

## CHAPTER 05 DISCIPLINARY PROCEDURES

### .01 Scope.

This chapter governs procedures for disciplinary, licensing, and certification matters concerning EMS providers, applicants, and individuals providing emergency medical services without a license or certificate.

### .02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

#### B. Terms Defined.

(1) "Case resolution conference" means a committee established in MIEMSS composed of one EMS Board member, an assistant attorney general, and MIEMSS staff which is available to a respondent as a means to explore the possibility of a consent order or other resolution of a matter before the EMS Board on a voluntary, informal, and confidential basis.

(2) "Complaint" means a written report prepared for the provider review panel by the incident review committee based on an incident report which sets forth information which the incident review committee considers necessary to a proper review by the provider review panel and final action by the EMS Board.

(3) "Disposition agreement" means a formal agreement, which may be nonpublic, in which a respondent agrees to comply with certain conditions and the EMS Board foregoes further investigation or other action.

#### (4) Incident Report.

(a) "Incident report" means a written allegation that an individual has committed an act or acts which violate Education Article, § 13-516, Annotated Code of

Maryland, or the regulations adopted under it.

#### (b) "Incident report" includes:

(i) Notification that an applicant for a license or certificate or a renewal is alleged to have committed an act or acts which violate Education Article, § 13-516, or the regulations adopted under it;

(ii) A law enforcement report;

(iii) A report from a hospital or other medical facility;

(iv) A report from another country, state, the armed services of the United States, a unit of State government, or a unit of local government;

(v) A consumer complaint;

(vi) A news article, report, or media tape;

(vii) A malpractice claim;

(viii) A Maryland Ambulance Information System runsheet; or

(ix) Other information, from any source, that warrants investigation.

(5) "Incident review committee" means a committee established in MIEMSS and composed of the State EMS Medical Director or designee, an assistant attorney general, and MIEMSS staff, including staff investigators, which acts on incident reports.

(6) "Noncompliance notice" means a written notice of EMS Board action issued by the EMS Board to a respondent alleged to have committed an act or acts which violate Education Article, § 13-516, Annotated Code of Maryland, or the regulations adopted under it, which sets forth:

(a) The act or acts alleged;

(b) The reason for the action;

(c) The statutory or regulatory basis for the action;

(d) The right of the respondent to request a hearing within 30 days of receipt of the noncompliance notice;

(e) Notice that, if a hearing is not requested or if a hearing is requested and the

respondent does not appear, the EMS Board will take the proposed action which is final and binding on the respondent; and

(f) Further information as State Government Article, § 10-207, Annotated Code of Maryland, may require.

(7) "Provider review panel" means the body created by Education Article, § 13-516(e), Annotated Code of Maryland, and Regulation .14 of this chapter.

(8) "Respondent" means an individual against whom action is contemplated by the EMS Board.

### .03 Investigation of Incident Reports.

A. An incident review committee investigator shall initially investigate each incident report. Upon completion of the investigation, as may be required, the incident review committee investigator shall refer the incident report, together with the results of the investigation, to the other members of the incident review committee.

B. If the incident report warrants summary action in the case of an EMS provider, the investigator shall promptly refer the incident report to the incident review committee for summary action under COMAR 30.02.07 pending further action under this regulation.

C. If the incident report warrants immediate action in the case of an individual providing emergency medical services without a license or certificate, the investigator shall promptly refer the incident report to the EMS Board which may seek injunctive relief from a court of competent jurisdiction. If the EMS Board elects to issue a cease and desist order, it shall issue a noncompliance notice and proceed under Regulation .05 of this chapter.

D. The incident review committee shall:

(1) Review each incident report referred to it by the investigator together with the investigation results; and

(2) Conduct further investigation as may be required.

E. Upon completion of its review, the incident review committee may:

(1) Determine no further action is required;

(2) Refer the matter to the appropriate EMS operational program for further investigation or action; or

(3) Prepare a complaint which shall be referred:

(a) If the respondent is not a licensed or certified EMS provider and is alleged to be providing emergency medical services, directly to the EMS Board,

(b) If the respondent is a licensed or certified EMS provider or an applicant, to the provider review panel, or

(c) If the respondent is licensed as a registered nurse or licensed practical nurse by the Board of Nursing, to the Board of Nursing.

F. If a complaint is referred to the provider review panel, the incident review committee shall advise the respondent of the complaint by letter and afford the respondent the opportunity to provide the provider review panel with a written statement concerning the substance of the complaint. The letter shall be sent by certified and regular mail to the address the EMS provider or applicant maintains for purposes of licensure or certification notice, or any other last known address.

G. MIEMSS may notify appropriate EMS operational programs of incident reports, noncompliance notices, or hearings.

### .04 Review by the Provider Review Panel.

Upon review of each complaint referred to it by the incident review committee and any written statement provided by the respondent, the provider review panel shall recommend to the EMS Board any further action it considers necessary based upon the patient care and any allegations of misconduct.

.05 Action by the EMS Board.

A. Upon review of the complaint and any recommendations of the provider review panel together with the results of any investigations and any further inquiry the EMS Board may require, the EMS Board may:

- (1) Dismiss the complaint;
  - (2) Request that the respondent enter into a disposition agreement with the EMS Board;
- or

(3) Issue a noncompliance notice.

B. If the provider review panel does not affirmatively recommend disciplinary action of an EMS provider in cases concerning patient care, the EMS Board shall dismiss the complaint to the extent it relates to patient care.

C. Noncompliance Notice.

(1) The noncompliance notice shall specify which of the following actions the EMS Board proposes to take:

- (a) Reprimand or probation;
- (b) Suspension or revocation of a license or certificate;
- (c) Denial of a license or certificate to an applicant;
- (d) Refusal to renew an applicant's license or certificate; or
- (e) Issuance of a cease and desist order.

(2) The noncompliance notice shall specify whether the hearing will be delegated to the Office of Administrative Hearings. If the noncompliance notice does not delegate the hearing to the Office of Administrative

Hearings, the hearing shall be conducted by the EMS Board.

(3) The EMS Board shall serve the noncompliance notice on the EMS provider or applicant by hand delivery or certified and regular mail at the address the EMS provider or applicant maintains for purposes of licensure or certification notice, or any other last known address.

(4) An individual who is not an EMS provider or applicant shall be served by hand delivery or certified and regular mail at the person's last known address.

(5) The individual effecting service shall complete a certificate of service attesting to the method and date of service.

(6) Upon the issuance of a noncompliance notice, the EMS Board shall refer the matter to an assistant attorney general assigned to the EMS Board.

(7) If a hearing is not requested by the respondent within 30 days of receipt of the noncompliance notice or if, after due notice, the respondent fails or refuses to appear, the EMS Board shall issue a final decision under the noncompliance notice.

(8) A copy of the final decision shall be served on the respondent by certified and regular mail.

(9) If the respondent makes a timely request for a hearing, the body designated to conduct the hearing shall schedule a hearing and provide notice to all parties under State Government Article, § 10-208, Annotated Code of Maryland.

.06 Case Resolution Conference.

A. After service of the noncompliance notice and upon receipt of a request for a hearing, the EMS Board shall offer the respondent an opportunity to resolve the matter through a case resolution conference.

B. If the matter is resolved through a case resolution conference, the EMS Board and the respondent shall enter into a disposition agreement setting forth the terms and conditions of the resolution.

C. If a resolution is not achieved after opportunity for a case resolution conference, the matter shall proceed to hearing.

#### .07 Hearing.

A. Except to the extent provisions of this chapter specifically provide for a different procedure, the hearing shall be conducted under the procedures set forth in COMAR 30.02.06.

B. At least 6 members of the EMS Board shall be present for EMS Board hearings under this chapter.

#### .08 EMS Board Action.

A. The EMS Board shall issue a final decision based on its findings of fact and conclusions of law upon:

(1) Receipt of the decision of the administrative law judge and upon the conclusion of the exception process provided in COMAR 30.02.06.22, if any exceptions are filed; or

(2) The conclusion of the hearing before the EMS Board, if the matter is heard by the EMS Board.

B. If the hearing has been delegated to the Office of Administrative Hearings, the EMS Board is the final decision maker and is not bound by the administrative law judge's proposed findings of fact, conclusions of law, or decision.

C. The EMS Board shall issue any disciplinary action against a respondent who is licensed as a registered nurse or licensed practical nurse by the Board of Nursing in

accordance with the recommendation of the Board of Nursing for any complaint which has been referred to the Board of Nursing under Regulation .03 of this chapter.

D. A copy of the EMS Board's final decision shall be served on the respondent by certified and regular mail.

E. Within 30 days of the date of the final decision of the EMS Board, either party may file a motion for reconsideration. The motion is granted at the EMS Board's discretion. There is no automatic right to a hearing on a motion for reconsideration before the EMS Board. The EMS Board may or may not ask for a response from the opposing party. If a party moves for reconsideration, the time for seeking judicial review is calculated from the date the EMS Board rules on the reconsideration motion.

F. When a final decision states a time for reinstatement of or reapplication for a license or certificate, the respondent shall petition the EMS Board for reinstatement or reapplication under the final decision. The respondent shall complete the appropriate forms, include the appropriate fee, and submit these to the EMS Board with the petition. When a time is not stated in the final decision, a petition for reinstatement or reapplication may not be entertained before 1 year after the date of the final decision. When reinstatement or reapplication is made contingent upon the occurrence of an event, the respondent shall establish the occurrence to the satisfaction of the EMS Board.

#### .09 Judicial Review.

A. A respondent may seek judicial review of the EMS Board's final decision under State Government Article, § 10-222, Annotated Code of Maryland.

B. The EMS Board shall be party to the proceeding.

#### .10 Subpoenas.

A. At any stage of investigation and at any hearing, the EMS Board may issue a subpoena requiring a person to:

- (1) Testify under oath;
- (2) Answer interrogatories under oath;
- (3) Produce documents and tangible things; or
- (4) Permit inspection and copying of documents.

B. A subpoena shall:

- (1) Describe generally the nature of the investigation;
- (2) Specify the date, time, and place for the taking of required testimony;
- (3) Contain a copy of any interrogatories requiring answers;
- (4) Describe with reasonable specificity any things or documents to be produced together with the date, time, and place at which production is required;
- (5) Advise of the right to representation; and
- (6) Identify the individual who may be contacted on behalf of the EMS Board in reference to the subpoena.

C. A subpoena shall be issued over the signature of one of the following officials on behalf of the EMS Board:

- (1) Chair of the EMS Board;
- (2) Executive Director of MIEMSS;
- (3) Chair of the provider review panel; or
- (4) State EMS Medical Director.

D. Subpoenas to Corporations and Other Entities. A subpoena directed to a corporation, partnership, or other entity shall:

- (1) Describe with reasonable particularity the subject matter sought by the subpoena; and

(2) Require that the entity designate one or more authorized individuals to provide the testimony, interrogatory answers, things, or documents requested by the subpoena.

E. Petition to Quash or Modify Subpoena.

(1) A person served with a subpoena under this regulation may request that the subpoena be quashed or modified by filing a request in writing with the contact person identified in the subpoena within 10 days of service or before the action required by the subpoena, whichever is earlier. The request shall set forth good cause why the subpoena should be quashed or modified.

(2) The EMS Board, upon any further inquiry it may require, shall act promptly on any petition to quash or modify the subpoena.

F. Enforcement of Subpoena. If a person fails to comply with a subpoena served under this regulation, the EMS Board may apply to a court of competent jurisdiction for punishment of contempt.

G. Service of Subpoena.

(1) A subpoena may be served by hand delivery or certified mail.

(2) The individual serving the subpoena shall complete a certificate of service attesting to the method and date of service.

#### .11 Oaths.

A. The Chair of the EMS Board, the Executive Director of MIEMSS, the Chair of the provider review panel, and the State EMS Medical Director may administer oaths in connection with any investigation or hearing under this subtitle.

B. If an individual, without lawful excuse, disobeys an order by the EMS Board to testify or answer a question, the EMS Board may apply to a court of competent jurisdiction for punishment for contempt.

.12 Representation.

A. The respondent may appear in proper person or be represented by counsel admitted to practice in Maryland in any matter before the EMS Board and during any stage of the proceedings.

B. An assistant attorney general shall present:

- (1) Evidence at evidentiary hearings; and
- (2) Arguments before the EMS Board.

.13 Licensure and Certification Pending EMS Board Action.

A. Unless the EMS Board agrees to accept the surrender of a license or certificate, a holder of a license or certificate may not surrender the license or certificate.

B. A license or certificate may not lapse by operation of law while:

- (1) The holder of the license or certificate is under investigation; or
- (2) Charges are pending against the holder of the license or certificate.

C. The EMS Board may set conditions on its agreement with the holder of the license or certificate under investigation or against whom charges are pending to accept the surrender of the license or certificate.

.14 Provider Review Panel.

A. The provider review panel consists of 11 voting members appointed by the EMS Board and 2 nonvoting members.

B. Appointed Members.

(1) Provider Representatives.

(a) Eight of the appointed members shall be licensed or certified emergency medical service providers who are actively providing emergency medical services at the time of their appointment.

(b) In appointing the provider representatives, the EMS Board shall give consideration to providing for reasonable representation from throughout the State.

(c) Three of these members shall be members of a governmental fire, rescue, or emergency medical services company.

(d) Three of these members shall be members of a volunteer fire, rescue, or emergency services company.

(e) One of these members shall be an employee of a commercial ambulance service.

(f) One of these members shall be an emergency medical dispatcher.

(2) One of the appointed members shall be a physician appointed by the Board of Physician Quality Assurance.

(3) One of the appointed members shall be a medical director with emergency medical services experience.

(4) One of the appointed members shall be a representative of the Medical and Chirurgical Faculty of the State of Maryland who has emergency medical services experience.

(5) The appointed members shall serve terms of 4 years, except that the terms of the first appointed members shall be staggered by the Board as follows:

(a) Four members shall serve a 4-year term;

(b) Four members shall serve a 3-year term; and

(c) Three members shall serve a 2-year term.

C. The Executive Director of MIEMSS and the State EMS Medical Director shall serve as nonvoting ex officio members.

D. The provider review panel shall elect a chair from among its members.

E. Provider Review Panel Action.

(1) The provider review panel shall take action by majority vote when at least six voting members are present.

(2) When reviewing a complaint concerning an EMS provider:

(a) At least one voting provider review panel member present shall be an EMS provider of the same level as the respondent; and

(b) At least one voting provider review panel member present shall have the same governmental, volunteer, or commercial service affiliation as the respondent.

(3) A tie vote on an issue is considered a recommendation that no action be taken.

F. The EMS Board may remove any member of the provider review panel for just cause.

nonadmissible as provided in Health Occupations Article, Title 14, Subtitle 5, Annotated Code of Maryland.

B. To the extent possible, even after a final decision is entered by the EMS Board, the parties shall refrain from revealing legal documents, oral statements, or information that would reveal the identity of any patients referenced in the final decision.

#### .15 Right of Entry.

A duly authorized agent or investigator of the Board may enter, at any reasonable hour, a place of business of a licensed or certified emergency medical services provider or public premises if the entry is necessary to carry out a duty under this regulation or under Education Article, § 13- 516, Annotated Code of Maryland.

#### .16 Confidentiality and Admissibility of Proceedings, Records, and Files.

A. The incident review committee, the case review committee, the provider review panel, the case resolution conference, and, in connection with a disciplinary matter other than a hearing and the issuance of a final decision, the EMS Board, are medical review committees and committees in MIEMSS under Health Occupations Article, § 14-501, Annotated Code of Maryland, and, except for formal noncompliance notices or as otherwise provided by law, their proceedings, records, and files are confidential, nondiscoverable, and