

PROSECUTORIAL DISCRETION

Inherent in the entire enforcement process is the concept of prosecutorial discretion. Such discretion is necessary in order to discharge enforcement responsibilities in accordance with the trust invested by the public. The exercise of this discretion is vital to the proper execution of enforcement duties because the entire process of enforcing laws promulgated in the public interest involves balancing the interests of society against those interests of individuals who may threaten its well being through wrongful conduct.

Unfortunately, prosecutorial discretion defies precise definition or application. There is no specific formula to apply in every situation. Rather, the proper exercise of discretion requires flexibility to balance competing interests. The factors considered in deciding whether to investigate and prosecute require the exercise of prosecutorial discretion. When a case is reviewed, the following two basic questions are addressed:

- 1) Assuming the alleged facts are true, could this case be successfully prosecuted?
- 2) Even if the case could be prosecuted, should it be?

Certain cases are best resolved through remediation by the employer and/or local EMS agency, and not through licensure action.