

**CHAPTER 1031. COMPLAINTS, DISCIPLINARY ACTIONS,
ADJUDICATIONS AND APPEALS**

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Authority

The provisions of this Chapter 1031 issued under the Emergency Medical Services System Act, 35 Pa.C.S. §§ 8101—8157, unless otherwise noted.

Source

The provisions of this Chapter 1031 adopted October 11, 2013, effective October 12, 2013, 43 Pa.B. 6093, unless otherwise noted.

§ 1031.1. Administrative and appellate procedure.

(a) *Administrative proceedings.* Except as otherwise provided in this chapter, the Department will hold hearings and issue adjudications for proceedings conducted under the act and this subpart in accordance with 2 Pa.C.S. (relating to administrative law and procedure) and will conduct those proceedings under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(b) *Judicial appeals.* Department adjudications issued under the act and this chapter may be appealed to the Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

§ 1031.2. Complaints and investigations.

(a) *Filing a complaint.* A person may file with the Department a complaint about a violation of the act or this subpart by an individual or entity regulated by the Department under the act or an individual or entity believed to have provided EMS or have engaged in any other activity for which some type of authorization

under the act or this subpart is required, without that individual or entity having secured a certification, license or other authorization from the Department to engage in that activity as required by the act and this subpart.

(b) *Filing office.* The complaint shall be filed with the regional EMS council that serves the EMS region where the conduct occurred. The regional EMS council shall provide the Bureau with a copy of the complaint. A complaint concerning the conduct of a regional EMS council shall be filed directly with the Bureau.

(c) *Status of complaint.* If a person files a complaint seeking to have the Department impose a disciplinary or corrective measure under this chapter, the Department's action in the handling of the complaint will be on behalf of the Commonwealth to determine whether there has been a violation of a statutory or regulatory requirement over which the Department has jurisdiction under the act.

(d) *Processing a complaint.* Upon receipt of a complaint filed under this section, the Bureau will assess whether the Department has jurisdiction over the matter about which the complaint is filed. If the matter is within the Department's jurisdiction and an investigation is needed, the Bureau will investigate the complaint or assign the complaint to a regional EMS council or other appropriate entity to investigate. Unless the Bureau determines that disclosure to the individual or entity about whom the complaint has been filed will compromise the investigation or would be inappropriate for some other reason, the investigation will be initiated by providing that individual or entity with a copy of the complaint and requesting a response. The Department will redact and withhold identifying information of the complainant throughout the investigation and will not provide this information if the Department determines that release of this information may compromise the investigation or that release of this information may endanger the life or physical safety of the complainant. In the event the Department does not release identifying information of the complainant, the Department may disclose this information to those persons authorized by the Department to conduct the investigation or as otherwise required by law. If the matter is not within the Department's jurisdiction to address, the Bureau will advise the person who filed the complaint and refer the complainant to another agency if the Bureau believes that the matter about which the complaint has been filed may be within the other agency's jurisdiction.

(e) *Notification of results of investigation.* When an investigation is completed, the Bureau will notify the complainant of the general results of the investigation of the matter about which the complaint was filed. This notification does not include providing the complainant with a copy of any document collected or prepared during the course of the investigation or communications with persons involved in the investigation, including the subject of the complaint. The Bureau will also provide the same information to the individual or entity about whom the complaint was filed if the individual or entity was officially apprised of the complaint or investigation. If the Department is considering taking disciplinary action

against the individual or entity, notification may occur when a disciplinary decision is reached or when disciplinary charges are filed.

§ 1031.3. Discipline of EMS providers.

(a) *Grounds for discipline.* The Department may discipline or impose corrective measures on an EMS provider or an applicant for EMS provider certification for one or more of the following reasons:

- (1) Having a lack of physical or mental ability to provide adequate EMS, with reasonable accommodations if the person has a disability.
- (2) Deceptively or fraudulently procuring or representing certification or registration credentials, or making misleading, deceptive or untrue representations to secure or aid or abet another person to secure a certification, license, registration or other authorization issued under this subpart.
- (3) Engaging in willful or negligent misconduct in providing EMS or engaging in practice beyond the scope of certification authorization without legal authority to do so.
- (4) Abusing or abandoning a patient.
- (5) Rendering EMS while under the influence of alcohol, illegal drugs or the knowing abuse of legal drugs.
- (6) Operating an emergency vehicle in a reckless manner or while under the influence of alcohol, illegal drugs or the knowing abuse of legal drugs.
- (7) Disclosing medical or other information about a patient when prohibited by Federal or State law.
- (8) Willfully preparing or filing a false medical report or record or inducing another person to do so.
- (9) Destroying a medical report or record required to be maintained.
- (10) Refusing to render EMS because of a patient's race, sex, creed, national origin, sexual preference, age, handicap or medical problem or refusing to render emergency medical care because of a patient's financial inability to pay.
- (11) Failing to comply with Department-approved EMS protocols.
- (12) Failing to comply with reporting requirements imposed by the act or this subpart.
- (13) Practicing without the current registration of a certification.
- (14) Being convicted of a felony, a crime related to the practice of the EMS provider or a crime involving moral turpitude.
- (15) Willfully falsifying or failing to prepare an EMS PCR or complete details on an EMS PCR.
- (16) Misappropriating drugs or EMS agency property.
- (17) Having a certification or other authorization to practice a profession or occupation revoked, suspended or subjected to other disciplinary sanction.

(18) Violating, aiding or abetting another person to violate a duty imposed by the act, this subpart or an order of the Department previously entered in a disciplinary proceeding.

(19) Based upon a finding of misconduct by the relevant Federal or State agency, having been excluded from a Federal or State health care program or having had equity or capital stock or profits of an entity equal to 5% or more of the value of the property or assets of the entity when it was excluded from a Federal or State health care program.

(20) Any other reason as determined by the Department that poses a threat to the health and safety of the public.

(b) *Types of discipline authorized.* If disciplinary action or corrective action is appropriate under subsection (a), the Department may do one or more of the following:

- (1) Deny an application for certification or registration of the certification.
- (2) Issue a public reprimand.
- (3) Revoke, suspend, limit or otherwise restrict the certification.
- (4) Require the person to take refresher or other educational courses.
- (5) Impose a civil money penalty not exceeding \$1,000 for each incident in which the EMS provider engages in conduct that constitutes a basis for discipline.

(6) Stay enforcement of a suspension, revocation or other discipline and place the individual on probation with the right to vacate the probationary order for noncompliance.

(c) *Denial of registration.* The Bureau will not deny a registration of an EMS provider certification without giving the EMS provider prior notice of the reason for the denial and providing an opportunity for a hearing. If the reason for the denial is the failure of the EMS provider to present prima facie evidence that the continuing education or examination requirement for registration has been satisfied, the opportunity for a hearing may occur after the prior registration has expired.

Cross References

This section cited in 28 Pa. Code § 1027.3 (relating to licensure and general operating standards); 28 Pa. Code § 1031.6 (relating to temporary suspension of EMS provider and EMS vehicle operator certifications); and 28 Pa. Code § 1031.7 (relating to discipline of EMS instructors).

§ 1031.4. Petition for certification after revocation.

(a) *Petition for certification after revocation.* A person whose certification has been revoked may not apply for reinstatement of that certification. A person whose EMS provider certification has been revoked may petition the Department for allowance to apply for a new certification no earlier than 5 years after the effective date of the revocation. The petition must aver facts to establish that the petitioner has been rehabilitated to the extent that issuing that person a certifica-

tion would not be detrimental to the public interest. In assessing the public interest, the Department will weigh the facts that tend to show that the petitioner has been rehabilitated against the Department's duty to maintain public confidence in its ability to regulate EMS providers, deter other EMS providers from engaging in conduct similar to that which resulted in the revocation and protect persons who may require EMS.

(b) *Department action on the petition.*

(1) The Department will deny a petition for allowance to apply for a new certification, without conducting a hearing, if it accepts as true all facts averred and it concludes that those facts fail to establish that the petitioner has been rehabilitated to the extent that certification would not be detrimental to the public interest.

(2) The Department may grant or hold a hearing on a petition for a new certification if it concludes that the facts averred in the petition, if true, establish a prima facie case that the petitioner has been rehabilitated to the extent that certification would not be detrimental to the public interest.

(c) *Grant of petition for a new certification.* If the Department grants the petition, the petitioner shall repeat the educational program and the certification examinations that are required for the EMS provider certification the petitioner is seeking and shall satisfy all other requirements for that certification that exist at the time the petitioner files an application for certification after having successfully completed that education and the examinations.

(d) *Denial of petition for a new certification.* If the Department denies the petition, the petitioner may not again petition the Department for allowance to apply for certification until 1 year has expired from the date of the denial.

§ 1031.5. Discipline of EMS vehicle operators.

(a) *Grounds for discipline.* The Department may discipline or impose corrective measures on an EMSVO or an applicant for EMSVO certification for one or more of the following reasons:

(1) Having a lack of physical or mental ability to operate an EMS vehicle, with reasonable accommodations if the person has a disability.

(2) Deceptively or fraudulently procuring or representing certification or registration credentials, or making misleading, deceptive or untrue representations to secure a certification or registration.

(3) Operating an emergency vehicle in a reckless manner or while under the influence of alcohol, illegal drugs or the knowing abuse of legal drugs.

(4) Having a driver's license suspended in any jurisdiction due to the use of alcohol or drugs or a moving traffic violation.

(5) Operating a ground EMS vehicle without a driver's license or while a driver's license is suspended.

(6) Being convicted of a felony or a crime involving moral turpitude.

- (7) Failing to report a criminal conviction that the applicant or EMSVO is required to report or failing to report the suspension of a driver's license due to the use of alcohol or drugs or a moving traffic violation.
- (8) Any other reason as determined by the Department that poses a threat to the health and safety of the public.
- (b) *Types of discipline authorized.* If disciplinary or corrective action is appropriate under subsection (a), the Department may:
- (1) Deny an application for certification or registration of the certification.
 - (2) Issue a public reprimand.
 - (3) Revoke or suspend the certification.
 - (4) Impose conditions for lifting a suspension.
- (c) *Automatic suspension.* An EMSVO certification shall be automatically suspended for 4 years if an EMSVO is convicted of a criminal offense that involves driving under the influence of alcohol or drugs, and for 2 years if the EMSVO is convicted of a criminal offense that involves reckless driving or had a driver's license suspended due to the use of drugs or alcohol or a moving traffic violation.

Source

The provisions of this § 1031.5 adopted October 11, 2013, effective April 10, 2014, 43 Pa.B. 6093.

Cross References

This section cited in 28 Pa. Code § 1027.3 (relating to licensure and general operating standards); and 28 Pa. Code § 1031.6 (relating to temporary suspension of EMS provider and EMS vehicle operator certifications).

§ 1031.6. Temporary suspension of EMS provider and EMS vehicle operator certifications.

- (a) *Issuance of temporary suspension.* The Department will issue an order temporarily suspending an EMS provider or EMS vehicle operator certification, without a hearing, if based upon evidence received that appears to be credible the Department determines that the person is a clear and immediate danger to the public health and safety.
- (b) *Notice and preliminary hearing.* Notice of the temporary suspension will include a written statement of the factual allegations upon which the determination is based. Unless an extension of time is requested by the EMS provider or EMS vehicle operator, within 30 days after an order under subsection (a) is issued, the Department shall conduct a preliminary hearing to determine whether there is a prima facie case supporting the temporary suspension. The EMS provider or EMS vehicle operator may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses and offer testimony and other evidence to rebut the prima facie case. If and when the Department determines that the evidence does not establish a prima facie case that the EMS provider or EMS vehicle operator is a clear and

immediate danger to the public health and safety, the Department will immediately issue an order lifting the suspension.

(c) *Beginning of formal disciplinary proceedings.* After issuing an order under subsection (a), the Department shall begin formal disciplinary action under § 1031.3 or § 1031.5 (relating to discipline of EMS providers; and discipline of EMS vehicle operators).

(d) *Duration of temporary suspension if prima facie case is established.* If the Department determines that a prima facie case supporting the temporary suspension is established at the preliminary hearing, the temporary suspension shall remain in effect, but no longer than 180 days unless agreed upon by the parties.

§ 1031.7. Discipline of EMS instructors.

(a) *Grounds for discipline.* The Department may discipline or impose corrective measures on a certified EMS instructor, or an applicant for certification as an EMS instructor, for one or more of the following reasons:

- (1) Any reason an EMS provider may be disciplined under § 1031.3 (relating to discipline of EMS providers).
- (2) Providing instruction while under the influence of alcohol or illegal drugs or the knowing abuse of legal drugs.
- (3) Failing to perform a duty imposed upon an EMS instructor under this subpart.
- (4) Any other reason as determined by the Department that poses a threat to the health and safety of students.

(b) *Types of discipline authorized.* If disciplinary action or corrective action is appropriate under subsection (a), the Department may do one or more of the following:

- (1) Deny an application for certification.
- (2) Issue a public reprimand.
- (3) Revoke, suspend, limit or otherwise restrict the certification.
- (4) Impose a civil money penalty not exceeding \$1,000 for each incident in which the EMS instructor engages in conduct that constitutes a basis for discipline.
- (5) Stay enforcement of a suspension, revocation or other discipline and place the individual on probation with the right to vacate the probationary order for noncompliance.

§ 1031.8. Discipline of medical command physicians and medical command facility medical directors.

(a) *Grounds for discipline.* The Department may discipline or impose corrective measures on a medical command physician or medical command facility medical director for the following reasons:

- (1) Violating a responsibility imposed on the physician by § 1023.2 or § 1023.3 (relating to medical command physician; and medical command facility medical director).
- (2) Without good cause, failing to comply with an EMS protocol established or approved by the Department.
- (b) *Types of discipline authorized.* If disciplinary action or corrective action is appropriate under subsection (a), the Department may do one or more of the following:
 - (1) Deny the application for certification.
 - (2) Issue a public reprimand.
 - (3) Revoke, suspend, limit or otherwise restrict or condition the certification.
 - (4) Impose a civil money penalty not exceeding \$1,000 for each incident in which the physician engages in conduct that constitutes a basis for discipline.
 - (5) Stay enforcement of any suspension, revocation or other discipline and place the individual on probation with the right to vacate the probationary order for noncompliance.

§ 1031.9. Automatic suspension for incapacity.

The Department will automatically suspend a certification issued under this subpart upon receiving a certified copy of court records establishing that the person has been adjudicated as incapacitated under 20 Pa.C.S. § 5511 (relating to petition and hearing; independent evaluation) or an equivalent statutory provision, and will lift the suspension upon receiving a certified copy of court records establishing that the person has regained capacity under 20 Pa.C.S. § 5517 (relating to adjudication of capacity and modification of existing orders) or an equivalent statutory provision.

§ 1031.10. Discipline of EMS agencies.

- (a) *Grounds for discipline.* The Department may discipline an EMS agency or an applicant for an EMS agency license for one or more of the following reasons:
 - (1) Violating a requirement of the act or a regulation adopted under the act.
 - (2) Failing to submit a plan of correction acceptable to the Department to correct a violation cited by the Department or failing to comply with a plan of correction accepted by the Department.
 - (3) Refusing to accept a conditional temporary license properly sought by the Department or to abide by its terms.
 - (4) Engaging in fraud or deceit in obtaining or attempting to obtain a license.
 - (5) Lending its license or, except as authorized by the Department in acting upon the license application or an application to amend the license,

enabling another person to manage or operate the EMS agency or any service the EMS agency is licensed to provide.

(6) Engaging in incompetence, negligence or misconduct in operating the EMS agency or in providing EMS to patients.

(7) Using the license of another or in any way knowingly aiding or abetting the improper granting of a license, certification, accreditation or other authorization issued under the act.

(8) Failing to meet or continue to meet applicable licensure standards.

(9) The EMS agency is not a responsible person or is not staffed by responsible persons and refuses to remove from its staff the irresponsible person or persons when directed to do so by the Department.

(10) Being convicted of a felony or a crime involving moral turpitude or related to the practice of the EMS agency.

(11) Making misrepresentations in seeking funds made available through the Department.

(12) Refusing to render EMS because of a patient's race, sex, creed, national origin, sexual preference, age, handicap, medical problem or refusing to respond to an emergency and render EMS because of a patient's financial inability to pay.

(13) Violating an order previously issued by the Department in a disciplinary matter.

(b) *Types of discipline authorized.* If disciplinary action is appropriate under subsection (a), the Department may do one or more of the following:

(1) Deny an application for a license.

(2) Issue a public reprimand.

(3) Revoke, suspend, limit or otherwise restrict the license.

(4) Impose a civil money penalty not exceeding \$5,000 for each incident in which the EMS agency engages in conduct that constitutes a basis for discipline.

(5) Stay enforcement of a suspension, revocation or other discipline and place the EMS agency on probation with the right to vacate the probationary order for noncompliance.

Source

The provisions of this § 1031.10 adopted October 11, 2013, effective April 10, 2014, 43 Pa.B. 6093.

Cross References

This section cited in 28 Pa. Code § 1031.16 (relating to discipline of management companies).

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§ 1031.11. Discipline of medical command facilities.

(a) *Grounds for discipline.* The Department may discipline a medical command facility or an applicant for a medical command facility certification for one or more of the following reasons:

- (1) Submitting a fraudulent or deceptive application for certification or registration of the certification.
- (2) Violating a requirement in § 1029.1 or § 1029.2 (relating to general provisions; and operational requirements).
- (3) Refusing to permit an inspection or to respond to an inquiry as required under § 1029.4 (relating to inspections and investigations).
- (4) Failing to comply, without just cause, with an EMS protocol approved by the Department.
- (5) Failing to submit a plan of correction acceptable to the Department to correct a violation cited by the Department or failing to comply with a plan of correction accepted by the Department.

(b) *Types of discipline authorized.* If disciplinary action is appropriate under subsection (a), the Department may do one or more of the following:

- (1) Deny an application for certification.
- (2) Issue a public reprimand.
- (3) Revoke, suspend, limit or otherwise restrict or condition the certification.
- (4) Impose a civil money penalty not exceeding \$5,000 for each act that constitutes a basis for discipline.
- (5) Stay enforcement of a suspension, revocation or other discipline and place the medical command facility on probation with the right to vacate the probationary order for noncompliance.

§ 1031.12. Discipline of EMS educational institutes.

(a) *Grounds for discipline.* The Department may discipline an EMS educational institute or an applicant for an EMS educational institute certification for one or more of the following reasons:

- (1) Failure to satisfy the responsibilities imposed upon it under §§ 1025.1—1025.3 (relating to accreditation and operational requirements of EMS educational institutes; accreditation process; and advertising).
- (2) An absence of students in the program for 2 consecutive years.
- (3) Submission of a fraudulent or deceptive application for accreditation.

(b) *Types of discipline authorized.* If disciplinary action is appropriate under subsection (a), the Department may do one or more of the following:

- (1) Deny the application for accreditation or reaccreditation.
- (2) Impose terms of probation.
- (3) Revoke, suspend, limit or otherwise restrict the accreditation.
- (4) Impose a civil money penalty not exceeding \$1,000 for each infraction.

Source

The provisions of this § 1031.12 adopted October 11, 2013, effective April 10, 2014, 43 Pa.B. 6093.

§ 1031.13. Discipline of providers of EMS continuing education.

(a) *Grounds for discipline.* The Department may discipline a continuing education sponsor or an applicant for accreditation or reaccreditation as a continuing education sponsor for one or both of the following reasons:

(1) Failure to satisfy the requirements in Chapter 1025, Subchapter B (relating to EMS continuing education courses).

(2) Submission of a fraudulent or deceptive application for accreditation or reaccreditation.

(b) *Types of discipline authorized.* If disciplinary action is appropriate under subsection (a), the Department may do one or more of the following:

(1) Deny or withdraw its accreditation or reaccreditation.

(2) Downgrade its accreditation status to provisional accreditation, subject to withdrawal if deficiencies are not resolved within a time period prescribed by the Department.

(3) Withdraw approval of a continuing education course applicable to any future presentation of the course.

(4) Impose terms of probation.

(5) Revoke, suspend, limit or otherwise restrict the accreditation or reaccreditation.

(6) Impose a civil money penalty not exceeding \$1,000 for each infraction.

Source

The provisions of this § 1031.13 adopted October 11, 2013, effective April 10, 2014, 43 Pa.B. 6093.

§ 1031.14. Civil money penalty for practicing without a license or certification.

(a) *Operating an EMS agency without a license.* The Department may impose a civil money penalty of up to \$5,000 per day upon a person who owns or operates an EMS agency in this Commonwealth without having a license to operate that EMS agency.

(b) *Practicing as an EMS provider without a certification.* The Department may impose a civil money penalty of up to \$1,000 per day upon a person who provides EMS without an EMS provider's certification or other legal authority to provide EMS.

§ 1031.15. Discipline of vendors of EMS PCR software.

The Department may assess a vendor of EMS PCR software a civil money penalty of up to \$5,000 for each day a vendor violates a duty imposed by § 1021.43(b) or (d) (relating to vendors of EMS patient care reports).

§ 1031.16. Discipline of management companies.

(a) The Department may deny, withdraw or condition the approval of an entity to offer management services for one or more of the following reasons:

- (1) The entity is not a responsible person.
- (2) Persons having a substantial ownership interest in the entity are not responsible persons.
- (3) The entity will not be staffed by or conduct its activities through responsible persons.
- (4) The entity refuses to provide the Department with records or information reasonably requested by the Department to make a determination regarding paragraphs (1)—(3).
- (5) The entity conducts the operation or managerial control of an EMS agency, or conducts the day-to-day operations of the EMS agency, in a manner that subjects the EMS agency to possible disciplinary action under § 1031.10 (relating to discipline of EMS agencies).
- (6) The entity violates a requirement of the act or a regulation adopted under the act that is applicable to the entity.
- (7) Engaging in fraud or deceit in obtaining or attempting to obtain or maintain Department approval.

(b) For purposes of subsection (a):

- (1) A responsible person is a person who has not engaged in an act contrary to justice, honesty or good morals which indicates that the person is likely to betray the public trust in managing the operation of the EMS agency, or is a person who has engaged in this conduct but has been rehabilitated and is not likely to again betray the public trust.
- (2) A person has a substantial ownership in the entity if the person has equity in the capital, stock or the profits of the applicant equal to 5% or more of the property or assets of the applicant.
- (3) A person staffs an entity that manages an EMS agency if the person manages activity integral to the operation of the EMS agency.

Source

The provisions of this § 1031.16 adopted October 11, 2013, effective April 10, 2014, 43 Pa.B. 6093.

Cross References

This section cited in 28 Pa. Code § 1027.14 (relating to management companies).

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