



San Benito County Emergency Medical Services Agency

PREHOSPITAL DISCIPLINE PROCESS

Policy : 3030
Effective : May 1, 2010
Reviewed : May 1, 2010

I. Purpose

To provide a process for prehospital disciplinary action.

II. AUTHORITY

Health and Safety Code, Division 2.5, Section 1798.200, California Code of Regulations, Title 22, Division 9, Sections 100207 – 100217, California Code of Regulations, Title 13, Section 1101, EMSA publication “Recommended Guidelines for Disciplinary Orders and Conditions of Probation (July 10, 2002 edition),” California Government Code, Section 6254 and California Government Code, Title 2, Division 3, Chapter 5 Sections 11507.6, 11507.7, 11513 and 11514.

III. POLICY

The San Benito County EMS Medical Director may, in accordance with California Code of Regulations, Title 22, Division 9, Sections 100207 - 100217, deny suspend or revoke any First Responder, EMT-I or EMT-II certificate issued under this division, or may place any First Responder, EMT-I or EMT-II certificate holder on probation.

The San Benito County EMS Medical Director may, after consultation with the employer, temporarily suspend, prior to hearing, any EMT-P license upon a determination that:

1. The licensee has engaged in acts or omissions that constitute grounds for revocation of the EMT-P license as listed above for First Responder, EMT-1 or EMT-II;
2. Permitting the licensee to continue to engage in the licensed activity, or permitting the licensee to continue in the licensed activity without restriction, would present an imminent threat to the public health or safety.

IV. PROCEDURE

The San Benito County EMS Medical Director may, in accordance with Health and Safety Code, Division 2.5, Section 1798.200 and California Code of Regulations, Title 13, Section 1101, take disciplinary action as stated in above policy upon the finding of any of the following actions:

- (1) Fraud in the procurement of any certificate or license under this division.
- (2) Gross negligence.
- (3) Repeated negligent acts.
- (4) Incompetence.
- (5) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.
- (6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or certified copy of the record shall be conclusive evidence of the 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 which regulates narcotics, dangerous drugs, or controlled substances.
- (9) Addiction to or 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.
- (11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.
- (12) Unprofessional conduct exhibited by any of the following:
 - (a). The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed

to prohibit a First Responder, EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and First Responder, EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to affect a lawful arrest or detention.

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

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

Specific cases where certification denial is strongly indicated:

- (1) The applicant is required under Section 290 of the Penal Code to register as a sex offender for any offense involving force, duress, threat, or intimidation.
- (2) The applicant has been convicted of murder, attempted murder or murder for hire.
- (3) The applicant has been convicted of two or more felonies.
- (4) The applicant is on parole or probation for any felony.
- (5) The applicant has been convicted and released from incarceration during the preceding fifteen years for the crime of manslaughter or involuntary manslaughter.
- (6) The applicant has been convicted and released from incarceration during the preceding ten years for any offense punishable as a felony.
- (7) The applicant has been convicted of two misdemeanors within the preceding five years relating to the use, sale, possession or transportation of narcotics or dangerous drugs.
- (8) The applicant has been convicted of two misdemeanors within the preceding five years for any offense relating to force, violence, threat or intimidation.
- (9) The applicant has been convicted within the preceding five years of any theft related misdemeanor.
- (10) The applicant has committed any act involving moral turpitude including fraud or intentional dishonesty for personal gain within the preceding seven years.

The San Benito County EMS Medical Director will send a recommendation to the State EMS Authority for further investigation or discipline of the license holder, and shall include all documentary evidence collected by the Medical Director in evaluating whether or not to make

that recommendation. The recommendation and accompanying evidence shall be deemed in the nature of an investigative communication and be protected by California Government Code, Section 6254.

The San Benito County EMS Medical Director may take disciplinary action against a certificate holder for which any of the following is true:

1. The certificate was issued by San Benito County EMS Agency, or;
2. The certificate holder utilized or has utilized the certificate or the skills authorized by the certificate, including certificates issued by public safety agencies within the jurisdiction of the San Benito County EMS Medical Director.

For the action against a multiple certificate holder, the Medical Director shall determine, according to the circumstances of the case and the nature of the threat to the public health and safety, whether the action shall apply to one certificate or multiple certificates.

If the San Benito County EMS Medical Director takes any disciplinary action which affects a certificate, the Medical Director shall notify the State EMS Authority of the finding of the investigation and the disciplinary action taken using Form EMSA-CRI.

V. EVALUATION AND INVESTIGATION

The San Benito County EMS Medical Director shall evaluate information received from a credible source, including information obtained from an application, medical audit or 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 Health and Safety Code Division 2.5.

If the San Benito County EMS Medical Director determines, following evaluation of the information, that further inquiry into the situation is necessary or that disciplinary action is warranted, the Medical Director may conduct an investigation of the allegations. This investigation may use an Investigative Review Panel (IRP) as defined in California Code of Regulations, Title 22, Division 9, Chapter 6, Article 3, and Section 100211.

To insure that the investigative procedure provides individuals due process of law, the following procedures shall also apply:

Per Government Code, Title 2, Division 3, Chapter 5 Section 11507.6 (Request for Discovery):

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 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 event 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.

Per Government Code, Title 2, Division 3, Chapter 5 Section 11507.7 (Petition to Compel Discovery: Order):

- (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.
- (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

Per Government Code, Title 2, Division 3, Chapter 5 Section 11513 (Evidence):

- (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.
- (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.

Per Government Code, Title 2, Division 3, Chapter 5 Section 11514 (Affidavits):

- (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).

VI. DETERMINATION AND NOTIFICATION OF ACTION

Determination and notification of action will follow regulation as defined in California Code of Regulations, Title 22, Division 9, Chapter 6, Article 3, Sections 100212 – 100217. In addition, the EMS Agency will use the most current version of the EMS Authority's publication "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" as a reference.