

# Investigation and Enforcement Guide



**July 2017**

# TABLE OF CONTENTS

<b><i>Foreword</i></b>	<b>Page 2</b>
<b><i>Emergency Medical Technician</i></b>	<b>3</b>
Investigative Process	3
Investigation Causes	4
EMT Investigations & Administrative Hearing Process	5
EMT Investigation Diagram	7
Model Disciplinary Orders (MDOs)	8
MDO Appendix A - Assessment Model For Determining Impairment In EMT Certificate Holders or Applicants With Drug / Alcohol Related Investigations, Arrests, and/or Convictions	22
MDO Appendix B	24
<b><i>Paramedic</i></b>	<b>25</b>
Agency Investigative Process	25
Paramedic Investigation Diagram	27
<b><i>References</i></b>	<b>28</b>
California Code of Regulations, Title 22, Division 9, Chapter 6 <i>Process for EMT Certification Disciplinary Action</i>	28
Firefighters Procedural Bill of Rights Act <i>California Government Code, Section 3250-3262</i>	37
Administrative Procedures Act <i>California Government Code, Section 11500-11529</i>	42
State of California Emergency Medical Services Authority <i>Disciplinary Process Guidelines for Paramedic</i>	56
EMT Admonishment of Rights <i>Under the Firefighters Procedural Bill of Rights Act</i>	59
Paramedic Admonishment of Rights <i>Under the Firefighters Procedural Bill of Rights Act</i>	60

# INVESTIGATION AND ENFORCEMENT GUIDE

## **Foreword**

This guide was developed to assist in the uniform investigation and enforcement of prehospital care personnel. This document was compiled utilizing the State of California Emergency Medical Services Authority (EMSA) Guidelines for Disciplinary Orders and Conditions of Probation, the Firefighters Procedural Bill of Rights Act, the Administrative Procedures Act and El Dorado County Prehospital Care Policy.

It should be noted that the many of the incidents reported to and investigated by the Agency are not related to not clinical care but, to inappropriate personal behavior (on and off-duty). Service contractors should work cooperatively to build sound relationships and foster seamless integration of prehospital care. Most incidents should be handled at the lowest possible level, including service contractor -to- service contractor communication and resolution. In all cases, the procedures contained in this document must be utilized.

It should be noted that even though a service contractor has conducted their own investigation and may have offered an education/training plan to an employee, the Agency is responsible for the investigation and enforcement related to those certified and accredited. It is beneficial for both the employer and accused to immediately notify the Agency in accordance with El Dorado County Prehospital Care Policy. When appropriate, the Agency will work with the employer to facilitate resolution at the service contractor level. Not all cases will be offered education as a means of resolution.

## Emergency Medical Technician

### Investigative Process

The following investigative procedure will be utilized by the Agency for complaints related to Emergency Medical Technicians (EMTs) in the County of El Dorado.

### **Agency Responsibility**

All incidents should be reported to the Agency in writing. However, based on the severity or nature of an incident, the EMS Agency may be notified twenty-four (24) hours a day. Upon receipt of written notification or an EMS Event Analysis Report, the Agency will conduct a review of the incident under the supervision of the EMS Medical Director and/or EMS Agency Administrator.

### **Complaints and Event Analysis Reports**

When a complaint or EMS Event Analysis Report is received in writing, the Agency will evaluate the preliminary information and determine if any action is warranted. The Agency will also determine which service agency should handle the case. If the Agency deems no further action necessary or the complaint to be unfounded, the case will be closed.

### **Discovery and Preliminary Review**

The Agency will begin to review the circumstances related to the complaint. In this phase, actions such as, but not limited to, collection of patient care records, CAD data, incident reports, audiotapes, etc. may occur. The employer may or may not be involved in the investigation at this point. Upon review of the circumstances, the Agency will either find the complaint to be unsubstantiated and close the case; find the complaint to be substantiated and proceed to a formal investigation that may end with an offer of a Performance Improvement Plan (PIP) and/or with certification denial/revocation.

If education is offered as a form of remediation, a Performance Improvement Plan (PIP) will be utilized to track progress and completion. The Agency may work in cooperation with the subject's employer or other appropriate system resources in the development and execution of the PIP. Failure to complete a PIP may result in immediate administrative action.

### **Formal Investigation**

A formal investigation may consist of, but is not limited to, further collection and review of documents, evidence collection, interviews, etc. When the need for a formal investigation has been determined, the EMT and their employer (if applicable) will be notified in writing by mail.

The respondent shall be allowed representation of his/her choice through all processes of the investigation. Any such representation shall be at the respondent's expense.

## INVESTIGATION AND ENFORCEMENT GUIDE

Based on the results of the investigation, all evidence will be reviewed by the Agency and the case will either be closed, the subject offered education, or a formal accusation made. If a formal accusation is made, the subject will be notified in writing and will be informed of their rights in accordance with the applicable regulations.

### **Investigation Causes**

The California Health & Safety Code, Section 1798.200 specifies the offenses for which the Agency may take disciplinary action against an EMT. When filing an accusation the Agency may also cite additional related statutes, codes, regulations, ordinances, policies and protocols.

1. Fraud in Procurement of any Certificate or License
2. Gross Negligence: 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.
3. Repeated Negligent Acts: A repeated 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.
4. Incompetence: The lack of possession of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a certified EMT.
5. The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.
6. Conviction of any crime that is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of such conviction.
7. Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.
8. Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.
9. Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.
10. Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

## INVESTIGATION AND ENFORCEMENT GUIDE

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

### **EMT Investigations & Administrative Hearing Process**

Disciplinary proceedings for EMTs shall be conducted in accordance with Title 22, Chapter 6 of the California Code of Regulations. Additionally, disciplinary proceedings involving public agency firefighter EMTs shall be conducted in accordance with “The Firefighter Procedural Bill of Rights Act (California Government Code 3250-3262).

If a case does not settle and the respondent has filed a notice of defense, an administrative hearing is conducted pursuant to the Administrative Procedure Act (Government Code Sections 11500 et seq.). The medical director has the option of participating in a hearing on the merits, or of delegating the responsibility to an administrative law judge.

If the medical director delegates the hearing to an administrative law judge, then the administrative law judge issues a proposed decision within 30 days which is provided to the Agency. Thirty days after the receipt by the Agency of the proposed decision, a copy of the proposed decision shall be filed with the Agency as a public record and a copy shall be served by the Agency on each party and his or her attorney. The medical director can (1) adopt the decision in its entirety; (2) reduce or otherwise mitigate the proposed discipline and adopt the balance of the proposed decision; (3) make technical or other minor changes and adopt the decision; (4) reject the proposed decision and refer the matter back to the administrative law judge to take additional evidence; or (5) reject the proposed decision and decide the case upon the record.

The medical director has 100 days from receipt of the proposed decision to make a final decision. If the medical director fails to make a decision within the 100 days, the

## **INVESTIGATION AND ENFORCEMENT GUIDE**

proposed decision shall be deemed adopted by the Agency. The final decision by the director becomes a public record immediately and is served on the respondent and his or her attorney. Generally, the final decision becomes effective 30 days after the final decision is delivered or mailed to the respondent.

### **Default Decision**

Occasionally, after issuing an Accusation, a notice of defense requesting a hearing is not returned by the respondent to the Agency. According to the Administrative Procedure Act, the medical director can then issue a decision and order that is binding on the respondent.

### **Certification Denial**

When the Agency denies an initial application for a paramedic license, the applicant can appeal the decision through the Administrative Procedure Act by submitting a written request to the Agency. A Statement of Issues is prepared and served on the respondent. The Statement of Issues is treated procedurally the same as an Accusation. However, the respondent has the burden of proof to demonstrate that he or she has been rehabilitated.

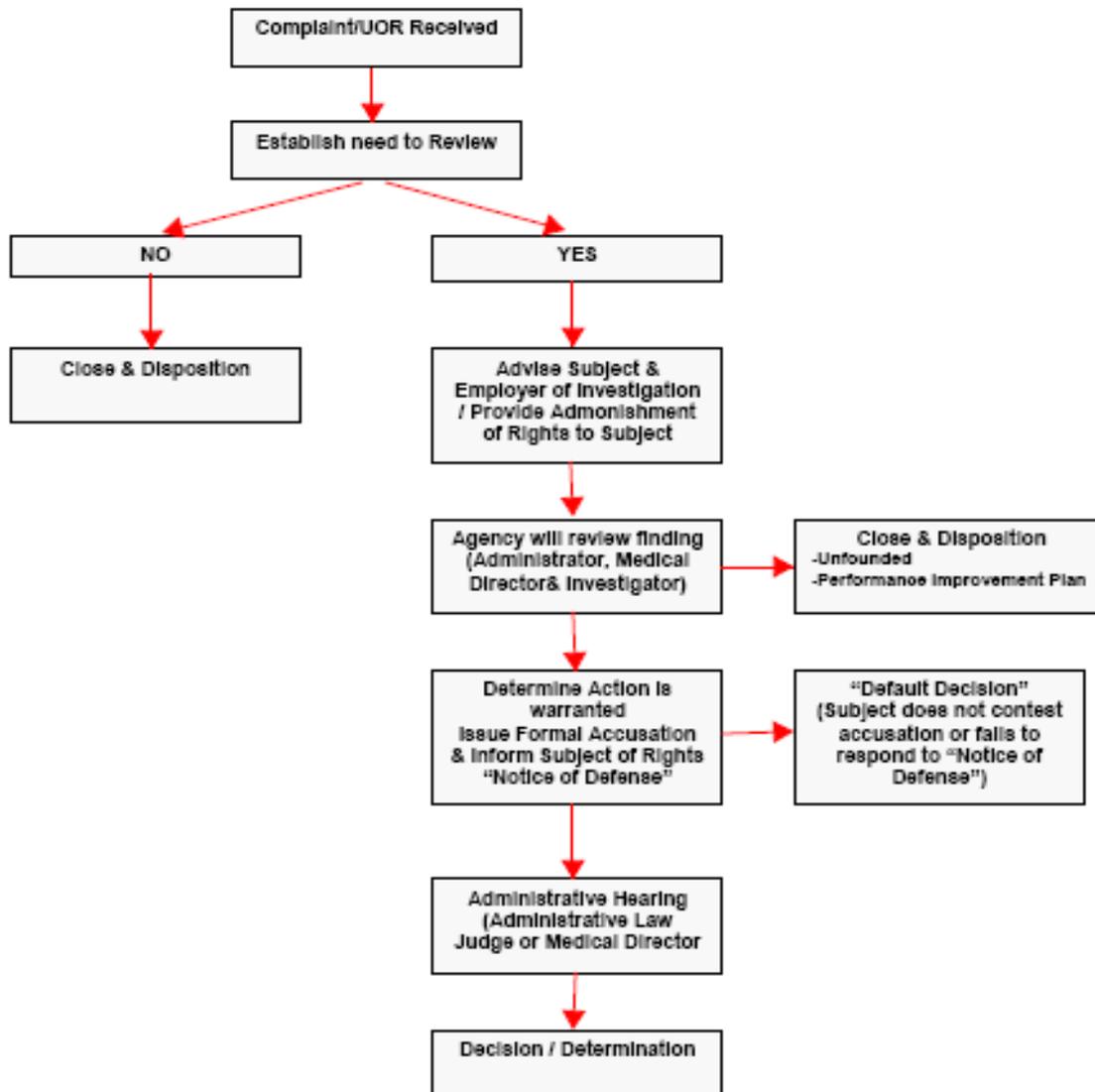
### **Respondent's Rights**

The respondent is entitled to representation of his/her choice throughout the investigation and any subsequent prosecution. Any such representation is at the respondent's own expense.

The respondent may request "discovery" prior to the hearing and within 30 days after service by the EMS Authority of the Accusation, pursuant to Government Code Section 11507.6. The respondent is encouraged to familiarize himself/herself with the administrative process and ask questions of the as to his or her procedural rights.

# INVESTIGATION AND ENFORCEMENT GUIDE

## EMT Investigation Diagram



# INVESTIGATION AND ENFORCEMENT GUIDE

## **Model Disciplinary Orders (MDOs)**

### **Section I: FOREWORD**

The purpose of the Recommended Guidelines for these Model Disciplinary Orders is to provide a consistent and equitable certification action in cases dealing with disciplinary cause as defined in Health and Safety Code, Division 2.5, Section 1798.200 (e).

The relevant employer shall use this document to develop a disciplinary plan in accordance with the Process for EMT-I and Advanced EMT Disciplinary Action, Chapter 6, Division 9, Title 22 of the California Code of Regulations. The local emergency medical services agency (LEMSA) medical director shall also use this document as a standard in settling disciplinary matters when a respondent wishes to resolve the allegations through a negotiated settlement. However, the settlement may be on any terms the parties determine are appropriate pursuant to Section 11415.60 of the California Administrative Procedure Act.

Should the respondent invoke his/her right to contest the allegations through the California Administrative Procedures Act, the administrative law judge shall use this document as a guide in making his/her recommendations for certification action (if needed) to the medical director of the local EMS agency.

The respondent shall be allowed representation of his/her choice through all processes of the investigation, filing of an accusation, negotiation of a settlement, and administrative hearing pursuant to the California Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1). Any such representation shall be at the respondent's expense.

### **Section II: DISCIPLINARY CONSIDERATION FACTORS**

The following factors shall be considered for determination of the certification action to be imposed on the respondent. Specifically, whether the certification action warranted is probation, suspension, or revocation:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;
8. Mitigating evidence;
9. Rehabilitation evidence;
10. In case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;
11. Overall criminal record;
12. Time that has elapsed since the act(s) or offense(s) occurred;
13. If applicable, evidence of expungement proceedings pursuant to Penal Code

## INVESTIGATION AND ENFORCEMENT GUIDE

1203.4.

14. In determining appropriate certification disciplinary action, the LEMSA medical director may give credit for prior disciplinary action imposed by the respondent's employer.

### Section III: VIOLATIONS and RECOMMENDED DISCIPLINARY ACTIONS

Health and Safety Code Section 1798.200 (c) specifies the offenses for which the LEMSA may take disciplinary action against an EMT-I or an Advanced EMT (AEMT). When filing an accusation, the LEMSA may also cite additional related statutes and regulations.

The recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. The administrative law judge may propose any discipline between the minimum discipline and maximum discipline for a particular violation. When the administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, a full explanation shall be included as to the nature of the act that warrants unusual consideration. The LEMSA medical director has the final determination as to the discipline to be imposed.

When used below, the numbers following the "Minimum Conditions of Probation" refer to the Optional Conditions of Probation in Section VI. These conditions may vary according to the nature and circumstances of the offense.

1. **Fraud in the procurement of any certificate or license under this division.**
  - Maximum Certification Action: Revocation or denial.
  - Recommended Certification Action: Revocation or denial.
  - Minimum Certification Action: Revocation stayed, sixty (60) day suspension/denial.
2. **Gross negligence** - 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.
  - Maximum Certification Action : Revocation
  - Recommended Certification Action: Revocation stayed, sixty (60) day suspension, three (3) years probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, three (3) years probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5, 8, 9 and 11.
3. **Repeated negligent acts** - A repeated 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.

## INVESTIGATION AND ENFORCEMENT GUIDE

- Maximum Certification Action : Revocation
  - Recommended Certification Action : Revocation stayed, thirty (30) day suspension, three (3) years probation with terms and conditions.
  - Minimum Certification Action : Revocation stayed, one (1) year probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5, 8, 9 and 11.
4. **Incompetence** - The lack of possession of that degree of knowledge, skill, and ability ordinarily possessed and exercised by a certified EMT-I or AEMT.
- Maximum Certification Action : Revocation
  - Recommended Certification Action: Revocation stayed, thirty (30) day suspension, three (3) years probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, one (1) year probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5, 8, 9 and 11.
5. **The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.**
- Maximum Certification Action: Revocation.
  - Recommended Certification Action: Revocation stayed, sixty (60) day suspension, 3 years probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, three (3) years probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Condition: 6
6. **Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of such conviction.**
- Maximum Certification Action: Revocation.
  - Recommended Certification Action: Variable depending on the nature of the crime with terms and conditions.
  - Minimum Certification Action: Revocation stayed, one (1) year probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions.
7. **Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.**
- Maximum Certification Action: Revocation
  - Recommended Certification Action: Revocation stayed, sixty (60) day suspension, 3 years probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, three (3) years probation with terms and conditions.

## INVESTIGATION AND ENFORCEMENT GUIDE

- Minimum Conditions of Probation: All Standard Conditions and Optional Condition: 6.
8. **Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.**
- Maximum Certification Action : Revocation
  - Recommended Certification Action: Revocation stayed, sixty (60) day suspension, 3 years probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, three (3) years probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 1, 2, 3, 4, and 10.
9. **Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.**
- # Maximum Certification Action : Revocation
- Recommended Certification Action: Revocation stayed, suspension until successful completion of drug/alcohol detoxification diversion program five (5) years probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, three (3) years probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 1, 2, 3, 4, and 10.
10. **Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.**
- Maximum Certification Action: Revocation
  - Recommended Certification Action: Revocation stayed, fifteen (15) day suspension, 1 year probation with terms and conditions.
  - Minimum Certification Action: Revocation stayed, one (1) year probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 5 and 8.
11. **Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.**
- Maximum Certification Action: Revocation
  - Recommended Certification Action: Revocation stayed, suspension until resolution of the physical or mental disability.
  - Minimum Certification Action: Revocation stayed, one (1) year probation with terms and conditions.
  - Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 8, 9, and 10.

## INVESTIGATION AND ENFORCEMENT GUIDE

### 12. Unprofessional Conduct-

**(A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, AEMT or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.**

- Maximum Certification Action: Revocation/Denial
- Recommended Certification Action: Revocation stayed, sixty (60) day suspension, three (3) years probation with terms and conditions.
- Minimum Certification Action: Revocation stayed, three (3) years probation with terms and conditions.
- Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 7 and 10.

**(B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Sections 56 and 56.6, inclusive of the Civil Code.**

- Maximum Certification Action: Revocation/Denial
- Recommended Certification Action: Revocation stayed, thirty (30) day suspension, one (1) year probation with terms and conditions.
- Minimum Certification Action: Revocation stayed one (1) year probation with terms and conditions.
- Minimum Conditions of Probation: All Standard Conditions and Optional Conditions: 6 and 9.

**(C) The commission of any sexually related offense specified under Section 290 of the Penal Code.**

- Maximum Certification Action : Revocation/ Denial
- Recommended Certification Action : Revocation/Denial
- Minimum Certification Action : Revocation/Denial

### **Section IV: DETOXIFICATION/DIVERSION PROGRAM CRITERIA**

The criteria to be considered in determining rehabilitation for alcohol/drug abuse offenses include, but are not limited to:

- Successful completion of a drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare program. The program shall include at least the following elements:
  1. Chemical-free treatment philosophy;
  2. Individual and/or group counseling;
  3. Random, documented biological fluid testing;
  4. Participation in support groups;
  5. Education about addictive disease;

## INVESTIGATION AND ENFORCEMENT GUIDE

6. Adherence to a 12-step recovery program philosophy or equivalent;
  7. Written documentation of participation in a 12-step recovery group or equivalent.
- Employment with a pre-hospital care provider, for a minimum of six (6) months, with documentation from the employer that the employer was aware of the previous drug or alcohol abuse problems. The documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed EMT-I or AEMT functions in a safe and competent manner.
  - If the respondent is seeking reinstatement of his/her certification, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.
  - A minimum of one (1) year must have elapsed between the time of the second offense and the effective date of the prior order.

### Section V: MITIGATING EVIDENCE

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his/her rehabilitative efforts and competency:

- A. Dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current EMT-I or AEMT competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: **"I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge."** The statement should be signed and dated by the person making the statement;
- B. Dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, where appropriate. The letters should include a description of the program, the number of sessions that the respondent has attended, the counselor's diagnosis of the respondent's condition, the respondent's prognosis for recovery, the respondent's current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor;
- C. Dated letters describing the respondent's participation in support groups;
- D. Dated laboratory analyses or drug screen reports, where appropriate;
- E. Dated performance evaluation(s) from the respondent's employer;

## INVESTIGATION AND ENFORCEMENT GUIDE

- F. Dated physical examination or assessment report by a licensed physician;
- G. Certificates or transcripts of courses related to EMT-I or AEMT duties that the respondent might have completed since the date of the violation. **An EMT whose certification has been revoked does not possess an EMT certification. Therefore, the individual cannot use his/her former certification number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an EMT certification is not used.**
- H. Evidence of community service or other educational experiences.

### Section VI: LANGUAGE FOR MODEL DISCIPLINARY ORDERS

#### Standard Revocation Orders

**Revocation - Single Cause:**

Certification Number \_\_\_\_\_ issued to the respondent, \_\_\_\_\_, is revoked.

**Revocation - Multiple Causes:**

Certification Number \_\_\_\_\_ issued to the respondent, \_\_\_\_\_, is revoked pursuant to Determination of Issues: \_\_\_\_\_, jointly and separately.

#### Standard Stay Order

**Standard Stay Order:**

However, such revocation is stayed and the respondent is placed on probation for \_\_\_\_\_ year(s) upon the following terms and conditions:

(List of terms and conditions.)

#### Standard Suspension Orders

**Suspension - Single Cause:**

Certification Number \_\_\_\_\_ issued to the respondent, \_\_\_\_\_, is suspended for \_\_\_\_\_.

**Suspension - Multiple Causes: (Concurrent)**

Certification Number \_\_\_\_\_ issued to the respondent, \_\_\_\_\_, is suspended for \_\_\_\_\_ pursuant to determination of issues: \_\_\_\_\_, jointly and separately. All suspensions shall run concurrently.

**Suspension - Multiple Causes: (Consecutive)**

## INVESTIGATION AND ENFORCEMENT GUIDE

Certification Number \_\_\_\_\_ issued to the respondent, \_\_\_\_\_, is suspended for \_\_\_\_\_ pursuant to determination of issues: \_\_\_\_\_, jointly and separately. All suspensions shall run consecutively.

### Standard Conditions of Probation

**1. Probation Compliance:**

The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the LEMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of his/her probationary order.

The respondent shall immediately execute and submit to the LEMSA all Release of Information forms that the LEMSA may require of the respondent.

**2. Personal Appearances:**

As directed by the LEMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of the respondent's compliance with the terms and conditions of the probationary order. The respondent shall be responsible for all of his/her costs associated with this requirement.

**3. Quarterly Report Requirements:**

During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of his/her probation. If the respondent submits his/her quarterly reports by mail, it shall be sent as registered mail.

**4. Employment Notification:**

During the probationary period, the respondent shall notify the LEMSA in writing of any EMS employment. The respondent shall inform the LEMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the LEMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The respondent authorizes any EMS employer to submit performance evaluations and other reports which the LEMSA may request that relate to the qualifications, functions, and duties of an EMT.

Any and all notifications to the LEMSA shall be by registered mail.

**5. Notification of Termination:**

During the probationary period, the respondent shall notify the LEMSA within seventy-two (72) hours after termination, for any reason, with his/her prehospital

## INVESTIGATION AND ENFORCEMENT GUIDE

medical care employer. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of his/her termination.

Any and all notifications to the LEMSA shall be by registered mail.

### **6. Functioning as an EMT:**

The period of probation shall not run anytime that the respondent is not practicing as an **EMT** within the jurisdiction of California.

If the respondent, during his/her probationary period, leaves the jurisdiction of California to practice as an EMT, the respondent must immediately notify the LEMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

Any and all notifications to the LEMSA shall be by registered mail.

### **7. Obey All Related Laws:**

The respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as an EMT-I or AEMT. The respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if the respondent has not submitted fingerprints to the LEMSA in the past as a condition of certification, then the respondent shall submit his/her fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this decision.

Within seventy-two (72) hours of being arrested, cited or criminally charged for any offense, the respondent shall submit to the LEMSA a full and detailed account of the circumstances thereof. The LEMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as an EMT.

Any and all notifications to the LEMSA shall be by registered mail.

### **8. Completion of Probation:**

The respondent's certification shall be fully restored upon successful completion of probation.

### **9. Violation of Probation:**

If during the period of probation the respondent fails to comply with any term of probation, the LEMSA may initiate action to terminate probation and implement actual certificate suspension/revocation. Upon the initiation of such an action, or the giving of a notice to the respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the LEMSA. An action to terminate probation and implement actual certificate suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of either Chapter 6 of the California

## INVESTIGATION AND ENFORCEMENT GUIDE

Code of Regulations, Title 22, Division 9, or the California Administrative Procedure Act, whichever process was used by the LEMSA.

The issues to be resolved shall be limited to whether the respondent has violated any term of his/her probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. The respondent and the LEMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

### Optional Conditions of Probation

**1. Abstinence from Drug Possession and Use:**

The respondent shall abstain from the possession, injection or consumption by any route of all controlled substances, dangerous drugs, or any drugs requiring a prescription unless prescribed under federal or state law as part of a documented medical treatment. Within fourteen (14) days of obtaining such a prescription, respondent shall ensure that the prescribing professional provides the LEMSA a written report identifying the medication, dosage, the date the medication was prescribed, the respondent's diagnosis, and the date the medication will no longer be required. This report must be provided to the LEMSA directly by the prescribing professional.

If the respondent has a lawful prescription when initially placed on probation, this same report must be provided within fourteen days of the commencement of probation.

Any and all notifications to the LEMSA shall be by registered mail.

**2. Abstinence from the Use of Alcoholic Beverages:**

The respondent shall abstain from the use of alcoholic beverages.

**3. Biological Fluid Testing:**

The respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the LEMSA or its designee. Respondent may use a lab pre-approved by the LEMSA or may provide to the LEMSA the name and location of an independent laboratory or drug/alcohol testing facility for approval by the LEMSA. Lab approval shall be based on criteria regulating professional laboratories and drug/alcohol testing facilities as set forth in Chapter 3, Division 2, of the Business and Professions Code and Division 1 of Title 17 of the California Code of Regulations. When the LEMSA requests a random test, the respondent shall provide the required blood/urine sample by the time specified, or within twelve (12) hours of the request if no time is specified. When the LEMSA requests a random test, the respondent shall ensure that any positive test results are conveyed telephonically by the lab to the LEMSA within forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to the LEMSA within ten (10) days. The respondent shall be responsible for all costs associated with the drug/alcohol screening.

## INVESTIGATION AND ENFORCEMENT GUIDE

The LEMSA may allow the random drug testing to be conducted by a laboratory under contract with the respondent's employer to meet the requirement of random drug testing as set forth in this section. The results of the employer's random drug testing shall be made available to the LEMSA in the time frames described above.

### 4. **Drug/Detoxification/Diversion Program:**

Within \_\_\_\_\_ days of the effective date of this decision, the respondent shall enroll and participate in a drug/detoxification/diversion program approved by the LEMSA. The respondent shall participate in the program until appropriate medical supervision determines that further treatment and rehabilitation is no longer necessary.

If the respondent voluntarily withdraws from the drug/detoxification/diversion program or the respondent is expelled from the program, such withdrawal or expulsion shall constitute a violation of probation by the respondent. The respondent shall be responsible for all costs associated with such drug/detoxification/diversion program.

### 5. **Educational Course Work:**

Within \_\_\_\_\_ days of the effective date of this decision, the respondent shall submit to the LEMSA proof of completion of \_\_\_\_\_ hours of education in areas substantially related to the offense as stated in the accusation and to the satisfaction of the LEMSA.

Any educational program may include community service to reinforce the learning objectives of the educational program.

All courses must be approved by the LEMSA. Within thirty-five (35) days after completing the course work, the respondent shall submit evidence of competency in the required education. Submittal of a certificate or letter from the instructor attesting to the respondent's competency shall suffice.

Any and all notifications to the LEMSA shall be by registered mail.

### 6. **Ethical Practice of EMS:**

Within \_\_\_\_\_ days of the effective date of this decision, the respondent shall submit to the LEMSA, for its prior approval, a course in Ethics. The respondent must complete this course during his/her probation period.

Upon completion by the respondent of the Ethics course, the respondent shall submit proof to the LEMSA that he/she fulfilled all course requirements.

Any and all notifications to the LEMSA shall be by registered mail.

### 7. **Stress/Anger Management:**

Within \_\_\_\_\_ days of the effective date of this decision, the respondent shall enroll and participate in a local, court approved, stress/anger management

## INVESTIGATION AND ENFORCEMENT GUIDE

program, which the respondent shall complete during his/her probation. Upon completion of the approved program, the respondent shall submit proof to the LEMSA that he/she has fulfilled all course requirements.

Any and all notifications to the LEMSA shall be by registered mail.

### 8. **Practical Skills Examination:**

Within \_\_\_\_ days of the effective date of this decision, the respondent shall submit to and pass a skills examination in subjects substantially related to the accusation based upon the U. S. Department of Transportation (DOT) and/or the National Registry of Emergency Medical Technicians (NREMT) skills examination, when applicable. If not addressed in the DOT or NREMT, an approved local standard shall be identified and utilized. The skills examination shall be administered by a board selected by the LEMSA using the pre-established criteria (See Section VII: Review Board for criteria).

The respondent shall not be allowed to function as an EMT until the respondent passes the examination. The respondent has the option and right to repeat the examination. There shall be at least a two (2) week period between examinations. No more than three (3) attempts to pass the examination shall be allowed. If the respondent fails to pass the exam after three (3) attempts, or chooses not to retake the examination, the respondent's certification shall be revoked.

### 9. **Oral Skills Examination:**

Within \_\_\_\_ days of the effective date of this decision, the respondent shall submit to and pass an oral exam in subjects substantially related to the accusation. The oral exam shall be administered by an examination board selected by the LEMSA using pre-established criteria (See Section VII: Review Board for criteria).

The respondent shall not be allowed to function as an EMT-I or AEMT until the respondent passes the examination. The respondent has the option and right to repeat the examination. There shall be at least a two (2) week period between examinations. No more than three (3) attempts to pass the examination shall be allowed. If the respondent fails to pass the exam after three (3) attempts, or chooses not to retake the examination, the respondent's certification shall be revoked.

### 10. **Psychiatric/Medical Evaluation:**

Within \_\_\_\_ days of the effective date of this decision, and on a periodic basis as specified by a psychiatrist certified by the American Board of Psychiatry and Neurology, or other specialist as determined by the medical director of the LEMSA, the respondent shall submit to a psychiatric evaluation. The psychiatrist must be approved by the LEMSA prior to the evaluation. The LEMSA may allow the psychiatric evaluation to be conducted by the respondent employer's

## INVESTIGATION AND ENFORCEMENT GUIDE

employee assistance program that meets the qualifications as set forth above. The respondent shall be responsible for all costs associated with the evaluation.

Within \_\_\_\_\_ days of the effective date of this decision, and on a periodic basis as specified by a licensed physician, or other specialist as determined by the medical director of the LEMSA the respondent shall submit to a medical evaluation. The physician must be approved by the LEMSA prior to the evaluation. The LEMSA may allow the medical evaluation to be conducted by the respondent employer's contracted physician that meets the qualifications as set forth above. The respondent shall be responsible for all costs associated with the evaluation.

The LEMSA shall have the sole discretion to determine if the respondent may continue to practice as an EMT until such time that the psychiatrist or physician evaluates and determines that the respondent is mentally and/or physically fit to practice safely as an EMT.

### **11. Performance Improvement Plan (PIP):**

The respondent shall function as a practicing EMT while on probation, except during the time when the respondent's certification is suspended by a term or condition of the disciplinary order.

The respondent shall submit to the LEMSA periodic Performance Improvement Plan reports compiled by his/her employer, or approved education provider. These reports shall document improvement as desired in the plan in order to satisfy this condition. The Performance Improvement Plan shall be developed by the LEMSA in conjunction with the respondent's employer(s). Performance Improvement Plan reports shall be submitted to the LEMSA every \_\_\_\_\_ days for a period of \_\_\_\_\_.

A Performance Improvement Plan may include, but not be limited to, education and/or evaluation of the respondent in areas substantially related to the accusation as follows:

1. Remedial training by a preceptor in a field or clinical setting.
2. Remedial training with performance demonstration by the respondent.
3. Policy review by the respondent.
4. Participation by the respondent in Quality Assurance/Quality Improvement review audits.

Any and all notifications to the LEMSA shall be by registered mail.

## **Section VII: REVIEW BOARD**

The LEMSA shall convene a Review Board to meet the requirements of Optional Conditions 8 and 9 of the Conditions of Probation. The board would be responsible for testing the respondent per the terms and conditions of probation. The board shall

## **INVESTIGATION AND ENFORCEMENT GUIDE**

submit to the LEMSA its recommendation as to whether the respondent has successfully completed the exam.

Each board shall consist of an EMS physician, an EMT or AEMT, and an EMS educator. All board members must be currently active in California in an EMS clinical or administrative capacity.

Any individual that meets the minimum criteria to serve on the board may apply to the LEMSA for a position on the board. The LEMSA shall review the applications for eligibility and establish a list of qualified individuals.

When it is necessary to convene a board, the LEMSA shall select individuals from the list to serve on the board. The LEMSA shall make reasonable attempts to convene a regional board based upon the location of the respondent. Each board member shall be required to sign a document advising that he/she does not have a conflict with the respondent (i.e. personal friend, employer, EMS oversight, etc.).

The term for any board member shall be two (2) years. At the conclusion of the term, a board member may reapply.

### **Board Member Qualifications**

#### Physician

- Must be licensed by the California Medical Board.
- Must have five (5) or more years of experience in EMS.
- Must not have had any discipline brought against him/her by the Medical Board of California.
- Must not have any criminal convictions.

#### EMT-I or AEMT

- Must be currently certified in California without any restrictions.
- Must not have had certification actions for actions for disciplinary cause as defined under the Health and Safety Code, Division 2.5, Section 1798.200 (e).
- Must not have any criminal convictions
- Must have two (2) or more years prehospital EMS experience

#### Educator

- Must qualify as a course director or principal instructor for an EMT-I or AEMT Training Program as that term is defined in California Code of Regulations, Title 22, Division 9, Chapter 2 Section 100070, for EMT-Is, or Chapter 3 Section 10109, for AEMT s.
- Must have five (5) or more years of experience in EMS with at least two (2) years as an EMS educator in an EMT or AEMT training program.
- Must not have had certification actions by their Professional Licensing/Certification Board.
- Must not have any criminal convictions.

# INVESTIGATION AND ENFORCEMENT GUIDE

## Appendix A (MDOs)

### ASSESSMENT USING MEDICAL MODEL FOR DETERMINING IMPAIRMENT IN EMT CERTIFICATE HOLDERS OR APPLICANTS WITH DRUG / ALCOHOL RELATED INVESTIGATIONS, ARRESTS, AND/OR CONVICTIONS PURSUANT TO H&S 1798.200(c) (9)

Offenses:	Applicant	Certificate holder
<p><b>One Misdemeanor Alcohol or Drug-Related Conviction Within 5 Years of Applying for EMT Certification, or Conviction for Misdemeanor Alcohol or Drug-Related offense</b></p>	<ol style="list-style-type: none"> <li>1. Obtain a medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense.               <ol style="list-style-type: none"> <li>a. If no signs of impairment, offer certification with 2 years probation with standard terms and conditions. No random testing required.</li> <li>b. If the individual is impaired, deny certification.</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Obtain a medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense.               <ol style="list-style-type: none"> <li>a. If no signs of impairment certification will be revoked, stayed, 3 years probation with standard terms and conditions. Random testing may be waived.</li> <li>b. If impaired, certification will be revoked.                   <ol style="list-style-type: none"> <li>i. Reinstatement will require that certificate holder go through re-application process and demonstrate 2 years of sobriety</li> <li>ii. Applicant will be required to obtain a medical and psychiatric evaluation by a physician certified by the American Society of Addiction Medicine (ASAM) at applicant's expense within 30 days of re-applying for licensure.</li> <li>iii. Random testing required. Workplace monitoring may be required.</li> </ol> </li> </ol> </li> </ol>
<p><b>Two Misdemeanor Alcohol-Related Convictions Within 5 Years of Applying for EMT Certification, or</b></p>	<ol style="list-style-type: none"> <li>1. Obtain a medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense.</li> </ol>	<ol style="list-style-type: none"> <li>1. Temporary suspension order (TSO) pursuant to Section 100213 of Chapter 6, Division 9, Title 22, California Code of Regulations.</li> <li>2. Obtain medical and psychiatric evaluation by a physician certified in addiction medicine by the American</li> </ol>

## INVESTIGATION AND ENFORCEMENT GUIDE

Offenses:	Applicant	Certificate holder
<p><b>Misdemeanor Alcohol-Related Arrest/Conviction While on Probation</b></p>	<ul style="list-style-type: none"> <li>a. If no signs of impairment, offer probation for 2 years with standard terms and conditions. Random testing required. Workplace monitoring may be required.</li> <li>b. If the individual is impaired, deny certification.</li> </ul>	<p>Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense.</p> <ul style="list-style-type: none"> <li>a. If no signs of impairment certificate holder will receive 30 to 90 days actual suspension time with additional terms and conditions and additional probation time. Random testing required. Workplace monitoring may be required.</li> <li>3. If impaired, certification will be revoked.                             <ul style="list-style-type: none"> <li>a. Reinstatement will require that Certificate holder go through re-application process and demonstrate 2 years of sobriety</li> <li>b. Certificate holder will be required to obtain a medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense within 30 days of re-applying for licensure. Random testing will be required. Workplace monitoring may be required.</li> </ul> </li> </ul>
<p><b>Two Misdemeanor Drug-Related Convictions in the past 5 years</b></p>	<p>Deny Certification</p>	<p>Revoke Certification</p>
<p><b>Three Misdemeanor Alcohol-Related Convictions Within 5 Years of Applying for EMT Certification, or Third Misdemeanor Alcohol-Related Arrest/Convictions While on Probation</b></p>	<p>Deny Certification</p>	<ul style="list-style-type: none"> <li>1. TSO and revocation</li> <li>2. Reinstatement will require that certificate holder go through re-application process and demonstrate 2 years of sobriety</li> <li>3. Certificate holder will be required to obtain a medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense within 30 days of re-applying for licensure. Random testing will be required. Workplace monitoring may be required</li> </ul>

## INVESTIGATION AND ENFORCEMENT GUIDE

Offenses:	Applicant	Certificate holder
<b>Investigation, Arrest or Conviction for Drinking or Drug use on-Duty, or Theft or Diversion of Drugs Intended for Patient Care</b>	<ol style="list-style-type: none"> <li>1. Obtain medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense.               <ol style="list-style-type: none"> <li>a. If no signs of impairment, offer probation for 2 years with standard terms and conditions. No random testing required.</li> <li>b. If the individual is impaired, deny certification.</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. TSO and revocation</li> <li>2. Reinstatement will require that certificate holder go through re-application process and demonstrate 2 years of sobriety</li> <li>3. Obtain medical and psychiatric evaluation by a physician certified in addiction medicine by the American Society of Addiction Medicine (ASAM) or the American Board of Psychiatry and Neurology (ABPN) at applicant's expense within 30 days of re-applying for certification. Random testing will be required. Workplace monitoring required</li> </ol>

### Appendix B (MDOs)

#### CHECKLIST OF IMPOSED DISCIPLINE

The local EMS agency (LEMSA) shall use the "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" in setting disciplinary matters when an EMT-I or AEMT applicant or certificate holder is subject to certification action due to disciplinary cause.

When making a decision regarding certification action pursuant to Section 1798.200 the LEMSA may give credit for discipline imposed by the employer for the same conduct.

The tables on the reverse enumerate the recommended certification actions that may be taken by the LEMSA and the optional terms and conditions of probation as detailed in the guidelines cited above. The left column of the table denotes the recommended action sought by the LEMSA. The right column is used to denote the action imposed by the employer. Use the chart below to determine which optional conditions of probation are applicable to the violations listed in section 1798.200 of the Health and Safety Code.

Quick Reference
-----------------

## INVESTIGATION AND ENFORCEMENT GUIDE

Violation	Discipline			Optional Conditions of Probation
	Maximum	Recom'd.*	Minimum*	
1798.200(c):				
(1) Fraud in the Procurement	Rev/Denial	Rev/Denial	60 days	N/A
(2) Gross Negligence	Rev.	60 days, 3 years	3 years	5, 8, 9, 11
(3) Repeated Negligent Acts	Rev.	30 days, 3 years	1 year	5, 8, 9, 11
(4) Incompetence	Rev.	30 days, 3 years	1 year	5, 8, 9, 11
(5) Fraudulent, Dishonest, Corrupt Acts	Rev.	60 days, 3 years	3 years	6
(6) Conviction of a Crime	Rev.	Variable	1 year	N/A
(7) Violating Division 2.5 or Regulations	Rev.	60 days, 3 years	3 years	6
(8) Violating Drug Statutes or Regulations	Rev.	60 days, 3 years	3 years	1, 2, 3, 4, 10
(9) Addiction or Misuse	Rev.	Indef., 3 yrs <sup>‡</sup>	3 years	1, 2, 3, 4, 10
(10) Outside Medical Control	Rev.	15 days, 1 year	1 year	5, 8
(11) Irrational Behavior	Rev.	Indef., <sup>‡</sup>	1 year	8, 9, 10
(12) Unprofessional Conduct:				
(A) Mistreatment of Abuse of a Patient	Rev/Denial	60 days, 3 years	3 years	7, 10
(B) Failure to Maintain Confidentiality	Rev/Denial	30 days, 1 year	1 year	6, 9
(C) Commission of any PC 290 Offense	Rev/Denial	Rev/Denial	Rev/Denial	N/A

Note: Days refers to suspension, years refer to probation

\* Including all standard terms and conditions and optional conditions if applicable.

‡ Suspension time is indefinite: until completion of a detoxification program or until resolution of the physical or mental disability.

## Paramedic Accreditation & Licensure

### Local EMS Agency Investigative Process

The following investigative procedure will be utilized by the Agency for complaints related to Paramedics in the County of El Dorado.

#### **Agency Responsibility**

All Incidents should be reported to the Agency in writing. However, based on the severity or nature of an incident, the EMS Administrator may be notified twenty-four (24) hours a day. Upon receipt of written notification or an EMS Event Analysis Report, the Agency will conduct a review of the incident under the supervision of the EMS Medical Director and/or EMS Agency Administrator.

As the Local Emergency Medical Services Agency (LEMSA), El Dorado County EMS Agency is responsible for paramedic accreditation and works with the State of California EMS Authority on paramedic licensure issues. The Agency is responsible for the initial investigation and evidence collection and may offer a Performance Improvement Plan (PIP) as a means of resolution when appropriate.

## INVESTIGATION AND ENFORCEMENT GUIDE

### **Complaint / EMS Event Analysis Report Received**

When a complaint or EMS Event Analysis Report is received in writing, the Agency will issue a case number and determine if further review is indicated. The Agency will then evaluate the preliminary information and determine which entity, if any, should handle the case. If the Agency deems no further action necessary or the complaint to be unfounded, the case will be closed. Paramedic licensure action by the EMS Medical Director to immediately suspend a holder's license shall be performed in accordance with the California Health and Safety Code 1798.202.

### **Proceedings**

Any proceedings by the EMS Authority to deny, suspend, or revoke the license of a paramedic or place any paramedic license holder on probation pursuant to Section 1798.200 of the Health and Safety Code, or impose an administrative fine pursuant to Section 1798.210 of the Health and Safety Code, shall be conducted in accordance with this article and pursuant to the provisions of the Administrative Procedure Act, Government Code, Section 11500 et seq. The authority shall use the "EMS Authority Recommended Guidelines for Disciplinary Orders and Conditions of Probation", dated July 26, 2008 and incorporated by reference herein, as the standard in setting disciplinary matters when a paramedic applicant or license holder is found to be in violation of Section 1798.200 of Division 2.5 of the Health and Safety Code.

### **Discovery and Preliminary Review**

The Agency will begin to review the circumstances related to the complaint. In this phase actions such as, but not limited to, collection of patient care records, CAD data, incident reports, audiotapes, etc. may occur. The employer may or may not be involved in the investigation at this point. Upon review of the circumstances, the Agency will either close the case with an offer of education, find the complaint to be unsubstantiated, or submit to the State of California EMS Authority.

If education is offered, the Agency Performance Improvement Plan (PIP) must be utilized. The Agency may work in cooperation with the subject's employer or other appropriate system resources in the development and execution of the PIP. Failure to complete a PIP may result in immediate administrative action.

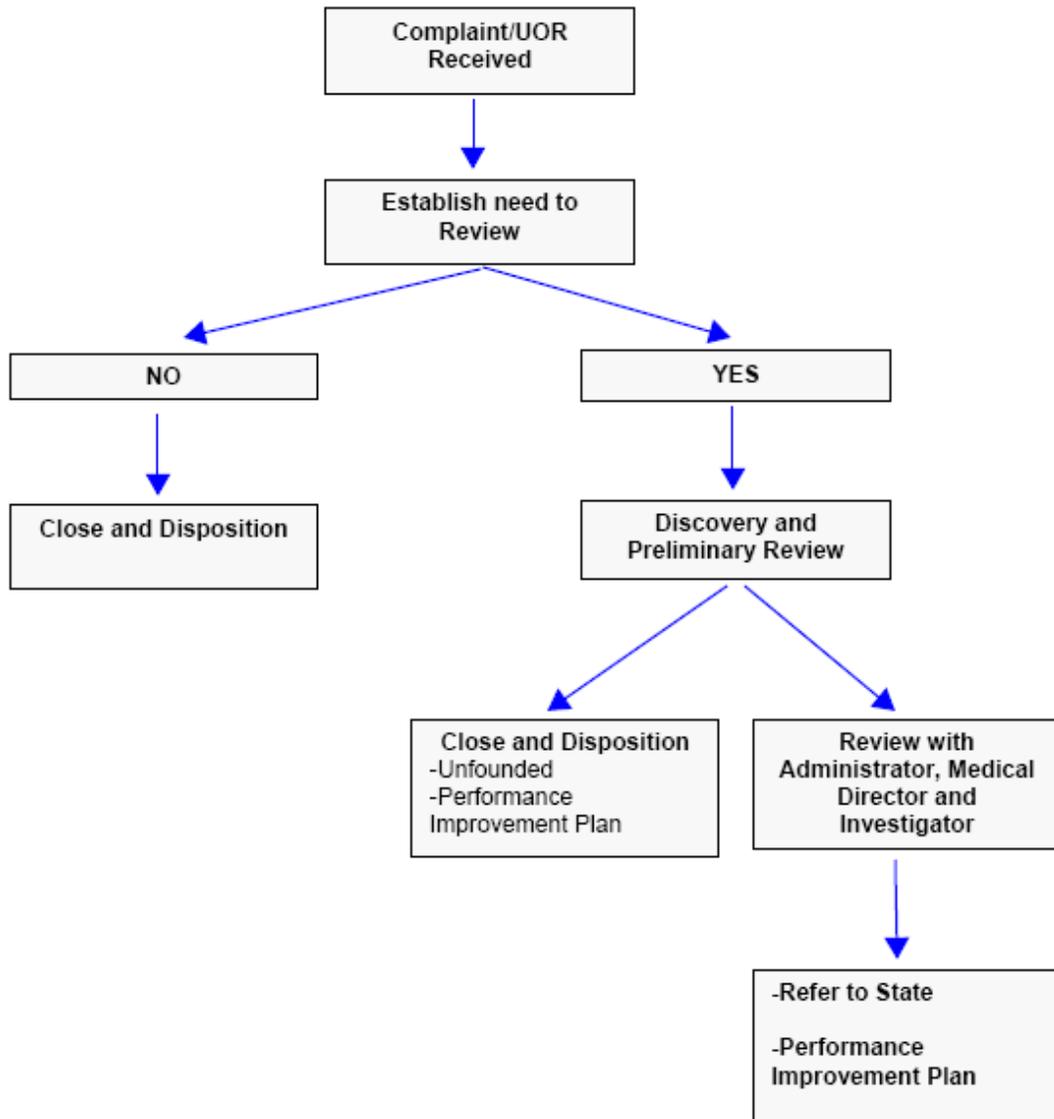
### **Formal Investigation**

A formal investigation may be conducted by the Agency if requested by EMSA. This may consist of, but is not limited to, further collection and review of documents, evidence collection, interviews, etc. When the need for a formal investigation has been determined, the paramedic and their employer will be notified in writing by mail. Before any disciplinary proceedings are undertaken, the EMS Authority shall evaluate all information submitted to or discovered by the EMS Authority including, but not limited to, a recommendation for suspension or revocation from a medical director of a local EMS agency, for evidence of a threat to public health and safety pursuant to Section 1798.200 of the Health and Safety Code.

The respondent shall be allowed representation of his/her choice through all processes of the investigation. Any such representation shall be at the respondent's expense.

# INVESTIGATION AND ENFORCEMENT GUIDE

## Paramedic Investigation Diagram



## References

### **California Code of Regulations, Title 22, Division 9, Chapter 6 *Process for EMT Certification Disciplinary Action***

#### **Article 1. Definitions**

##### **§ 100201. Certificate.**

"Certificate" means a valid Emergency Medical Technician (EMT) or Advanced EMT certificate issued pursuant to Division 2.5.

NOTE: Authority cited: Sections 1797.62, 1797.107, 1797.176, and 1798.204, Health and Safety Code.

Reference: Sections: 1797.61, 1797.62, 1797.80, 1797.82, 1797.184, 1797.210, 1797.211, 1797.216, and 1798.200, Health and Safety Code.

##### **§ 100202. Certifying Entity.**

"Certifying entity," as used in this Chapter, means-a public safety agency or the office of the State Fire Marshal if the agency has a training program for EMT personnel that is approved pursuant to the standards developed pursuant to Section 1797.109 of the Health and Safety Code, or the medical director of the local EMS agency (LEMSA).

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.210, 1797.216 and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62, 1797.184, 1797.211, and 1798.204, Health and Safety Code.

##### **§ 100202.1. Disciplinary Cause.**

For the purposes of this Chapter, "Disciplinary Cause" means an act that is substantially related to the qualifications, functions, and duties of an EMT and/or Advanced EMT and is evidence of a threat to the public health and safety, per Health and Safety Code Section 1798.200.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, 1797.210, 1797.216 and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62 and 1798.204, Health and Safety Code.

##### **§ 100203. Division 2.5.**

"Division 2.5" means Division 2.5 of the Health and Safety Code, the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1798.204, Health and Safety Code.

##### **§ 100204. Medical Director.**

For the purposes of this Chapter, "medical director" means the medical director of the LEMSAs, pursuant to Section 1797.202(a) of the Health and Safety Code.

NOTE: Authority cited: Sections 1797.62, 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1797.202, Health and Safety Code.

## INVESTIGATION AND ENFORCEMENT GUIDE

### **§ 100205. Multiple Certificate Holder.**

"Multiple Certificate Holder" means a person who holds an EMT, Advanced EMT, and/or EMT-II certificate issued pursuant to Division 2.5.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62, 1797.80, 1797.82, 1797.210, 1797.216 and 1798.204, Health and Safety Code.

### **§ 100206. Relevant Employer(s).**

"Relevant employer(s)" means those ambulance services permitted by the Department of the California Highway Patrol or a public safety agency, that the certificate holder works for or was working for at the time of the incident under review, as an EMT or Advanced EMT either as a paid employee or a volunteer.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1797.61, 1798.200, 1798.204, Health and Safety Code.

### **§100206.1. Discipline**

"Discipline" means either a disciplinary plan taken by a relevant employer pursuant to Section 100206.2 of this Chapter or certification action taken by a medical director pursuant to Section 100204 of this Chapter, or both a disciplinary plan and certification action.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1797.61, 1798.200, 1798.204, Health and Safety Code.

### **§ 100206.2. Disciplinary Plan.**

"Disciplinary Plan" means a written plan of action that can be taken by a relevant employer as a consequence of any action listed in Section 1798.200 (c). The Disciplinary Plan shall be submitted to the LEMSA medical director and may include recommended certification action consistent with the Recommended Guidelines for Disciplinary Orders and Conditions of Probation for EMT (Basic) and Advanced EMT (MDOs).

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1798.200, 1798.204, Health and Safety Code.

### **§ 100206.3. Certification Action.**

"Certification Action" means those actions that may be taken by a medical director that include denial, suspension, revocation of a certificate, or placing a certificate holder on probation.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1797.204, 1798.200, Health and Safety Code.

### **§ 100206.4. Model Disciplinary Orders**

"Model Disciplinary Orders" means the Recommended Guidelines for Disciplinary Orders and Conditions of Probation (EMSA document #134) which were developed to provide consistent and equitable discipline in cases dealing with disciplinary cause.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Section 1797.61, 1798.200, 1798.204, Health and Safety Code.

# INVESTIGATION AND ENFORCEMENT GUIDE

## Article 2. General Provisions

### § 100207. Application of Chapter.

(a) The certifying entity, relevant employer, or LEMSA shall adhere to the provisions of this Chapter, in applicable situations, when investigating or implementing any actions for disciplinary cause.:

(b) In order to take disciplinary or certification action on an EMT, Advanced EMT, or EMT-II, it must first be determined that a disciplinary cause has occurred by the applicant or certificate holder and there exists a threat to the public health and safety, as evidenced by the occurrence of any of the actions listed in Section 1798.200(c) of the Health and Safety Code by the applicant or certificate holder.

(c) An application for certification or recertification shall be denied without prejudice and does not require an administrative hearing, when an applicant does not meet the requirements for certification or recertification, including but not limited to, failure to pass a certification or recertification examination, lack of sufficient continuing education or documentation of a completed refresher course, failure to furnish additional information or documents requested by the certifying entity, or failure to pay any required fees. The denial shall be in effect until all requirements for certification or recertification are met. If a certificate expires before recertification requirements are met, the certificate shall be deemed a lapsed certificate and subject to the provisions pertaining to lapsed certificates.

(d) Nothing in this Chapter shall be construed to limit the authority of a base hospital medical director to provide supervision and medical control for prehospital emergency medical care personnel, as specified in local medical control policies and procedures, developed pursuant to requirements of Division 2.5 and of Chapters 3 and 4 of this division for medical control and supervision.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798. 204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62, 1797.176, 1797.202, 1797.210, 1797.216, 1797.220, 1798, 1798.100, 1798.102, 1798.200 and 1798.204, Health and Safety Code.

### § 100208. Substantial Relationship Criteria for the Denial, Placement on Probation, Suspension, or Revocation of a Certificate.

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

(b) For the purposes of a crime, the record of conviction or a certified copy of the record shall be conclusive evidence of such conviction.

(1) "Crime" means any act in violation of the penal laws of this state, any other state, or federal laws. This also means violation(s) of any statute which impose criminal penalties for such violations.

(2) "Conviction" means the final judgment on a verdict of finding of guilty, a plea of guilty, or a plea of nolo contendere.

(c) The LEMSA, when determining the certification action to be imposed or reviewing a petition for reinstatement or reduction of penalty under Section 11522 of the Government Code, shall evaluate the rehabilitation of the applicant and present eligibility for certification of the respondent. When the certification action warranted is probation, denial, suspension, or revocation the following factors may be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;

## INVESTIGATION AND ENFORCEMENT GUIDE

2. Actual or potential harm to the public;
  3. Actual or potential harm to any patient;
  4. Prior disciplinary record;
  5. Prior warnings on record or prior remediation;
  6. Number and/or variety of current violations;
  7. Aggravating evidence;
  8. Mitigating evidence;
  9. Rehabilitation evidence;
  10. In the case of a criminal conviction, compliance with terms of the sentence and/or court-ordered probation;
  11. Overall criminal record;
  12. Time that has elapsed since the act(s) or offense(s) occurred;
  13. If applicable, evidence of expungement proceedings pursuant to Penal Code 1203.4.
  14. In determining appropriate certification disciplinary action, the LEMSA medical director may give credit for prior disciplinary action imposed by the respondent's employer.
- NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, 1798.200, and 1798.204, Health and Safety Code.
- Reference: Sections 1797.61, 1797.176, 1797.210, 1797.216, 1797.220, and 1798.200, Health and Safety Code.

### **§ 100208.1. Responsibilities of Relevant Employer.**

Under the provisions of this Chapter, relevant employers:

- (a) May conduct investigations, according to the requirements of this Chapter, to determine disciplinary cause.
- (b) Upon determination of disciplinary cause, the relevant employer may develop and implement, a disciplinary plan, in accordance with the MDOs.
  - (1) The relevant employer shall submit that disciplinary plan to the LEMSA along with the relevant findings of the investigation related to disciplinary cause, within three (3) working days of adoption of the disciplinary plan.
  - (2) The employer's disciplinary plan may include a recommendation that the medical director consider taking action against the holder's certificate to include denial of certification, suspension of certification, revocation of certification, or placing a certificate on probation.
- (c) Shall notify the medical director that has jurisdiction in the county in which the alleged action occurred within three (3) working days after an allegation has been validated as potential for disciplinary cause.
- (d) Shall notify the medical director within three (3) working days of the occurrence of any of following:
  - (1) The EMT or Advanced EMT is terminated or suspended for a disciplinary cause,
  - (2) The EMT or Advanced EMT resigns or retires following notification of an impending investigation based upon evidence that would indicate the existence of a disciplinary cause, or
  - (3) The EMT or Advanced EMT is removed from EMT or Advanced EMT -related duties for a disciplinary cause after the completion of the employer's investigation.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, 1798.200, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.176, 1797.200, 1797.210, 1797.211, 1797.220, and 1798.200, Health and Safety Code.

### **§ 100209. Jurisdiction of the Medical Director.**

- (a) The medical director shall conduct investigations to validate allegations for disciplinary cause when the certificate holder is not an employee of a relevant employer or the relevant employer does not conduct an investigation. Upon determination of disciplinary cause, the medical director may take certification action as necessary against an EMT or Advanced EMT certificate.

## INVESTIGATION AND ENFORCEMENT GUIDE

(b) The medical director may, upon determination of disciplinary cause and according to the provisions of this Chapter, take certification action against an EMT or Advanced EMT to deny, suspend, or revoke, or place a certificate holder on probation, upon the findings by the medical director of the occurrence of any of the actions listed in Health and Safety Code, Section 1798.200 (c) and for which any of the following conditions are true:

(1) The relevant employer, after conducting an investigation, failed to impose discipline for the conduct under investigation, or the medical director makes a determination that discipline imposed by the relevant employer was not in accordance with the MDOs and the conduct of the certificate holder constitutes grounds for certification action.

(2) The medical director determines, following an investigation conducted in accordance with this Chapter, that the conduct requires certification action.

(c) If The medical director, after consultation with the relevant employer or without consultation when no relevant employer exists, may temporarily suspend , prior to a hearing, an EMT or Advanced EMT certificate upon a determination of the following:

(1) The certificate holder has engaged in acts or omissions that constitute grounds for revocation of the EMT or Advanced EMT certificate; and

(2) Permitting the certificate holder to continue to engage in certified activity without restriction poses an imminent threat to the public health and safety.

(d) If the medical director takes any certification action the medical director shall notify the Authority of the findings of the investigation and the certification action taken by using Form EMSA-CRI (1/93) through June 30, 2010. Commencing July 1, 2010 and thereafter, this information shall be entered directly into the Central Registry by the LEMSA taking certification action.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62, 1797.90, 1797.117, 1797.118, 1797.202, 1797.216, 1797.217, 1797.220, 1798, 1798.200 and 1798.204, Health and Safety Code.

### Article 3. Evaluation and Investigation.

#### § 100210. Evaluation of Information.

(a) A relevant employer who receives an allegation of conduct listed in Section 1798.200 (c) of the Health and Safety Code against an EMT or Advanced EMT and once the allegation is validated, shall notify the medical director of the LEMSA, within three (3) working days, of the EMT's or Advanced EMT's name, certification number, and the allegation(s). Notification shall only be made to one LEMSA medical director with jurisdiction in the following order:

(1) the medical director where the EMT or Advanced EMT is employed by a relevant employer, or

(2) the medical director where the conduct occurred, or

(3) the medical director where the EMT's or Advanced EMT's Certifying Entity is located.

(b) A LEMSA that receives any complaint against an EMT or Advanced EMT shall forward the original complaint and any supporting documentation to the relevant employer for investigation pursuant to subsection (a) of this section, if there is a relevant employer, within three (3) working days of receipt of the information. If there is no relevant employer or the relevant employer does not wish to investigate the complaint, the medical director shall evaluate the information received from a credible source, including but not limited to, information obtained from an application, medical audit, or public complaint, alleging or indicating the possibility of a threat to the public health and safety by the action of an applicant for, or holder of, a certificate issued pursuant to Division 2.5.

(c) The relevant employer or medical director shall conduct an investigation of the allegations in accordance with the provisions of this Chapter, if warranted.

## INVESTIGATION AND ENFORCEMENT GUIDE

(d) Statewide public safety agencies shall provide the Authority with current relevant employer contact information for their individual agencies.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62, 1797.90, 1797.176, 1797.202, 1797.220, 1798, 1798.200 and 1798.204, Health and Safety Code.

### **§ 100211. Investigations Involving Firefighters**

(a) The rights and protections described in Chapter 9.6 of the Government Code shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.

(b) All investigations involving EMT s, Advanced EMT's, and EMT-IIs who are employed by a public safety agency as a firefighter shall be conducted in accordance with Chapter 9.6 of the Government Code, Section 3250 et. seq.

NOTE: Authority cited: Sections 1797.107, 1797.176 and 1798.204, Health and Safety Code. Sections 3250, 27727, Government Code.

Reference: Sections 1797.90, 1797.176, 1797.202, 1797.220, and 1798.204, Health and Safety Code.

#### **§ 100211.1. Due Process.**

The certification action process shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

NOTE: Authority cited: Sections: 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections: 1798.200 and 1798.204, Health and Safety Code.

### **Article 4. Determination and Notification of Action**

#### **§ 100212. Determination of Certification Action.**

(a) certification action, relative to the individual's certificate(s) shall be taken as a result of the findings of the investigation.

(b) Upon determining the disciplinary or certification action to be taken as authorized by this Chapter, the relevant employer or medical director shall complete and place in the personnel file or any other file used for any personnel purposes by the relevant employer or LEMSA, a statement certifying the decision made and the date the decision was made. The decision must contain findings of fact and a determination of issues, together with the disciplinary plan and the date the disciplinary plan shall take effect.

(c) In the case of a temporary suspension order pursuant to Section 100209 (c) of this Chapter, it shall take effect upon the date the notice required by Section 100213 of this Chapter is mailed to the certificate holder.

(d) For all other certification actions, the effective date shall be thirty days from the date the notice is mailed to the applicant for, or holder of, a certificate unless another time is specified or an appeal is made.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.62, 1797.176, 1797.202, 1797.211, 1797.220, 1798, 1798.200 and 1798.204, Health and Safety Code.

#### **§ 100213. Temporary Suspension Order.**

(a) A medical director may temporarily suspend a certificate prior to hearing if, in the certificate holder has engaged in acts or omissions that constitute grounds for denial or revocation according to Section 100216(c) of this Chapter and if in the opinion of the medical director

## INVESTIGATION AND ENFORCEMENT GUIDE

permitting the certificate holder to continue to engage in certified activity would pose an imminent threat to the public health and safety.

(b) Prior to, or concurrent with, initiation of temporary suspension order of a certificate pending hearing, the medical director shall consult with the relevant employer of the certificate holder

(c) The notice of temporary suspension pending hearing shall be served by registered mail or by personal service to the certificate holder immediately, but no longer than three (3) working days from making the decision to issue the temporary suspension. The notice shall include the allegations that allowing the certificate holder to continue to engage in certified activities would pose an imminent threat to the public health and safety. (d) Within three (3) working days of the initiation of the temporary suspension by the LEMSA, the LEMSA and relevant employer shall jointly investigate the allegation in order for the LEMSA to make a determination of the continuation of the temporary suspension.

(1) All investigatory information, not otherwise protected by the law, held by the LEMSA and the relevant employer shall be shared between the parties via facsimile transmission or overnight mail relative to the decision to temporarily suspend.

(2) The LEMSA shall serve within fifteen (15) calendar days an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (Administrative Procedures Act).

(3) If the certificate holder files a Notice of Defense, the administrative hearing shall be held within thirty (30) calendar days of the LEMSA's receipt of the Notice of Defense.

(4) The temporary suspension order shall be deemed vacated if the LEMSA fails to serve an accusation within fifteen (15) calendar days or fails to make a final determination on the merits within fifteen (15) calendar days after the Administrative Law Judge (ALJ) renders a proposed decision.

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.90, 1797.160, 1797.176, 1797.200, 1797.202, 1797.211, 1797.220, 1798.2, 1798.100, 1798.200, and 1798.204, Health and Safety Code.

### **§ 100214. Final Determination of Certification Action by the Medical Director**

Upon determination of certification action following an investigation, and appeal of certification action pursuant to Section 100211.1 of this Chapter, if the respondent so chooses, the medical director may take the following final actions on an EMT or Advanced EMT certificate:

- (a) Place the certificate holder on probation
- (b) Suspension
- (c) Denial
- (d) Revocation

#### **§ 100214.1. Placement of a Certificate Holder on Probation.**

Pursuant to Section 100207, the medical director may place a certificate holder on probation any time an infraction or performance deficiency occurs which indicates a need to monitor the certificate holder's conduct in the EMS system, in order to protect the public health and safety. The term of the probation and any conditions shall be in accordance with MDOs established by the Authority. The medical director that placed the certificate holder on probation may revoke the EMT or Advanced EMT certificate if the certificate holder fails to successfully complete the terms of probation.

NOTE: Authority cited: Sections 1797.107, 1797.176 and 1798.204, Health and Safety Code. Reference: Sections 1797.61, 1797.176, 1797.202, 1797.184, 1797.220, 1798, 1798.200 and 1798.204, Health and Safety Code.

#### **§ 100215 4.2. Suspension of a Certificate.**

## INVESTIGATION AND ENFORCEMENT GUIDE

(a) The medical director may suspend an individual's EMT or Advanced EMT certificate for a specified period of time for disciplinary cause in order to protect the public health and safety.

(b) The term of the suspension and any conditions for reinstatement, shall be in accordance with MDOs established by the Authority

(c) Upon the expiration of the term of suspension, the individual's certificate shall be reinstated only when all conditions for reinstatement have been met. The medical director shall continue the suspension until all conditions for reinstatement have been met.

(d) If the suspension period will run past the expiration date of the certificate, the EMT or Advanced EMT shall meet the recertification requirements for certificate renewal prior to the expiration date of the certificate.

NOTE: Authority cited: Sections 1797.107, 1797.175, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.176, 1797.202, 1797.220, 1798, 1798.200, and 1798.204, Health and Safety Code.

### **§ 100216 4.3. Denial or Revocation of a Certificate.**

(a) A certifying entity, that is not a LEMSA, shall advise a certification or recertification applicant whose conduct indicates a potential for disciplinary cause, based on an investigation by the certifying entity prompted by a DOJ and/or FBI CORI, pursuant to Section 100210(a) of this Chapter, to apply to a LEMSA for certification or recertification.

(b) The medical director may deny or revoke any EMT or Advanced EMT certificate for disciplinary cause that have been investigated and verified by application of this Chapter

(c) The medical director shall deny or revoke an EMT or Advanced EMT certificate if any of the following apply to the applicant:

(1) Has committed any sexually related offense specified under Section 290 of the Penal Code.

(2) Has been convicted of murder, attempted murder, or murder for hire.

(3) Has been convicted of two (2) or more felonies.

(4) Is on parole or probation for any felony.

(5) Has been convicted and released from incarceration for said offense during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter.

(6) Has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.

(7) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to the use, sale, possession, or transportation of narcotics or addictive or dangerous drugs.

(8) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offence relating to force, threat, violence, or intimidation.

(9) Has been convicted within the preceding five (5) years of any theft related misdemeanor.

(d) The medical director may deny or revoke an EMT or Advanced EMT certificate if any of the following apply to the applicant:

(1) Has committed any act involving fraud or intentional dishonesty for personal gain within the preceding seven (7) years.

(2) Is required to register pursuant to Section 11590 of the Health and Safety Code.

(e) Subsection (a) and (b) shall not apply to convictions that have been pardoned by the Governor, and shall only apply to convictions where the applicant/certificate holder was prosecuted as an adult. Equivalent convictions from other states shall apply to the type of offenses listed in (a) and (b). As used in this Section, "felony" or "offense punishable as a felony" refers to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

(f) This Section shall not apply to those EMTs, or EMT-IIs who obtain their California certificate prior to the effective date of this Section; unless:

## INVESTIGATION AND ENFORCEMENT GUIDE

- (1) The certificate holder is convicted of any misdemeanor or felony after the effective date of this Section.
- (2) The certificate holder committed any sexually related offense specified under Section 290 of the Penal Code.
- (3) The certificate holder failed to disclose to the certifying entity any prior convictions when completing his/her application for initial EMT or Advanced EMT certification or certification renewal.
- (g) Nothing in this Section shall negate an individual's right to appeal a denial of an EMT or Advanced EMT certificate pursuant to this Chapter.
- (h) Certification action by a medical director shall be valid statewide and honored by all certifying entities for a period of at least twelve (12) months from the effective date of the certification action. An EMT or Advanced EMT whose application was denied or an EMT or Advanced EMT whose certification was revoked by a medical director shall not be eligible for EMT or Advanced EMT application by any other certifying entity for a period of at least twelve (12) months from the effective date of the certification action. EMT's or Advanced EMT's whose certification is placed on probation must complete their probationary requirements with the LEMSA that imposed the probation. Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code, Section 11522, Government Code. Reference: Sections 1797.61, 1797.62, 1797.118, 1797.176, 1797.202, 1797.220, 1798, 1798.200, 1798.204, and 1797.216, Health and Safety Code.

### **§ 10021. Notification of Final Decision of Certification Action.**

- (a) For the final decision of certification action, the medical director shall notify the applicant/certificate holder and his/her relevant employer(s) of the certification action within ten (10) working days after making the final determination
- (b) The notification of final decision shall be served by registered mail or personal service and shall include the following information:
  - (1) The specific allegations or evidence which resulted in the certification action;
  - (2) The certification action(s) to be taken, and the effective date(s) of the certification action(s), including the duration of the action(s);
  - (4 3) Which certificate(s) the certification action applies to in cases of holders of multiple certificates;
  - (5 4) A statement that the certificate holder must report the certification action within ten (10) working days to any other LEMSA and relevant employer in whose jurisdiction s/he uses the certificate;

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.61, 1797.160, 1797.176, 1797.202, 1797.217, 1797.220, 1798, 1798.200 and 1798.204, Health and Safety Code.

## **Article 5. Local Responsibilities.**

### **§ 1002186. Development of Local Policies and Procedures.**

Each Relevant Employer, Certifying Entity and LEMSA shall develop and adopt policies and procedures for local implementation of the provisions of this Chapter. All local policies and procedures so adopted must be in accordance with these provisions and must address all of the requirements of this Chapter, as applicable.

### **§ 100217. Reimbursement for Administrative Law Judge Costs.**

- (a) Actual fees paid by a LEMSA for the services of an ALJ, who is on the staff of the Office of Administrative Hearings, for disciplinary action appeals as required by this Chapter and in

## INVESTIGATION AND ENFORCEMENT GUIDE

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.

(1) Each LEMSA that has paid for the services of an ALJ under this section during the preceding fiscal year shall submit, to the Authority, copies of invoices for fees charged and proof of the actual amount paid according to the provisions of (a) (2) (A) of this section.

(2) The Authority shall reimburse the LEMSAs no more than the actual payment made for the ALJ in accordance with the following:

(A) Invoices for fees incurred between July 1 and June 30 shall be due at the Authority no later than August 31.

(B) The LEMSA has provided evidence of the costs to include an invoice, payment, the name and any other required identifying information for the emergency medical technician(s) whose disciplinary hearing was included in the costs.

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

NOTE: Authority cited: Sections 1797.107, 1797.176, 1797.184, and 1798.204, Health and Safety Code.

Reference: Sections 1797.62, 1797.176, 1797.202, 1797.216, 1797.217, 1797.220, 1798, 1798.200, and 1798.204, Health and Safety Code.

## **The Firefighters Procedural Bill Of Rights Act California Government Code 3250-3262**

### **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,

## INVESTIGATION AND ENFORCEMENT GUIDE

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 work missed while being interrogated.

(b) The firefighter under investigation shall be informed, prior to 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 interrogation, 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

## INVESTIGATION AND ENFORCEMENT GUIDE

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 non-criminal 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.

## INVESTIGATION AND ENFORCEMENT GUIDE

(5) 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 predisciplinary 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

## INVESTIGATION AND ENFORCEMENT GUIDE

writing, that the mistaken 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 information 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.

## INVESTIGATION AND ENFORCEMENT GUIDE

(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. Nothing 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 interagency 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.

## **Administrative Procedures Act California Government Code 11500-11529**

### **11500.**

In this chapter unless the context or subject matter otherwise requires:

(a) "Agency" includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word "agency" alone is used the power to act may be delegated by the agency, and wherever the words "agency itself" are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(b) "Party" includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

## INVESTIGATION AND ENFORCEMENT GUIDE

(c) "Respondent" means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) "Administrative law judge" means an individual qualified under Section 11502.

(e) "Agency member" means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

### **11501.**

(a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) This chapter applies to an adjudicative proceeding of an agency created on or after July 1, 1997, unless the statutes relating to the proceeding provide otherwise.

(c) Chapter 4.5 (commencing with Section 11400) applies to an adjudicative proceeding required to be conducted under this chapter, unless the statutes relating to the proceeding provide otherwise.

### **11502.**

(a) All hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings. This subdivision applies to a hearing required to be conducted under this chapter that is conducted under the informal hearing or emergency decision procedure provided in Chapter 4.5 (commencing with Section 11400).

(b) The Director of the Office of Administrative Hearings has power to appoint a staff of administrative law judges for the office as provided in Section 11370.3. Each administrative law judge shall have been admitted to practice law in this state for at least five years immediately preceding his or her appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

### **11503.**

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

### **11504.**

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be 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 that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom

## INVESTIGATION AND ENFORCEMENT GUIDE

requests permitted by Section 11505 may be made, shall be served with the statement of issues.

### **11504.5.**

In the following sections of this chapter, all references to accusations shall be deemed to be applicable to statements of issues except in those cases mentioned in subdivision (a) of Section 11505 and Section 11506 where compliance is not required.

### **11505.**

(a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form: Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact: (here insert name and address of appropriate person). The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

### **11506.**

(a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

## INVESTIGATION AND ENFORCEMENT GUIDE

- (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.
- (4) Admit the accusation in whole or in part.
- (5) Present new matter by way of defense.
- (6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
- (b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.
- (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.
- (d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.
- (e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section

### **11507.**

At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

### **11507.3.**

- (a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.
- (b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

### **11507.5.**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

### **11507.6.**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to

## INVESTIGATION AND ENFORCEMENT GUIDE

testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e) Any other writing or thing which is relevant and which would be admissible in evidence;
- (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof. For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements. Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

### **11507.7.**

- (a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.
- (b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.
- (c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.
- (d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

## INVESTIGATION AND ENFORCEMENT GUIDE

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

### **11508.**

(a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent. Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

### **11509.**

The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense. The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) on the \_\_\_\_ day of \_\_\_\_, 19\_\_, at the hour of \_\_\_\_, upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office of agency).

### **11511.**

On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the

## INVESTIGATION AND ENFORCEMENT GUIDE

name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefore in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

### **11511.5.**

(a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on identity and limitation of the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.

(9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

(10) Motions for intervention.

(11) Exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d).

(12) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(d) With the consent of the parties, the prehearing conference may be converted immediately into alternative dispute resolution or an informal hearing. With the consent of the parties, the proceeding may be converted into alternative dispute resolution to be conducted at another time. With the consent of the agency, the proceeding may be converted into an informal hearing to be conducted at another time subject to the right of a party to object to use of the informal hearing procedure as provided in Section 11445.30.

(e) The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order.

### **11511.7.**

(a) The administrative law judge may order the parties to attend and participate in a settlement conference. The administrative law judge shall set the time and place for the settlement conference, and shall give reasonable written notice to all parties.

(b) The administrative law judge at the settlement conference shall not preside as administrative law judge at the hearing unless otherwise stipulated by the parties. The administrative law

## INVESTIGATION AND ENFORCEMENT GUIDE

judge may conduct all or part of the settlement conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

### 11512.

(a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

(b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the administrative law judge admitting or excluding evidence is subject to review in the same manner and to the same extent as the administrative law judge's proposed decision in the proceeding.

(c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the administrative law judge or agency member, and included in the record. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case, except that a substitute qualified to act may be appointed by the appointing authority.

(d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.

(e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517.

### 11513.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

## INVESTIGATION AND ENFORCEMENT GUIDE

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

### **11514.**

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form: The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

### **11515.**

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.

### **11516.**

The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

### **11517.**

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

## INVESTIGATION AND ENFORCEMENT GUIDE

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefore. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

## INVESTIGATION AND ENFORCEMENT GUIDE

### 11518.

Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

### 11518.5.

(a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The agency may refer the application to the administrative law judge who formulated the proposed decision or may delegate its authority under this section to one or more persons.

(c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.

(d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

### 11519.

(a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

### 11519.1.

(a) A decision rendered against a licensee under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code may include an order of restitution for any financial loss or damage found to have been suffered by a person in the case.

## INVESTIGATION AND ENFORCEMENT GUIDE

(b) The failure to make the restitution in accordance with the terms of the decision is separate grounds for the Department of Motor Vehicles to refuse to issue a license under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code, and constitutes a violation of the terms of any applicable probationary order in the decision.

(c) Nothing in this section is intended to limit or restrict actions, remedies, or procedures otherwise available to an aggrieved party pursuant to any other provision of law.

### **11520.**

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

### **11521.**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

### **11522.**

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and

## INVESTIGATION AND ENFORCEMENT GUIDE

the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

### **11523.**

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

### **11524.**

(a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

(c) In the event that an application for a continuance by a party is denied by an administrative law judge of the Office of Administrative Hearings, and the party seeks judicial review thereof, the party shall, within 10 working days of the denial, make application for appropriate judicial relief in the superior court or be barred from judicial review thereof as a matter of jurisdiction. A party applying for judicial relief from the denial shall give notice to the agency and other parties. Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be either oral at the time of the denial of application for a continuance or written at the same time application is made in court for judicial relief. This subdivision does not apply to the Department of Alcoholic Beverage Control.

### **11526.**

The members of an agency qualified to vote on any question may vote by mail or another appropriate method.

## INVESTIGATION AND ENFORCEMENT GUIDE

### 11527.

Any sums authorized to be expended under this chapter by any agency shall be a legal charge against the funds of the agency.

### 11528.

In any proceedings under this chapter any agency, agency member, secretary of an agency, hearing reporter, or administrative law judge has power to administer oaths and affirmations and to certify to official acts.

### 11529.

(a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

(1) To be represented by counsel.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(3) To present written evidence in the form of relevant declarations, affidavits, and documents. The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

(4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

(1) There is a reasonable probability that the petitioner will prevail in the underlying action.

(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

## INVESTIGATION AND ENFORCEMENT GUIDE

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

## **The California EMS Authority** ***Paramedic Disciplinary Process***

The EMS Authority may deny, revoke, suspend, or place on probation a paramedic's license pursuant to California Health & Safety Code Section 1798.200. The EMS Authority does not have statutory authority to impose fines for violations of Section 1798.200.

Proceedings against a paramedic's license shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code (Administrative Procedure Act). The California Attorney General's Office is the EMS Authority's legal counsel responsible for disciplinary actions under Section 1798.200.

### **Accusation**

If, at the completion of an investigation, the Enforcement Unit determines that a violation of Section 1798.200 occurred and that administrative enforcement is warranted, the Enforcement Unit makes its recommendation to the deputy director of the EMS Authority. If the deputy director decides that disciplinary action should commence against a respondent, the deputy director requests that an Accusation be prepared pursuant to Government Code Section 11503, which is served upon the respondent. The Accusation is prepared by the EMS Authority's legal counsel, the California Attorney General's Office, and is a public document.

In order to receive a hearing on the merits, the respondent must file a notice of defense within 15 days of being served with the Accusation.

### **Stipulation**

## INVESTIGATION AND ENFORCEMENT GUIDE

When appropriate, the deputy attorney general assigned to the case may begin settlement negotiations concurrent with the service of the accusation. This is done in order to avoid a protracted administrative hearing with an uncertain outcome. The settlement document is called a "Settlement Agreement", but is commonly referred to as the "Settlement".

The settlement contains an agreed upon statement of facts and law, and provides specific disciplinary terms and conditions. In signing the settlement, the respondent is admitting that the violations occurred as stated in the Accusation, and is agreeing to all the terms and conditions of the settlement. When the signed settlement is received from the respondent, the settlement is presented to the director for approval and signature.

### **Administrative Hearing Process**

If a case does not settle and the respondent has filed a notice of defense, an administrative hearing is conducted pursuant to the Administrative Procedure Act (Government Code Sections 11500 et seq.). The director has the option of participating in a hearing on the merits, or of delegating the responsibility to an administrative law judge. The standard of proof in an administrative hearing to revoke, suspend, or place a license on probation is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board Of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 185 Cal.Rptr. 601)

If the director delegates the hearing to an administrative law judge, then the administrative law judge issues a proposed decision within 30 days which is provided to the EMS Authority. Thirty days after the receipt by the EMS Authority of the proposed decision, a copy of the proposed decision shall be filed with the EMS Authority as a public record and a copy shall be served by the EMS Authority on each party and his or her attorney. The director can (1) adopt the decision in its entirety; (2) reduce or otherwise mitigate the proposed discipline and adopt the balance of the proposed decision; (3) make technical or other minor changes and adopt the decision; (4) reject the proposed decision and refer the matter back to the administrative law judge to take additional evidence; or (5) reject the proposed decision and decide the case upon the record.

The director has 100 days from receipt of the proposed decision to make a final decision. If the director fails to make a decision within the 100 days, the proposed decision shall be deemed adopted by the EMS Authority. The final decision by the director becomes a public record immediately and is served on the respondent and his or her attorney. Generally, the final decision becomes effective 30 days after the final decision is delivered or mailed to the respondent.

### **Default Decision**

Occasionally, after issuing an Accusation, a notice of defense requesting a hearing is not returned by the respondent to either the deputy attorney general or the EMS Authority. According to the Administrative Procedure Act, the director can then issue a decision and order that is binding on the respondent.

### **Licensure Denial**

When the EMS Authority denies an initial application for a paramedic license, the applicant can appeal the decision through the Administrative Procedure Act by submitting a written request to the EMS Authority. A Statement of Issues is prepared and served on the respondent. The Statement of Issues is treated procedurally the same as an Accusation. However, the respondent has the burden of proof to demonstrate that he or she has been rehabilitated.

## INVESTIGATION AND ENFORCEMENT GUIDE

### **Respondent's Rights**

The respondent is entitled to representation of his/her choice throughout the investigation and any subsequent prosecution. Any such representation is at the respondent's own expense.

The respondent may request "discovery" prior to the hearing and within 30 days after service by the EMS Authority of the Accusation, pursuant to Government Code Section 11507.6.

The respondent is encouraged to familiarize himself/herself with the administrative process and ask questions of the case investigator, the chief investigator, or the deputy attorney general as to his or her procedural rights.

The respondent may access the statutes and regulations governing the conduct of paramedics at the EMS Authority's web site at "www.emsa.ca.gov". Information concerning the Administrative Procedure Act can be obtained at the web site of the Office of Administrative Hearings at "www.oah.dgs.ca.gov".

### **PROCEDURE FOR IMMEDIATE SUSPENSION**

Pursuant to California Health and Safety Code Section 1798.202(a), the director of the EMS Authority or the medical director of a local EMS agency (LEMSA) may temporarily suspend prior to hearing a paramedic license upon a determination that: (1) the paramedic has engaged in acts or omissions that constitute grounds for revocation; and (2) the paramedic poses an "imminent threat" to public health and safety if allowed to continue as a paramedic.

**If the LEMSA temporarily suspends** a paramedic license, Section 1798.202(b) requires that within three working days the LEMSA shall transmit to the EMS Authority all relevant documentary evidence via facsimile or overnight mail. The director of the EMS Authority has two days after receipt of the evidence to determine whether the temporary suspension order should continue. If the director determines that the temporary suspension order should continue, the EMS Authority has 15 days after receipt of the evidence to serve a temporary suspension order and accusation on the affected paramedic. If the paramedic files a notice of defense, Section 1798.202(d) requires that a hearing be held within 30 days of the filing of the notice of defense. The director of the EMS Authority has 15 days after receipt of the administrative law judge's proposed decision to make a final decision.

**If the EMS Authority temporarily suspends** a paramedic license by filing a temporary suspension order and accusation pursuant to Section 1798.202(c), the LEMSA and employer shall be notified. If the paramedic files a notice of defense, Section 1798.202(d) requires that a hearing be held within 30 days of the filing of the notice of defense. The director of the EMS Authority has 15 days after receipt of the administrative law judge's proposed decision to make a final decision.

## INVESTIGATION AND ENFORCEMENT GUIDE

### ***EMT - Admonishment Of Rights Under The Firefighters Procedural Bill Of Rights Act***

The El Dorado County Emergency Medical Services Agency (Agency) is conducting an investigation into matters that may result in disciplinary action against your EMT certification 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.), the Agency 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 Agency 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. The Agency 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 Agency personnel. If it is recorded by Agency personnel, you have a 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 and expense present during the entire investigation interview, however this person cannot be subject to 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.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
EMT Certificate #

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## INVESTIGATION AND ENFORCEMENT GUIDE

### **PARAMEDIC - Admonishment Of Rights Under The Firefighters Procedural Bill Of Rights Act**

The El Dorado County Emergency Medical Services Agency (Agency) is conducting an investigation into matters that may result in disciplinary action against your paramedic accreditation and/or 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.), the Agency 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 Agency 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. The Agency 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 Agency personnel. If it is recorded by Agency personnel, you have a 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 and expense present during the entire investigation interview, however this person cannot be subject to 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.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Paramedic License #

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date