

EMT 2010

California Emergency Medical Services Authority

EMT 2010 Handbook

Making Strides
in the EMS Field



Arnold Schwarzenegger
Governor

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Schedule of EMT 2010 Rollout Workshops

Dates and Locations

April 13 – 14, 2010 Los Angeles

Los Angeles County EMS Agency, 10100 Pioneer Boulevard,
First Floor, Room 110, Santa Fe Springs, CA 90670

April 21 – 22, 2010 San Francisco

San Francisco Department of Public Health, 101 Grove
Street, Room 300 Auditorium, San Francisco, CA 94102

April 26 – 27, 2010 Sacramento

Hilton Sacramento Arden West, 2200 Harvard Street,
Sacramento, CA 95815

May 10 - 11, 2010 Palm Springs

CFED West Conference and Expo, Palm Springs Convention
Center, 277 N. Avenida Caballeros, Palm Springs, CA 92262

EMSA will also host a series of training webinars on the new EMT certification standards, the central registry and the investigation and discipline requirements. For a schedule of webinars, visit www.emsa.ca.gov/EMT2010.

Agenda

DAY ONE - Certification Process and Background Checks

Review of EMT Regulations

- ◆ Review of Advanced EMT Regulations
- ◆ Review of Central Registry Regulations
- ◆ Review of Paramedic Regulations

Background Checks

Roles and Responsibilities

- ◆ Certifying Entity
- ◆ LEMSA
- ◆ Employer

IT Operations for the Central Registry

- ◆ Certification
- ◆ Input of Information

Fees and Payments

DAY TWO - Enforcement and Disciplinary Processes

Review of Disciplinary Regulations

Investigation Process

- ◆ Notifications
- ◆ Firefighters Bill of Rights
- ◆ Disciplinary Action Plan
- ◆ Forms

Overview of Legal Issues

- ◆ Issuing Accusations
- ◆ Issuing Statements of Issues
- ◆ Issuing Temporary Suspension Orders
- ◆ Settlement Agreements
- ◆ Hearings
- ◆ Model Disciplinary Orders

ALJ Reimbursement Process

Central Registry Input and IT Operations

1 EMT 2010 Project Introduction and History

In September 2008, Governor Arnold Schwarzenegger signed legislation to reform emergency medical services in California by increasing accountability and oversight.

Authored by Assemblymember Alberto Torrico (D-Newark), Assembly Bill 2917, known as EMT 2010, requires the EMS Authority to develop a single set of statewide standards for certification, disciplinary orders and conditions of probation for Emergency Medical Technicians (EMTs).

The legislation amended Health and Safety Code, Division 2.5, requiring that by July 1, 2010:

- the EMS Authority must establish a central registry of EMT and Advanced EMT (AEMT) certification data,
- all certified Emergency Medical Technicians [EMTs] and Advanced EMTs be fingerprinted for state and federal background checks as a condition of certification,
- local EMS agencies afford EMTs and AEMTs a hearing, when requested, before an administrative law judge when taking disciplinary action on an EMT or AEMT certificate.

Paramedics were already subject to state and federal background checks as a condition of licensure, and their licenses disciplined in accordance with the Administrative Procedures Act.

EMT 2010 is the biggest administrative challenge the EMS system in California has seen in the past decade and we have dedicated the resources of the EMS Authority to ensuring a smooth, effective transition. There are regulatory, technical, process and coordination components that are vital and interconnected.

The EMS Authority has worked with our stakeholders to amend the EMT, AEMT, Disciplinary, and Paramedic Regulations and adopt new regulations that pertain to the Central Registry requirements. We have also received a great deal of support in creating the Central Registry and incorporating EMT databases from all over the state into one system. We anticipate the regulations taking effect in early June. The participation we've received from our partners throughout the process has been, and continues to be, critical to the success of EMT 2010.

EMSA has prepared this handbook to assist local EMS agencies, employers of EMS personnel, and EMS personnel certifying entities in understanding and carrying out the new provisions of the Health and Safety Code as specified in Assembly Bill 2917. The handbook is also available at www.emsa.ca.gov/EMT2010.

R. Steve Tharratt, MD, MPVM
Director, Emergency Medical Services Authority

2 Summary of Revisions to EMT Regulations

The EMT Regulations contain a number of amendments. Here is a summary of those changes:

General Amendments

1. Change the title EMT-I to EMT for consistency with the new term from the National Scope of Practice Model throughout the chapter.
2. Change the term, “certifying authority” to “certifying entity” for consistency with the new terminology from AB 2917.
3. Codify the National Registry of EMTs EMT basic written and skills examinations as the certifying examinations for California.

Amendments to the Optional Skills Section

1. EMT accreditation in optional skills is limited to those EMTs with active EMT certificates and who are employed within the jurisdiction of the LEMSA by an employer who is part of the organized EMS system.
2. The term “esophageal-tracheal” airway was replaced with the term, “perilaryngeal airway adjunct”. This change was made to recognize various similar airway adjuncts such as the King Tube and the Combi-Tube and any other similar airway adjunct that may be developed in the future.
3. The following “package” of skills and medications were removed from the EMT Optional Skills and moved to the Advanced EMT Regulations:
 - a. Blood glucose determination
 - b. Aspirin
 - c. Bronchodilators
 - d. Epinephrine, sub-cutaneous
 - e. Naloxone
 - f. Nitroglycerine
 - g. Glucagon
 - h. Activated Charcoal
4. Establishing an IV under the supervision of a paramedic was also removed from the EMT optional

skills, because this is included in the AEMTs scope of practice.

5. EMTs who fail to demonstrate competency may be subject to accreditation action in accordance with Chapter 6, the revised Disciplinary Regulations.
6. The Optional Skills section was also amended to provide that EMTs accredited in optional skills may practice those optional skills on a mutual aid response in accordance with the accrediting local EMS agency’s policies and procedures.

The following optional skills will remain in the EMT Regulations:

1. Use of perilaryngeal airway adjuncts
2. Administration of naloxone
3. Administration of epinephrine
4. Administration of Atropine and Pralidoxime

EMT Training

1. This revision requires that EMT Refresher courses must use the US DOT EMT Refresher National Standard Curriculum.
2. When a local EMS agency approves, renews an approval, or disapproves an EMT training program, that LEMSA shall simultaneously notify the EMS Authority and the training program of that EMT training program’s approval, renewal of approval, or disapproval. This is intended to provide the EMS Authority with timely notification of a training program’s approval status so the EMS Authority’s training program list on the EMS Authority’s web site can be as up-to-date as possible.
3. EMT training programs must retain student records for a period of not less than four years.
4. A new process for withdrawing an EMT training program’s approval was added to the EMT regulations. This process is consistent with a similar addition to the Advanced EMT Regulations and is currently contained in the Paramedic Regulations.

EMT Certification

1. Starting July 1, 2010 all EMTs will need to obtain a criminal background check for EMT certification.
2. In order to be certified or recertified, all EMTs will need to complete an EMT certification application.
3. EMT certification expiration dates shall not exceed two years from the date the applicant successfully meets the EMT certification requirements. This amendment was made to correct prior language that may result in an EMT certification period lasting more than two years. Now, EMT certifications expire two (2) years from the date that the individual passes the National Registry EMT-Basic certifying exam, except in the following cases:
 - A person who possesses a current and valid out-of-state EMT-Intermediate or Paramedic certification, the expiration date shall be the same expiration date as stated on the out-of-state certification but in no case shall exceed two (2) years from the effective date of EMT wallet-sized certificate card issued by a California EMT certifying entity.
 - A person who possesses a valid National Registry issued EMT-Basic, EMT-Intermediate or Paramedic certification, the expiration date shall be two (2) years from the date of passing the National Registry examination whichever is soonest, but in no case shall the expiration date of certification exceed two (2) years from the effective date.
 - An individual currently licensed in California as a Paramedic, pursuant to subsection (c), shall have an EMT expiration date that is the same as the current expiration date of the Paramedic license.
4. EMTs will be responsible for notifying their certifying entity of their current mailing address and

shall notify their certifying entity in writing within thirty (30) calendar days of any and all changes of the mailing address, giving both the old and the new address, and EMT registry number.

5. EMTs shall only be certified by one EMT certifying entity during a certification period.

EMT Recertification

1. Provisions were added to extend an EMT's certification period for up to six months for those EMTs deployed for active duty with a branch of the armed forces, whose EMT certifications expired while on active duty or are near expiring.

This is a new chapter of regulations that was created to provide California's certifying entities with the requirements to certify and issue EMT and Advanced EMT (AEMT) certifications that are consistent with the requirements created by Assembly Bill 2917

General

All certifying entities shall provide the EMS Authority with current contact information for their certification program that includes:

1. The certifying entity's name.
2. The certifying entity's business address
3. The certifying entity's telephone number.
4. The certifying entity's fax number.

All EMT and AEMT certifying entities shall enter certification and recertification data into the central registry no later than 14 calendar days from the date the applicant successfully meets the certification or recertification requirements.

All EMT and AEMT certifying entities shall print EMT and AEMT certification cards using the central registry.

3 Summary of AEMT Regulatory Changes

The EMT-II Regulations (Ch. 3, Title 22, Division 9, California Code of Regulations) are being revised to give the EMT-II's a new title, the Advanced EMT (AEMT) and a new scope practice which are consistent with the National Scope of Practice Model that was created by the National Highway Traffic Safety Administration. Here is a summary of those changes:

General

The term EMT-II is replaced with the term AEMT throughout this Chapter. There will continue to be references to EMT-II's in certain sections to reference previously certified EMT-II's.

Certification of AEMTs will be done by local EMS agencies that approve AEMT providers.

AEMT training program approval requirements are consistent with the EMT and Paramedic training program approval requirements.

Scope of Practice:

1. Perform pulmonary ventilation by use of perilyngeal airway adjunct.
2. Institute intravenous catheters, saline locks, needles or other cannulae (IV lines), in peripheral veins.
3. Administer intravenous glucose solutions or isotonic balanced salt solutions, including Ringer's lactate solution.
4. Obtain venous and/or capillary blood samples for laboratory analysis.
5. Use blood glucose measuring device.
6. Administer the following drugs in a route other than intravenous:
 - Sublingual nitroglycerine preparations;
 - aspirin
 - glucagon
 - inhaled beta-2 agonists (bronchodilators)

- activated charcoal
- naloxone;
- epinephrine;

7. Intravenous administration of 50% dextrose.

Optional Scope of Practice:

For the EMT-II's that were certified prior to July 1, 2010 and accredited to practice in a local EMS agency with an approved EMT-II training program on January 1, 1994, they may continue to practice the EMT-II scope of practice when that scope of practice is approved by their local EMS agency. These previously certified EMT-II's will be re-titled to AEMTs and may be authorized by their local EMS agency to perform the AEMT Local Optional Scope of Practice which includes:

1. Administering the following medications:
 - Lidocaine hydrochloride
 - Atropine sulfate
 - Sodium bicarbonate
 - Furosemide
 - Epinephrine
 - Morphine sulfate
 - Benzodiazepines (midazolam)
2. Perform synchronized cardioversion and defibrillation.

Training

Other changes to the AEMT Regulations include AEMT training program approval requirements. Previously approved EMT-II training programs will need to transition to the new AEMT training program requirements within six months from the date that the AEMT Chapter of Regulations becomes effective in order to maintain their approval.

AEMT training consists of a minimum of 88 hours in length and is composed of a didactic portion, a clinical portion, and a field internship portion.

The new AEMT training program is competency based, meaning that all AEMT students need to demonstrate competency in all portions of the training program. Even though the minimum required hours are set at 88, a student may need to exceed those hours in order to achieve competency.

Model Curriculum

The EMS Authority, with the help of the EMT-II Task Force, has developed an Advanced EMT Model Curriculum. This model curriculum, or the topics contained in the model curriculum, make up the core content required for Advanced EMT training until such a time that the national textbook publishers have released their AEMT textbooks. The EMS Authority has also set July 1, 2013 as the date to transition to the NREMT Advanced EMT written and skills examinations.

Certification

AEMTs will be certified by local EMS agencies that approve AEMT providers.

4 Summary of Central Registry Regulations

EMT & AEMT Certification

All certifying entities will need to create a certification application that contains certain statements required in regulation and should be created to collect certain elements that are required fields in the Central Registry.

1. The certification application process must include a method to disclose any certification or licensure actions. The specific requirement from the regulations states disclose any certification or licensure action against an EMT, Advanced EMT, EMT-II certificate or a Paramedic license or any denial of certification by a LEMSA or in the case of Paramedic, licensure denial by the Authority.
 - a. Any certification or licensure action against any EMS-related certification or license in California, and/or entity per statutes and/or regulations of another state or other issuing entity, including active investigations, or
 - b. Any certification or licensure action against an EMT, Advanced EMT, EMT-II certificate, Paramedic license, or health related license, or
 - c. Any denial of certification by a LEMSA or Paramedic licensure denial by the Authority.
2. Each EMT and AEMT certification application must include the following statement: “I hereby certify under penalty of perjury that all information on this application is true and correct to the best of my knowledge and belief, and I understand that any falsification or omission of material facts may cause forfeiture on my part of all rights to EMT certification in the state of California. I understand all information on this application is subject to verification, and I hereby give my express permission for this certifying entity to contact any person or agency for information related to my role and function as an EMT in California.”

The certifying entity may wish to create an application to collect the required data elements for central registry for each certification applicant. The required data elements for the central registry are:

 1. First name
 2. Last name
 3. Middle name, if available
 4. Date of birth
 5. Phone number
 6. Mailing address
 7. Residential address, if different
 8. City of residence
 9. State of residence
 10. Zip code of residence
 11. Social security number
 12. Employer, if applicable
 13. Prior certifying entity, if applicable
 14. Prior certification number, if applicable
 15. Beginning on or after July 1, 2010, date that a live scan was completed for the DOJ CORI, or
 16. If finger print images were previously submitted, a letter from either the employer or the certifying entity verifying CORI with subsequent arrest notification report was completed and that the individual is not precluded from EMT certification.
 17. Date EMT certification was issued.
 18. Expiration date of EMT certification.
 19. Current certification status:
 - a. Active
 - b. Expired
 - c. Denied
 - d. Revoked
 - e. Suspension
 1. Suspension effective date
 2. Suspension expiration date

- f. Placed on probation
 1. Probation effective date
 2. Probation expiration date
- g. LEMSA that took certification action

Expiration Date

There are four scenarios to establish the expiration date for EMT certification. All of these scenarios are intended to prohibit an EMT certification period of greater than two years.

1. For initial EMT certification applicants, who took and passed the NREMT examination the expiration date shall be two years from date of taking the NREMT examination. This may result in a certification period of less than two years depending on how long the individual waits to apply for EMT certification.
2. For individuals who meet the EMT certification requirements based on their California paramedic license, the EMT certification expiration date shall be the same date as the paramedic license expiration date.
3. For individuals who possess a current and valid out-of-state EMT-Intermediate or Paramedic certification, the expiration date shall be the same expiration date on their out-of-state certificate, but in no case greater than two years from the date the individual meets the EMT certification requirements.
4. For individuals who possess a NREMT Registration Card (EMT, EMT-Intermediate, or Paramedic) and have not taken the NREMT EMT examination in greater than two years, the expiration date shall be two years from the date the individual meets the EMT certification requirements.

The expiration date for AEMTs shall be the final day of the month two years from the date the AEMT applicant meets the certification requirements.

Criminal Background Checks

1. Certifying entities will need to verify that each applicant for initial certification or certification

renewal meets the criminal background check requirement or continues to meet criminal background check grandfathering provisions.

2. For new EMT and/or AEMT certification applicants who are not in the criminal central registry as having a current criminal background check with subsequent arrest notification, the individual will need to be live scanned for certification or recertification.
3. The Background Checks portion of this handbook contains more information about criminal background check requirements.

EMT and AEMT Recertification Requirements

Individuals who meet the recertification requirements greater than six months before expiration.

1. For EMTs - Complete 24 hours of continuing education (CE) or a 24-hour refresher course.
2. For AEMTs – Complete 36 hours of CE.
3. Submit a completed skills competency form.
4. Complete an application that includes disclosure of any certification or licensure action as previously specified.
5. Certifying entity shall make sure that the applicant meets the criminal background check requirement, e.g. a certifying entity or employer is receiving subsequent arrest notifications on this applicant.
6. Individual assigned a new effective date and expiration date (mostly used to line up expiration dates on one date).

Individuals who meet the recertification requirements less than six months before expiration.

1. For EMTs - Complete 24 hours of continuing education (CE) or a 24-hour refresher course.
2. For AEMTs – Complete 36 hours of CE.
3. Submit a completed skills competency form.
4. Complete an application that includes disclosure of any certification or licensure action as previously specified.
5. Certifying entity shall make sure that the applicant meets the criminal background check requirement,

e.g. a certifying entity or employer is receiving subsequent arrest notifications on this applicant.

6. Effective date shall be the day after current expiration date (eg. Expires 6-30-10, effective 7-1-10, new expiration date 6-30-12).

Individuals who have a lapsed certification from 0 to 6 months from expiration date:

1. For EMTs - Complete 24 hours of continuing education (CE) or a 24-hour refresher course.
2. For AEMTs – Complete 36 hours of CE.
3. Submit a completed skills competency form.
4. Complete an application that includes disclosure of any certification or licensure action as previously specified.
5. A certifying entity shall make sure that the applicant meets the criminal background check requirement, e.g. a certifying entity or employer is receiving subsequent arrest notifications on this applicant.
6. New effective date – date application process is completed and the applicant meets the certification requirements.
7. New expiration date – last day of the month of two year certification period.

Individuals who have a lapsed certification 6 to 12 months from expiration date.

1. For EMTs - Complete 36 hours of continuing education (CE) 24-hours of which may be from a refresher course.
2. For AEMTs – Complete 48 hours of CE.
3. Submits a completed skills competency form.
4. Complete an application that includes disclosure of any certification or licensure action as previously specified.
5. A certifying entity shall make sure that the applicant meets the criminal background check requirement, e.g. a certifying entity or relevant employer is receiving subsequent arrest notifications on this applicant.
6. New effective date – date application process is completed and the applicant meets the certification requirements.

7. New expiration date – last day of the month of two year certification period.

Individuals who have a lapsed certification from 12 to 24 months from expiration date.

1. For EMTs - Complete 48 hours of continuing education (CE) 24-hours of which may be from a refresher course.
2. For AEMTs – Complete 60 hours of CE.
3. For EMTs - Pass the National Registry EMT Basic written and skills examinations.
4. For AEMTs – Pass the AEMT written and skills certifying examinations.
5. Complete an application that includes disclosure of any certification or licensure action as previously specified.
6. Complete a criminal background check.
7. New effective date – date application process is completed and the applicant meets the certification requirements
8. New expiration date – last day of the month of two year certification period.

Individuals who have a lapsed certification of greater than 24 months from expiration date.

1. Complete an entire EMT Basic or an entire AEMT course.
2. For EMTs - Pass the National Registry EMT Basic written and skills examinations.
3. For AEMTs – Pass the AEMT written and skills certifying examinations.
4. Complete an application that includes disclosure of any certification or licensure action as previously specified.
5. Complete a criminal background check.
6. New effective date – date application process is completed and the applicant meets the certification requirements.
7. New expiration date – last day of the month of two year certification period.

Only one EMT or AEMT certification shall be issued by one certifying entity per certification period.

Printing Certificate Cards:

Certifying entities have the option of printing certification cards or request that the EMS Authority print certification cards.

1. Those certifying entities that print certificate cards will need to print EMT certificate cards using the central registry.
 - If the certifying entity does not already have a card printer, they will need to purchase a printer and configure their printers to the central registry.
 - Certifying entities that print their certification cards will only have to print on the front side of the card with the individual's name, central registry number, effective date, expiration date, and status.
 - The certifying entity will need to determine how many blank EMT certificate cards to keep on hand.
 - The EMS Authority will provide the blank certification cards to the certifying entities at no cost.
 - The certifying entity will need to order a supply of blank EMT certificate cards from the EMS Authority when necessary.
2. Those certifying entities that request the EMS Authority to print their certification cards:
 - The certifying entity shall request, in writing, the EMS Authority print their certification cards. There is no charge to the certifying entity for the EMS Authority to print and mail their certification cards.
 - For those certifying entities that request the EMS Authority print their certification cards, they will need to develop and print temporary EMT or AEMT certificates that will be valid for 45-days.
 - The temporary certificate shall contain the following information:
 - a. Name of the individual certified.
 - b. Date the temporary certificate was issued.
 - c. Date the temporary certificate expires.
 - d. Certification status.
 - e. Registry number.
3. EMT and AEMT certifying entities shall issue certification cards within 45 calendar days of receipt of a complete application to individuals who apply for and successfully complete the EMT and AEMT certification requirements.
4. EMTs and AEMTs shall only be certified by one certifying entity per certification cycle.

5

Summary of Paramedic Regulatory Changes

California Code of Regulations, Title 22, Division 9, Chapter 4

Updated Reference to the National Standard for Paramedic Training

Section 100159 of the Paramedic Regulations - In January 2009, the U.S. Department of Transportation, National Highway Traffic Safety Administration, released the National Emergency Medical Services Education Standards, DOT HS 811 077A, and the Paramedic Instructional Guidelines, DOT HS 811 077E, as the new national standards for paramedic training. These documents replaced the Emergency Medical Technician Paramedic National Standard Curriculum DOT HS 808 862 March 1999, including appendix E, referenced in the Paramedic Regulations.

Therefore, Section 100159 of the Paramedic Regulations was amended to strike the reference to the March 1999 standards, and add in the reference to the new national standards for paramedic training as the required standard for paramedic training in California. These amendments were necessary to meet the EMS Authority's objective for California's paramedic training standards to be consistent with national paramedic training standards. They were also necessary because the paramedic examination of the National Registry of Emergency Medical Technicians (NREMT) will be revised to reflect the new national standards and the EMS Authority has designated the paramedic examination of the NREMT as California's paramedic licensure examination.

Extension of Time for Militarily Deployed Paramedics to Meet Licensure Renewal Requirements

Many of California's Paramedics are members of the reserves with a branch of the Armed Forces of the United States which includes the California National

Guard. In recent years many of these Paramedics have been deployed for active military duty, often times with very little advanced notice. Deployments have often included tours in foreign countries with little or no ability to access continuing education courses needed for the paramedics to maintain their paramedic licenses. In addition, the paramedics' licenses sometimes expire during the time of their deployment or shortly after their release from active military duty.

Consequently, the EMS Authority, in appreciation for the service to their country provided by these Paramedics, amended Section 100166 of the Paramedic Regulations to allow these paramedics a six-month grace period, absent penalties, to fulfill the continuing education requirements needed to renew their paramedic licenses.

Licensure and Licensure Renewal Fee Increase

In 1994, Health and Safety Code (H&SC) Section 1797.172 was amended authorizing the EMS Authority to charge fees for the licensure and licensure renewal of paramedics in an amount sufficient to support the EMS Authority's licensure program at a level that ensures the qualifications of the individuals licensed to provide quality care. This section also established the basic fee for licensure and licensure renewal at \$125, but did not provide any mechanism for adjusting the fee to account for increases or decreases in the cost of the program.

In 2008, H&SC Section 1791.172 was amended by AB 2917 to allow the EMS Authority to annually evaluate the fee to determine if the fee is sufficient to fund the actual costs of the EMS Authority's licensure, licensure renewal, and enforcement programs, and adjust the fee by regulation as necessary. When the EMS Authority conducted the evaluation of the fee in 2008, it was determined that beginning in Fiscal

Year 2008/2009, there would be a \$277,000 shortage between projected revenue (\$1,315,000) and the costs of the licensure (\$483,000) and enforcement (\$1,109,000) programs.

At the time of the evaluation, it was also determined that the licensure program was in need of additional personnel (Program Technician III \$86,000) to process renewal applications. The number of licensees had increased from 7,953 in 1994 to over 16,900 in 2009, and during that time there had been no increase in the number of technicians performing the licensure function.

Therefore, the EMS Authority determined that the fee should be raised from \$125 to \$195. However, to lessen the burden of such a large fee increase at one time, the EMS Authority amended the Paramedic Regulations, Section 100171, to adjust the basic paramedic licensure and licensure renewal fee from \$125 to \$160 in Fiscal Year 2010/2011 and from \$160 to \$195 in Fiscal Year 2011/2012.

6 Background Checks

Starting July 1, 2010, all EMTs and Advanced EMTs must complete a criminal background check (Ch. 10, §100347). This section is divided into three subsections that describe how certifying entities can meet the background check requirements. The first subsection will describe the requirements for certifying entities to establish their criminal background check processes with California's Department of Justice, the second subsection will describe the "Grandfathering" of criminal background checks process, and the third subsection will describe other requirements for the criminal background check processes.

1. Establishing Criminal Background Check Processes:
 - a. All EMT and Advanced EMT certifying entities shall establish a criminal background check process that includes Federal Bureau of Investigation (FBI) background checks, with the California Department of Justice (DOJ). The criminal background check process shall include an initial background check from DOJ and FBI and subsequent arrest notification from DOJ.
 - b. Certifying entities that do not receive criminal background checks from DOJ will need to complete the following steps prior to April 1, 2010:
 - Have a current resolution from your governing body which establishes the need for FBI background checks, for the most current resolution language acceptable by the FBI, for the most up to date sample DOJ/FBI resolution language, please contact Nichole Devey of the Department of Justice at (916) 227-2720 or Nichole.Devey@doj.ca.gov.
 - Complete and submit a Live Scan Request application to DOJ, which must include a request to receive DOJ and FBI background check information. The application can be obtained at this link to the DOJ web site, (<http://ag.ca.gov/fingerprints/pdf/LiveScan-PacketRev06.pdf>).
 - Complete and submit a Subsequent Arrest Service Contract to DOJ (designating your agency as the primary recipient and the EMS Authority as the secondary recipient). This document can be obtained from the DOJ web site at <http://ag.ca.gov/fingerprints/forms/subarr.pdf>.
 - c. Certifying entities that receive initial criminal background checks, but not subsequent arrest notifications or FBI background checks, will need to complete the following prior to April 1, 2010:
 - Have a current resolution from your governing body which establishes the need for FBI background checks, for the most current resolution language acceptable by the FBI, and for the most up to date sample DOJ/FBI resolution language, please contact Nichole Devey of the Department of Justice at (916) 227-2720 or Nichole.Devey@doj.ca.gov.
 - A letter to DOJ on your agency's letterhead requesting:
 1. FBI level of service be added for your agency; and
 2. Applicant type Emerg Med Tech Lic/Cert be added to your agency's ORI (number issued by DOJ to identify your agency). The generic applicant type: Lic/Cert/Permit will be disabled. The letter must also include your ORI number.
 3. Complete and submit a Subsequent Arrest Service Contract to DOJ (designating your agency as the primary recipient and the EMS Authority as the secondary recipient). This document can be obtained

at this link to the DOJ web site, (<http://ag.ca.gov/fingerprints/forms/subarr.pdf>).

- d. Certifying entities that receive initial criminal background checks and subsequent arrest notification reports but not FBI criminal background checks will need to complete the following prior to April 1, 2010:
 - Have a current resolution from your governing body which establishes the need for FBI background checks, for the most current resolution language acceptable by the FBI, for the most up to date sample DOJ/FBI resolution language, please contact Nichole Develey of the Department of Justice at (916) 227-2720 or Nichole.Develey@doj.ca.gov.
 - Submit a letter to DOJ on your agency's letterhead requesting:
 1. FBI level of service be added for your agency; and
 2. The retainable applicant type Emerg Med Tech Lic/Cert be added to your agency's ORI. The generic applicant type: Lic/Cert/Permit will be disabled. The letter must also include your ORI number.

2. "Grandfathering":

Those individuals that received a state level criminal background check for purposes of EMT-I or EMT-II certification or employment prior to July 1, 2010, may be eligible for "grandfathering" of their prior criminal background check if they meet the following conditions(Ch. 10, §100348):

- a. Must have had a state level criminal background check from the California Department of Justice.
- b. The certifying entity and/or employer must receive subsequent arrest notification reports from DOJ on those individuals.
- c. The certifying entity and/or employer must certify that the individual is not precluded from certification for any of the following reasons (Ch. 6, §100214.3 (c)):

- Committed any sexually related offense specified under Section 290 of the Penal Code.
 - Convicted of murder, attempted murder, or murder for hire.
 - Convicted of two (2) or more felonies.
 - On parole or probation for any felony.
 - Convicted and released from incarceration for said offense during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter.
 - Convicted and released from incarceration for said offense during the preceding ten (10) years for any felony.
 - 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.
 - Convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to force, threat, violence, or intimidation.
 - Convicted within the preceding five (5) years of any theft related misdemeanor.
- d. The process for "Grandfathering" EMTs and EMT-IIs who received a criminal background check for the purposes of employment will require the employer to submit a completed Criminal Offender Record Information form to the EMT-I's or EMT-II's certifying entity.
 - e. The certifying entity will enter this information into individual's certification record.
 - f. A Criminal Offender Record Information Form is available in the appendix of this handbook and on the EMS Authority's web site.
 - g. Individuals who meet the "Grandfathering" criteria will not need to complete a FBI background check after July 1, 2010, unless that individual separates from that certifying entity or employer.

3. Other Background Check Information

- a. No Longer Interested – Certifying entities and/or employers that receive a CORI report, including a subsequent arrest notification report, that no longer certify/recertify or employ an EMT or an Advanced EMT shall notify the California DOJ using the “No Longer Interested Notification Form (BCII 8302, Rev 08/07)” within twelve months of the certification lapse that they no longer have a business need to receive the CORI on that individual (Ch. 10, §100349).
- b. Repeat live scan – Individuals may need to obtain a new live scan if:
 - The individual was “Grandfathered” by an employer/certifying entity and separated from their employer and/or certifying entity.
 - The individual’s certification lapses for greater than 12-months.
- c. Criminal Background Checks for employment and certification.

After July 1, 2010 all background checks for EMT certification must include dual notification with the EMT certifying entity and the EMS Authority. The EMS Authority is not authorized to receive background check reports and subsequent arrest notifications from DOJ for the purposes of employment. An employer that is also an EMT certifying entity may, at their discretion, use the background check they obtain for certification purposes for employment purposes as well, but they may not use an employment background check for certification purposes.

7 Roles and Responsibilities

Pursuant to the provisions of AB 2917, which amended Health and Safety Code, Division 2.5, in 2008, Certifying Entities, Local EMS Agencies, and EMS Employers, defined as Relevant Employers (ambulance services permitted by the Department of the California Highway Patrol or a public safety agency), have certain roles and responsibilities in the implementation and maintenance of the State EMT Central Registry and in the disciplinary process for EMTs and AEMTs. EMSA has amended and promulgated regulations to specify how these roles and responsibilities are to be carried out. Those roles and responsibilities include the following:

Certifying Entities

For the purpose of the California EMT Central Registry, Certifying Entities are defined as:

- A public safety agency that has an approved EMT (EMT-I) training program
- The State Fire Marshal (which has an approved EMT (EMT-I) training program)
- A medical director of a local EMS agency

Responsibilities:

- Develop and adopt policies and procedures for implementing the provisions of Chapter 10 Process for EMT and AEMT Disciplinary Actions Regulations.
- Provide EMSA with current contact information for their certification program that includes the following as required in Chapter 10 California EMT Central Registry Regulations, Section 100344(b):
 1. The Certifying Entity's name,
 2. The Certifying Entity's address (business address, city, state, zip code),
 3. The Certifying Entity's telephone number,
 4. The Certifying Entity's fax number.
- Submit to EMSA no later than March 31, 2010 initial data (for test purposes only) on all their currently certified EMTs and AEMTs in the format required by EMSA. The format template is available on EMSA's website under EMT-2010 Project and as Attachment 1 to this section. It is critical that EMSA receive and evaluate this information in order to determine any problems with the data prior to the final data being submitted to EMSA on June 25, 2010 for the July 1, 2010 go-live date for the State EMT Central Registry.
- Ensure that all their currently certified EMTs and AEMTs have had a state criminal background check through the California Department of Justice, including subsequent arrest notification reports.
- Verify in writing to EMSA that the provision above has been met for each of their currently certified EMTs and AEMTs, including information that each of these certified EMTs/AEMTs were not precluded from certification pursuant to Section 100126(c) and (d) of Chapter 6, "Process for EMT and Advanced EMT Disciplinary Action" Regulations. A sample template for submitting this information to EMSA is included as Attachment 2 in this section. This template was developed and provided courtesy of the staff of the Inland Counties EMS Agency.
- Submit to EMSA by June 25, 2010, the final data on all their EMTs/AEMTs certified as of June 25, 2010. Final data must include the data elements required in Section 100344, Chapter 10 "California EMT Central Registry" Regulations.
- Ensure, beginning July 1, 2010 and thereafter, that all new EMT and AEMT certification applicants have a state and federal criminal background check conducted through the California Department of

Justice, including subsequent arrest notifications, by use of the “Request for Live Scan Service application Form BCII 8016 (06/09)” with appropriate ORI codes to ensure that criminal background check results and subsequent arrest notification reports go to both the certifying entity and EMSA. A sample of the form is included as “Attachment 2” in this section.

- Collect, beginning July 1, 2010 and thereafter, \$75 per initial EMT or AEMT applicants. These fees are payable to EMSA within 30 days of the last day of the calendar month in which a certification was issued, unless an agreement for some other payment plan has been made between the Certifying Entity and EMSA. EMSA will invoice each Certifying Entity for the fee amount due each month. Fees owed to EMSA and not paid within 90 days of the last day of the calendar month in which a certificate was issued will result in the Certifying Entity being subject to a penalty of 15% of the fees owed, unless the Certifying Entity has entered into an agreement with EMSA which specifies different terms.
- Collect, beginning July 1, 2010 and thereafter, \$75 per EMT or AEMT applicant whose background check from the DOJ is no longer active. For example, this would apply to an EMT or AEMT who had a DOJ background check, including subsequent arrest notification reports, through his/her employer or Certifying Entity prior to July 1, 2010, and therefore met the background check requirements through the “grandfathered” provision but who is no longer with the same employer or renewing through the same Certifying Entity, and therefore EMSA is not receiving the subsequent arrest notification reports. In this situation the employer or Certifying Entity that initially provided verification that the background check had been done as required and therefore grandfathered the EMT or AEMT but was required to submit a No Longer Interested form to DOJ on the EMT or AEMT once the EMT or AEMT was no longer employed by the employer or did not renew with the Certifying Entity. These fees are payable to EMSA within 30 days of the last day of the calendar month in which a certification was issued, unless an agreement for some other payment plan has been made between the Certifying Entity and EMSA. EMSA will invoice each certifying entity for the fee amount due each month. Fees owed to EMSA and not paid within 90 days of the last day of the calendar month in which a certificate was issued will result in the Certifying Entity being subject to a penalty of 15% of the fees owed, unless the Certifying Entity has entered into an agreement with EMSA which specifies different terms.
- Collect, beginning July 1, 2010, for an EMT or AEMT renewal applicant that does not meet the criteria in the bullet above, \$37 per applicant. These fees are payable to EMSA within 30 days of the last day of the calendar month in which a certification was issued, unless an agreement for some other payment plan has been made between the Certifying Entity and EMSA. EMSA will invoice each certifying entity for the fee amount due each month. Fees owed to EMSA and not paid within 90 days of the last day of the calendar month in which a certificate was issued will result in the Certifying Entity being subject to a penalty of 15% of the fees owed, unless the Certifying Entity has entered into an agreement with EMSA which specifies different terms.
- Notify DOJ using a “No Longer Interested Notification Form BCII 8302, Rev 08/07”, within 12 months of the lapse of an EMT or AEMT certificate issued by the Certifying Entity, that the Certifying Entity is no longer eligible to receive criminal offender record information (subsequent arrest notification reports) on the lapsed EMT or AEMT certificate holder.

Local EMS Agencies (LEMSA)

In addition to the responsibilities previously noted when a LEMSA is a Certifying Entity, a LEMSA's responsibilities include the following:

- Develop and adopt policies and procedures for implementing the provisions of Chapter 10 Process for EMT and AEMT Disciplinary Action Regulations.
- When a LEMSA receives a complaint against an EMT or AEMT, the LEMSA shall forward the original complaint and any supporting documentation, within 3 working days of receipt of the complaint, to the EMT's or AEMT's employer, if the employer is a Relevant Employer as defined in Section 100206 of Chapter 10 Process for EMT and AEMT Disciplinary Action Regulations.
- Upon receipt of a disciplinary action plan submitted by a Relevant Employer for one of their EMTs or AEMTs, the LEMSA medical director shall make a determination to either accept the Relevant Employer's disciplinary action plan and any recommendation for certification action, or conduct his/her own investigation and determine any appropriate certification action to be taken in accordance with the provisions of Chapter 10 Process for EMT and AEMT Disciplinary Action Regulations.
- Upon receipt of a complaint against an EMT or AEMT that is not employed by a Relevant Employer or when the Relevant Employer does not wish to investigate the complaint, the medical director of the LEMSA shall evaluate the complaint information received from a credible source, and shall conduct an investigation in accordance with the provisions of Chapter 10 Process for EMT and AEMT Disciplinary Action Regulations.
- Ensure that any LEMSA investigations involving EMTs or AEMTs, who are employed as firefighters by a public safety agency, are conducted in accordance with Chapter 9.6 of the Government Code, Section 350, et seq. (Firefighters Procedural Bill of Rights).
- Ensure that any LEMSA disciplinary action taken against an EMT or AEMT for violations of Health and Safety Code Section 1798.200 are conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, including a hearing before an Administrative Law Judge as appropriate.
- Adhere to the provisions and timeframes for a temporary suspension as specified in Article 4 of Chapter 10 Process for EMT and AEMT Disciplinary Action Regulations.
- Ensure that the terms of probation or suspension of an EMT or AEMT certificate are in accordance with the Model Disciplinary Orders as defined in Section 100206.4 of Chapter 10 Process for EMT and AEMT Disciplinary Action Regulations.
- Deny or revoke an EMT or AEMT certificate, as warranted, in accordance with Section 100214.3 of Chapter 10 Process for EMT or AEMT Disciplinary Action Regulations.
- Invoice EMSA annually, but no later than August 31, for all services paid to an Administrative Law Judge the preceding Fiscal Year (July 1 through June 30). The invoice shall include name and any other required identifying information for the EMT or AEMT whose disciplinary hearing was included in the costs, copies of invoices for fees charged for the services of any Administrative Law Judge and proof of the actual amount paid by the LEMSA.

EMS Employers

EMS Employers that are defined as Relevant Employers have the following roles and responsibilities:

- Develop and adopt procedures for implementing the provisions of Chapter 10 Process for EMT and AEMT Disciplinary Action.
- If the Relevant Employer has required their currently certified EMTs and AEMTS, prior to July 1, 2010, to have had a state criminal background check through the California Department of Justice, including the Relevant Employer receiving subsequent arrest notification reports on their EMTs and AEMTs, then the Relevant Employer shall report to EMSA, preferably through the respective LEMSA, verification in writing that the required background check has been met for each of their currently certified EMTs and AEMTS, including information that each of these certified EMTs/AEMTS was not precluded from certification pursuant to Section 100126(c) and (d) of Chapter 6, Process for EMT and Advanced EMT Disciplinary Action Regulations. A sample template for submitting this information to EMSA, through the LEMSA, is included as Attachment 2 in this section. This template was developed and provided courtesy of the staff of the Inland Counties EMS Agency.
- Within 3 days of receipt of a complaint by a credible source against an EMT or AEMT employed by the Relevant Employer, notify the medical director of the respective LEMSA that a complaint by a credible source has been received and whether the Relevant Employer wishes to investigate the complaint or whether the Relevant Employer wants the medical director of the LEMSA to investigate the complaint.
- If the Relevant Employer chooses to conduct the investigation, it shall be conducted in accordance with the provisions of Chapter 10 Process for EMT and AEMT Disciplinary Process.
- Upon determination of disciplinary cause following the investigation, the Relevant Employer may develop and implement a disciplinary plan in accordance with the Model Disciplinary Orders as defined in Section 100206.4 of Chapter 10 Process for EMT and AEMT Disciplinary Process.
- Shall submit the disciplinary plan to the LEMSA medical director that has jurisdiction in the county in which the alleged action occurred within 3 working days after the allegation has been validated as potential for disciplinary action.
- Shall notify the LEMSA medical director within 3 working days of the occurrence of any of the following: 1) termination or suspension of the EMT or AEMT for disciplinary cause, or 2) the EMT or AEMT has resigned following notification of an impending investigation based upon evidence that would indicate the evidence of a disciplinary cause, or 3) the EMT or AEMT is removed from EMT or AEMT-related duties for a disciplinary cause after the completion of the Relevant Employer's investigation.
- Notify DOJ using a "No Longer Interested Notification Form BCII 8302, Rev 08/07", within 12 months of an employee, who is an EMT or AEMT, leaves their employ and for whom the employer is receiving Criminal Offender Record Information (CORI) (subsequent arrest notification report) that the employer is no longer eligible to receive the CORI.

8

IT Operations for the Central Registry

The purpose of the Central EMT Registry is to provide a single source of information for EMTs throughout the state. To insure that the information contained in the registry is consistent the standard data elements have been prescribed and are listed later in this section. In general the registry will provide the following capabilities:

- Act as a central registry for all Emergency Medical Technicians (EMTs) and Advanced EMTs (AEMTs);
- Create a record keeping system for those certifying entities that have not specifically tracked their EMT population;
- Provide a mechanism for the creation of renewal notifications if desired;
- Provide a mechanism for the issuance of EMT Certification cards including initial certifications, renewals and lost cards, and
- Provide a single repository for actions taken against EMT certifications.

The entry of data into the registry is broken up into subject matter areas as follow:

Information about the person:

- Name (First, middle, last and suffix [e.g. Jr., III, etc.]);
- Social Security Number;
- Date of Birth;
- Residence address including Street Address, City, County, State and zip code; (By simply entering the zip code the city, county and state will be specified for you. For those zip codes that do not observe city or county boundaries secondary choices will be available via a separate drop down list.)
- Phone number;
- Fax number if you are collecting it; and
- E-mail address if you are collecting it.

The person area also includes the ability, via separate checkboxes, to indicate that the address, phone and fax

are unlisted. One other feature of this area is the ability to use the information in this section to automatically link to a MapQuest map. One further capability is to record any pertinent notes about the person.

Information about the EMT Certificate:

- Previous certificate number;
- Mailing address including Street Address, City, County, State, zip code; (By simply entering the zip code the city, county and state will be specified for you. For those zip codes that do not observe city or county boundaries secondary choices will be available via a separate drop down list.)
- Phone number;
- Fax number if you are collecting it; and
- E-mail address if you are collecting it.

If the mailing address is the same as the residence address you may simply copy that information by selecting a separate tab. The certificate area also includes the ability via separate checkboxes to indicate that the address, phone and fax are unlisted. You may also utilize a check box to indicate that an e-mail address will be used as the mailing address. One other feature of this area is the ability to use the information in this section to automatically link to a MapQuest map. One further capability is to record any pertinent notes about the license.

Information about the EMT or AEMT employer:

- Employer name (only if the employer is a relevant employer – i.e. EMS is the primary function of the employer)
- Employer Address

In order to simplify the employer information data entry you may utilize a search of existing employers that have been entered into the system. The search employs the use of wild cards so that you do not have to enter the entire name. The wild card character is an asterisk (*) and can be used before and/or after the search text.

Using a wild card character before the search phrase indicates that entity name will end with the phrase being searched. Using a wild card after the search phrase indicates that the entity name will begin with the phrase used for the search. Using a wild card before and after the search phrase indicates that the search phrase must occur somewhere within the entity name. You will also be able to use the information already entered by the EMS Authority in the licensing of Paramedics which should greatly reduce the amount of information to be entered.

Background Check Information:

- Indication that there is a letter of verification that the background check was met prior to 7/1/2010 or that the CORI information is being received;
- The entity requesting the CORI information; and
- The date of CORI or verification letter.

If you can verify that an initial background check with subsequent arrest notification was completed prior to 7/1/2010 and you do not know the date, you may enter 6/30/2010 in the date field.

Information about the Requirements that must be met before a certificate can be issued. Those requirements include:

- Live Scan information received from the Department of Justice and that the applicant is not precluded from certification based upon the information contained in the reports;
- A completed and signed application was received;
- Appropriate fees have been received with the application; and
- The National Registry Exam for EMTs has been taken and passed.

A box for each requirement must be checked to indicate compliance with that requirement.

Information about any certification actions taken against an EMT or AEMT certificate will be available for viewing by all certifying entities but may only be entered by Local EMS Agencies (LEMSA). That information includes:

- The certification action taken (Probation, Suspension, Revocation or Denial of Certification);

- Start/effective date of the action (all actions);
- Ending date of the action (Probation or Suspension only);
- The LEMSA taking the action; and
- The Medical Director taking the action.

Once the information for either an initial certification or certification renewal has been entered and is complete you may then approve the application. At that point the application will automatically be placed in a print queue to create the EMT or AEMT cards and any insertion material that may be necessary for mailing the cards. The information is then available for entities to print their own cards or for the EMS Authority to print them as requested by the certifying entity.

Renewing certifications is a process that first begins with the creation of a pool of renewal applications 3 months before the EMT or AEMT certification is scheduled to expire. The process will be initiated by the EMS Authority and will create an individual print queue of notices for renewal for each certifying entity. Those notices may be printed or deleted from the print queue as each certifying entity wishes. The renewal process creates a pool of renewals upon which actions must be taken in order to prevent expiration of the individual certificates.

In general, all data elements that contain repetitive information such as Certifying Entity name, LEMSA, Types of Actions taken, License Status, County, etc. will be available via drop down menus to eliminate/reduce the potential for error.

GOVERNMENTAL EMS PROVIDER CRIMINAL OFFENDER RECORD INFORMATION VERIFICATION FORM

| | |
|---|--|
| DEPARTMENT NAME: | |
| DOJ Offender Record Information (ORI) # | |
| <p>As the qualifying employer for the below named individual, I certify:</p> | |
| <p>1. This employer/certifying entity conducted a state level Criminal Offender Record Investigation (CORI) on the EMT prior to July 1, 2010.</p> | |
| <p>2. This employer/certifying entity is actively receiving subsequent arrest notification reports from the California DOJ.</p> | |
| <p>3. Nothing in the CORI search precludes the applicant from obtaining EMT-I certification as outlined in Division 9, Title 22, Chapter 6, Section 100216 of the California Health and Safety Code:</p> | |
| <p>a. Has committed any sexually related offense specified under Section 290 of the Penal Code.</p> | |
| <p>b. Has been convicted of murder, attempted murder, or murder for hire.</p> | |
| <p>c. Has been convicted of two (2) or more felonies.</p> | |
| <p>d. Is on parole or probation for any felony.</p> | |
| <p>e. Has been convicted and released from incarceration for said offense during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter.</p> | |
| <p>f. Has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.</p> | |
| <p>g. 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.</p> | |
| <p>h. Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to force, threat, violence, or intimidation.</p> | |
| <p>i. Has been convicted within the preceding five (5) years of any theft related misdemeanor.</p> | |
| <p>Instructions:</p> | |
| <p>NAME: The name should be formatted First MI. Last with a space between First and middle initial and between middle initial and Last. Include any necessary suffix information. Omit any titles or letters of accomplishment (Hon., Mr., Mrs. Dr., MD, RN, etc.)</p> | |
| <p>EMT-I or EMT-II CERTIFICATION #: Enter the EMT-I or EMT-II certification number.</p> | |
| <p>DATE OF LIVESCAN: Enter the date of livescan if known. If date is unknown enter 6/30/2010 if the person meets the requirements listed above.</p> | |
| <p>COMMENTS: Enter any pertinent comments. (There are typically no comments.) Insert as many lines in this form between the headings and signature as necessary.</p> | |

9 Fees and Payments

Fees

With all the new responsibilities at the EMS Authority created by AB 2917, there are also costs attached to those responsibilities in the form of new staff, new software, additional information technology costs, and reimbursements to the local EMS agencies for their administrative law judge costs. In order to cover these costs; new fees will be passed on to each EMT or AEMT applicant starting July 1, 2010. There are two fees, \$75 and \$37, which are in addition to local certification fees, and other costs such as the live scan fees.

The \$75 fee pertains to initial EMT and AEMT certification applicants and those that need to obtain a new criminal background check and is broken down as follows:

\$22 – covers the central registry costs

\$15 – covers the local EMS agency administrative law judge reimbursement costs.

\$38 – covers the administrative costs for the EMS Authority to manage the criminal background check responsibilities.

The \$37 fee pertains to EMT and AEMT recertification applicants and those that do not need to obtain a new criminal background check and is broken down as follows:

\$22 – covers the central registry costs

\$15 – covers the local EMS agency administrative law judge reimbursement costs.

Payments

The EMS Authority is developing a procedure in-house where the central registry will be queried at the beginning of every month to determine the number of new EMTs and AEMTs certified and the number of recertifying EMTs and AEMTs in the previous month and sort that data by certifying entity.

The EMS Authority will then send an invoice to each certifying entity identifying the applicants and their respective fees. The certifying entity will then have up to 90 days from the last day of the calendar month in which the certificate was issued to submit those fees to the EMS Authority. Unless some other agreement is made between the EMS Authority and the certifying entity, late submission of these fees to the EMS Authority is subject 15% penalty of outstanding fees.

10 Review of Disciplinary Regulations

The overall changes to the Process for EMT and AEMT Disciplinary Action Regulations were intended to avoid duplication of investigations, discipline, and certification actions on EMTs and AEMTs by employers and local EMS agencies. In addition, local EMS agencies must follow the Administrative Procedures Act when imposing certification action and for appeals to certification. The local EMS agency medical director continues to be the only individual legally authorized to take certification action on an EMT or AEMT. Here is a summary of the revisions to the Disciplinary Regulations:

1. Define “relevant employer,” which is an ambulance service permitted by the California Highway Patrol or a public safety agency, a fire department, law enforcement agency, or other public safety agency that employs EMTs.
2. Establish a three-day timeline of receipt of information for the relevant employer or the local EMS agency to notify each other of an allegation of conduct listed in Section 1798.200 (c) of the Health and Safety Code that would lead to an investigation to determine if disciplinary cause exists.
3. Allow relevant employers the first right of refusal to conduct investigations of an allegation of conduct listed in Section 1798.200 (c) of the Health and Safety Code.
4. Allow a relevant employer, who conducts an investigation, to create a disciplinary action plan that is consistent with the newly introduced Recommended Guidelines for Disciplinary Orders and Conditions of Probation for EMT and Advanced EMT (MDOs) that would be presented to the local EMS agency for consideration of certification action.
5. Require that the relevant employer, who conducts an investigation that results in the development of a disciplinary plan, deliver the disciplinary plan to the local EMS agency that certified the EMT or AEMT or deliver the disciplinary plan to the local EMS agency that has jurisdiction where the employer is headquartered. The latter pertains to certifying entities, mostly fire departments that certify EMTs.
6. Require the relevant employer to notify, within three days, the local EMS agency that has jurisdiction where the alleged action occurred of any of the following:
 - The EMT or AEMT is terminated or suspended for disciplinary cause.
 - The EMT or AEMT retires or resigns following notification of impending investigation based on evidence that would indicate the existence of disciplinary cause, or
 - The EMT or AEMT is removed from EMT or AEMT related duties for disciplinary cause after the completion of the employer’s investigation.
7. Allow the relevant employer to refer investigations that may lead to certification action to the local EMS agency, in the event the relevant employer does not wish to conduct the investigation.
8. Require the relevant employer to notify the local EMS agency medical director in whose jurisdiction an allegation occurred of that allegation.
9. Require the relevant employer and the local EMS agency to consult with each other regarding issuing a temporary suspension order by the local EMS agency.
10. The local EMS agency must comply with the Administrative Procedures Act when imposing certification action and offering a hearing to appeal that certification action.

11. Introduce the Recommended Guidelines for Disciplinary Orders and Conditions of Probation for EMT and Advanced EMT (MDOs). The MDOs shall be used when a relevant employer adopts a disciplinary plan that will be submitted to the local EMS agency. The MDOs shall also be used by an Administrative Law Judge as a guideline when an EMT or AEMT appeals certification action by the local EMS agency.

11 Investigation Process

The purpose of this section is to provide unilateral guidance to those seeking a basic understanding when conducting a regulatory investigation. An investigation is conducted in order to protect the health and safety of the public and at the same time ensure a fair and impartial investigation that will assist in rendering a conclusion and potential administrative action. This section contains topics that include:

- Processes and procedures used by EMSA in conducting paramedic investigations.
- Administrative and legal requirements, terminology, and document information.
- Links to training resources that the EMS Authority recommends to those conducting investigations or involved in the administrative process.

This section is a generalization of how the EMS Authority conducts investigations and a brief overview for the certifying entities. This is not a formal training manual, nor should it be considered a certified education program to conduct or authorize investigations. All persons that conduct investigations that are authorized by their respective agencies should adopt policies that are reviewed by administrative staff. The EMS Authority recommends that the certifying entities consult with their own legal and administrative staff for the best practices for the regulatory processes and at the same time ensure due process for those who they provide regulatory oversight.

Laws can change from year to year and amendments can be made at any time. This section does not reflect those changes or amendments. Certifying entities should monitor those changes of law and act accordingly. Those specific laws include: The Administrative Procedures Act, Public Records Act, Division 2.5 of the Health and Safety Code, Title 22 of the California Code of Regulations, and the Penal Code. Any changes or clarifications of law would supersede any of the information contained within this training section.

Mandatory Notification

Section 1798.200 (a)(1), Health and Safety Code:

(A) Except as provided in paragraph (2), an employer of an EMT-I or EMT-II may conduct investigations, as necessary, and take disciplinary action, except certification action, against an EMT-I or EMT-II who is employed by that employer for conduct in violation of subdivision (c) of H&S Code Section 1798.200. The employer shall notify the medical director of the local EMS agency that has jurisdiction in the county in which the alleged violation occurred within three days when an allegation has been validated as a potential violation of subdivision (c).

(B) Each employer of an EMT-I or EMT-II employee shall notify the medical director of the local EMS agency that has jurisdiction in the county in which a violation related to subdivision (c) occurred within three days after the EMT-I or EMT-II is terminated or suspended for a disciplinary cause, the EMT-I or EMT-II resigns following notification of an impending investigation based upon evidence that would indicate the existence of a disciplinary cause, or the EMT-I or EMT-II is removed from EMT-related duties for a disciplinary cause after the completion of the employer's investigation.

(C) At the conclusion of an investigation, the employer of an EMT-I or EMT-II may develop and implement, in accordance with the Guidelines for disciplinary orders, temporary suspensions, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. Upon adoption of the disciplinary plan, the employer shall submit that plan to the local EMS agency within three working days. The employer's disciplinary plan may include a recommendation that the medical director of the local EMS agency consider taking action against the holder's certificate pursuant to paragraph (3).

A Complaint Comes In... Now What?

A complaint is an expression of pain, dissatisfaction, resentment, discontent or grief.

- Complaints include allegations, which are to assert, affirm or declare, with or without proof, a claim or concern.
- A legally sufficient complaint is a complaint that is legally sufficient if the facts as alleged, if shown to be true, would constitute a violation of applicable law or rule.
- Violation - Did the individual break the law, rule, regulation, or policy whether intentionally or unintentionally.

Sources of complaints:

- Employer
- Supervisor
- Patient
- Hospital Personnel
- Self Reported
- Law Enforcement
- Anonymous Individual

Anyone may file a complaint against any paramedic whom they believe is involved in illegal and/or unethical activities that are related to the professional responsibilities of a paramedic.

Public Health and Safety vs. Due Process

- Protect public health and safety.
- Resolve matter efficiently, professionally, and fairly.
- Ensure rights of individuals to due process.

When a complaint is received, an investigation may be initiated into the allegation(s). An acknowledgment of receipt of the complaint is sent to the complainant.

Written complaints are preferred because:

- The investigator can establish a relationship with the complainant.
- The investigator can contact the complainant if more information is needed.
- If the complainant's letter provides insufficient details or lacks specific factors, then the investigator should request additional information.

- A decision regarding the resolution of the matter will be communicated to the party who initiated the complaint.

Verbal complaints:

- If the complaint originates via telephone, the investigator will take notes of the conversation and will get as many details as possible but will also encourage the complainant to file a written complaint. It may be anonymous.
- The investigator may send the complainant a complaint form or may conduct an interview to obtain the complaint. This can be performed based upon resources, location and cooperation of the complainant.
- Failure to complete the complaint form in its entirety may result in delays or the investigator's inability to conduct an investigation into the matter.

Anonymous complaints:

- The complainant may want to remain anonymous because of their relationship to the person and may fear retaliation or retribution.
- Certifying entities should decide if they will accept or reject anonymous complaints. The EMS Authority considers all anonymous sources of complaints. The investigator should keep in mind other factors as to why the complainant wants to remain anonymous such as retaliation from an individual or employer, or the complainant simply desires to do what he/she considers to be right.

An anonymous complaint is more difficult to investigate. The investigator might question the credibility and merit of the complaint.

The investigator may ask anonymous callers to complete the complaint form or letter to the investigator and tell them they will remain anonymous.

If the anonymous complainant does not return a completed form or letter to the investigator, the complaint may be considered insufficient.

Self-Initiated:

- Subsequent arrest notification from DOJ.

- When the EMS Authority is investigating a complaint on a paramedic, it can result in opening a case on the paramedic's partner who is a paramedic or an EMT-I. If the partner is an EMT-I, then the complaint may be forwarded to the certifying entity for handling.

Complaint Handling:

- Initial review of the complaint materials will be conducted by the investigator.
 1. Is the complaint regarding a person within your jurisdiction?
 2. Is it a billing issue and not a patient care complaint?
 3. Could the complaint be retaliation motivated from the employer, co-worker, supervisor, etc?
 4. How long ago was the violation? One week or one year ago?
 5. Is the complaint based on a pending civil claim?
 6. Is this a FFPBOR related case?
 7. What information will I need?
 8. What can be proven reasonably?
 9. Does the complaint and evidence have legal sufficiency to provide for prosecution?
 10. Is this a violation with an imminent threat to the public, or is it a violation that might hold off on an urgent decision to be made depending on case load, resources, etc.
- If it does represent an imminent threat to the health and safety to the public, should a Temporary Suspension Order be issued?
- If the initial review determines that the complaint lacks necessary substance for investigation, the investigator should obtain further information from the complainant.
- The complaint review determines:
 1. The information provided is complete enough
 2. The investigator clearly understands the scope and nature of the complaint
 3. The case is assigned to an investigator
 4. The potential violation is established
 5. The priority is established
 6. Urgent matters

Coordination of Investigatory Matters

Must develop partnership/trust:

- Employers and local EMS medical directors want the same thing - best emergency medical care for citizens.
- Partnership should start in the beginning of an investigation; this is helpful in obtaining documents, arranging interviews, and information on respondents and witnesses.
- Reduces friction between employers and local certifying entities.
- Partnership guarantees investigative strategies will not be damaged.
- Local EMS agencies know the difficulties and benefits in their area.
- Allows cases to progress at a faster pace, share resources.

Submission of Evidence/Documents

It is important to keep track of where you obtained your evidence, including documents

- The chain of evidence.
- Any referrals to other agencies should be provided with a cover letter explaining the reason for the referral. Don't just send documents.

District Attorney Involvement:

- Referral to a district attorney or law enforcement agency for criminal prosecution;
- Application to Superior Courts for injunctions and other orders to prevent repetitive or imminent offenses.

Investigative Outline/Strategies

- Read through; examine every part of the complaint. When it is all said and done, what do you really have?
- Chart the players and how they connect to each other. This is not necessary with every case. Good to use when numerous people are involved:
- Design it for change as the case progresses.
- Use it to visualize case and develop strategies.
 1. Great for interviews, helps keep you informed.
 2. Do not make outline/chart rigid process. Be flexible and informal.

3. When to interview the respondent.
4. Beginning of the investigation or the end.
5. Always give the respondent the opportunity to be interviewed.

Subpoenas vs. voluntary compliance

- Voluntary compliance saves time vs. subpoenas.
- Does a certifying entity have subpoena authority? It would be advisable to find out beforehand. Check with your legal counsel.
- Certain records must be obtained via subpoena:
 1. Financial records.
 2. Medical records. A complainant should be willing to provide these to you without a subpoena.

Consumer notice - what is it, how does it apply:

- California Code of Civil Procedures 1985.3.
- Respondent has the right to be notified (consumer notice) when a subpoena has been served on an individual or business that has in its custody personal records of the respondent.
- Motion to Quash.
- There is no consumer notice requirement for personal records of a third party that maintains records, documents that were not entrusted to that person by the respondent:
- Example - a citizen takes photos of an accident scene showing an illegal act by a paramedic. These photos are the records of the citizen, not the respondent. Thus, no consumer notice would be required.

Each case needs to be investigated by means of obtaining documents, interviewing the parties involved with this case, a review by legal staff and then leading into final action or the case is simply closed with no further action.

A case plan should be developed either mentally or on paper. Case steps should include:

Obtaining Documents

You should be made aware that the retrieval of documents can take up to 1-3 months for court records. Medical records can take up to 30-45 days. It can be

very frustrating when you have to wait for numerous law enforcement or court records. The EMS Authority faces this as a continued challenge, which often leads into case delays and backlogs.

If a district attorney or law enforcement agency is working on a case, you may not be able to obtain investigative records until the case is closed. Therefore, if you anticipate referral to the district attorney, it would be advisable to make a request for the records as soon as possible.

The investigator should send out a formal letter of request for documents. It is best if you put in your request your authority to obtain documents. Do not put social security numbers in letters requesting documents. This is generally not a good idea for ID theft risks and most agencies that receive requests are aware of this and no longer require social security numbers for identification purposes. Some of the California courts, and other states, maintain on-line court records for instant review. Keep a list or bookmark those courts that allow on-line review of records.

The fundamental tools for state agency administrative investigations, which include broad rights to request records, the right to issue subpoenas, and the right to take depositions, are found in the Government Code. This is only for state agencies. Local certifying entities should consult with their legal counsel to determine their authorizations to conduct investigations and the authority to request and obtain documents, such as medical records, criminal records, court documents, employment records, etc. Certifying entities should answer this question before it arises from a respondent or the public.

When requesting documents, should the investigator request certified or non-certified documents? Certified documents can and often do take longer, since the sender of the documents have to authenticate and sign that the records are a true and accurate representation of the original documents. The certified records are then sent through the mail to the requestor. Non-certified documents are usually faster, because they do not require a signature and can be e-mail, faxed or sent by ground mail. It would be recommended that you

consult with a supervisor and/or legal counsel as to their needs for certified records.

Legal Counsel Participation

Should you consult with legal counsel before performing any step of the investigation? You can, based upon resources and the complexity of the case. You may be able to bypass steps of the investigation by consulting with your legal counsel first. The potential exists that your legal counsel may not need additional documents or statements, which may shorten the investigative time.

Benefits to consulting with legal counsel include:

- Assist with due process.
- Provide input as to the investigative process, or to the case being cancelled due to lack of evidence or witnesses.
- Provides that legal counsel will be more familiar with the case, which is beneficial for prosecution.
- Can be educational for the investigator and legal counsel.
- Can communicate better with the respondent's defense counsel.

Interviewing Respondents, Witnesses and Patients

Interviewing is a necessity for any investigator and his/her case. Can you bypass an interview? Yes, if you are certain you have enough evidence and you want to proceed forward with the investigation. The downfall to this is you have no idea what the respondent will provide for his reasons for the violation.

The interview should be considered the time for the respondent to explain his/her actions, violations, convictions, etc. The interview should never be the place to take out your anger on the respondent. The interview should be conducted in a calm and professional manner with minimal interruptions. There is no benefit to intimidate a person in the interview and certainly no person should be forced into saying something if they decide not to answer. You simply need to provide a cooperative atmosphere between the investigator and the person being interviewed. We all enjoy the personal space around us and when you are conducting an interview, you should avoid violating

someone's personal space to avoid any pressure that they might feel.

So what if the person being interviewed does not want to be interviewed? Live with it. It will not be the last time this occurs and you cannot really do anything about it. The exception to this might be certifying entities that might consider a refusal insubordination. You can advise the person that it will be noted in the report and it may not reflect favorably upon him. If the person being interviewed becomes negative, or argumentative, you are expected to be professional and you should maintain your composure. If the interview starts to become hostile with actions and/or threats, then for safety reasons you should terminate the interview immediately and seek advice of your superiors or legal counsel of how to proceed next.

Remember, the interview is your interview and you should maintain control over the interview. That includes the direction of the interview is going. If the person being interviewed starts talking about things not related to the interview, maintain the interview and stay focused on the details of what you are interviewing about. Being in control of the interview does not mean being the dictator over the interview. It means that you set the pace and the topics to be covered.

In order to prepare and conduct a professional interview the following should be remembered:

- The primary purpose is to obtain information.
- Be nice.
- Be professional.
- Mutually agree on a date, time and location for the interview
- Remember the conditions under FFBOR.
- Ask permission to record an interview when conducting the interview by telephone.
- Always identify yourself. You know who you are interviewing, but do they know who you are.
- Always bring extra interview tapes and batteries for the tape recorder. You will be sorry that you did not have them if needed.
- It is your interview. Have the respondent answer the question, not his/her representation.

- Most of the time it is best to interview all parties individually, rather than in a group session.
- If interviewing a child, never tower over them as they will be intimidated and/or frightened, which they will then lock up and not speak to you
- Be aware of your body language and the body language of the person being interviewed.
- Allow for rest periods if the interview(s) are lengthy.
- Review your material before the interview.
- The interview room/area should be private and free from distractions
- Limit the number of people in the room conducting the interview. This is not a firing squad, it is an interview.

Interview Techniques

- Conducting interviews is a never ending learning process. It's a learning process where you learn from others and your own mistakes.
- It is important to listen to the person being interviewed. Do twice the listening vs. speaking. The interview is not about what you know, but what the witness/respondent knows.

For witnesses:

- Keep the interview flexible, this helps keep the interviewee comfortable (if that's what you want).
- Ask broad questions – let the interviewee tell his/her story. Most folks want to tell you what happened. Let them talk and you listen. If they drift off of the subject, let them for awhile and then slowly bring them back. The more comfortable they are, the more they are willing to provide you with information.
- At the conclusion of their story ask your follow up questions. These can start out broad and become more specific.
- Remember everyone will have his/her own interpretation as to what took place. Look for the common theme amongst the people you interview.

Respondents/difficult witnesses:

- Use the same basic techniques as above with

modification.

- Never tell them what you know. Talk to them in general terms. If they want specifics, it's okay to tell them you are not providing it and explain why.
- Have them tell their story. Sometimes a respondent will try to find out what specifically you are looking for, or what you know, and you should exercise caution in responding to their inquiry.

Tape Recording:

- It is usually best to tell the person being interviewed the reasons why you would like to record the interview, in that it creates an accurate account to the interview and could prove or disprove a statement that was made.
- Telephone tape recordings – You must always obtain the permission of the person being interviewed by telephone and that you would prefer to record the interview. Even if this was previously arranged.
- You should first obtain the permission from the person being interviewed and then once the tape recording is started, have them acknowledge the authorization.
- If the person being interviewed does not allow a tape recording, you may have another person(s) present during the interview. At the conclusion of the interview (not recorded), go back over your notes with the individual for accuracy. If you prefer, you can have them sign or initial your notes. Mention in opening paragraph that the individual being interviewed refused to be tape recorded.
- After the recording has been started, you should always start out with the following:
 1. Date and time of the interview
 2. Case number
 3. Have everyone present identify themselves
 4. Location of interview

Legal or Union Representative:

- If respondent advises he/she is represented by legal counsel, you must go through the attorney. This would include any documents from the respondent and testimony from the respondent.

- Unless you have dealt with the attorney in the past, it is a good practice to have legal counsel send you a letter advising they represent the individual. Often lawyers will call to try to find out what you're up to prior to taking on the client. The attorney has no right to information until they legally represent the individual.
- If counsel advises his client wants to tell all, then arrange for an interview that is mutually agreeable and see if they are willing to forward you any documents they might have prior to the interview for your review. This generally is a sign of good faith and creates a more open and cooperative atmosphere. Defense counsel may want the same in return and you may wish to do this if desirable. Only you will be able to get a feel for the cooperative spirit of the relationship.
- Don't let the attorney answer the questions for his client. Remind the attorney that you're interested in the knowledge of his/her client, not him/her.
- A respondent does not have to answer an investigator, but you can question why they are refusing to answer the question.
- Explain to the respondent that the interview is their chance to explain their side of the story. No benefit is gained by intimidating a person into an interview. Try to make it a cooperative atmosphere.
- Generally, the interview is not the time or place to share your conclusions of information that is already obtained, unless you are trying to resolve conflicting information.
- Remember, it is your interview for you to obtain the information. You control the interview, not the respondent or their representative.
- Lack of training or experience in report writing.
- Lack of investigative training and/or skills.
- Do you really have the right people conducting an investigation? Are they motivated to conduct investigations and can they handle the stress of conducting investigations, interviewing and testifying?
- Case load exceeds the amount of time provided to investigate cases.
- Lack of understanding of what your agency is looking for in a written investigative report.
- Leadership. Who is actually providing oversight for the investigator and the required report? This can be confusing if an investigator receives conflicting directives from supervisors, medical directors, legal counsel and board of directors as to what goes into a report and in what format. The immediate supervisor should be providing this input to avoid any confusion. This can be prevented by a policy or report writing template that all should follow.

Case summaries are conducted to memorialize the investigators findings in a written document. The investigator should always remember that the case summary can be read by many individuals, which may include:

- The investigator himself for purposes that may arise years from the time it was written
- Administrative staff
- Law Enforcement
- District Attorney
- Medical Consultants
- Legal Counsel
- Administrative Law Judges
- Jurors
- Media

Therefore, it is important that the investigator document his/her findings in a manner that is:

- Honest
- Grammatically sound
- Professional in appearance
- Complete, but without information that has no bearing on your case, such as: you interview

Report Writing

Of all the important aspects of conducting an investigation, memorializing the investigation is the most important. Even if you conduct the most intense investigation and conduct numerous interviews and collect substantial amounts of evidence, it will all be worthless if a poorly written report is prepared. What are the reasons for poorly written reports? This can be attributed to:

a complainant who wants to tell you their life story. Although it may be important to listen to the complainant, it really has not purpose of the investigation and is meaningless to a reviewer of your report.

- Should lack personal opinions or generalizations

Remember to only document findings that will be important for your case. A large report does not necessarily indicate a better investigation. Stick with the facts and what the case is all about. Do you have a case? If so, what is the violation and how can I prove it in my report. It is not what you know, but what you can prove and document.

Generally, investigators document their case summaries in the following manner:

- Respondent's name, address, paramedic license number employer.
- Brief summary of case, or sometimes referred to as a synopsis.
- Case summary, which is generally the meat of the case and contains facts in a time sequential manner.
- Conclusions of the investigators findings. This can be based upon his/her discussions with the local EMS agencies, employers, documents reviewed, protocols, criminal convictions, and other aspects that the investigator used to conclude and provide a conclusion to the case.
- Exhibits.
- Signatures of the investigator and supervisor.

Recommendations are usually prepared into a confidential memorandum that would be forwarded to your legal counsel for review. Since it is a protected document, remember to clearly identify on this document that it is a confidential document protected by the attorney-client privilege.

Recommendations are your opportunity to advise legal counsel of your recommendations regarding the discipline (if any) that should or should not be imposed upon the respondent. This should also address any recommendations for remedial training that would be of benefit. Be prepared to again justify your recommendations. You should take into consideration any improvement steps the employer has done as well.

At times, additional subheadings in the report may be added, such as recommendations from the LEMSA, timelines of photographs or videos, prior disciplinary actions, lab results, etc.

Always identify in your report who you are speaking about, especially when using words such as they, them, he or she. You may know, but will the reviewer?

One of the worst things to do in a case summary is to try to impress people in your report. Stay away from large or impressive words or phrases. Most reviewers do not have the time or inclination to review large volumes of pages or phrases that do not simply explain what the investigator is talking about. Remember, you are not writing a novel, you are explaining the facts of a case in a simple and understandable manner that will be understood by reviewers of your report.

At times you will be required to prepare a large report. Generally, these are for cases that involve incompetence where you will have to prove that over a period of time that a person is deemed incompetent, despite remedial training attempts. With these type of cases, generally, you will have multiple patient care issues over a period of time and a number of medical responses.

Once an investigation is complete it should be reviewed by a supervisor for completeness. Should you have legal counsel review cases that you recommend to be closed with no further action? That should be determined by your local agency.

If no action is to be taken, then a closer letter should be sent out to the complainant explaining that the case is closed and a reason is given. Do not explain in great deal why the case is being closed with no further action. Keep it simple and to the point. The complainant should merely be told that the case is closed based upon:

- No violation was found upon completion of the investigation.
- Lack of an independent witness.
- No evidence was discovered to support a violation of the local protocols or State law.

If the case does support formal discipline, then the case should be followed up with a review by legal counsel to determine legal sufficiency for prosecution.

12 Disciplinary Actions

Remediation

Remediation: Resolving personnel problems

- Approach to remediation--Remediation first.
- Assess performance problems--Assess then Treat.
- Methods to improve performance
- The employer should have a vested interest in remediation as it may create a better employer and improve patient care

Remediation Concepts

- Corrective rather than punitive
- Assumption of human behavior: willing and able to perform

Approach

- Quality assurance / improvement loop
- Assessment then treatment
- Corrective actions should be “tailor-made”
- Approach to performance problems
- Identified problem - try remediation

What is the performance problem?

- Is there a training problem?
- What is the difference between what is being done and not being done?
- Why am I dissatisfied?

Objectives for performance

- Cognitive - knowledge
- Psychomotor - manipulative, skills
- Affective - attitudes / observable behavior

Is it important?

- Why is the discrepancy important?
- What would happen if I left it alone?
- Could doing something to resolve the problem have a worthwhile result?

Skill deficiency

- Could he do it if he really had to?
- Could he do it if his life depended' on it?
- Are his present skills adequate for the desired performance?
- Did he once know how to perform as desired?
- Has he forgotten how to do the skill?
- How often is the skill or performance used?
- Does he get regular feedback?
- Exactly how does he find out how well he is doing?
- Could he learn the skill or job?
- Does he have the potential to perform as desired?
- Is he over-qualified for the job?

Simpler solution?

- Can I provide some kind of job aid?
- Can the needed information be accessible?
- Can I show rather than train?
- Would informal training be sufficient?

Not a skill problem, is performance punishing?

- What's the consequence of performing as desired?
- Is it punishing to perform as expected?
- Does he perceive desired performance as being geared to penalties?

Is non-performance rewarding?

- What is the result of “doing it his way” instead of “my way”?
- What does he get out of present performance in the of reward, prestige status ...?
- Does he get more attention for misbehaving than for behaving?
- Are you rewarding irrelevant behavior while overlooking crucial behaviors?

Does performance really matter?

- Does performing matter to the performer?
- Is there a favorable outcome for performing?

- Is there a source of satisfaction?
- Is he able to take pride in performance?
- Are there obstacles to performing?
- What prevents him from performing?
- Does he know what is expected?
- Does he know when to do what is expected?
- Are their conflicting demands?
- Does he lack the authority, time, tools?
- Can I reduce interference?
- What should I do?
- Which solution is best?
- Are any solutions inappropriate or impossible to implement?
- Which remedy is likely to give us the most result for the least effort?
- Which solution most closely fits with the suspected problem?
- Which are we best equipped to try?

Interventions

- Lecture / didactic
- Video tape
- Reference material
- Patient scenarios
- Tutoring (1-on-1)
- Structured courses
- Computer
- Simulation
- Clinical experience
- Field observation
- Interactive video

Licensure Actions

- A licensure action is any situation described in Section 1798.200, Health and Safety Code.
- Situations must be substantially related to the qualifications, functions, or duties of a paramedic.
- Licensure actions can be disciplinary or can prevent a future violation from reoccurring.
- Actions should be based on the severity of the act(s), frequency of violations, criminal conduct, and remediation attempts.

Temporary Suspension Orders (TSO)

When should this be considered? Generally, a TSO is issued when an imminent threat to the health and safety exists. A true threat to the health and safety of the public is more than just stating it in a TSO. It should be justified. A certifying entity investigator, administrator or medical director should be ready to present his/her arguments to an administrative law judge in a hearing to justify the TSO. Certifying entities should refer to 1798.200 (a) (4) of the Health and Safety Code for direction of regarding a temporary suspension order.

Things to consider in support of a TSO:

- What is the imminent threat?
- Did the employer suspend the individual, therefore removing the threat? Should a TSO be considered anyway?
- Did the person get terminated? Can they obtain employment in the future, therefore reinstating the imminent threat?
- Is the person in custody and likely to remain in custody?

What represents an imminent threat to the health and safety to the public? No black and white answer can be made for this. You as the local EMS agency medical director/certifying entity will have to evaluate the evidence in the matter and consider the totality of the circumstances and the provisions of 1798.200 (a)(4) H&S.

Any violation under 1798.200 H&S can be considered an imminent threat as long as it can be justified, but generally, the EMS Authority considers the following:

- Theft related crimes.
- Alcohol or drug intoxication while on-duty.
- The commission of any sexually related offense specified under Section 290 of the Penal Code.
- Rape
- Sodomy
- Lewd or Lascivious Acts
- Forcible Acts of Penetration

- Sexual Battery
- Sexual Exploitation of Minors
- Child Molestation
- Obscene Conduct/Exposure
- Distribution of Material to Seduce a Minor

A Temporary Suspension Order is a tool to remove the imminent threat from the public. The authority to impose a Temporary Suspension Order should never be used to:

- Intimidate
- Display a show of force or authority over others
- Set an example for others to force compliance
- Coerce or force someone into a statement

Temporary Suspension Orders (TSO) vs. Regular Investigative Process

- Immediate Suspension
- Time Constraints.
- For cases involving paramedics, EMSA has always provided advice to local agencies before beginning process or during this process; local EMS agency medical directors must consult with employers before issuing a temporary suspension order.
- Notify licensee and identify reasons for immediate suspension.
- Notify licensee immediately if suspension is lifted or continued.

Regular Process

- Situations where danger to the public may not be a factor.
- EMSA has always provided advice to local agencies before beginning process or during this process; local EMS agency medical directors must consult with employers.
- Provides more time to conduct an investigation, but this should be considered if a TSO is warranted.

Certifying entities should be aware of Health and Safety Code section 1798.200 (a)(4) that provides for the temporary suspension of a license or certificate:

(4) The medical director of the local EMS agency, after consultation with the employer of an EMT-I or EMT-II, may temporarily suspend, prior to a hearing,

any EMT-I or EMT-II certificate or both EMT-I and EMT-II certificates upon a determination that both of the following conditions have been met:

(A) The certificate holder has engaged in acts or omissions that constitute grounds for revocation of the EMT-I or EMT-II certificate.

(B) Permitting the certificate holder to continue to engage in the certified activity without restriction would pose an imminent threat to the public health or safety.

(5) If the medical director of the local EMS agency temporarily suspends a certificate, the local EMS agency shall notify the certificate holder that his or her EMT-I or EMT-II certificate is suspended and shall identify the reasons therefore. Within three working days of the initiation of the suspension by the local EMS agency, the agency and employer shall jointly investigate the allegation in order for the agency to make a determination of the continuation of the temporary suspension. All investigatory information not otherwise protected by law held by the agency and employer shall be shared between the parties via facsimile transmission or overnight mail relative to the decision to temporarily suspend. The local EMS agency shall decide, within 15 calendar days, whether to serve the certificate holder with an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If the certificate holder files a notice of defense, the hearing shall be held within 30 days of the local EMS agency's receipt of the notice of defense. The temporary suspension order shall be deemed vacated if the local EMS agency fails to make a final determination on the merits within 15 days after the administrative law judge renders the proposed decision.

(6) The medical director of the local EMS agency shall refer, for investigation and discipline, any complaint received on an EMT-I or EMT-II to the relevant employer within three days of receipt of the complaint, pursuant to subparagraph (A) of paragraph (1) of subdivision (a).

Criminal Convictions

This information is for general use and not intended as full and comprehensive instruction governing the laws and rules relating to convictions or relief granted under applicable sections of law. For further information you may refer to the appropriate sections of law or you may wish to seek legal assistance. The EMS Authority recommends that the certifying entities review and have an understanding of the laws granting specific relief.

Pleas

1016 of the Penal Code. There are six kinds of pleas to an indictment or an information, or to a complaint charging a misdemeanor or infraction:

1. Guilty.
2. Not guilty.
3. Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.
4. A former judgment of conviction or acquittal of the offense charged.
5. Once in jeopardy.
6. Not guilty by reason of insanity. A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good

cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

Court Relief

Section 1203.4 of the Penal Code allows a defendant to request to have certain convictions set aside or are granted a dismissal. Generally, an expungement is granted under certain conditions. Those conditions include:

- The defendant must apply for the 1203.4 PC relief in the county where the conviction occurred.
- The defendant is not currently on probation or has current charges pending
- The defendant has successfully completed any and all terms of his probation and has sufficient evidence to that demonstrates to the court rehabilitation or why the court should grant relief under 1203.4 PC.
- The defendant has satisfied any fines, fees and/or restitutions.

Generally, there are convictions that cannot be granted relief under 1203.4 PC. Those would include:

- Any Infraction violation.
- Misdemeanor Violations of 42001(b) Vehicle Code.
- Violations listed under 12021.1 Penal Code (firearms, prior convictions of certain violent offenses).
- Any felony conviction pursuant to Penal Code 261.5(d).
- Violations of Penal Code Sections 286(c), 288, 288a(c), 288.5 or 289(j).

Even if granted relief under 1203.4 PC, the applicant is required to respond to a question on the application for any State or local licensure that requires disclosure of any criminal conviction. The investigator will have to review any court conviction records where it states that the defendant was granted relief under 1203.4 PC.

1203.4. (a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Section 12021.

Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a

person prohibited from holding public office as a result of that conviction to hold public office.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred twenty dollars (\$120), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a

prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

Juvenile Convictions

Is an applicant that was arrested and convicted of a criminal offense, while he/she was deemed a juvenile, required to disclose a conviction? The applicant may not have to if they were declared a ward of the court under the provisions of Welfare and Institutions Code 203, which states:

An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.

In addition to relief provided by 1203.4 PC, and 302 W&I, a respondent may also declare relief under 1210.1 (d) of the Penal Code, non violent drug possession, 17 of the Penal Code, post conviction relief and 1000.4 of the Penal Code, deferred entry of judgment.

These sections of law that provide relief come with certain provisions that are too numerous to mention in this manual. If a respondent is declaring relief under any of the above provisions, then a thorough and careful examination of the court documents should be conducted. A letter from a defense attorney should never be accepted on behalf of the official court record. It is recommended that the certifying authorities obtain the court documents and contact the court that provided the relief for further interpretation if required.

Separation of Functions

The Administrative Adjudication Bill of Rights (Gov. Code §11425.10 et seq.), which is part of the California Administrative Procedure Act, requires that the adjudicative function of an agency be separated from the investigative, prosecutorial and advocacy functions within the agency. (See Gov. Code §§ 11425.10 & 11425.30.) This means that the commission, board or person charged with rendering the ultimate agency decision in the case (after the administrative hearing) cannot have served as an investigator, prosecutor or advocate at the hearing or during the pre-hearing phase. The law also provides that the ultimate decision-maker may not be subject to the authority, direction or discretion of an investigator, prosecutor or advocate. (See Gov. Code § 11425.30, subd. (a).) While this separation of functions is mandated by statute in California, it is also required by due process considerations, which require a fair hearing in which the ultimate decision-maker has not pre-determined the outcome because of his or her status as an investigator, prosecutor or advocate in the case.

As a practical matter, separation of functions requires an agency to institutionalize barriers separating the ultimate decision-maker in the administrative proceeding from the prosecutorial staff and investigative staff. Many agencies adopt formal or informal criteria for the types of cases that will be investigated and prosecuted so that the head of an agency (whether a commission, board or an executive officer) can direct the focus of the enforcement program without becoming involved in individual cases in violation of the separation of functions requirement.

Certifying authorities should have designated people within their agency to conduct investigations and a supervisor that has the authority to make decision regarding investigations, while at the same time, shielding the final decision maker from details of the case. Once the facts of the case have been determined, then the final decision maker can be presented with appropriate documents, which are usually the accusation, settlement agreement and a proposed decision from an administrative law judge.

Registered Sex Offender Considerations

Registered sex offenders are barred from EMT and Paramedic licensure in the State of California. Who must register as a sex offender? This is covered in 290 of the California Penal Code:

290. (a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to “the Act” in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section

286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

13 Firefighters Procedural Bill of Rights

On October 13, 2007, Governor Schwarzenegger signed the Firefighter's Procedural Bill of Rights Act into law. The law specifies the procedure to be followed whenever a firefighter is subject to investigation and interrogation for alleged misconduct which may result in punitive action such as dismissal, demotion, suspension, salary reduction, written reprimand, transfer, or even temporary reassignment. A firefighter would be able to bring suit in superior court for alleged violations of the act, and obtain appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations. The Firefighter's Procedural Bill of Rights Act became effective on January 1, 2008 and is codified in the California Government Code at sections 3250 through 3262.

3250. This chapter shall be known, and may be cited, as the Firefighters Procedural Bill of Rights Act.

3251. For purposes of this chapter, the following definitions apply:

(a) "Firefighter" means any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank. However, "firefighter" does not include an inmate of a state or local correctional agency who performs firefighting or related duties or persons who are subject to Chapter 9.7 (commencing with Section 3300). This chapter does not apply to any employee who has not successfully completed the probationary period established by his or her employer as a condition of employment.

(b) "Public agency" has the meaning given that term by Section 53101.

(c) "Punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

3252. (a) Except as otherwise provided in Chapter 9.5 (commencing with Section 3201), or whenever on duty or in uniform, no firefighter shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) A firefighter shall not be prohibited from seeking election to, or serving as a member of, the governing board of a school district, or any local agency where the firefighter is not employed, including, but not limited to, any city, county, city and county, or special district, or political subdivision thereof.

3253. When any firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member designated by the employing department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, at a time when the firefighter is on duty, unless an imminent threat to the safety of the public requires otherwise. If the interrogation does occur during off-duty time of the firefighter being interrogated, the firefighter shall be compensated for any off-duty time in accordance with regular department procedures. The firefighter's compensation shall not be reduced as a result of any interrogation.

(b) The firefighter under investigation shall be informed, prior the interrogation, of the rank, name, and command of the officer or other person in charge of the interrogation, the interrogating officer, and all other persons to be present during the interrogation. All questions directed to the firefighter under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The firefighter under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed reasonable breaks to attend to his or her own personal physical necessities.

(e) (1) The firefighter under interrogation shall not be subjected to offensive language or threatened with punitive action. A promise of reward shall not be made as an inducement to answering any question. The employer shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing, before the employee may be compelled to respond to incriminating questions in an interrogation. Subject to that grant of immunity, a firefighter refusing to respond to questions or submit to interrogations shall be informed that the failure to answer questions directly related to the investigation or interrogation may result in punitive action.

(2) The employer shall not cause the firefighter under interrogation to be subjected to visits by the press or news media without his or her express written consent free of duress, and the firefighter's photograph, home address, telephone number, or other contact information shall not be given to the press or news media without his or her express written consent.

(f) A statement made during interrogation by a firefighter under duress, coercion, or threat of punitive action shall not be admissible in any subsequent judicial proceeding, subject to the following qualifications:

(1) This subdivision shall not limit the use of statements otherwise made by a firefighter when the employing fire department is seeking civil service sanctions against any firefighter, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements otherwise made by the firefighter under interrogation in any civil action, including administrative actions, brought by that firefighter, or that firefighter's exclusive representative, arising out of a disciplinary action.

(g) The complete interrogation of a firefighter may be recorded. If a recording is made of the interroga-

tion, the firefighter shall have access to the recording if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The firefighter shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those portions that are otherwise required by law to be kept confidential. Notes or reports that are deemed to be confidential shall not be entered in the firefighter's personnel file. The firefighter being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If, prior to or during the interrogation of a firefighter, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that may result in punitive action against any firefighter, that firefighter, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, or be subject to any punitive action for refusing to disclose, any information received from the firefighter under investigation for noncriminal matters. This section shall not be construed to apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other firefighter.

(j) A firefighter shall not be loaned or temporarily reassigned to a location or duty assignment if a firefighter in his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3254. (a) A firefighter shall not be subjected to punitive action, or denied promotion, or be threatened with that treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

(b) Punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal.

(c) A fire chief shall not be removed by a public agency or appointing authority without providing that person with written notice, the reason or reasons for removal, and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a fire chief by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, or for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, if one does not otherwise exist by rule or law, in the job of fire chief.

(d) Punitive action or denial of promotion on grounds other than merit shall not be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of discovery by the employing fire department or licensing or certifying agency. This one-year limitation period shall apply only if the discovery of the act, omission, or other misconduct occurred on or after January 1, 2008. If the employing department or licensing or certifying agency determines that discipline may be taken, it shall complete its investigation and notify the firefighter of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the firefighter voluntarily waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(2) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves an employee who is incapacitated or otherwise unavailable. If the investigation involves a matter in civil litigation where the firefighter is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(6) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(7) If the investigation involves an allegation of workers' compensation fraud on the part of the firefighter.

(e) If a predisciplinary response or grievance procedure is required or utilized, the time for that response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the employing department or licensing or certifying agency decides to impose discipline, that agency shall notify the firefighter in writing of its decision to impose discipline within 30

days of its decision, but not less than 48 hours prior to imposing the discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a firefighter if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exists:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the firefighter's pre-disciplinary response or procedure.

3254.5. An administrative appeal instituted by a firefighter under this chapter shall be conducted in conformance with rules and procedures adopted by the employing department or licensing or certifying agency that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2.

3255. A firefighter shall not have any comment adverse to his or her interest entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer, without the firefighter having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. However, the entry may be made if after reading the instrument the firefighter refuses to sign it. That fact shall be noted on that document, and signed or initialed by the firefighter.

3256. A firefighter shall have 30 days within which to file a written response to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment.

3256.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a firefighter, during usual business hours, with no loss of compensation to the firefighter, permit that firefighter to inspect personnel files that are used or have been used to determine that firefighter's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each firefighter's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefore by the firefighter.

(c) If, after examination of the firefighter's personnel file, the firefighter believes that any portion of the material is mistakenly or unlawfully placed in the file, the firefighter may request, in writing, that the mis-

taken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the firefighter describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the firefighter.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the firefighter's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the firefighter.

3257. (a) A firefighter shall not be compelled to submit to a lie detector test against his or her will.

(1) Disciplinary action or other recrimination shall not be taken against a firefighter refusing to submit to a lie detector test.

(2) No comment shall be entered anywhere in the investigator's notes or anywhere else that the firefighter refused to take, or did not take, a lie detector test.

(3) Testimony or evidence to the effect that the firefighter refused to take, or was subjected to, a lie detector test shall not be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3258. A firefighter shall not be required or requested for purposes of job assignment or other personnel action to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his or her family or household, unless that informa-

tion is otherwise required to be furnished under state law or obtained pursuant to court order.

3259. A firefighter shall not have his or her locker or other space for storage that may be assigned to him or her searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained or unless he or she has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing department or licensing or certifying agency.

3260. (a) It shall be unlawful for any employing department or licensing or certifying agency to deny or refuse to any firefighter the rights and protections guaranteed by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any firefighter against any employing department or licensing or certifying agency for alleged violations of this chapter.

(c) (1) If the superior court finds that the employing department or licensing or certifying agency has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order or preliminary or permanent injunction prohibiting the employing department or licensing or certifying agency from taking any punitive action against the firefighter.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the party's attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a fire department as the court deems appropriate. Noth-

ing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a fire department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the firefighter, the fire department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the firefighter whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the firefighter whose right or protection was denied, the fire department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a fire department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the fire department and the contractor, a "hold harmless" or similar provision that protects the fire department from liability for the actions of the contractor. An individual shall not be liable for any act for which a fire department is liable under this section.

3261. Nothing in this chapter shall in any way be construed to limit the ability of any employing department, licensing or certifying agency, or any firefighter to fulfill mutual aid agreements with other jurisdictions or agencies, and this chapter shall not be construed in any way to limit any jurisdictional or inter-agency cooperation under any circumstances where that activity is deemed necessary or desirable by the jurisdictions or agencies involved.

3262. The rights and protections described in this chapter shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.

14 California Public Records Act

At times you may receive a Public Records Act request for records involving your agency or an investigation that you conducted. The laws regarding PRA requests are quite involved and cannot be explained in this training manual.

Below are some California Government Code references that cover relevant sections of the Public Records Act (Government Code Sections 6250-6265). At the end of this manual is a reference to training that covers the Public Records Act, which the EMS Authority recommends that the certifying authorities consider attending.

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6251. This chapter shall be known and may be cited as the California Public Records Act.

6252. (Definitions) As used in this chapter:

(a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

...

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

...

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record

is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the California Emergency Management Agency, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representa-

tive thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date,

and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly,

or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

...

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

...

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters.

Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

...

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

6254.4. (a) The home address, telephone number, e-mail address, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters, are confidential and shall not be disclosed to any person, except pursuant to Section 2194 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification

shown on a voter registration card of a registered voter, or added to the voter registration records to comply with the requirements of the Help America Vote Act of 2002 (42

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, “agency” includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

The preceding statutes did not constitute the complete California Public Records Act. Please read the entire Act in Government Code Sections 6250-6265.

15 Recommended Training

The EMS Authority recommends the following courses for people who will be conducting investigations:

The Council on Licensure, Enforcement and Regulations (CLEAR)

The program takes the investigator through every step in the investigative process from planning the investigation to writing the report. CLEAR offers a Basic and Specialized training and certification program.

www.clearhq.org/

Regulatory Investigative Techniques

Regulatory Investigative Techniques is a 40-hour course on the basic principles, methods, and techniques used in a regulatory investigation. Emphasis is on the practical application. Subject areas include: role of the investigator, source of information, civil and criminal remedies, subpoenas and warrants, administrative hearing process, planning your investigation, legal aspects of investigation, giving testimony and expert witness, investigative note-taking and report writing.

<http://wserver.arc.losrios.edu/~safety/courses/law-enforcement/index.html>

Public Records Act

Learn the statutory and case law requirements in the dissemination of public records to protect your agency. It will also allow you to know what records are available for an investigator to obtain.

<http://www.cpoa.org>

Courtroom Testimony/ Administrative Hearings

This is a separate course or can be obtained covered by CLEAR training or the Regulatory Investigative Techniques course.

www.post.ca.gov/Publications/Course_Catalog/2425.asp

Interview and Interrogation

Interview course are available around the State. Most courses will cover human behavior, body language, detecting deception and cognitive interviewing.

www.post.ca.gov/Publications/Course_Catalog/3625.asp
www.tdc.org.com/
www.liedetecion.com/
www.getconfessions.com/

16 Sample EMSA Enforcement Forms

Some of the forms that EMSA utilizes in investigation and enforcement of Paramedics are presented on the following pages including:

- A. Case Document Checklist
- B. Case Acknowledgment to Complainant
- C. Probation Employment Notification Form
- D. Closure to Respondent
- E. Firefighter Bill of Rights Admonishment
- F. Case Summary Report Format

B. Case Acknowledgment to Complainant

Date

(Name of Complainant)
Name of Agency, if applicable
(Address)

Re: EMSA Complaint #

Dear Sir/Madam:

This letter acknowledges receipt of your referral of a matter concerning the above paramedic to the EMS Authority. We will be reviewing the matter and may request your assistance in obtaining additional information.

If you have any questions concerning this matter, please call «responsible_person» at (000)000-0000

Sincerely,

Responsible Party Signature
Title

C. Probation Employment Notification Form

Employment Notification

One of the conditions of your probation requires you to notify the EMS Authority of your EMS employer(s) or prospective EMS employer(s) of your probationary status and provide them with a copy of your Agreement. (If you have more than one employer, please make copies as needed). Please complete the information and return it to your Probation Monitor within 10 days.

I certify that a copy of my Agreement was given to my EMS employer or prospective employer and they are fully aware that my paramedic license has been placed on probation.

 Probationer (print name) Signature Date

This section is to be completed by Employer

I have received a copy of the Agreement from the probationer listed above and I'm aware of their probationary status.

 Employer name (print name) Signature Date

Employer's Name and Address:

Telephone: _____

D. Closure to Respondent

Date

(Name of Respondent)

(Address)

RE: EMSA Complaint No. (##-####)

Dear (Respondent):

Pursuant to the Health and Safety Code, the Emergency Medical Services Authority (EMSA) is authorized to make inquiries into allegations of paramedic misconduct. Based on the fact that you were convicted of a misdemeanor, the EMSA conducted an investigation per Health and Safety Code section 1798.200. This section permits the EMSA to take disciplinary action against a paramedic license for the following:

(Specific H&S Code Violation(s) _____

This letter is to inform you that the EMSA has reviewed the information concerning the circumstances surrounding your [insert specific allegation(s)]. The EMSA is not taking any disciplinary action and will be closing its investigation. However, should future incidents occur which necessitate review by the EMSA, we will consider all facts and evidence, both past and present, in reaching appropriate licensure action.

If you need any clarification regarding this matter, or if you have any additional questions or concerns, please do not hesitate to call (Investigator Name) at (916) 322-4336.

Sincerely,

(Name)

Chief Investigator

E. FFBOR Admonishment

ADMONISHMENT OF RIGHTS UNDER THE FIREFIGHTERS PROCEDURAL BILL OF RIGHTS ACT

The State of California Emergency Medical Services Authority (EMSA) is conducting an investigation into matters that may result in disciplinary action against your EMT-P license pursuant to California Health and Safety Code Section 1798.200 and the California Code of Regulations. As a person covered or potentially covered under the Firefighters Procedural Bill of Rights Act (California Government Code Section 3250 et. seq.), EMSA is informing you of certain rights you have pertaining to this investigation interview.

You have the right to:

1. Have this investigation interview conducted at a reasonable hour, during your normal duty time.
2. Be informed of the name and job classification of the EMSA employee conducting the investigation interview.
3. Be informed of the nature of the investigation.
4. Have the investigation interview conducted for a reasonable period of time. Reasonable breaks to attend to your personal physical necessities will be allowed.
5. An investigation interview free from offensive language. There are no rewards for answering questions, nor punishments for refusing to answer questions. EMSA requests that you answer any questions that you choose to respond to completely, honestly, and accurately to the best of your recollection.
6. Record this investigation interview with your own recording device if you choose. This investigation interview may be recorded by EMSA personnel. If it is recorded by EMSA personnel, you have the right to request and obtain a complete copy of the recording.
7. Obtain a copy of any complaints or reports associated with this investigation, subject to any laws pertaining to confidentiality of such documents.
8. Have a representative of your choosing present during the entire investigation interview, however this person cannot be a subject of this same investigation.
9. Give your express consent prior to searching any personal locker or storage space under your exclusive control. You have the right to refuse to provide consent if you choose.

I acknowledge that I have received a copy of this document prior to commencement of this investigation interview.

Date

Signature

F. Case Summary Report Format

STATE OF CALIFORNIA
EMERGENCY MEDICAL SERVICES AUTHORITY

REPORT OF INVESTIGATION

RESPONDENT:

CASE NO.:

License No.:
Prior Enforcement Cases:
Criminal History:
Employer:

Brief Summary of Case:

Case Summary:

Conclusion:

Recommendation:

Exhibits:

Completed By: _____ Date: _____
(Name & Job Title)

17 Legal Considerations for EMT and AEMT Changes

1. Formal Actions against an existing certification, or to deny an application for a certification, must be conducted according to the California Health and Safety Code (HSC), The Administrative Procedures Act (APA), and the relevant portions of the California Code of Regulations (CCR).
2. Specific basis for certification denial/discipline are found in HSC Section 1798.200.
3. Certification denial/discipline standards 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.
4. The prohibited conduct must be substantially related to the duties and functions of a certificate holder (CCR 100208).
5. Formal actions are subject to due process; i.e. notice for the basis of the action and an opportunity to be heard and contest the charges (HSC 1797.184(d)).
6. The Administrative Procedures Act sets forth the rules regarding notices, communication between the parties, subpoenas, conduct of hearings, decisions, etc. The APA is contained within the California Government Code, beginning at Section 11370. Copies of the complete APA and relevant APA regulations are available directly from the Office of Administrative Hearings.
7. Hearings on appeals of an action are administrative in nature. Appeals are heard by the state Office of Administrative hearings (OAH), a branch of the Department of General Services (<http://www.oah.dgs.ca.gov>). All hearings are scheduled directly with OAH.
8. There is a privately produced practice guide available that provides instruction for the drafting of actions and the conduct of administrative hearings. "California Administrative Hearing Practice" by Continuing Education of the Bar (<http://www.ceb.com>).
9. The Regulations set forth specific rules for the conduct of investigations, responsibilities of Relevant Employers and LEMSA's, information sharing of investigations, and notifications 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 set forth disciplinary rules for permissive ("may") and mandatory ("shall") certification denial/revocation actions (CCR 100214.3).
10. Model Disciplinary Orders ("Recommended Guidelines for Disciplinary Orders and Conditions of Probation for EMT (Basic) and Advanced EMT", EMSA #134) have been adopted by regulation. The Model Disciplinary Orders are guidelines for Agencies to determine appropriate individual discipline based upon the conduct that occurred. Since the Model Disciplinary Orders have been adopted by regulation, an Administrative Law Judge must use them in determining appropriate discipline subsequent to a hearing.

18 Administrative Law Judge Reimbursement Process

Actual fees paid by a LEMSA for the services of an Administrative Law Judge, who is on the staff of the Office of Administrative Hearings, for disciplinary action appeals as required by Chapter 6 Process for EMT and AEMT Disciplinary Cause Regulations and in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code are eligible for reimbursement from the Emergency Medical Technician Certification Fund.

Each LEMSA that has paid for the services of an Administrative Law Judge during the preceding fiscal year (July 1 through June 30) shall submit to EMSA copies of invoices for fees charged and proof of the actual amount paid.

EMSA will reimburse the LEMSAs no more than the actual payment made for the Administrative Law Judge in accordance with the following:

Invoices for fees incurred between July 1 and June 30 shall be due at EMSA no later than August 31 of that same year.

The LEMSA has provided evidence of the costs incurred. The evidence shall include for each hearing held the following:

- An invoice
- Proof of payment
- The name of, and any other required identifying information for, each emergency medical technician whose disciplinary hearing was held in the relevant fiscal year.

If there are insufficient monies available to reimburse each LEMSA for the entire actual amount expended for Administrative Law Judge services, then reimbursements will be allocated proportionately among all the LEMSAs for actual expenditures for Administrative Law Judge services within that fiscal year.

19 Common Definitions

Accusation: A written statement which specifies the acts or omissions the respondent is charged with and includes the specific statutes and rules that were violated .

Adjudication: The act of a court in making an order, judgment, or decree.

Administrative Procedures Act: Rules and procedures regarding administrative adjudication and the formal hearing process. Government Code sections 11500-11529

Attorney-Client Privilege: The right to refuse to disclose, or prevent another from disclosing, a confidential communication between the client and lawyer.

Burden of Proof: The obligation of a party to produce a particular state of conviction (e.g. preponderance of evidence, clear and convincing, beyond a reasonable doubt) in the mind of the trier of fact as to the existence, or nonexistence, of a fact. If the party does not meet the burden then the trier of fact must assume that the fact does not exist.

Certified Documents: Documents obtained from an agency or department or other having been guaranteed a true and accurate copy. Documentary evidence entered as evidence at a hearing must be certified.

Clear and Convincing: The standard of proof required in which the party bearing the burden of proof must show that the truth of the allegations is highly probable.

Complainant: 1. The agency that is taking action.
2. The person that makes a complaint.

Complaint: 1. An expression of discontent, regret, pain, censure, resentment, or grief; lament; faultfinding.

2. The first pleading of the plaintiff in a civil action, stating the cause of action.

Corrupt: Spoiled; tainted; vitiated; depraved; debased; morally degenerate.

Decision: A determination of the disciplinary action that is made by the Director of the agency.

Default: An agency action decided without a hearing or response from a Respondent such as when the Respondent fails to file a notice of defense or fails to show at hearing.

Dishonest: Not honest; disposed to lie, cheat, or steal.

Due Process: Procedures that provide for notice of an action and opportunity to respond.

Evidence: Anything that tends logically to prove or disprove a fact at issue.

Evidence (Circumstantial): All evidence other than direct that tends to show a fact based on inference or presumption.

Evidence (Cumulative): Facts or information that proves what has previously been established by other information concerning the same issue.

Evidence (Direct): Evidence that by itself proves a fact without an inference or presumption. Usually refers to the testimony of witnesses that ties the respondent directly to the act or omission, such as an eye witness. firsthand knowledge

Evidence (Hearsay): Statements regarding a matter from someone who is not a direct witness.

Evidence (Prima Facie): Evidence that is sufficient to prove the fact in question.

Expert Witness: A person who is qualified based on their education, training, skill or experience to testify and provide expert opinions about evidence or a fact at issue within the scope of their specialized knowledge or expertise in a particular subject.

Fact vs. Opinion: A fact is something that is true about a subject and can be tested or proven. An opinion is what someone thinks about that subject.

Fraudulent: Given to or using fraud; cheating; dishonest.

Gross Negligence: This is an extreme departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties if confronted with a similar circumstance.

Incompetence: The lack of possession of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a person trained and acting in a similar capacity.

Interview: The process of obtaining information from people who possess knowledge about a particular offense, as part of the process of investigation.

Negligence: Failure to use such care as 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.

Order: A legal document carrying out, modifying or rejecting a proposed decision.

Proposed Decision: A conclusion or judgment from an Administrative Law Judge based on the evidence presented at hearing and applicable law which is then sent to the Director of the agency for application.

Public Records Act: Refers to Government Code sections 6250 to 6276.48 that give the public access to information in possession of public agencies.

Regulations: Rules or procedures that implement, interpret, or explain Statutes or Law. Regulations have the weight of law, but statutes take precedence over regulations. Regulations are approved by the Office of Administrative Law.

Respondent: The person to which the agency action is directed.

Settlement: An agreement between parties in a case to certain terms and conditions set forth in the agreement.

Statement of Issues: Issued after the denial of a license when the respondent requests a hearing. A written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and in addition, any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought.

Statute: Legislatively created laws. Federal law takes precedence over state law. Statute overrides regulations or guidelines.

Subpoena: A formal order for the summoning of witnesses or evidence such as documents or records.

Testimony: Evidence given in oral form.

Witness: An individual who “may” provide information regarding a case. This information may or may not be factual, truthful, or complete.

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EMT 2010 Stakeholder Workgroup:

California Fire Chiefs Association
Emergency Medical Services Medical Directors Association of California
Emergency Medical Services Administrators Association of California
California Professional Firefighters
California State Firefighters Association
California Ambulance Association
California Paramedic Program Directors
California Highway Patrol
State Fire Marshal's Office
California Department of Parks and Recreation
California Department of Forestry and Fire Protection



California Emergency Medical Services Authority