMHAS policies, procedures, regulations and/or work rules reported on the MHAS-20 Report.

SCOPE: All clinical staff

PROCEDURE:

A. General Considerations

The hospital will take immediate and appropriate action to protect patients involved in allegations of abuse, neglect or exploitation, including removing alleged perpetrators from direct contact with the involved patient pending the outcome of the facility's investigation as indicated.

The DMHAS Office of Labor Relations conducts an administrative investigation of alleged violations of DMHAS policies, procedures, regulations and/or work rules reported on the MHAS-20 Report form. *Note: Patient Confidentiality – please be vigilant in protecting patient confidentiality. The use of initials or numbers should be used when referring to patients.* This investigation begins within twenty-four (24) hours after the alleged incident occurs. This administrative investigation may be conducted concurrently with a criminal investigation and/or the affirmative action investigation and/or patient rights investigation and/or peer review inquiry. These investigations are separate and distinct from each other.

The DMHAS Office of Labor Relations is responsible for development of all evidence in the administrative investigation. This includes, but is not limited to, obtaining physical evidence, gathering all relevant documents, interviewing all individuals who may have information relevant to the alleged violation, and obtaining statements from all involved persons and witnesses. In patient-related incidents, the Client Rights Officer (CRO) interviews the involved patient(s) or patient witness(es) for the administrative investigation. Patient interviews may be conducted jointly by the CRO and the DMHAS Office of Labor Relations, wherever appropriate. Investigations are conducted jointly by the Affirmative Action Program Manager and the DMHAS Office of Labor Relations in allegations of affirmative action violations and/or sexual harassment complaints.

If the Facility Human Resources Office is notified of a violation and the MHAS-20 report form was not completed at the time of the alleged violation, the Facility Director of Human Resources directs the appropriate individual/s to complete one immediately and forward to the departmental manager or supervisor.

During some investigations, the DMHAS Office of Labor Relations and the Department Director may determine that it is necessary for the alleged perpetrator to be placed on administrative leave with pay or temporarily reassigned to another unit/ to ensure an optimum level of patient care, safety, and welfare, and to protect the employee from further allegations.

A preliminary investigation is initiated for all allegations of patient abuse under the direction of the CEO or designee. The RN Supervisor conducts the preliminary investigation for allegations against nursing staff, and the Unit Director and Discipline Chair conduct the preliminary investigation for allegations against other members of the clinical staff. The alleged perpetrator(s) is immediately removed from patient care, pending the outcome of the preliminary investigation. Issues considered/explored during the preliminary investigation include, but are not limited to the following:

- the fact pattern as presented in the allegation;
- the physical evidence;
- the feasibility of the circumstances as alleged;
- the history of allegations attributed to the patient;
- the history of allegations directed toward the staff; and
- the content of witness statements.

The RN Supervisor or the Unit Director gathers the information from the preliminary investigations and consults with the Program Manager or Hospital Administrator-on-Call to render a final decision on whether or not to proceed with Administrative Leave or Temporary Reassignment.

B. Administrative Leave

Administrative Leave is utilized when there have been serious allegations made against an employee, the employee's presence at work is deemed unsafe or disruptive and the employee's actions are such that termination may result. Criteria for the use of administrative leave include, but is not limited to:

1. preliminary investigation determines there is witness confirmation and/or corroboration through physical evidence on the scene of an allegation of physical patient abuse;
2. employee's presence at work could be harmful to the public, the welfare, health and safety of patients, state employees or state property;
3. physical violence including sexual abuse; and
4. suspected staff impairment.

The respective Department Director immediately notifies the employee in writing of any alleged work rule violation/s and/or patient complaint and commencement of an administrative investigation.

C. Staff Temporary Reassignment

Temporary reassignment is utilized when circumstances do not warrant placing the alleged perpetrator on administrative leave with pay, but where reassigning the employee to a non-direct care area, or removing the employee from direct contact with the patient alleging abuse, is determined to be in the best interest of both patient(s) and staff. Criteria for the use of temporary reassignment to a non-direct care area includes allegations of physical abuse where the preliminary investigation is unable to establish a fact-pattern to rule in or rule out the allegation(s); the preliminary evidence is such that the abuse could have occurred. Criteria for the use of temporary reassignment of patient care responsibilities within the assigned unit, or reassignment to another patient care unit, includes allegations of verbal abuse, or physical abuse where there is no preliminary evidence to support the allegation but there are no specific facts, evidence or witness statements that disprove the allegation.

The Department Director is responsible for removing alleged perpetrators from direct contact with patients as indicated as soon as the perpetrators are identified as such and communicating this to the Facility Human Resources Office. The Facility Human Resources Office will immediately notify the Chief Executive Officer and the affected employee in writing.

The temporary reassignment will continue until the investigation is complete, additional factual information deems temporary reassignment no longer necessary or as allowed by the collective bargaining agreement.

D. Leave of Absence Pending Administrative Action

The procedure described below is to be used when placing an employee on leave of absence pending an investigation of alleged serious misconduct and subsequent administrative action or pending the disposition of criminal charges. In each case of paid leave of absence, a “day” should be understood to mean an employee’s regularly scheduled workday.

An employee may be placed on a leave of absence with pay *up to fifteen (15) days*, to permit investigation of alleged serious misconduct which could constitute just cause for dismissal under C.G.S. Section 5-240-1a(c). If necessary, the duration of the employee’s leave of absence may be extended to the amount of time specified in the respective collective bargaining agreement. Such leave is only utilized if the employee’s presence at work could be harmful to the public, the welfare, health or safety of patients/ clients or state employees or state property.

Following a decision to place the employee on such paid leave, the employee is provided written notice stating the reasons for the leave, the effective date of the leave, and the duration of the leave which does not exceed the *duration specified by the respective collective bargaining agreement*.

The DMHAS Office of Labor Relations immediately reports placement of an employee on leave of absence under this section to the Commissioner of Administrative Services by completing a DMHAS Human Resources Information Systems processing form to request a transaction be entered into CORE CT.

E. Leave of Absence Pending Disposition of Criminal Charges

Any employee who is the subject of criminal charges which, upon conviction, would constitute just cause for dismissal under C.G.S. 5-240-1a(c) may request a voluntary leave of absence without pay pending the disposition of the criminal charges pursuant to the provisions of C.G.S. Section 5-248 and regulations adopted pursuant thereto. In the event the criminal charges are not disposed of during a one-year voluntary unpaid leave of absence, the employee may request an extension of that leave, in accordance with the provisions of C.G.S. Section 5-248 and regulations adopted pursuant thereto.

An employee may be placed on a leave of absence with pay for up to thirty (30) days pending disposition of criminal charges, the pendency of which would hamper the completion of an independent administrative investigation and which, upon conviction of the employee, would constitute just cause for dismissal under C.G.S. Section 5-240-1a(c). Such leave is only used if the employee's presence at work could be harmful to the public, the welfare, health or safety of patients/clients or state employees or state property.

Following a decision to place the employee on such paid leave, the employee is provided written notice stating the reasons for the leave, the effective date of the leave and the duration of the leave, which does not exceed thirty (30) days unless extended by authorization from the DMHAS Office of Labor Relations.

The DMHAS Office of Labor Relations immediately reports placement of an employee on leave of absence under this section to the Commissioner of Administrative Services by completing a DMHAS Human Resources Information Systems processing form to request a transaction be entered into CORE CT.

The leave may be extended for an additional thirty (30) day period upon request of the WFH CEO and approval of the Commissioner of Administrative Services based on a showing that the pendency of the criminal charges prevents the completion of an independent administrative investigation of the underlying conduct.

At least two weeks prior to the expiration of the initial thirty (30) days' paid leave, the DMHAS Agency Human Resources Administrator/designee receives WFH's written request to extend the paid leave for an additional thirty (30) day period. If the DMHAS Agency Human Resources Administrator/designee concurs that the pendency of the criminal charges prevents the completion of an independent administrative investigation, she/he submits the request to the Commissioner of Administrative Services for approval.

Notify the employee of the extension if granted.

Complete a DMHAS Human Resources Information Systems processing form to request a transaction be entered into CORE CT.

F. Employee Representation During the Investigatory Interview

An employee who is being interviewed concerning an incident or action, which may subject her/him to disciplinary action, is notified of the right to have a representative present at the interview.

An employee is also offered representation if evidence which may subject the employee to discipline develops during the interview.

If an employee perceives that the interview may lead to discipline and requests representation, she/he is permitted to obtain such representation.

Bargaining unit members may have a union representative present. Employees not covered by a contract may have a representative of their choice present. In each case, the above provision will not unreasonably delay the investigatory interview.

The investigator informs the employee waiving the right to representation, must be done in writing (sample waiver attached).

G. Investigation File

The DMHAS Office of Labor Relations compiles an investigation file showing the chronology of events. The file includes:

1. original MHAS-20 Report;
2. all statements obtained (MHAS-20, Statement Of Witness/Involved Person);
3. any physical evidence obtained;
4. pertinent documents such as service ratings, CORE-CT job data transactions copies, timekeeping records; and;
5. identification of similar incidents and explanation of disciplinary action(s) taken.

H. Determination of Action to be Taken

The DMHAS Office of Labor Relations does a complete review of the investigation file, applicable policies, and union contracts to determine whether or not administrative action is warranted.

If no administrative action is warranted, the employee who is the subject of the investigation is informed in writing, and returned to his/her regularly assigned unit, if applicable, and the case is closed.

1. If administrative action is warranted:

The DMHAS Office of Labor Relations advises the CEO of the action under consideration

2. The DMHAS Agency Human Resources Administrator/designee:

a. May review the case and, if appropriate, consults with the

1. DMHAS Commissioner/Deputy Commissioner(s);
2. DMHAS Director of Affirmative Action;
3. DMHAS Manager of Patient Rights & Grievance Procedure;
4. State Office of Labor Relations; and
5. Office of the Attorney General.

I. Pre-discipline Procedure

Prior to a decision to suspend, demote for disciplinary reasons or dismiss an employee, the DMHAS Office of Labor Relations, acting for the CEO, gives the employee notice of the charges, an explanation of the evidence, and an opportunity to respond pursuant to Loudermill guidelines and the pre-discipline procedure in C.G.S. Regulations 5-240-7a.

The pre-discipline procedure is also followed prior to a decision to impose a non-disciplinary demotion as an alternative to layoff and prior to a decision to impose a non-disciplinary separation for infirmities under C.G.S. 5-244.

J. Loudermill Notice

The Loudermill Notice is written and includes the following:

1. the nature of the complaint;
2. a specification of the charges;
3. a concise statement of the evidence;
4. the law, rules or policy that may have been violated;
5. the maximum discipline under consideration;
6. the specific time and place of a pre-decisional meeting;
7. a statement that at the meeting the employee will have the opportunity to tell her/his side of the story and present reasons why the action being considered should not be taken, and
8. a statement informing the employee of the right to have a representative of her/his choice present.

- a. If the employee waives representation at the Loudermill conference, the employee signs a waiver prior to the commencement of the meeting.
- b. If a bargaining unit employee chooses to have an attorney present, two waivers are obtained: the first is the standard waiver of union representation, the second is a union waiver permitting the attorney or other advisor to represent the employee at the Loudermill conference, if permissible under the applicable collective bargaining agreement.

The notice may be mailed, return receipt requested, or hand delivered to the employee at work. If the notice is mailed, the time of the meeting when the employee will be given an opportunity to present her/his side of the story is scheduled no sooner than five working days following the mailing of the notice. If the notice is hand delivered to the employee at work, the time of the meeting when the employee is given the opportunity to tell her/his side of the story may be any time following receipt of the notice, including immediately following the receipt of the notice.

If the employee declines or fails to attend the pre-decisional meeting, the administrative action under final consideration may be imposed, consistent with the notice provided under this section.

K. Pre-decisional meeting (Loudermill)

The pre-decisional meeting is held by the CEO or designee. The CEO or designee:

1. states the charges;
2. describes the evidence supporting the charges;
3. describes the maximum discipline under consideration;
4. asks the employee for her/his side of the story and comments, considering what discipline, if any, is warranted, and
5. keeps notes of what transpires.

The employee may respond through her/his representative to the evidence, giving the employee's side of the story. The representative may also speak for the employee regarding the form of discipline, if any, that should be imposed.

L. Post-discipline Procedure

Within one week of a decision by the CEO to suspend an employee, demote an employee except at the request of the employee, or dismiss an employee, the CEO provides written notice, in addition to any notice that has been provided in accordance with the pre-discipline procedure, to the employee and her/his (union) representative

stating the disciplinary or other decision, the reasons for this decision, and the effective date

In all other cases, the employee receives written notice of the final disposition of the investigation.

The DMHAS Office of Labor Relations:

1. notifies the respective Department Director, who notifies the supervisor of the action to be taken;
 2. provides the Facility Human Resources Director notice of disciplinary action or other administrative action to be placed in the employee's personnel file, pursuant to contractual or statutory obligations;
- if applicable, completes a DMHAS Human Resources Information Systems processing form to request a transaction be entered into CORE CT;
3. notifies DMHAS Public Safety of the final disposition of the administrative investigation in cases where there has been an allegation of criminal activity; and
 4. notifies the CRO that the investigation is completed, appropriate actions have been taken and the employee's work restriction on the applicable unit is being lifted.

The post-discipline procedure described above is also followed in all cases where a pre-decisional meeting has been held relative to:

1. non-disciplinary demotion, except at the express written request of the employee; and
2. non-disciplinary separation for infirmities.
[A demotion as an alternative to layoff and a separation for infirmities under C.G.S. Section 5-244 are not and shall not be construed in any manner that could characterize either as a disciplinary measure, notwithstanding the use of the pre-discipline and post-discipline procedures]

M. Final Report

The DMHAS Office of Labor Relations completes a final report by summarizing the chronology of events related to and surrounding the incident. The report includes an accurate record of the prediscipline procedure and the final disposition of the case. All letters of suspension and all stipulated agreements are reviewed and approved by the DMHAS Director of Labor Relations prior to implementation.

N. Record Retention

The DMHAS Office of Labor Relations retains the original investigation files for five (5) years from the date of completion of the investigation. Final disposition of such files are in accordance with procedures established by the State Librarian pursuant to C.G.S. Sections 11-8 and 11-8a.

WAIVER OF REPRESENTATION

I fully understand the reason for this meeting, and I hereby waive my right to union or other

representation at this time. However, I reserve my right to representation at future meetings.

(signed)

(witness)

(date)