



# **Ambulance Service of New South Wales**

## **UNSATISFACTORY PERFORMANCE - Guidelines**

### **1 Introduction**

These guidelines are issued for the purpose of dealing with unsatisfactory performance and the taking of remedial or disciplinary action against an employee for unsatisfactory performance under Part 3 of the *Ambulance Services Regulation 2005* (the Regulation).

Generally, unsatisfactory performance means not meeting agreed tasks, or timeframes or standards of work. The agreed standards can be in a work plan or in any other documentation. Any standard that is applied must be relevant to the employee's position description or duty statement.

There must be no reasonable or satisfactory reason for the unsatisfactory performance.

Unsatisfactory performance includes, but is not limited to:

- agreed goals and targets consistent with any relevant written documentation, including work plans, position descriptions or duty statements, and are not achieved within a reasonable or agreed time;
- set tasks consistent with any relevant written documentation including work plans, position descriptions or duty statements, which are not performed, or not performed within a reasonable or agreed time, or not performed to the required standard;
- identified skills required are not demonstrated within a reasonable or agreed time.
- Unsatisfactory performance may also include less serious matters of unsatisfactory professional conduct. However, a serious instance of unsatisfactory professional conduct would normally be dealt with as a misconduct matter.

### **2 Application and Effect**

The Procedural Guidelines apply to employees of the Ambulance Service who are defined to mean persons employed in staff or senior executive positions, including those on probation.

Refer to the Service's "Guide to dealing with "Drug and Alcohol Use by Staff", "Employees Assistance Program", Peer Support Officers and Chaplaincy Services." for guidance in relation to managing some of these issues.



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### **2.1 Procedural Fairness**

The guidelines are subject to the rules of procedural fairness.

The employee must have:

- the opportunity to respond to the opinion of the Chief Executive that the employee's performance is still unsatisfactory after remedial action has been taken and given a reasonable opportunity to improve
- a separate opportunity to make representations in relation to any disciplinary action being considered, including an interview with the Chief Executive

Procedural fairness also requires that an employee the subject of these guidelines should be provided with a copy of these Guidelines for Dealing with Unsatisfactory Performance

### **3 Delegation - Chief Executive**

The Chief Executive is to deal with the unsatisfactory performance of an employee.

The Chief Executive may delegate any of his/her functions under the Act to deal with unsatisfactory performance.

Generally if the functions in dealing with unsatisfactory performance are delegated by a Chief Executive, the functions would be delegated to an employee who understands the process of dealing with unsatisfactory performance and would have available to him/her the resources necessary to carry out the delegated function.

In delegating the authority to deal with unsatisfactory performance, the entire function including the tasks of determining whether the employee's performance is unsatisfactory, and that of determining the relevant action, should be delegated to the same person.

In these guidelines a reference to the Chief Executive is to be read as to include a reference to a delegate.

The Chief Executive may seek advice from relevant 'experts' to assist in forming a view as to how the matter might proceed. For example, the manager/supervisor of training and development may assist in determining the most appropriate training for an employee.



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Managers/supervisors with responsibility for performance management should have the necessary training, skills and experience. Competency areas for training may include:

For manager/supervisors the following courses or training opportunities will assist them in applying these guidelines:

- giving and receiving constructive feedback;
- cross-cultural awareness and communication;
- effective performance standards;
- setting realistic objectives;
- training needs analysis;
- transparency in performance management; and
- managing under-performance and rewarding superior performance.

For employees the following training or experience to assist them in a performance management process:

- negotiation skills;
- cross-cultural awareness and communication;
- appropriate assertiveness;
- individual performance and organisational achievement;
- setting work goals;
- self-assessment; and
- giving and accepting feedback.

### **3.1 Terminology**

**Remedial action**, means the options defined at Clause 15(1) of the Regulation to deal with an allegation of misconduct as a remedial matter, namely:

- counselling,
- training and development,
- monitoring the employee's conduct or performance,
- implementing a performance improvement plan,
- the issuing of a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory,
- transferring the employee to another position in the Ambulance Service that does not involve a reduction of the employee's classification or position,
- any other action of a similar nature.



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**Disciplinary action** means the penalty options defined at Clause 15(1) of the Regulation, namely, any one or more of the following:

- dismissal from the Ambulance Service,
- directing the employee to resign, or to be allowed to resign, from the Ambulance Service within a specified time,
- if the employee is on probation—annulment of the employee’s appointment,
- except in the case of a senior executive employee—reduction of the employee’s classification or position,
- a caution or reprimand.

**Manager/supervisor** means the person responsible for the day to day supervisory function in relation to the employee.

**Documentation** in relation to agreed goals, targets, and tasks means all relevant written documentation including work plans; position descriptions or duty statements; and any other documentation.

### **4 Service Obligations**

Manager/supervisors are responsible for ensuring that employees under their supervision meet required work standards. It is important that employees who are not meeting the required standards have those issues addressed as soon as performance difficulties are identified.

To help deal with unsatisfactory performance, the following pre-conditions should be established by the Ambulance Service:

- induction and probation programs
- clearly articulated reasonable and attainable work standards and performance requirements
- development plans to assist an employee to reach expected work standards
- a clear understanding of the work to be performed
- training and development opportunities, both on and off the job, are provided which are:
  - accessible and relevant
  - cover all elements of the job
  - focus on any new job requirements
  - provide opportunities to practice and acquire skills and knowledge
  - provide regular feedback to employees about their performance with advice and assistance to remedy any deficiencies
  - and recognise and reward good work performance



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- Remove barriers to effective performance. These could include:
  - ensuring employees have all the necessary resources to perform the job, including equipment, information and staff
  - not placing conflicting demands on time
  - reviewing policies or practices which should be changed
  - dealing with external interference which may inhibit performance to a satisfactory standard.

### **4.1 Equal Employment Opportunity**

In dealing with any instance of unsatisfactory performance the manager/supervisor should examine whether the following standard EEO measures have been implemented with respect to the employee in question:

- Ensuring equitable allocation of work, acting in higher grade opportunities and training opportunities
- Appointing employees on their ability to perform the job
- Ensuring fair and equitable distribution of overtime, leave and shift work (where relevant)
- Ensuring fair performance assessment and development.

### **4.2 Consideration of organisational and non-work-related factors**

The manager/supervisor must consider factors which may contribute to the unsatisfactory performance.

**Poor work performance** occurs where an employee consistently fails to meet agreed, documented, work objectives that are fair and reasonable.

The consequences of this can impact on the individual employee, the work group and the Ambulance Service.

Factors contributing to poor performance can include:

- **organisational factors** (eg poorly managed restructuring; poor work and job design with subsequent lack of challenge in work; ineffective recruitment and selection resulting in a “mismatch” of people and jobs; inappropriate planning, resourcing and competing deadlines);
- **management practices** (eg inappropriate or unacceptable management approach; inconsistent application of performance standards; biases, changes in opinion or lack of care or commitment on the manager/supervisor’s part);



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- **training and development needs** (eg inadequate induction and explanation of job role/responsibilities; insufficient skills, training, or experience to perform the duties and responsibilities of the position; unsupported introduction of new technology);
- **poor communication** between management and employees (eg inadequate performance evaluation and feedback);
- **social factors** (eg disruptive personality clashes within the work environment);
- **inappropriate work environment** (eg occupational health and safety standards not being met; direct or indirect discrimination or workplace harassment); and
- **personal issues** (eg lack of motivation or commitment; health or other family problems; drug and alcohol misuse).

Performance difficulties that are not work-related may require intervention or assistance by management, employee associations, an employee assistance provider, or external individuals or organisations. The cause of performance difficulties needs to be identified and appropriate strategies developed, including training, to assist the employee deal with identified poor work performance.

### **4.3 Remedial vs Disciplinary Action**

Before utilising the procedures to manage unsatisfactory performance, the manager/supervisor must be satisfied that reasonable assistance has been provided to the employee to enable him/her to perform at the required standard. You should consider if any organisational, non-work related matter could be a factor and the pre-conditions at 4 are met.

Disciplinary action is not the first choice in managing unsatisfactory performance, but may become necessary when remedial action has not been effective. Disciplinary action is only appropriate where performance remains unsatisfactory after the employee has been given a reasonable opportunity to improve his or her performance.

If the Chief Executive is of the opinion that an employee is not performing in a satisfactory manner or to a satisfactory level he/she may decide to take remedial action (see clause 22 (2) of the *Ambulance Service Regulation*)

## **5 Dealing with Unsatisfactory Performance**

Dealing with unsatisfactory performance requires a stepped process, which is transparent, consistently applied, and has regard to the particular circumstances of the case. The Regulation requires that a reasonable opportunity for improvement must be given.

Improvement of performance and job satisfaction is the primary goal. Whilst remedial action will usually provide the desired results, it may be necessary to proceed with disciplinary action if the agreed goals are not met and performance is still unsatisfactory. The process should also have regard to work plans or performance agreements that may be in place.



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### **5.1 Steps for Dealing with Unsatisfactory Performance**

There are six steps for dealing with unsatisfactory performance:

1. Early Intervention and Informal Counselling
2. Formal Counselling
3. Remedial Action and Review
4. Consideration of Disciplinary Action or further Remedial Action
5. Preliminary decision on action being considered
6. Implementation of final decision.

### **6 Early Intervention and Informal Counselling (Step 1)**

Early and effective informal counseling will in most cases address a work performance problem, and inform the employee that their poor work performance is unacceptable.

The primary responsibility for informal counselling is the employee's manager/supervisor. It is only if action under this step has failed to rectify the unsatisfactory performance that consideration need be given to involving the next level of management.

The employee should be given at least 24 hours verbal notice of the time, place and purpose of the proposed informal counselling session.

At the outset of the session the manager/supervisor will:

- Outline the purpose of the discussion
- Clarify expectations.
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The manager/supervisor should also:

- Confirm the appropriate work standards and explain how the employee's performance has differed from those standards, by reference to a work plan relevant documentation
- Outline what he/she considers to be the applicable work standard/s and explain how the employee's performance has departed from that standard with reference to a work plan or other relevant documentation
- Provide an opportunity for the employee to respond to the manager/supervisor's performance concerns
- If necessary, confirm in writing the work performance issues requiring improvement, the targets to be achieved and the timeframe. Where there is no written correspondence following informal counselling, a diary note should be made and signed by the employee
- Check the employees understanding of the expectations outlined and advise the employee of what will follow if the agreed performance standards were not met within the required timeframe



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- Advise the employee of his/her right to use the Ambulance Service's grievance resolution procedure if there is a disagreement.

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The outcome of informal counselling should be agreed by the employee and their manager/supervisor. If the employee disagrees with the manager/ supervisor's views on their work performance, and/or proposals to improve work performance, they are to be informed of their right to use the Ambulance Service's grievance and dispute resolution procedures. Any process for the management of performance would continue whilst the employee's grievance is considered and resolved.

In advising an employee's work plan consideration should be given to the:

- work issues to be addressed,
- targets to be achieved,
- timeframe for reviewing the employee's performance.

In addition the manager/supervisor will:

- Note and address any relevant organisational factors which impact on the employee's performance;
- Note personal or external factors which impact on the employee's performance and provide assistance to the extent possible such as referral to the Ambulance Service's Employee Assistance Provider;
- Advise the employee that a copy of the work plan that is developed, will be placed on his/her personnel file.

### **7 Formal Counselling (Step 2)**

Formal counselling will be required when:

- Performance remains unsatisfactory after informal supervisory counselling; or
- The unsatisfactory performance is beyond the scope of informal supervisory counselling.

The employee's manager/supervisor will usually perform formal counselling.

#### **7.1 Formal Notification by Chief Executive**

It is necessary to involve the Chief Executive before commencing this step. If formal counselling is undertaken without approval of the Chief Executive, then it may be necessary to undertake further remedial action if at the end of the process the employee's performance is still unsatisfactory.

A submission should be prepared for the Chief Executive to enable him or her to form an opinion as to whether the employee is not performing his/her duties in a satisfactory manner.



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The submission should detail the unsatisfactory performance, the informal counselling to date and possible remedial options.

Attached to the submission for approval of the Chief Executive should be a draft letter to the employee advising of the Chief Executive's opinion that the employee has not been performing his/her duties in a satisfactory manner and of the proposed remedial action (see Sample Letter 1).

In any case where remedial action is proposed that includes the transfer of the officer to another position where that would require the employee to change residence, then the employee must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented, including an interview with the Chief Executive. This requirement also applies to any further remedial action which is proposed.

The employee must be given a reasonable opportunity to improve following formal notification from the Chief Executive.

### **7.2 Advice from Manager/Supervisor**

The aim of the formal counselling process is to ensure that at the end of the session the employee and manager/supervisor are fully aware of the future management of the employee's work performance. The information is summarised in a Performance Improvement Plan, discussed below.

At least 24 hours written notice will be given to the employee by the manager/supervisor indicating:

- The time and location of the session
- The purpose of the formal counselling
- Who will be attending the counselling session
- The unsatisfactory performance issues to be discussed
- Possible strategies to address poor performance
- The purpose of a performance improvement plan
- That the employee may have a support person (such as a union delegate or colleague) in attendance if required.

The letter from the Chief Executive should be attached.

Organisational, personal or external factors or deficiencies that may impact on the employee's performance should be considered.

At the outset of the formal counseling session the manager/supervisor will:

- Outline the purpose of the session
- Clarify expectations
- Confirm the areas of unsatisfactory performance



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- Provide an opportunity for the employee to respond to the manager/supervisor's performance concerns
- Advise the employee that continued unsatisfactory performance might result in other remedial action or possible disciplinary action
- Refer the employee to these Guidelines for Dealing with Unsatisfactory Performance.

An agreed documented Performance Improvement Plan shall be developed by the manager/supervisor and employee unless it is determined the poor work performance is solely due to identified organisational, personal or external factors or deficiencies. If it is determined the poor work performance is solely due to personal factors the employee will be referred to the Service's Employee Assistance Provider. The employee should sign the Performance Improvement Plan. The employee may indicate if there are issues of disagreement.

### **7.3 Performance Improvement Plan**

The Performance Improvement Plan should:

- Address the work performance issues to be reminded
- Indicate goals and targets to be achieved
- Indicate any other relevant remedial action to be taken as part of the Performance Improvement Plan –for example training
- Note agreed dates for progress reviews
- Note the timeframe for reviewing the employee's performance
- Be signed by the employee and the manager/supervisor

Timeframes must be appropriate and relevant to the nature and complexity of the performance issues, and the availability of training (where this is required). The timeframes should be agreed between the employee and the manager/supervisor.

In addition the manager/supervisor will:

- Note and address any relevant organisational factors which impact on the employee's performance
- Note personal or external factors which impact on the employee's performance and provide assistance where possible, such as referral to the Service's Employee Assistance Provider.
- Advise the employee that a copy of the Performance Improvement Plan that is jointly developed with the employee will be placed on his/her personnel file.

The employee is to be provided with a copy of the Performance Improvement Plan.



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### **8 Taking of Remedial Action and Review (Step 3)**

The employee and the relevant manager/supervisor will review the Performance Improvement Plan on the agreed review date/s. The review will consider progress, including whether agreed remedial action, such as training, was implemented.

At least 24 hours written notice (see Sample letter 2) will be given to the employee indicating:

- The time and location of the review
- The purpose
- Who will be attending the counselling session
- That the employee may have a support person in attendance.

Where there is to be more than one follow-up review in the agreed period, if performance is satisfactory, the improvement should be documented. Any continuing performance issues should also be documented.

### **9 Outcomes of Review**

At the end of the review period/s as agreed, the employee shall be advised in writing by the Chief Executive either that:

#### **Performance is satisfactory and the process is finalised**

On-going feedback and performance monitoring will occur through the normal feedback cycle of the performance management system.

**OR**

#### **Performance remains unsatisfactory and further remedial action is proposed (Step 4)**

The advice should indicate:

- The remedial action proposed
- The reasons for the decision
- A summary of the process taken to date
- The consequences of the decision
- That continuing unsatisfactory performance may lead to disciplinary action
- Advice on how to access further assistance if required.

Where the proposed remedial action is the transfer to another position that would require the employee to change residence, then the employee must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented.



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OR

### **Performance remains unsatisfactory and this may lead to disciplinary action (Step 4)**

Where remedial action has been taken, and a reasonable opportunity has been given to the employee to improve performance and the performance of that employee is still unsatisfactory (see Sample letter 3), the Chief Executive will advise the employee in writing that his/her performance remains unsatisfactory and that the employee's performance may lead to disciplinary action ( s47 (2) ) (see sample letter 4 ).

The notification should indicate:

- That the Chief Executive is of the opinion that performance is still unsatisfactory and detail the unsatisfactory performance
- That the performance may lead to disciplinary action and what that means
- A summary of the process taken to date, including the reasonable opportunity the employee has had to respond to the opinion about his/her performance
- The consequences of the decision
- The employee will be given an opportunity to respond to the Chief Executive's opinion about the employee's performance – and that the time for response will be 14 days
- The employee's response will be taken into consideration in deciding whether to take disciplinary action with respect to the employee

### **10 Preliminary decision on action being considered (Step 5)**

Having considered the employee's response, the Chief Executive may then give consideration to taking:

- disciplinary action;
- further remedial action; or
- no further action

The employee is to be advised accordingly.

In making a decision about disciplinary action the Chief Executive shall, prior to notifying the employee of this fact, give consideration as to what is the most severe in the range of penalties that might conceivably apply to such unsatisfactory performance ("the severest penalty").

In deciding what the severest penalty is, the Chief Executive shall have regard to the objects of Part 3 of the Regulation, that is:

- To protect the health and safety of the public by providing mechanisms to ensure that employees of the Ambulance Service are fit to perform their duties,



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- To ensure that the public interest is protected,
- To maintain appropriate standards of conduct and work-related performance in the Ambulance Service;
- To protect and enhance the integrity and reputation of the Ambulance Service.

It is essential that the Chief Executive's consideration of the severest penalty must not involve any pre-judgment as to what penalty, if any, is ultimately to be applied to the employee. The consideration of the actual penalty, if any, to be applied is not to occur until the steps outlined below have been carried out.

The Chief Executive Officer shall consider the following:

- The facts of the case
- The impact of the unsatisfactory performance on the objectives of Part 3 of the Regulation
- The skill, experience and position of the employee
- The nature and seriousness of the unsatisfactory performance
- Mitigating or extenuating circumstances (if available at this stage)
- The employment history and general conduct history of the employee
- Whether the unsatisfactory performance has previously been the subject of counselling or previous remedial or disciplinary action
- The effect of the proposed action on the employee

If the decision is to take disciplinary action the written notification (see Sample letter 4) must state:

- The fact that the employee's response has been taken into account.
- The disciplinary action penalty/s being considered ("severest penalty" being considered for the particular matter). In particular, the employee should be advised if dismissal, a direction to resign or annulment of probation is being considered.
- That previous employment matters (such as past remedial actions, warnings or discipline matters or alternatively previous satisfactory work history) will be taken into account.
- That the employee has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he/she considers should be taken into account in relation to the disciplinary action being considered. The Chief Executive has discretion to extend the period for response if the employee applies for additional time within the fourteen day period and provides reasonable grounds for seeking the extension.
- That he/she may have an interview with the Chief Executive and may be represented by a solicitor, barrister or agent, before a final decision is made. The request for an interview should be made within 5 days of receipt of the written response. The representative may speak on behalf of the employee at



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- the interview but not attempt to cross examine the Chief Executive. Generally the Chief Executive should arrange to have the interview held within a few days of receipt of the written response.
- That these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step outlined in the letter must be taken and documented before the Chief Executive may make a final decision.

### **11 Implementation of final decision (Step 6)**

The Chief Executive, having considered any submission made by the employee in respect to the disciplinary action being considered, and having had an interview, if requested, shall make a final decision promptly and expeditiously. A final decision may consist of disciplinary action, remedial action or no action. The employee shall then be advised in writing of the final decision and its date of effect (See Sample letter 5).

In making a decision as to the appropriate disciplinary action, the Chief Executive must exercise his/her discretion and not adopt a policy that unsatisfactory performance will always attract the same punishment.

All the issues outlined above are to be considered along with any submission made by the employee. The employee's submission may have addressed such matters as the unsatisfactory performance, or any extenuating and mitigating circumstances. If made, the Chief Executive shall also consider any submission made on behalf of the employee by the union or legal representative.

The employee will be advised of the final decision as to the actual disciplinary action being taken (see Sample Letter 5).



## STEPS FOR DEALING WITH UNSATISFACTORY PERFORMANCE

