

## Investigation and Disciplinary

**PURPOSE:** To establish requirements necessary for all EMS personnel and EMS agencies. The West Virginia Office of Emergency Medical Services, Investigative Division, conducts investigations in conjunction with licensed agencies or law Enforcement personnel as well as separate and distinct investigations. The investigations may involve any and all matters within EMS jurisdiction in accordance with established investigative protocols as prescribed in WV 68 CSR 48-7 and WV 16-4C

**POLICY:** To ensure consistent standards and procedures for Investigations and Disciplinary for EMS personnel and EMS agencies in West Virginia.

### **PROCEDURE/REQUIREMENTS:**

**A. EMS Personnel:** WV 68 CSR 48-7.1.1-11 The Commissioner may initiate investigations on his or her own motion, and upon the written complaint of any person, cause investigations to be conducted to determine if disciplinary action is called for and impose the sanctions upon emergency medical services personnel as described in W. Va. Code §16-4C-9. Reasons for such actions include, but are not limited to:

1. Failure to comply with any requirements of 64CSR48.6.1. Minimum Eligibility Requirements or 64CSR.48.6.2. Standards of Conduct.
2. Incompetent practice while providing emergency medical services.
3. Abuse or abandonment of a patient.
4. Willful preparation or filing of false medical reports or records, or the inducement of other persons to do so.
5. Destruction of medical records required to be maintained.
6. Failure to comply with patient care reporting requirements established by the Commissioner.
7. A willful or consistent pattern of failure to complete details on a patient's medical record.

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8. Having a license, certification or other authorization to practice a health care profession or occupation revoked, suspended or subjected to disciplinary sanction:
  9. Improper disclosure of confidential patient information.
  10. Violating a duty imposed by W. Va. Code §§16-4C-1 et seq., this rule, or an order of the Commissioner previously entered in a disciplinary proceeding. OR
  11. Other reasons determined by the Commissioner which may pose a threat to the health and safety of the public or exposes the public to risk or loss of life or property.
- B. Applicant Background Check** 16-4C.8.e an applicant shall submit to a national criminal background check, the requirement of which is declared to be not against public policy.
1. The applicant shall meet all requirements necessary to accomplish the national criminal background check, including submitting fingerprints, and authorizing the West Virginia Office of Emergency Medical Services, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for certification.
  2. The results of the national criminal background check may not be released to or by a private entity.
  3. An application for an original, renewal, or temporary emergency medical service personnel certificate shall be acted upon by the commissioner and the certificate delivered or mailed, or a copy of any order of the commissioner denying any such application delivered or mailed to the applicant, **within 15 days after the date upon which the complete application including test scores and background checks**, if applicable, was received by the commissioner.

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- C. **EMS agencies:** WV 68 CSR 48-7.2.1-11 The Commissioner may initiate complaints, investigations and impose the sanctions upon EMS agencies described in W. Va. Code §16-4C-9. Reasons for such actions include, but are not limited to:
1. Failure to comply with any requirements of section 4 of this rule.
  2. Operating EMS vehicles which fail to comply with section 5 of this rule.
  3. Failure to comply with all applicable rules, policies and procedures of the OEMS.
  4. Disclosure of medical or other information, if prohibited by federal or state law.
  5. Preparation or filing of false medical reports or records, or the inducement of other persons to do so.
  6. Failure to disclose illegal, unethical acts and conduct of emergency medical services personnel or agencies to OEMS.
  7. Failure to report to OEMS, within 10 days, any known arrest, indictment, misdemeanor or felony conviction, or revocation, suspension or other disciplinary sanction of a certificate or other authorization to practice any health care profession or occupation in any state for all EMS personnel affiliated with the agency.
  8. Destruction of medical records required to be maintained.
  9. Refusal to render emergency medical care because of a patient's race, gender, creed, national origin, age, disability, medical problem or financial inability to pay.
  10. Violating a duty imposed by W. Va. Code §§ 16-4C-1 et seq., this rule or an order of the Commissioner previously entered in a disciplinary proceeding. OR

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11. Other reasons determined by the Commissioner which may pose a threat to the health and safety of the public or exposes the public to risk or loss.

**D. To file a Complaint/Self Report:** complaints/self-report can be filed via the following hyperlink, <https://www.wvoems.org/ems-programs/investigations/file-a-complaint-or-self-report>

1. **Self-Reporting:** WV 68 CSR 48.6.2.14. Certified personnel shall report to OEMS and to their affiliated EMS agencies within ten (10) days any arrest, indictment, misdemeanor or felony conviction, or revocation, suspension or other disciplinary sanction of a certificate or other privilege to practice any health care profession or occupation in any state or exclusion from federal reimbursement programs.

**E. Disciplinary and Corrective Action:** WV 68 CSR 48-7.5.1-11. The Commissioner may impose disciplinary or corrective measures upon EMS agencies and emergency medical services personnel for non-compliance. Disciplinary options may include, but are not limited to one or more of the following:

1. Administrative penalties of up to \$5,000.00 per violation.
2. Denial of certification.
3. Written reprimand.
4. Limitation on the certificate holder's authorization to practice.
5. Limitation of the EMS agency's license to provide service.
6. Required refresher courses or other education at the individual's expense.
7. A consent agreement.
8. Probation.
9. Suspension.

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10. Revocation. AND
11. Mandatory participation and successful completion of a detoxification or rehabilitation program at the individual's expense.

**F. Complaints; investigations; due process procedure; grounds for disciplinary action.** WV 16-4C-9.

1. The commissioner may at any time upon his or her own motion, and shall, upon the written complaint of any person, cause an investigation to be conducted to determine whether grounds exist for disciplinary action under this article or legislative rules promulgated pursuant to this article.
2. An investigator or other person who, under the direction of the commissioner or the director, gathers or reports information in good faith to the commissioner or the director, is immune from civil liability.
3. After reviewing any information obtained through an investigation, the commissioner or director shall determine if probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article.
4. Upon a finding that probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article, the commissioner or director shall provide a copy of the complaint and notice of hearing to the licensee or certificate holder.
5. Upon a finding of probable cause that the conduct or continued service or practice of any individual certificate holder may create a danger to public health or safety, the commissioner may temporarily suspend the certification prior to a hearing or notice:
  - i. The commissioner may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification: Provided, however, That the commissioner shall simultaneously institute proceedings for a hearing.

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- ii. The commissioner or the director may enter into a consent decree or hold a hearing for the suspension or revocation of the license or certification or the imposition of sanctions against the licensee or certificate holder.
- iii. The commissioner or the director issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person or agency regulated by the article.
- iv. The commissioner or the director may sign a consent decree or other legal document related to the complaint.
- v. The commissioner shall suspend or revoke any certificate, temporary certificate or license when he or she finds the holder has:
  1. Obtained a certificate, temporary certificate or license by means of fraud or deceit; or
  2. Been grossly incompetent, and/or grossly negligent as defined by the commissioner in accordance with rules or by prevailing standards of emergency medical services care; or
  3. Failed or refused to comply with the provisions of this article or any legislative rule promulgated by the commissioner or any order or final decision of the commissioner; or
  4. Engaged in any act during the course of duty which has endangered or is likely to endanger the health, welfare or safety of the public.

**G. The procedures for hearings** WV 68 CSR 48-7.8.1-2. Rights of appeal, judicial review apply as set forth in W. Va. Code §16-4C-10.

1. It is the intention of this rule to safeguard the residents of West Virginia by preventing any person who may be unfit or unqualified from engaging in emergency medical services and to safeguard the interests of emergency medical services personnel by affording them due process of law and an opportunity for fair notice and a meaningful hearing.

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2. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the West Virginia Bureau for Public Health rule, 64 CSR 1, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," and the provisions of this rule.
- H. Hearings:** WV 64-1-4.
1. **Request for Hearing;** Form Required - Any party who requests a hearing to determine any constitutional rights, legal rights, duties, interests or privileges of specific parties as required by law shall specify in writing the relief requested and the grounds relied upon as a basis for the relief requested.
  2. **Hearing on Written Request** - When the Commissioner is presented with a request for a hearing, he or she shall conduct a hearing within forty-five (45) days of receipt of such written request, unless postponed to a later date by mutual agreement.
  3. A request for a hearing may be denied if the Commissioner determines that the hearing:
    - i. Involves an exercise of authority in excess of that available under law.
    - ii. Would serve no useful purpose. OR
    - iii. Arises out of an event or occurrence that happened more than ninety (90) days prior to the request for a hearing.
  4. If the Commissioner determines that the request for a hearing should be denied then the Commissioner shall, within twenty (20) days of the receipt of such request, enter an Order denying the request for hearing, including the reason for such denial. Appeal may be taken from such Order as provided in W. Va. Code §29A-5-4.

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- I. **Notice of Hearing** WV 64-1-4.5.a-j. Upon the receipt of a request for a hearing the Commissioner shall within twenty (20) days provide the party making such request with a notice of hearing providing the Commissioner has not entered an Order denying a hearing. Such notice shall contain:
1. The date, time and place of the hearing.
  2. A short plain statement of the matters asserted. AND
  3. A statement of intention to appoint a hearing examiner, such notice shall be given at least 10 days in advance of the date of the hearing.
  4. **How Hearings Conducted** - Hearings shall be conducted as follows:
    - i. Any party shall have the right to be represented by an attorney qualified to practice in the state of West Virginia.
    - ii. The bureau may be represented by the office of the attorney general.
    - iii. The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed.
    - iv. When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.
    - v. The bureau shall be bound by the rules of privilege recognized by law.
    - vi. Documentary evidence may be received in the form of copies or excerpts or by incorporation of reference.
    - vii. Initially the bureau shall be given an opportunity to present evidence, including testimony, papers, records, bureau staff memoranda and documents in the possession of the bureau which it selects and determines to be in support of its position.



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- viii. Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the bureau's presentation, shall have the right to present evidence including testimony, papers and records and to submit rebuttal evidence.
- ix. The bureau shall have the right to cross-examine witnesses providing rebuttal testimony. AND
- x. Following the presentation of all the evidence, every party, including the bureau, shall have the right to offer closing argument, not to exceed a reasonable time limit as determined by the Commissioner or the hearing examiner.

**J. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission. WV 64-1-7.**

- 1. Any party, including the bureau, may submit to the hearing examiner or administrative law judge proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, on a time frame to be agreed upon by the parties and by the hearing examiner. In the event the proceedings of a hearing are transcribed, then the parties may submit proposed findings of fact and conclusions of law within twenty (20) days from the date the final transcript is available.

**K. Conferences; Informal Disposition of Cases. WV §64-1-9.**

- 1. At any time prior to the hearing or thereafter but prior to the issuance of a final decision, the Commissioner, or his or her duly appointed hearing examiner may hold conferences:
  - i. To dispose of procedural request or similar matters.
  - ii. To simplify or settle issues by consent of the parties. OR
  - iii. To provide for the informal disposition of cases by stipulation, agreed settlement, or consent order.

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2. The Commissioner, or his or her duly appointed hearing examiner may cause such conferences to be held on his or her own motion or at the request of a party.
- L. **Appeal.** WV §64-1-14.
1. An appeal from any final order or ruling entered in accordance with this rule shall be in accordance with the provisions of W. Va. Code §29A-5-4.