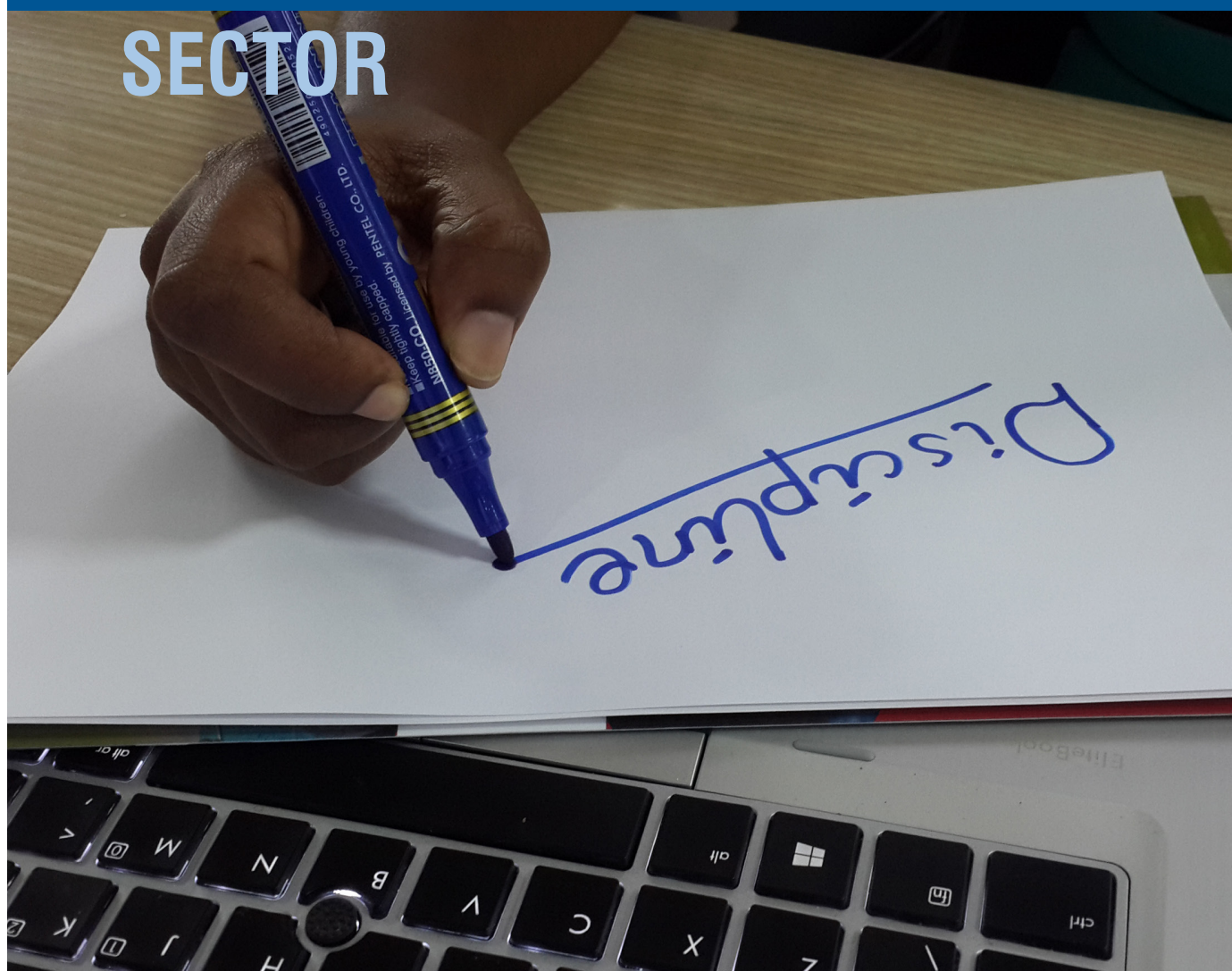




Ministry of Health

USER GUIDE TO DISCIPLINE PROCESS IN PUBLIC HEALTH SECTOR



USER GUIDE TO DISCIPLINE PROCESSES IN THE PUBLIC HEALTH SECTOR

June 2016

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Contents

Foreword	iii
Definition of Terms	v
Abbreviations	iv
Introduction	1
Principles of the Discipline Process	2
Minor Offences	4
Major Offences	4
References	9
List of Contributors	10

Foreword

The overall mission of the health sector in Kenya is to promote and provide quality, curative, preventive, promotive, rehabilitative and palliative health care services to all Kenyans. Achieving the mission and the constitutional provision of the right to the highest attainable standard of health requires the health workers to observe the values and principles of public service. These amongst others include high standards of professional ethics; responsive, prompt, effective, impartial and equitable provision of services and efficient and economic use of resources in provision of health services.

Achieving the right to health and the sector mission also requires a disciplined health workforce. In that respect disciplinary control is an integral part in the management of human resource in the sector. It is intended to help and encourage health workers achieve and maintain professional ethics, standards of conduct, contribute to improved performance and productivity. Healthcare workers have an obligation to always follow specific established behaviour as stipulated in their contract of employment, public service code of ethics and the professional councils/boards code of conduct.

The administration of disciplinary control over public officers is vested in the Public Service Commission under Article 234 (2) (b), of the Constitution of Kenya 2010. To ensure disciplinary control is maintained consistently in the public service, the commission has delegated disciplinary powers to Authorized Officers as per the Public Service Commission regulations and instructions issued to the service from time to time allowing for consideration and finalization of cases at the Ministry/State Department level and County Governments. Thus in the health sector, when an employee's performance or behaviour is unsatisfactory, corrective action must be taken. Corrective action will follow the process of progressive discipline when the situation is a result of inappropriate behavior or unsatisfactory performance.

However, disciplinary action should not be viewed as punishment, but as a method of correcting a problem. All disciplinary actions inflicted on an employee in the health sector shall be within the law and the Public Service Commission Regulations. Accurate evidence shall be the foundation of fairness in discipline cases. Proactive administration of disciplinary control also bestows the supervisor with the responsibility

to have regular meetings with employees to explain workplace rules and code of conduct. The supervisor must therefore inform an employee of the standards of particular conduct that apply in the workplace.

The purpose of this user guide is to support administration of disciplinary control and ensure that it is carried out in a fair and consistent manner in the health sector. It is meant to guide the health workers supervisors/ facility in-charges on the process to be followed to handle discipline at the work place and in instituting proactive disciplinary control. This guide does not substitute other laws and guidelines, but is meant to guide the user. The MOH wishes to issue the user guide to the national and county governments towards better management of health workers.

Dr. Nicholas Muraguri
**Principal Secretary,
Ministry of Health
Republic of Kenya**



Signed



Date

Definition of terms

<i>Discipline</i>	conforming to service rules and regulations which prescribe expected conduct and behavior of individual officers
<i>Disciplinary control:</i>	due process to do with justice and any awful punishment
<i>Minor offence:</i>	means any crime which upon conviction the imprisonment is six months or below.
<i>Major offence:</i>	means a serious crime which upon conviction the imprisonment is over six (6) months.
<i>Gross misconduct:</i>	fundamental breach of obligations arising under the contract of service /employment.

Definitions as provided for in the Public Service Commission's Discipline Manual for the Public Service, May 2015

Abbreviations

HRM & D Human Resource Management & Development

HRH Human Resources for Health

MHRMAC Ministerial Human Resource Management Advisory Committee

CHRMAC County Human Resource Management Advisory Committee

CPSB County Public Service Board

PSC Public Service Commission

Introduction

The delivery of high quality health service requires all employees to adhere to high standards of work performance, conduct and attendance. The purpose of this user guide is to support the human resources management and development disciplinary process and ensure that it is carried out in a fair and consistent manner in the health sector. The user guide will ensure that disciplinary cases are processed with a reporting link between the HR department and regulatory bodies towards enforcement of a professional code of conduct and values in the health sector.

Disciplinary control is a key component of the human resource mandate. Public officers are required to maintain integrity and uphold the dignity of the office to which they are appointed. Disciplinary control therefore intends to help and encourage public officers to achieve and maintain standards of conduct, and to contribute to improved performance and productivity.

It is therefore envisaged that every health worker adheres to the rules of conduct and ethics in accordance to the law and as per their regulatory body requirements, failure to which disciplinary procedures can be initiated against the health worker.

Scope

The user guide applies to all health workers employed or engaged by the national and county governments. It outlines the process to be followed in the event that health workers are subject to disciplinary action. It is also meant to guide the supervisors/facility in-charges on the process of instituting disciplinary action at the work place. This guide does not substitute other laws and guidelines.

Objective of the user guide

This user guide aims to:

1. Define discipline and understand its meaning in the context of the existing public service regulations.
2. Outline standard procedures for uniformity in handling disciplinary cases.
3. Understand disciplinary procedures in the context of existing regulations.

4. Outline steps in disciplinary process as a flow chart for easier understanding and interpretation for the health worker and their line managers.
5. Understand the roles and responsibilities of the various institutions/ agencies/ commissions and authorized officers in handling disciplinary cases

Principles of the discipline process

The discipline process is to be governed by the following:

- i. Proper framing of charges** — Full particulars of the case, including the applicable provision of the constitution, legislation or code of Conduct alleged to have been breached.
- ii. Prompt handling** — Investigation to suspected or alleged breaches of disciplinary standards and any subsequent disciplinary procedures and action will be conducted as promptly as is practicable to ensure fairness, consistency and proper adherence to procedural requirements and timescales.
- iii. Rule of natural justice** — Procedural fairness, where an officer must be allowed adequate opportunity to prepare and present his/her case; the deciding authority must be unbiased when hearing and making decisions; and decisions must be based upon logical proof or evidential material.
- iv. Investigation** — No formal disciplinary procedures will be instigated against a health worker for misconduct unless the allegations have been fully investigated, and sufficient evidence established to warrant a disciplinary hearing.
- v. Right of appeal** — The health worker will have the right to appeal and apply for review of disciplinary related decisions.
- vi. Application of other interventions** in resolving discipline cases such as counselling, guidance, training and dispute resolution mechanisms.

Alternative interventions

Alternative interventions are efforts taken to address employee misconduct using a method other than traditional discipline action. These may result in modified behavior if used early on in the discipline process for less serious offences but may not be effective in more serious issues or habitual

offences. The appropriateness of the particular approach will vary based upon the nature of the offence and personality of the individual whose conduct needs correcting.

Alternative discipline interventions in the public service can take many forms such as:

- a. Counseling – a counseling intervention is not a discipline action, as its purpose is not to create a negative experience, but rather to communicate helpful information and provide necessary support in management of psychological challenges.
- b. Guidance and training - This can be used by supervisors to address poor performance of an officer when there is no misconduct contributing to the problem.
- c. Dispute resolution mechanism - can be used effectively to resolve, reduce, or even eliminate workplace disputes that might come from a circumstance where disciplinary action is appropriate. Alternative dispute resolution affords an opportunity to create solutions that are uniquely tailored to address issues at hand. The method shall be applied in accordance with the Guidelines for Mediation Conciliation and Negotiation in the Public Service.

General provisions

The following shall be observed while processing discipline cases:

- a. Disciplinary cases dealt with under delegated powers shall be processed through the respective Human Resource Management Advisory Committee. (HRMAC)
- b. If criminal proceedings are instituted against an officer or in instances where an officer has been acquitted of a criminal charge in a court of law, the authorised officer shall not be prevented from dismissing or punishing him/her on any other charge arising out of his/her conduct in the matter.
- c. Where an officer has been charged with desertion of duty, the letter shall be addressed to his/her last known address by registered mail.
- d. Disciplinary cases shall be dealt with promptly and finalized within a period of six (6) months. Where it is found impracticable to do so, the Authorised Officer shall report individual cases to the Public Service Commission (PSC) explaining the reason for the delay.

Specific provisions of the discipline process

i. Minor offences

For initial instances of a minor offence committed by an officer, his/her supervisor will issue a verbal warning. The verbal warning should be in form of structured discussion which may entail counselling. The officer should be informed of the alleged offence and likely consequences if the offence is repeated in future. A written record for such a warning indicating that there was a meeting between the supervisor and the officer should be kept by the supervisor.

In the event that the officer repeatedly commits minor offences irrespective of verbal warning(s), a written warning should be given to the officer by the supervisor. The warning letter should state the exact nature of offence(s) and indicate future disciplinary action against the officer if the offence is repeated.

Where an officer fails to reform despite being issued with verbal and written warnings, or where he or she commits serious offence(s) the procedure outlined below for major offences shall apply.

ii. Major offences

Step 1: Receipt of allegation

The complainant, who may be a co-worker/patient/supervisor/member of the public, will make the complaint on the alleged misconduct in writing. The complaint may come through the facility or regulatory body and will be received by the facility in-charge/sub county HAO/HRH Officer/Director HRM&D. The complaint shall be recorded and acknowledged within 7 days.

Step 2: Preliminary inquiry

1. The facility in-charge/sub county HAO/HRH Officer/Director, HRM&D will conduct a preliminary inquiry to establish if there are sufficient grounds to warrant a disciplinary process. Where an officer has been warned severally but failed to reform, the facility in-charge/sub county HAO/HRH Officer/Director, HRM&D will review the persistent offences. A report including supporting evidence will be compiled.
2. If there is no evidence to substantiate the allegation, the case will be dismissed and the complainant will be informed in writing.

3. If there is sufficient and specific evidence, the officer will be issued with a 'show cause' letter indicating the alleged offence and the charges framed against him/her. He/she will be required to respond in writing, within 21 working days from the date of issue of the letter.
4. After expiry of the specified period, whether the officer responds or not, the case will be submitted to the Ministerial Human Resource Management Advisory Committee (MHRMAC)/ County Human Resource Management Advisory Committee (CHRMAC) to make recommendations to the Authorised Officer, whose decision will be subsequently conveyed to the officer.
5. If the matter warrants further investigation, the Authorised Officer will form an ad hoc committee to investigate the allegations of misconduct.

Step 3: Investigation

1. The investigating officers appointed to the ad hoc committee should be senior to the accused officer and should not have dealt with the case before.
2. The ad hoc committee should comprise not less than three (3) officers. Where there are more than three members, the constitution of the team shall be an odd number.
3. The ad hoc committee will prepare an investigation report with the findings and submit this report to the Authorised Officer. The investigation report shall not contain any recommendation in regard to the form of punishment to be inflicted on the accused officer but should contain:
 - i. The name of the officer charged;
 - ii. The particulars of the charge as set out in the 'show cause' letter;
 - iii. The reply by the charged officer to the particulars in the charge;
 - iv. The issues for investigation as established by the ad hoc committee;
 - v. Evidence collected by the team, including any statements by witnesses;
 - vi. Analysis of the evidence and statements;
 - vii. A statement of opinion by the ad hoc committee on whether the charges against the officer have been proved as well as any material information aggravating or mitigating the case.

4. Where there is need, or on request, the ad hoc committee shall allow an officer to appear in person or with his representatives to enable the accused officer to defend himself
5. If the disciplinary issue relates to professional misconduct, the Authorised Officer will involve the accused officer's regulatory body in the investigation process.

Step 4: Determination

1. The Authorised Officer will present the investigative report to Ministerial HRMAC/County HRMAC for deliberation and appropriate recommendation.
2. The MHRMAC/CHRMAC will present their recommendations to the Authorised Officer for decision as the case may be.
3. The Authorised Officer will then communicate the decision to the employee and inform him on his right to appeal the decision.
4. The decision will be communicated to the regulatory body where the employee is a member.

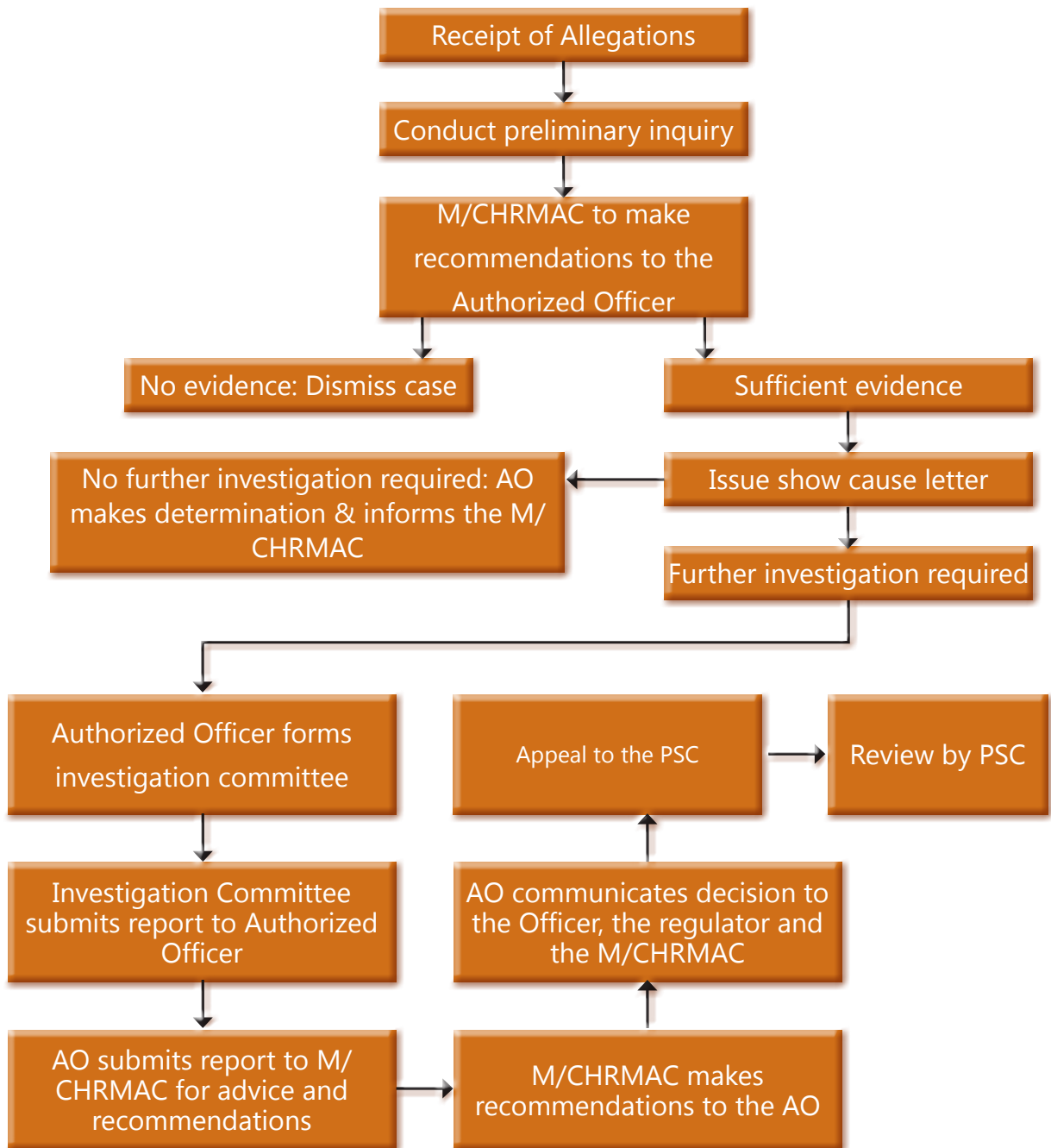
Step 5: Appeal

1. Any Officer who is dissatisfied or affected by a decision made by the Authorised Officer at National or County level may appeal to the Public Service Commission (PSC) against the decision.
2. An appeal must be made in writing within 42 calendar days after the date of the decision. The PSC may entertain an appeal later if, in the opinion of the Commission, and the circumstances warrant it.
3. The appeal shall be addressed to the Secretary, PSC, through the Authorised Officer, who shall give comments on the issues raised.
4. An appeal shall be accompanied by copies of all material evidence or documents that the appellant wishes to rely on.
5. Decision on the appeal must be made to the officer, who shall be informed of the right of review on account of new material facts, or an error in case the appeal was disallowed.

Step 6: Review

1. Any officer dissatisfied or affected by a decision made by the Public Service Commission on appeal in a decision made in a disciplinary case may apply for review.
2. The application for a review must be made in writing within one year from the date of the communication of the decision. The Commission may hear an application for review outside the set time frames if circumstances so warrant.
3. The PSC will make a final determination and inform the affected person.

Discipline process flowchart



References

Public Service Commission, Discipline manual for the public service, May 2015

Public Service Commission, Policy on hearing and determining appeals from County Government Public Service, July 2014

Public Service Commission, Code of Regulations, revised 2006

Public Service Commission, County Public Service Human Resource manual, May 2013

The code of professional conduct and discipline (6th edition)(Revised January 2012)

National Nurses Association of Kenya (NNAK) Code of conduct and ethics (July 2009)

The Public Health Officers (Training, Registration and Licensing Act 2013), part vi

List of Contributors

1. Mr. David Njoroge, [Ministry of Health](#)
2. Mr. Duke Ongechi, [Ministry of Health](#)
3. Mr. Shadrack Kimeu, [Ministry of Health](#)
4. Jane Muhia, [Ministry of Health](#)
5. Milka Kuloba, [Ministry of Health](#)
6. Dorothy Njeru, [Ministry of Health](#)
7. Rahab Maina, [Ministry of Health](#)
8. Mr. Benard Otieno, [Ministry of Health](#)
9. Beatrice Ndungi, [Ministry of Health](#)
10. Racheal Ruwa, [Ministry of Health](#)
11. Mr. Mark Rafimbi, [Ministry of Health](#)
12. Lucy Opondo, [Ministry of Health](#)
13. Fridah Omwangale, [Ministry of Health](#)
14. Lydia Kamau, [Ministry of Health](#)
15. Mr. James Mwalloh, [Ministry of Health](#)
16. Mr. Wilson Siambi, [Trans Nzoia County Public Service Board](#)
17. Damaris Amolo, [Homabay County Public Service Board](#)
18. Carolyne Enane, [Vihiga County Public Service Board](#)
19. Mr. Peter Kafwihi, [Kilifi County Public Service Board](#)
20. Rtd Col. Job Akhulia, [Kakamega County Public Service Board](#)
21. Alice Abuki, [Kisii County](#)
22. Dr. Andrew Luvoni Ondego, [Vihiga County](#)
23. Mr. Shem Nyang'au, [Nyamira County](#)
24. Dr. Gerald Akeche, [Homa Bay County](#)
25. Everlyne Sikenyi, [Bungoma County](#)
26. Mr. Butaki David, [Trans Nzoia County](#)
27. Mr. Paul Kangira, [Transitional Authority \(TA\)](#)
28. Loise Wainaina, [Public Service Commission](#)
29. Mr. Jonathan Buturu, [Clinical Officers Council \(COC\)](#)
30. Dorine Odongo, [Pharmacy and Poisons Board \(PPB\)](#)
31. Peninah Ndombi, [The Kenya Nutritionists & Dieticians Institute \(KNDI\)](#)
32. Mr. Maurice Osano, [Nursing Council of Kenya](#)
33. Dr. Janet Muriuki, [IntraHealth International](#)
34. Mr. Mathew Thuku, [IntraHealth International](#)
35. Mukami Kathambara, [IntraHealth International](#)
36. Monica Wangari, [IntraHealth International](#)
37. Jeniffer Kiema, [IntraHealth International](#)
38. Wycliffe Omany, [IntraHealth International](#)
39. Meshack Ndolo, [IntraHealth International](#)

Ministry of Health
Afya House
Cathedral Road
Po Box 30016 - 00100
Nairobi, Kenya.
Email: ps@Health.go.ke
<http://www.health.go.ke>

