

Article 6. Sex, drugs, and rock and roll

S McCormick, J Wardrope

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This is the sixth article in a series on management within the emergency department. This article focuses on disciplinary procedures and actions.



Essential additional information for this article is found in emjonline. Information specific to the article is found in the full text "contents" section and general information about St Jude's is in the "education" section

FEEDBACK

The new ECG machine has been a great success and it seems that everyone who comes in to the department is having an ECG taken! This has certainly improved the care of those patients requiring an ECG but are there any problems with this indiscriminate use of an investigation? Perhaps this ECG craze will settle down as the new machine loses its novelty.

The SHO who you discovered was misusing heroin has caused you more problems. Should you break his confidentiality to protect patients? Are patients at risk? You read the advice in *Standards of Practice* on the GMC web site (www.gmc-uk.org) and see drug misuse described as a "serious problem". The document confirms your duty to patients and to the doctor and it is clear you must tell somebody. You decide to speak to his consultant, an understanding paediatrician, and together you approach the occupational health consultant and the postgraduate dean. Unfortunately, while you are formulating a plan of action the SHO is admitted to A&E with a respiratory arrest and the cause is all too clear. After treatment the SHO self discharges and the next day he resigns from his position by post. The only contact addresses available are hospital accommodation and while the postgraduate dean has a home address his parents appear to have moved since he qualified. What can you do now?

In general patient confidentiality is paramount but there are several situations where you must break confidentiality, if asked, under United Kingdom law and others where you have to make a professional judgment. These are summarised in the box 1. It is always good practice to seek advice from a colleague, the clinical or medical director or your medical indemnity organisation.

Box 1 Breaking confidentiality

UK law insists

- Suspected terrorist offence
- Driver involved in accident (Road Traffic Act—name/address only)
- By order of the court

Circumstances where it might be considered

- Serious arrestable offence
- Health problems in a health care professional that might lead to patient harm
- Child protection issues

The GP notes for the personal injury case were missing. Those of you who have sent in reports may wish to amend your opinion. Those of you who have waited can now submit your report.

Examples of cases of need are given on the internet feedback section.

TIME OUT—PEOPLE Disciplinary procedures

Introduction

Maintaining discipline and standards within an A&E department are essential to its functioning. The majority of staff will naturally behave within agreed social boundaries and are aware of specific behaviour that is expected in the workplace. Sometimes, however, these boundaries are crossed and at this time management must be prepared to act appropriately to ensure the smooth running of the department.

Over the last five articles we have been getting to know the staff at St Jude's A&E and have followed their attempts to rebuild the team that is required to run a successful department. Unfortunately the incident involving Dr Wales and Staff Nurse Holly has the potential to divide the staff and threaten the team ethos that has evolved. A split could develop along nurse/doctor or male/female lines and a proper investigation and just conclusion are essential if the team is to be maintained.

Behaviour

Attempts to define the boundaries of acceptable behaviour in the workplace have increased in the past 20 years. It is now accepted that colleagues of all grades must respect each other, with particular attention being paid to issues concerning race or gender. The abuse of hierarchical power by bullying has also now been "outed" as unacceptable and poor performance or deliberate under performance may also result in disciplinary action. These types of behaviour are deemed unacceptable in any workplace but the position is not so clear when it comes to other issues.

Certain types of behaviour may be acceptable in some workplaces or circumstances but not deemed appropriate in others. An example of this would be the use of profanities in conversation. While this may be tolerated on a building site or in the staff room of a hospital it is unlikely that such language would be condoned during direct patient contact. It is important that staff are aware of such variable standards to prevent misunderstandings.

A further complication is whether behaviour outside the workplace can be considered relevant to the employer. This might be justified if it involves other employees, especially if it reflects behaviour within the workplace but what if the

See end of article for authors' affiliations

Correspondence to:
Mr J Wardrope,
Department of Accident
and Emergency Medicine,
Northern General Hospital,
Herries Road, Sheffield
S5 7AU, UK;
Jim.Wardrope@sth.nhs.uk

behaviour remains solely outside of work? Is heavy drinking outside of work relevant if performance at the workplace is unaffected? This may seem like a "Big Brother" employer but would you want your child at a school where the English department was found drunk in the gutter every Friday night? Certain self inflicted standards exist in many professions but are becoming more difficult to justify and maintain with the erosion of status occurring today.

Of course illegal behaviour can never be condoned in or out of the workplace but again the seriousness of the offence and its relevance will need to be considered. Few of us would continue to employ an armed robber but a minor speeding offence might only be relevant in an ambulance driver rather than an A&E SHO.

The consequence of this is that each employer will need to produce their own guidelines to define what is acceptable. These guidelines would at least cover harassment, misconduct and performance but it is impossible to cover every eventuality. Guidelines on the general standard of behaviour can be useful but over generalisation is unhelpful. It may also be felt appropriate to have guidelines on capability separate from those of conduct. Ultimately the guidelines produced should be clear and concise and made easily available to all staff.

Disciplinary procedures

The consequence of unacceptable behaviour is disciplining, a concept most of us learned in childhood. Rules governing discipline in the workplace are necessary to ensure fairness in the treatment of employees. Written information on these rules should be provided to workers in accordance with the Employment Rights Act 1996. Management is responsible for the setting of these standards and for disciplining those who fail to reach them but they must ensure that the rules and procedures involved are reasonable. A model disciplinary procedure should aim to correct unacceptable behaviour rather than punish it and employees must have faith in the process, which is seen to be thorough, fair and applied consistently. The Advisory, Conciliation and Arbitration Service (ACAS) have produced guidance on disciplinary procedures¹ and these are summarised in text box 2.

Applying the theory

So how does this help us at St Jude's? You will have read the statements of the relevant parties and had a chance to form an opinion. Was this just a drunken fumble at the Christmas party, or is it something more serious?

For doctors, disciplinary procedures fall into three categories;

- Personal misconduct
- Professional misconduct
- Professional competence

In this case it is clearly a question of alleged personal misconduct. If an allegation of sexual indiscretion had come from a patient then this would have been investigated under professional misconduct procedures.

Does Dr Wales' alleged misbehaviour fall under our authority? The incident at the party happened outside of work but it was a departmental event and involved another member of staff. It must also be recognised that the complaint did not just refer to this one incident but to a pattern of behaviour that had occurred in the workplace. This being the case it was wholly appropriate for the senior staff to investigate the complaint further and Dr Wales was informed of this. It was felt that the delay from the main incident to the formal complaint was already too long and a swift conclusion to the affair would be to everyone's benefit.

- The procedures should be in writing, specify to whom they apply and not discriminate

Box 2 Principles of disciplinary action

All hospitals will have written policy on disciplinary procedures. A copy of this should be in your "policy and procedures reference section" of your work library (this will be discussed in a time out on "Administration and Time Management")

When a disciplinary matter occurs, the manager responsible should gather all relevant facts as soon as possible and obtain written statements if necessary. In certain cases it may be appropriate to suspend an employee to allow an unhindered investigation or because of the nature of the offence. This suspension should be with pay and it should be made clear that the suspension is not part of the disciplinary procedure and does not indicate any degree of guilt. Unfortunately this is not always the case and the employee, their colleagues, the public and sometimes the media draw an unfair inference from this action. In the event that a suspension is being considered, the employee must be advised that he can bring a friend or union representative to any interview or hearing for support and advice. The information obtained should be investigated and a decision taken on what is the appropriate next step.

- The investigation should be thorough and occur without undue delay
- All records and statements should be kept confidential
- Clear indication of the disciplinary action that may be taken should be given
- The worker should be informed of the complaint and relevant statements in good time, given the opportunity to state their case and allowed representation at any procedure
- Dismissal should not occur for a first offence except in a case of gross misconduct
- Ensure a right of appeal and indicate the correct procedure for this

The information required for further investigation was gathered by written statement and during this time Dr Wales' suspension was considered. Sister Oak was in favour of this because of the atmosphere in the department and the nature of the case but Mr London felt that this might imply guilt and would serve very little purpose. As a compromise the nursing and middle grade rotas were adjusted to keep Dr Wales and Staff Nurse Holly apart. On examination of the statements it was felt that consistency and corroboration was on Staff Nurse Holly's side but ultimately it still came down to her word against Dr Wales'.

Advice was taken from the director for human resources, the medical director and the director of nursing. The consensus opinion was that while Dr Wales had probably acted inappropriately it would be difficult to take formal disciplinary action with the evidence available.

Mr London agreed to give Dr Wales "counselling" about the incident and ensured Sister Oak that it would not simply be a slap on the wrists. Mr London spoke with Dr Wales and explained that no formal action was being taken. He did, however, point out that there were major concerns that Dr Wales had behaved badly and that his future conduct in the department would be under close scrutiny. He also "suggested" that Dr Wales should write a letter of apology to Staff Nurse Holly as she could well have made more of the Christmas party incident, possibly threatening his career.

Sister Oak discussed the case with Staff Nurse Holly and explained that while no formal action was being taken Dr Wales was to be reprimanded for his behaviour. Staff Nurse

Holly was content with this but expressed reservations at how she was to work in the department with Dr Wales now?

This was the conclusion of the St Jude's team. How does it compare with your own ideas on how this could have been handled? Do you think the outcome was satisfactory? How can we deal with Jenny Holly's concerns?

IN TRAY

You have a letter from a local school asking to organise a visit for the children. This might be a chance to build relationships within the community but is it more trouble than it is worth?

A local pharmacy is opening a 24 hour branch and wishes to discuss sponsorship of departmental advice cards. Would this be useful to the department? How far are we prepared to let sponsorship or advertising go within the hospital setting?

Shane "Six Pack" Simons, the local pop star, has an unusual request for you: he wants to shoot part of his next video in your department!

The GP notes for the personal injury case have arrived.

TASKS

- Review the Standards of Practice Document from the GMC.
- What action are you going to take over the runaway SHO?
- Consider the pros and cons of advertising within the A&E department.
- Decide whether to agree to a visit by the school children.
- You can now complete the PI report (not in hospital time of course, we would not want to be subject to the professional misconduct procedures!).

Web info (emjonline.com/contents/SIMS6)

Letter from Green Mound School
 Letter from Pills' Chemists
 Letter to Staff Nurse Holly from Dr Wales
 Letter from Shane Simon's agent
 Diary
 GP notes for personal injury report
 Example of case of need

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Disclaimer

The characters and incidents in this series are mostly fictional and any resemblance to persons or departments is coincidental. Some situations are based on real problems but in no case have names or details been used that might identify a person or department.

Authors' affiliations

S McCormick, J Wardrope, Department of Accident and Emergency Medicine, Northern General Hospital, Herries Road, Sheffield S5 7AU, UK

REFERENCES/FURTHER READING

- 1 **ACAS**. *Code of good practice*. London: HMSO. Martin M, Jackson T. Discipline and grievance handling. In: *Personnel practice*. London: Institute of Personnel and Development, 1998:88-95.
- 2 **Cole GA**. *Management theory and practice*. London: Letts Educational, 1999:358-9.