Investigations, Personnel Discipline and Agency Sanctions

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Leadership Skills For State EMS Officials - 2014 Workshop
Presentation Objectives

• Overview of Investigations and “Due Process”
• Discuss Regulations affecting EMS Providers & Services
• Discuss Personnel Discipline
• Discuss EMS Agency Sanctions
• Discuss Impact of regulations on
  – EMS Services
  – EMS Providers
Investigations

- Laws?
- Regulations?
- Policies?
- Procedures?
- Bylaws?
- Documents?
Investigators

- Standard of Care
- Regulations
- Know Medical Protocols
- Understand Due Process
- Apply Procedures
- Process focused
- Ask questions
Fact Finding

Develop Regulations, Policies, SOPs to ensure

- Due Process
- Confidentiality
- Consistent Investigations
- Consistent Investigator Training
Dispositions

- **SUSTAINED**
  
  *All or part of the act occurred as alleged, based upon the existence of substantial fact.*

- **NOT SUSTAINED**
  
  *Information insufficient to prove or disprove the allegation.*

- **EXONERATED**
  
  *The act occurred but was justified, lawful and proper.*

- **UNFOUNDED**
  
  *The alleged act did not occur.*
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**QA / QI Process**
PCR Review, Sentinel Events, Operational Issues, Analyses & Reports

Improved System Function
Incident

**QA / QI Process**

PCR Review,
Sentinal Events,
Operational Issues, Analyses & Reports
Incident

EMS Service
- QA Officer
- Notify
- Medical Director
- Operational
- Program
Overview QA Process

- Trigger - Identify Issue
- Initial Incident Report
- Initial Investigation
  - Ensure Public Safety
- Convene Medical Review
  - Consider Remediation
- Complete Investigation & Report
  - EMS Agency Discipline?
  - Case Closure?
  - Publish findings
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- **Typical Incident Report**
- **Suspend Privileges?**
- **Contact State EMS Medical Director**

Maryland Institute for Emergency Medical Services Systems
Confidential / Nondiscussable Medical Case Review (MRC) Material

**MRC – Patient Care Quality Assurance Incident Report (PCQA-IR)**

5-Day Incident Report: ___________ 35-Day Incident Report: ___________
Request Case Closure: ___________  Request MIFESS Review: ___________

Within 5 days of being made aware of an Incident the QA Officer must in writing document the Incident and identify EMS Provider(s) involved to MIFESS’ Compliance Office and State EMS Medical Director.

Within 35 days of being made aware of an Incident the QA Officer must in writing submit documentation of the MRC’s investigative findings and recommendations to MIFESS’ Compliance Office and State EMS Medical Director.

1. Incident Date: ___________ EMSOP Incident #: ___________ Report Date: ___________
2. Name(s) EMSOP Medical Director(s) notified: ___________
3. Name of EMS Operational Program Medical Director(s) notified: ___________
4. Individuals / EMSOP Involved: ___________
   4a. EMSOP ___________ Unit Number ___________
   4b. EMS Provider(s): 1. ___________ ID# ___________
      2. ___________ ID# ___________
4d. Other Individuals: 1) ___________ 2) ___________
5. Type Of Incident (Check ONE)
   a. ___________ [Extraordinary Care Procedure] (within 24 hours report to State EMS Medical Director 800-648-3001)
   b. ___________ Protocol violation which may have resulted in harm to a patient or substandard patient care
   c. ___________ Inability to carry out physician orders
   d. ___________ May require disciplinary action by the State, or
   e. ___________ Suggest need for change to Statewide EMS System by MIFESS
   d. Other (explain) ___________
6. Describe incident: ___________
7. Action by EMSOP: (Describe planned remediation on page #2)
8. EMS Provider privileges Suspended? NO _____  YES _____**
   (**Immediately Notify State EMS Medical Director, COMAR Title 30.03.03.06D)
   EMSOP Medical Director: ___________ Date: ___________
9. Report Submitted By:
   Name ___________
   Official Title ___________
   Street ___________
   City ___________ State ___________ Zip code ___________
   Office Phone ___________ Cell Phone ___________
   Fax ___________ E-mail ___________
   Signature ___________ Date: ___________
Authority to Limit Privileges?

Maryland Institute for Emergency Medical Services Systems
Confidential / Nondiscourerable Medical Case Review Material

Title 30
MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

SUBTITLE 03 EMERGENCY MEDICAL SERVICES OPERATIONAL PROGRAMS

Chapter 03- Medical Direction


.06 Credentialing of EMS providers
C. In association with or through the granted authority of an EMS operational program, an EMS operational program medical director may suspend or limit the privileges of an EMS provider within that EMS operational program if, in the opinion of the EMS operational program medical director, the EMS provider poses an imminent threat to the health or well-being of patients.

D. If the EMS operational program medical director suspends or limits the privileges of an EMS provider under § C of this regulation, the EMS operational program medical director and the EMS operational program shall immediately notify the State EMS Medical Director of:
   (1) The circumstances and grounds for the action;
   (2) Specific plans for remedial education; and
   (3) The process, including reevaluation, by which the EMS provider may be able to regain privileges.
Overview QA Process

• Convene Incident Review Committee
  – EMS Investigator, Legal Counsel, Medical Director, etc.

• Consider Summary Suspension

• Consider Peer Review
  – EMT-B
  – EMT-I
  – EMT-P
  – EMS Medical Director
  – Public
  – EMS Authority
Peer Review
Recommendation/Action

- Dismiss Complaint (if patient care related?)
- Deny Application
- Reprimand
- Remediation
- Probation
- Suspension
- Revocation
State EMS Authority Process

- Dismiss Complaint
- Additional Investigation
- Propose Discipline
- Issue “Noncompliance” Notice
- Ensure “Due Process”
Due Process

A principle of federal constitutional law that gives every person in USA the right to present reasons why Government should not deprive the person of Life, Liberty or Property.
Due Process

Procedure that serves to

• Determine Facts
• Instill confidence
  – Providers
  – Observers
Due Process

When does Due Process Apply?

• Due Process applies when government acts to deprive an individual of life, liberty or property.
Procedural Due Process

• Due Process Procedures should provide the EMS provider notice and an opportunity to be heard.
  – **Notice** of the charges
  – **Opportunity** to rebut the charges against in a meaningful way and time
Where does **Due Process** Apply?

- State and Local Government EMS/Fire
- Private Ambulance Companies
- Volunteer EMS/Fire Services
Analysis to Determine Due Process Applies

- Private organization or Corporation?
- How much government $ received?
- Who owned Property organization used?
- Government oversight?
- Performing Government function?
- Who was organization’s staff employed by?
- What legal requirement for providing service?
Judicial Findings

- Courts frequently find that even volunteer ambulance companies are carrying out governmental actions and **due process** is required.
When does **Due Process** Apply?

- Employment terminations
- Disciplinary actions
- Medical Director withdrawal of EMS Provider’s Credentials
State EMS Authority Process

- IF - Applicant/Provider Accepts Noncompliance Notice
  - EMSA Issues Final Action/Public Order
  - Reports Discipline
    - Healthcare Integrity & Protection Data Bank (HIPDB)
    - NREMT
    - EMS Service Medical Directors
State EMS Authority
Disciplinary Process

- IF - Applicant/Provider requests hearing
- EMSA schedules hearing
- EMSA considers Case Resolution Conference (CRC)
Case Resolution Conference (CRC)

• IF - CRC accepts resolution
  – Results presented EMSA

• EMSA accepts CRC resolution
  – Hearing canceled
  – EMSA Final Action
  – Reports Discipline
Case Resolution Conference (CRC)

- IF - CRC panel rejects resolution
- EMSA Complaint to EMS Hearing
- Administrative Hearing Process
  - Decision non-binding on EMSA?
- EMSA considers Administrative Hearing findings
State EMS Authority Process

- EMSA issues **Final Action/Public Order**
- Report to Healthcare Integrity and Protection Data Bank (**HIPDB**)?
- Applicant/Provider may **appeal** EMSA decision to the **Circuit Court (TORT)**?
State EMS Authority
Due Process

- EMS Provider may not surrender certificate or license during an investigation of IRC Complaint unless EMS Board wishes to accept it
- EMS Authority may not allow certification or license to lapse during disciplinary process
Criminal Convictions

• Self-reported criminal conviction
• Discovered criminal history
  – Not reported to EMSA
  – Prohibited Conduct (fraudulent application)
• Discovery/Report EMS Provider convicted new crime
Criminal Convictions

- Self-reported criminal conviction

Legal Questions (EMS Courses Only)

1. Have you ever applied for licensure or certification in any state other than Maryland?
   - Yes (Attach copy of state certification or license)
   - No

2. Have you ever had any health care certification or license withheld, suspended, revoked, or denied, or have you surrendered, or allowed a license or certificate to expire or lapse as the result of an investigation or disciplinary action?
   - Yes
   - No

3. Have you ever been convicted of, or pled guilty to, pled nolo contendere to, or received probation before judgement with respect to any crime other than a minor traffic violation, the record of which has not been expunged?
   - Yes
   - No

For EMS Courses, if you responded yes to #2 or #3, you must submit documentation that fully describes the offense, copies of relevant court documents, disposition, and current status to the Compliance Office at 653 West Pratt Street, Baltimore, MD 21201-1536 (Telephone 410-706-2339). Failure to submit complete documentation will delay the processing of your application.
Criminal Convictions

Important Considerations

• Mandatory background checks
• Identify and report criminal convictions
• Frequent Sex Offender Registry checks
EMS Provider Credentials

- Medical Director Limits Provider credentials
  - Clinical competence
  - Medical decision making
Public Health Threat? No

Procedure
Convene Medical Review

Yes

Procedure
Consider: Suspension
Limited Practice
Immediately Notify EMS Authority

Yes

EMS Summary Suspension?
EMS Provider Suspended

- **Local**
  - During investigation *(EMSA considers public threat)*

- **Summary Suspension**
  - Threat to Health and Welfare of the public (contact State EMSA Medical Director)
  - Opportunity for immediate hearing?
  - Case Review
  - Consider Parallel Investigation

- Ensure “Due Process”

- NREMT notification
Publish Disciplinary Actions

Disciplinary Actions

The following final disciplinary actions were issued:

B-2009-488 (EMT-B) (Applicant)—October 20, 2010. For failing to render appropriate EMT-B level care, Provider was placed on probation for six months and required to demonstrate Advanced Life Support skills proficiency in an emergency medical services director by July 1, 2010, with quarterly progress reports sent to MEMSS Compliance Office.

L-2009-493 (EMT-B) (Applicant)—October 28, 2010. For failing duty to the patient by failing to provide properly sterile instruments in the ambulance, was placed on probation for 4 years, and was required to provide quarterly reports from the Provider’s supervisor to the MEMSS Compliance Office during probation.

E-2009-493 (EMT—Applicant)—October 28, 2010. For pleading guilty to driving or attempting to drive while under the influence, license revocation process was allowed to proceed, and, if convicted, the Applicant will be placed on probation for 1 year and subject to random drug testing at Applicant’s expense.

B-2009-494 (EMT-B) (Applicant)—October 22, 2010. For fraudulently ordering the purchase of a vehicle valued at $30,000, Applicant was placed on probation for 1 year and subject to random drug testing at Applicant’s expense.

B-2009-495 (EMT-B) (Applicant)—October 25, 2010. For failing to provide proper care while on duty and other instances of inappropriate conduct while on duty, the Provider was placed on probation for 3 years, and was required to enroll in and successfully complete sexual harassment training.

A-2009-496 (EMT-B) (Applicant)—October 25, 2010. For failing to render appropriate CMT-B level care, Provider was placed on probation for 1 year and required to demonstrate Advanced Life Support skills proficiency in an emergency medical services director by July 1, 2010, with quarterly progress reports sent to MESS Compliance Office.
Published Disciplinary Actions

B-2009-484 (CRT)—(by Disposition Agreement) June 8, 2010. For failing to render appropriate CRT level care, Provider was placed on probation for six months and required to demonstrate Advanced Life Support skills proficiency to an emergency medical services director by July 1, 2010, with quarterly progress reports sent to MIEMSS Compliance Office.

B-2009-495 (EMT-B) (Applicant)—October 25, 2010. For pleading guilty to driving or attempting to drive a vehicle while impaired by alcohol and receiving probation before judgment and 18 months of supervised probation, certification process was allowed to proceed, and, if certified, the Applicant will be placed on probation concurrent with court-ordered probation and subject to random alcohol and drug testing at Provider’s expense.
Questions

• Ensure “due process”

  – Protects public and provider and EMSA