

# Article 16

## Article 16 - Employee Evaluation

Related Articles: 6.07, 9, 11.04 (J), 14, 18.02, 18.03, 18.04, 23

### Interpretation Guidelines:

#### Article 16.01 - Employee Rights

It is the Employer's responsibility to prepare and provide performance evaluations once a year following completion of the probationary period.

As a result it is the Union's policy that no employee should participate in either self or peer evaluation processes. There is a potential that self evaluations could be used against the employee and peer evaluations could result in pitting one union member against another. (See BCNU Council Policy Manual - a copy can be found on the BCNU website: [www.bcnu.org](http://www.bcnu.org))

#### The purpose of the performance evaluation:

- Is to acknowledge the employee's success in performing the requirements of the employee's position; and
- Where appropriate, identify performance areas requiring improvement.

The Employer must provide the instruction and support necessary to assist the employee meet the performance standard.

The arbitration award: *Lady Minto Gulf Islands Hospital and BCNU, May 17, 1989* (Thompson) set out the following as:

#### Criteria for Evaluations:

1. The Employer must define the expected standard of performance required which is reasonable in the circumstances of the job in question;
2. The employee must be clearly informed of that standard;
3. The Employer must give the employee instruction, training or supervision such that the employee has a reasonable opportunity to meet the required standard;
4. Where possible, an employee should be offered the opportunity to move to another position more suited to his or her abilities;
5. The Employer must demonstrate that the employee failed to meet the established performance standard to the extent that renders him or her incapable of performing the job;

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6. The Employer must warn the employee that his or her performance is sufficiently unsatisfactory that continued failure would result in dismissal.

Use of the CRNBC (RNABC) Standards for Nursing Practice (Standards) was discussed in the arbitration award: *Yaletown House Society and BCNU, September 9, 1996, (Kinzie)*. The arbitrator set out the following criteria for use of the Standards:

1. Employers have the right to establish performance standards; as long as they are fair, reasonable, and not in violation of the Collective Agreement. Performance standards must match up with the employee's job description.
2. Employees must not be evaluated against standards and expectations of which they are unaware.
3. The Employer may reference external sources such as the Standards for Nursing Practice (Standards). However, on their own, the Standards do not provide enough advice for employees about the specific work expectations against which they will be evaluated as they are too wide in scope. The following criteria apply when using the Standards as part of the evaluation process:
  - The Employer must act in a fair and reasonable manner;
  - Employees must have prior notice of the specific standards from the Standards that will be used to evaluate performance; and
  - The Standards used in evaluations must be objectively and specifically related to the work expectations of the specific job being evaluated.

An employee's signature only means they have read the evaluation, not that they necessarily agree with all of the contents.

Employees must be made aware of all performance evaluations, censures, letters and reports. This includes documentation on the employer's personal file of any performance issues.

*Also see interpretation guidelines under Article 6.07 Personnel File and the Consent Award: St. Paul's Hospital, Terrace Regional Health Care Society and BCNU, February 15, 1994 (Taylor)*

The 14 day deadline for filing a grievance begins the day the employee first becomes aware of the document.

It is for this reason that employees need to file grievances when they receive an evaluation that identifies less than satisfactory performance.

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In processing a grievance on a performance evaluation Stewards need to ask the following questions:

- Was the employee advised of the problem before receiving the evaluation?
- What has the Employer done to assist the employee in meeting the performance expectations?
- Is the Employer expecting a higher or different standard of performance from this employee than from other employees?
- Has the employee been given a chance to correct the problem?
- Has the employee been advised of performance problems in the past? If so, what were they and how did the matter get addressed by the Employer?

Stewards also need to:

- Obtain copies of the employee's previous performance evaluations.
- Accompany the employee to review and make copies of the contents of the employee's personnel file. (Also see Article 6.07)

### Letters of Expectation vs Letter of Discipline

Letters of Expectation can be problematic for a number of reasons:

1. These letters often have disciplinary overtones.
2. Employers don't see them as disciplinary and therefore don't believe they can be grieved under the collective agreement or fall under the provisions of Article 16.03 where the employee can request their removal from their personnel file.
3. Employees don't appreciate the potential ramifications of these letters.
4. The Union believes they could lead to discipline as in practice these letters are often relied on by the Employer as part of the progressive discipline process.

Also see: Arbitration Award: *Hilton Villa Care Centre and BCNU*, February 13, 2003 (Gordon).

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### Letter of Expectation

What should stewards do if an employee gets a letter of expectation?

#### GET CURIOUS AND INVESTIGATE

Ask yourself:

- what happened that brought about the letter?
- what process has the employer gone through to arrive at the letter?
- what might be going on here?
- is it factually accurate?

Assess the letter against the criteria laid out in the tools "Is it a Letter of Expectation?" and "Is it a Letter of Discipline?"

Remember:

- the burden of proof lies with the union to show that a letter is disciplinary.

**IF IN DOUBT GRIEVE!**

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### Letter of Expectation vs. Letter of Discipline

**HEABC**Health Employers  
Association of BC**NBA**Nurses' Bargaining  
Association

## Health Employers Association of BC and Nurses' Bargaining Association

### Joint Guideline

#### **DIFFERENCES BETWEEN DISCIPLINARY LETTERS AND NON-DISCIPLINARY LETTERS OF EXPECTATION**

Employers sometimes provide an employee with a letter which outlines the employer's expectations regarding the employee's behaviour in the performance of their job duties and/or compliance with policies or standards. An issue sometimes arises regarding whether such a letter is disciplinary or non-disciplinary. This distinction affects whether the letter is grievable<sup>i</sup>, how long it can remain on employee's personnel file<sup>ii</sup> and if shop steward representation at meetings<sup>iii</sup> is required.

The proper characterization of such letters is ultimately a question of fact based on all the circumstances.<sup>iv</sup> Without being an exhaustive list, the following is a listing of differences between letters of expectation (non-disciplinary) and disciplinary letters.<sup>v</sup>

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	<b>Letter of Expectation</b>	<b>Disciplinary Letter</b>
<b>Purpose</b>	To counsel and communicate, to identify or clarify expected behaviour in performance of job duties.	To correct poor performance or undesirable behaviour - assumes that discipline is needed to achieve correction.
<b>Employer's Intention</b>	<p>Helpful, supportive.</p> <p>Examples used only as a means to clarify inappropriate or unacceptable behaviour.</p> <p>Support is offered by way of training and/or other resources.</p> <p>Develops, with employee's input, mutual goals to encourage employee's commitment to change.</p>	<p>Disciplinary.</p> <p>Nature of Employee's conduct: culpable - specific incident of poor performance, or infraction of a rule, policy or standard.</p> <p>Should be clearly stated to be disciplinary.</p> <p>Does the employee have to grieve the letter to be able to respond to it?</p>
<b>Focus</b>	<p>Assumes behaviour will change in future, when an employee understands what is expected and is supported in an effort to change.</p> <p>A review period is set to give feedback on progress of change.</p> <p>A future disciplinary offence will be treated with no reference to this letter as a foundation for any progressive discipline.</p> <p>This letter may only be used to show that the employee was aware of the employer's requirements.</p>	<p>Expected behaviour is identified, but consequences are attached to present and any future failure to meet prescribed standards.</p> <p>May require compliance with provisions of the collective agreement, such as presence of a union representative when discipline is imposed.</p> <p>Negative impact on employee's work record.</p> <p>Part of progressive discipline – further incidents of a similar nature may be followed by further possible increased discipline.</p>

Attached to this guideline are samples of a letter of expectation and a disciplinary letter. If you have any questions please contact your steward or your labour relations consultant.

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## Sample Letter of Expectation

Dear [Nurse]

July 6, 2006

*This letter of expectation confirms the discussion which occurred on July 5, with yourself and your steward, Mary.*

*We expect you to do dressing changes using sterile technique in accordance with the employer's policy #735 which can be found in the policy manual located on your unit.*

*In order for you to meet this expectation, we have agreed to provide you with a one hour in-service with the surgical clinician on your next day shift at 0900 on July 8. During this in-service, she will show you how to change dressings pursuant to policy #735. You will then be expected to demonstrate to the clinician the dressing change process.*

*If you have any concerns or questions following the in-service, please feel free to speak to the clinician or the charge nurse on your unit.*

*Yours truly,*

*[Nurse Manager]*

*c: Mary (Steward)*

## Sample Letter of Discipline

Dear [Nurse]

July 6, 2006

*This letter will confirm our discussion which occurred on today's date with yourself and your steward Mary regarding the July 3<sup>rd</sup> report that there was a second incident on June 29<sup>th</sup> of an IV started in the antecubital space.*

*The patient complained to the recovery room nurse that the IV site was uncomfortable and asked for it to be removed. As noted, in our previous written feedback (June 29<sup>th</sup>) to you and as noted in the unit policy, this is unacceptable practice. This policy re IV sites was also brought to your attention on March 20, 2004. It is a standard for nursing practice (Standard 1: Responsibility and Accountability Indicator 3) that you follow agency policies.*

*The patient's chart was reviewed and it was noted that you documented the IV was started in the left forearm. It is a unit and agency expectation that charting is correct. It is a standard for nursing practice (Standard 3: Competent Application of Knowledge, Indicator 8) that charting must be accurate and complete as the chart is a legal document.*

*If you are experiencing difficulty starting an IV in one of the acceptable sites, you will:*

- 1. Consult with a nursing colleague working on the unit to seek acceptable options; or*
- 2. Consult with the nurse manager or designate to seek acceptable options; and*
- 3. Chart this consultation on the patient record.*

*A decision to use the antecubital site will only be made in the OR, by the anesthetist.*

*This is a letter of discipline. Any further incidences of this nature will be deemed as serious and will result in further discipline, up to and including termination of your employment. If you have any concerns or questions please contact me.*

*Yours truly,*

*Nurse Manager*

*c: Mary ( Steward)*

**Questions to Consider**

	<b>Non-Disciplinary Letter of Expectation</b>	<b>Letter of Discipline</b>
<b>Purpose</b>	<ul style="list-style-type: none"> <li>• what dialogue took place with the employee before the letter was given?</li> <li>• where else has the employer stated this expected behaviour to all employees?</li> <li>• is there other documentation that relates to the letter?</li> <li>• is the letter specifically directed at the employee?</li> <li>• does the letter want to correct undesirable behaviour by specific employees or all employees</li> </ul>	<ul style="list-style-type: none"> <li>• what dialogue took place with the employee before the letter was given?</li> <li>• where else has the employer stated this expected behaviour to all employees?</li> <li>• is there other documentation that relates to the letter?</li> <li>• is the letter specifically directed at the employee?</li> <li>• does the letter want to correct undesirable behaviour by specific employees or all employees?</li> </ul>
<b>Employer Intention</b>	<ul style="list-style-type: none"> <li>• was the employee involved in the process to develop mutual goals?</li> <li>• does the employer address it's concerns in a supportive manner?</li> <li>• does the employer offer support to improve or overcome the perceived problem(s)?</li> <li>• does the language in the letter refer to communication of performance expectation</li> </ul>	<ul style="list-style-type: none"> <li>• does the letter identify concerns or unacceptable or insubordinate behaviour possibly warranting discipline in the future if continued?</li> <li>• does the letter accuse the employee of misconduct of a culpable nature?</li> <li>• does the letter refer to possible disciplinary action if the conduct persists?</li> <li>• does the letter suggest the employee's actions were ill founded or improperly handled?</li> <li>• is the letter itself in a disciplinary format?</li> </ul>
<b>Focus</b>	<ul style="list-style-type: none"> <li>• what is the process for review? will the consequences of the review go on the employee's file?</li> <li>• where does the letter fit in progressive discipline?</li> <li>• did the employer request a union representative be present when the letter was presented?</li> <li>• how can you be assured the letter will not be referred to in any future discipline?</li> <li>• would a reasonable person view this letter as negative?</li> </ul>	<ul style="list-style-type: none"> <li>• where does the letter fit in progressive discipline?</li> <li>• does the letter speak to consequences if employee fails to meet the prescribed behaviour/expectations?</li> <li>• did the employer request a union representative be present when the letter was presented?</li> </ul>
This tool was created from the Joan Gordon arbitration award, Feb 13, 2003		

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### Article 16.03 - Records Removed

The Employer is only required to remove reports of disciplinary action, adverse reports etc from the employee's personnel file in the following circumstances:

- On request of the employee after 18 months after the date of the incident (i.e. not the date the censure was given) and so long as there has been no further discipline in the intervening period.
- As a result of a resolution to a grievance.

The employee needs to record the date of any reports of disciplinary action, adverse reports etc (unsuccessfully grieved one presumes); in order to **request** they are removed from their personnel file in accordance with the timelines in the PCA (i.e. after 18 months).

#### Additional References:

#### Arbitration Awards:

*Lady Minto Gulf Islands Hospital and BCNU, May 17, 1989 (Thompson)* - this decision sets out criteria for performance evaluations.

*Yaletown House Society and BCNU, September 9, 1996, (Kinzie)* - this decision sets out the criteria for using the CRNBC (RNABC) Standards for Nursing Practice.

*Consent Award: St. Paul's Hospital, Terrace Regional Health Care Society and BCNU, February 15, 1994 (Taylor)* - this decision deals with what may be kept on an Employer's personal file as opposed to the employee's personnel file.

*Hilton Villa Care Centre and BCNU, February 13, 2003 (Gordon)* - source for the tool used in this manual demonstrating the difference between letters of expectation and letters of discipline, and in addition contains a good review of the applicable jurisprudence.