

# Disciplinary Actions

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## Disclaimer:

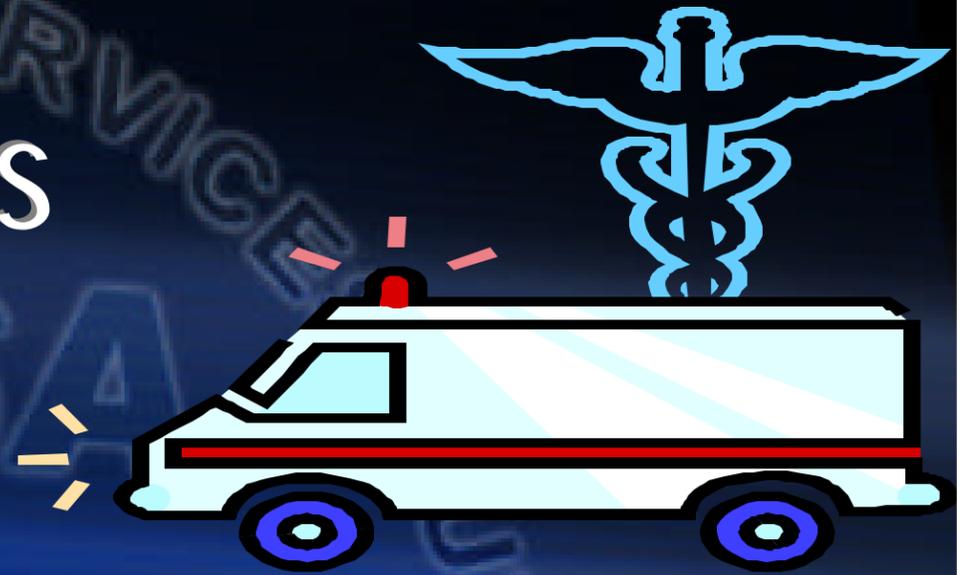


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(You were expecting something different from a lawyer?)

# The Basics

- Who's the Boss?
- Basis for taking an action
- Bringing actions under the APA.
- Regulations
- Model Disciplinary Orders
- Settlement Agreements.
- After the action is final.



# Who's the Boss?

- The "Boss" is the ultimate decision maker.
- Ultimate decision maker = Medical Director.
- The Medical Director has the final "say" over all administrative actions under his/her purview.



# The Medical Director:

- Takes on the role of a judge
- Should not be involved in the investigation
- Should not be involved in ex parte communications with any party
- Is allowed to have separate legal representation
- Renders a final decision and order on behalf of the agency



# Basis for taking an Action

- The basis for initiating an action must be for causes found in California Health and Safety Code Section 1798.200(c)(1)-(12), or the California Code of Regulations



# 1798.200(c)

- (1) Fraud in the procurement of any certificate or license under this division.
- (2) Gross negligence.
- (3) Repeated negligent acts.
- (4) Incompetence.
- (5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.
- (6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

## 1798.200(c) (cont.)

- (7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.
- (8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.
- (9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.
- (10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

# 1798.200(c) (cont.)

- (11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.
- (12) Unprofessional conduct exhibited by any of the following:
  - (A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.
  - (B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 to 56.6, inclusive, of the Civil Code.
  - (C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

# Bringing Actions under the Administrative Procedures Act (APA)

- The APA is found beginning at California Government Code Section 11370
- Provides a standardized set of laws pertaining to administrative actions
- All actions on EMT certifications/ Paramedic licenses must be conducted according to the APA

# The APA Provides For:

- Due process for actions
- Notice of allegations and opportunity to respond
- Impartial forum for dispute
- Accountability
- Hearing procedures
- Appeals process



# Evidence Standard for APA Actions



- The standard of evidence for administrative actions is “clear and convincing”. Evidence offered to prove the truth of a matter asserted requires a finding of high probability, or to be so clear as to leave no substantial doubt.
- Standard is the same for all action types under the APA.

# APA Action Types:

- Statement of Issues
- Accusation
- Temporary Suspension Order
- Petition for Reinstatement
- Default Decision

# Statement Of Issues (SOI)

- Used to deny an appeal on a new application for a certification or license
- Serves as the “pleading”, listing all the specific reasons the application is being denied
- The burden of proof is on the applicant – the applicant must show that he/she is entitled to receive the certification/license

# Accusation

- Used for a person who has an existing certification/license
- Serves as the “pleading”, listing all the specific facts and reasons that the certificate/license is subject to discipline
- The burden of proof is on the Agency to show that the certificate/license holder has committed acts that warrant discipline

# Temporary Suspension Order (TSO)

HSC 1798.200(a)(4), CCR 100213



- Temporarily (and immediately) suspends a certificate/license prior to/until a hearing and final decision
- Since the certificate/license is immediately suspended, the timelines for issuing an accusation, holding a hearing, etc. are very tight.
- TSO's are only appropriate when the conduct poses an "imminent threat" to the public's health and safety

# What is an Imminent Threat?

- You'll know it when you see it!
- Typically, it is:
  - Serious criminal conduct or on-duty intoxication issues
  - Substance abuse issues that have or could lead to drug theft from an employer
  - Commission of a sexual offense listed under Penal Code Section 290 (1798.200(c)(12)(C))



# TSO Timelines

1798.200(a)(5), CCR 100213



- TSO starts upon date issued, effective when Respondent receives notice
- If the LEMSA Director suspends, then he/she must consult with employer within 72 hours to continue to uphold suspension
- Accusation must be issued within 15 days of the suspension
- NOD must be returned within 15 days of receipt (allow additional 5+5 for mailing)
- Hearing must be held within 30 days of Agency receipt of NOD
- ALJ must issue decision within 30 days of hearing

# Petition for Reinstatement/ Reduction of penalty

GC11522, CCR 100208

- Used where a person formerly held a certificate/license, or has been disciplined and wishes to have the penalty reduced
- Petitioner may apply one year after the effective date of the original decision
- Heard by the Agency itself (no ALJ)
- Medical Director is the decision maker
- Oral or written hearing at the choice of the Agency
- Medical Director should issue written decision

# Defaults

(GC 11520)

- If a Respondent never responds to the Accusation/SOI, or fails to show up at the noticed hearing, then action may be taken for a default decision.
- Default may be based on Respondent's admissions, other evidence, or affidavits.
- Respondent may make a motion to set aside the default within seven days of receiving it, and must cite either: failure to receive the original notice; mistake; inadvertence; or excusable neglect.
- Decision to set aside is solely within the discretion of the Medical Director

# Hearings



- Office of Administrative Hearings
- Hearing Process
- Representation
- Timing of Decisions

# Office of Administrative Hearings (OAH)

- OAH is a branch of the Dept. of General Services  
<http://www.oah.dgs.ca.gov>
- Is a quasi-judicial tribunal
- There are four offices: Los Angeles, San Diego, Oakland and Sacramento
- Jurisdiction for a hearing is set according to the APA (GC 11508)

## OAH (cont.)

- Hearings may be held at locations other than the four main offices by special arrangement
- Each office has its own calendar clerk and Presiding Administrative Law Judge (PALJ)
- Hearings are set directly with OAH



# Hearing Process

- Hearings are held before an ALJ, who will conduct the hearing, take evidence, allow for witness examination, etc.
- Less formal proceeding than typical Superior Court matter
- After the hearing, ALJ will issue a proposed (recommended) decision
- Decision will be issued within thirty days
- Decision is advisory to the Agency and non binding.

## Hearing Process (cont)

- Medical Director must adopt, modify, or reject the ALJ's proposed decision
- If decision is modified (to a greater penalty) or rejected, must order transcripts of the hearing and give opportunity for additional written or oral argument

# Hearing Process (cont)



- Once a final determination is made, the Medical Director must issue a "Decision and Order" (D&O).
- D&O can be appealed within seven days.
- D&O becomes final after seven days, but effective on date specified in the order.

# Representation

- A Respondent is entitled to representation if he/she chooses (at their own expense)
- Respondents may represent themselves
- Agency is not required to be represented by an attorney.



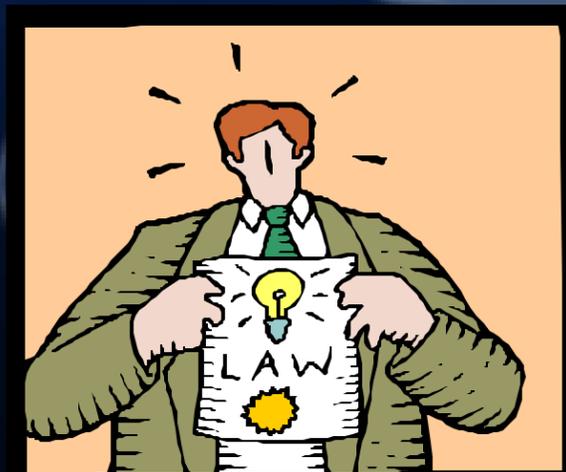
# Timing of Decisions



- The ALJ will issue a proposed decision within 30 calendar days of the end of the hearing.
- Agency has 30 days to “publicly file” the proposed decision and serve it on respondent
- Agency has 100 days from receipt of decision to adopt, modify, or reject
- If not acted on within 100 days, decision is adopted by default

# Regulations

- Administrative agencies adopt, amend and repeal regulations under the authority granted to them by either constitutional provisions or statutes. While regulations are not statutes, they have the force and weight of law.

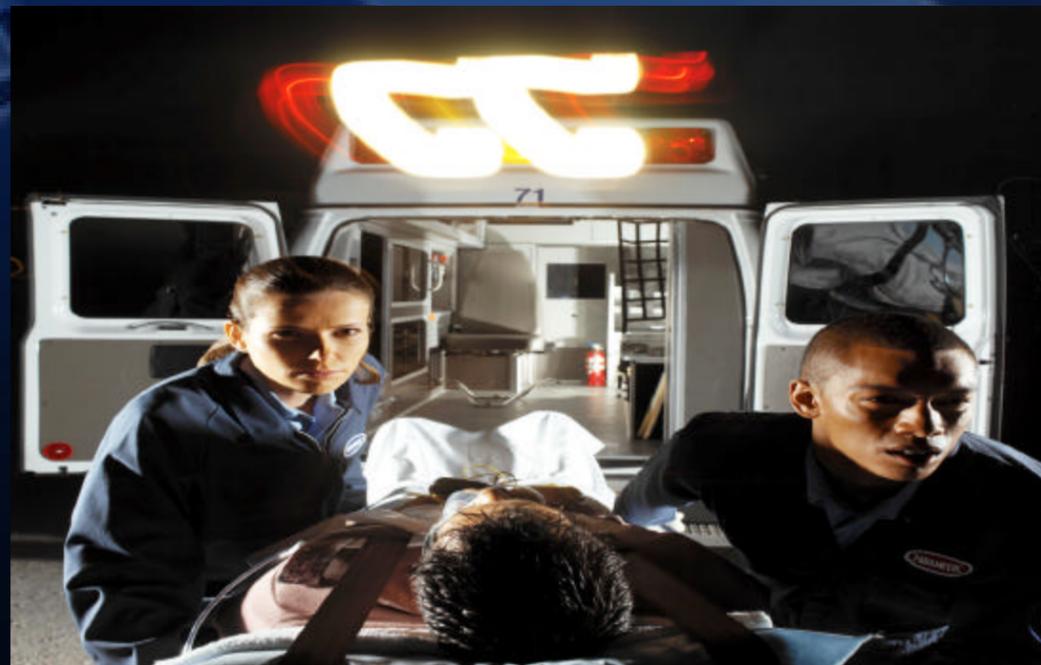


## Regulations (cont.)

The Regulations set forth specific rules for the conduct of investigations, responsibilities of Relevant Employers and LEMSA's, information sharing of investigations, disciplinary standards, and notification once an action becomes final. The Regulations are available in print and online from the Office of Administrative Law (<http://www.oal.ca.gov/Publications.htm>).

## Regulations (cont.)

- Disciplinary actions for EMT and Advanced EMT are found in the California Code of Regulations, Title 22, Division 9, Chapter 6, Article 1, beginning with Section 100201



## Regulations (cont.)

- The disciplinary cause must be “substantially related” to the duties and functions of a certificate holder (CCR 100202.1).
- Substantial Relationship Criteria is found at CCR 100208



## Regulations (cont.)

- “(a) For the purposes of denial, placement on probation, suspension, or revocation of a certificate, pursuant to Section 1798.200(c) of the Health and Safety Code, a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a certificate holder if to a substantial degree it evidences unfitness of a certificate holder to perform the functions authorized by the certificate in that it poses a threat to the public health and safety.”

## Regulations (cont.)

- The Regulations also set forth standards for mandatory (“shall”) and discretionary (“may”) certification denial/revocation actions (CCR 100214.3).



## Shall Deny/Revoke (CCR 100214.3(c): (*"Lifetime Bans"*)

- (1) Has committed any sexually related offense specified under Section 290 of the Penal Code.
- (2) Has been convicted of murder, attempted murder, or murder for hire.
- (3) Has been convicted of two (2) or more felonies.

## Shall Deny/Revoke (CCR 100214.3(c): (*"Time Limit Bans"*)

- (4) Is on parole or probation for any felony.
- (5) Has been convicted and released from incarceration for said offense during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter.
- (6) Has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.

## Shall Deny/Revoke (CCR 100214.3(c): (*"Time Limit Bans"*) (cont.)

- (7) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to the use, sale, possession, or transportation of narcotics or addictive or dangerous drugs.
- (8) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to force, violence, threat, or intimidation.
- (9) Has been convicted within the preceding five (5) years of any theft related misdemeanor.

## May Deny/Revoke:

- (1) Has committed any act involving fraud or intentional dishonesty for personal gain within the preceding seven (7) years.
- (2) Is required to register pursuant to Section 11590 of the Health & Safety Code.
- (e) Subsections (a) and (b) shall not apply to convictions that have been pardoned by the governor, and shall only apply to convictions where the applicant/licensee was prosecuted as an adult. Equivalent convictions from other states shall apply to the type of offenses listed in (a) and (b). As used in this section, "felony" or "offense punishable as a felony" refers to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

# Length of denial/revocation

- Effective for 12 months statewide from the date the decision is final



# Model Disciplinary Orders (MDO's)

- The MDO's are found in "Recommended Guidelines for Disciplinary Orders and Conditions of Probation for EMT (Basic) and Advanced EMT" (EMSA #134), which are incorporated by reference into the Regulations
- The MDO's provide a consistent and fair standard for disciplinary actions

# Who must use the MDO's?

- Relevant employers must use them to develop a disciplinary plan
- Medical Directors must use the MDO's when determining discipline, or negotiating a stipulated settlement agreement
- ALJ's must use them when formulating decisions regarding certification discipline



## MDO's (cont.)

- The MDO's provide for a minimum, a recommended, and a maximum discipline depending upon the offense
- The recommended level of discipline should be imposed in the absence of any mitigating or aggravating evidence
- The administrative law judge may propose any discipline between the minimum discipline and maximum discipline for a particular violation
- The Medical Director has the final determination as to the level of discipline to be imposed

# Settlement Agreements

- Stipulated settlement agreements can be used anytime to voluntarily conclude a certification action
- The MDO's must be used as a standard when negotiating settlement terms

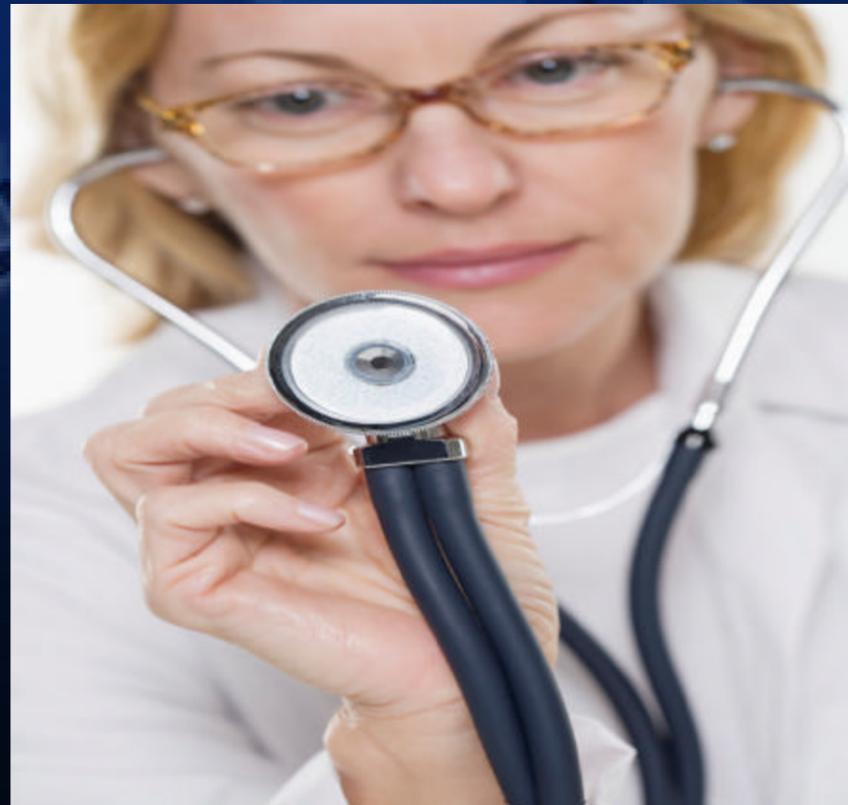
## Settlement Agreements (cont.)

- Settlement can be on any terms that the parties agree upon that are not contrary to law (GC 11415.60)



## Settlement Agreements (cont.)

- Can include sanctions that the Agency otherwise lacks the power to impose  
(i.e. fitness for duty medical evaluations)



# After the Action is Final

- The Agency must provide notification of the outcome of the action. (CCR100215)
- Respondent and Relevant Employer must be notified within ten days of final decision



# Who Gets Notice?

After the Action is Final (cont)

- California DOJ NLI (revocation)
- National Registry (revocation)
- U. S Dept. of Health and Human Services Office of the Inspector General (Medicare Exclusion Database)
- Respondent (10 days)
- Relevant Employer (10 days)
- Central Registry

Good Luck!



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