

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§157.36. Criteria for Denial and Disciplinary Actions for EMS Personnel and Applicants and Voluntary Surrender of a Certificate or License

(a) Emergency Suspension. The commissioner or his/her designee shall issue an emergency suspension order to any emergency medical services (EMS) certificant or licensee if the commissioner or his/her designee has reasonable cause to believe that the conduct of any certificant or licensee creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the commissioner or designee shall be effective immediately without a hearing on notice to the certificant or licensee. Notice to the certificant or licensee shall be established on the date that a copy of the signed emergency suspension order is sent to the address shown in the current records of the department.

(2) A copy of the emergency suspension order shall be sent to any licensed EMS provider, first responder organization, medical director, institution or facility with which the certificant or licensee is known to be associated, at the address shown in the current records of the department.

(3) If a written request for a hearing is received from the suspended individual within 15 days of the date of suspension, the department shall conduct a hearing not later than the thirtieth day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(b) Disciplinary Action. The department may suspend, revoke, or refuse to renew an EMS certification or paramedic license, or may reprimand a certificant or licensed paramedic for, but not limited to, the following reasons:

(1) violating any provision of the Health and Safety Code, Chapter 773, and/or Title 25 of the Texas Administrative Code (TAC), as well as Federal, State, or local laws, rules or regulations affecting, but not limited to, the practice of EMS;

(2) any conduct which is criminal in nature and/or any conduct which is in violation of any criminal, civil and/or administrative code or statute;

(3) failing to make accurate, complete and/or clearly written patient care reports documenting a patient's condition upon arrival at the scene, the prehospital care provided, and patient's status during transport, including signs, symptoms, and responses during duration of transport as per EMS provider's approved policy;

(4) falsifying any EMS record; patient record or report; or making false or misleading statements in a oral report; or destroying a patient care report;

(5) disclosing confidential information or knowledge concerning a patient except where required or allowed by law;

(6) causing or permitting physical or emotional abuse or injury to a patient or the public, and/or failing to report such abuse or injury to the employer, appropriate legal authority and/or the department;

(7) failing to report to the employer, appropriate legal authority or the department, the event of abuse or injury to a patient or the public within 24 hours or the next business day after the event.

(8) [(7)] failure to follow the medical director's protocol, performing advanced level or invasive treatment without medical direction or supervision, or practicing beyond the scope of certification or licensure;

(9) [(8)] failing to respond to a call while on duty and/or leaving duty assignment without proper authority;

(10) [(9)] abandoning a patient[, turning over the care of a patient or delegating EMS functions to a person who lacks the education, training, experience, knowledge to provide appropriate level of care for the patient];

(11) turning over the care of a patient or delegating EMS functions to a person who lacks the education, training, experience, or knowledge to provide appropriate level of care for the patient;

(12) [(10)] failing to comply with the terms of a department ordered probation or suspension;

(13) [(11)] issuing a check to the department which has been returned to the department or its agent unpaid;

(14) [(12)] discriminating in any way based on real or perceived conditions of national origin, race, color, creed, religion, sex, sexual orientation, age, physical disability, mental disability, or economic status;

(15) [(13)] misrepresenting level of any certification or licensure;

(16) [(14)] misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any other person or entity [or failing to take reasonable precautions to prevent such misappropriations];

(17) failing to take precautions to prevent misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any person or entity;

(18) [(15)] falsifying or altering, or assisting another in falsifying or altering, any department application, EMS certificate or license; or using or possessing any such altered certificate or license;

(19) [(16)] committing any offense during the period of a suspension/probation or repeating any offense for which a suspension/probation was imposed within the two-year period immediately following the end of the suspension or probation;

(20) [(17)] cheating and/or assisting another to cheat on any [department] examination, written or psychomotor, [or the examination of] by any provider licensed by the department or any institution or entity conducting EMS education and/or training or providing an EMS examination leading to obtaining certification or renewing certification or license;

(21) [(18)] obtaining or attempting to obtain and/or assisting another in obtaining or attempting to obtain, any advantage, benefit, favor or gain by fraud, forgery, deception, misrepresentation, untruth or subterfuge;

(22) [(19)] illegally possessing, dispensing, administering or distributing, or attempting to illegally dispense, administer, or distribute controlled substances as defined by the Health and Safety Code, Chapter 481 and/or Chapter 483;

(23) [(20)] having received disciplinary action relating to an EMS certificate or license or another health provider certificate or license issued in another state or in a U.S. Territory or in another nation, or having received disciplinary action relating to another health provider certificate or license issued in Texas;

(24) [(21)] failing or refusing to timely give the department full and complete information requested by the department;

(25) [(22)] failing to notify the department of a change in his or her criminal history within 30 business days of the issuance of a court order, which resulted in him or her being convicted or placed on a deferred adjudication community supervision or deferred disposition for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);

(26) [(23)] failing to notify the department within 5 business days of his or her being arrested, charged or indicted for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title;

(27) [(24)] failing to notify the department of a change in his or her criminal history within 5 business days of the issuance of a court order, which resulted in him or her being

convicted or placed on deferred adjudication community supervision, or deferred disposition for any offense noted in §157.37(e)(5) of this title;

(28) [(25)] failing to notify the department within 5 business days of his or her being arrested, charged or indicted for a criminal offense noted in §157.37(e)(5) of this title;

(29) [(26)] having been convicted or placed on deferred adjudication community supervision, or deferred disposition for a criminal offense that directly relates to the duties and responsibilities of EMS personnel, as determined by the provisions of §157.37 of this title, except that a person's EMS certification or paramedic license shall be revoked if the certificant or licensed paramedic is convicted, or placed on deferred adjudication community supervision or deferred disposition for a criminal offense, noted in §157.37(e)(5) of this title.

(30) [(27)] failing to timely complete any portion of the criminal history evaluation process, including submission of fingerprints, or timely providing information requested by the department within 60 days of notification to do so, in accordance with provisions in §157.37 of this title;

(31) [(28)] engaging in any conduct that jeopardizes or has the potential to jeopardize the health or safety of any person;

(32) [(29)] using **[abusing]** alcohol or drugs to such an extent that in the opinion of the commissioner or his/her designee [bureau chief], the health or safety of any persons **[is,]** or may be[,] endangered;

(33) failure by the employee, of an employer drug screening test right before, after or during an assigned EMS work or volunteer shift;

(34) resigning employment or refusing by the employee, of an employer drug screening test right before, after or during an assigned EMS work or volunteer shift;

(35) [(30)] engaging in any activity that betrays the patient privacy perspective or public trust and confidence in EMS; **[and]**

(36) [(31)] failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately perform the duties or meet the responsibilities required of a certified emergency medical technician or licensed paramedic; **[.]**

(37) delegating medical functions to other EMS personnel without approval from the medical director per approved protocols;

(38) failing to transport a patient and/or transport a patient to the appropriate medical facility according to the criteria for selection of a patient's destination established by the medical director;

(39) failing to document no-transport and refusals of care and/or follow the criteria under which a patient might not be transported, as established by the medical director;

(40) failing to contact medical control and/or the medical director as required by the medical director's protocols and/or EMS provider's policy and procedure when caring for or transporting a patient;

(41) failing to protect and/or advocate for patients/clients and/or the public from unnecessary risk of harm from another EMS certified or licensed personnel;

(42) falsifying employment or volunteer medical profession applications and/or failing to answer specific questions that would have affected the decision to employ or otherwise utilize while certified or licensed as an EMS personnel;

(43) behaving in a disruptive manner toward other EMS personnel, law enforcement, firefighters, hospital personnel, other medical personnel, patients, family members or others, that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(44) failing to notify the department no later than 30 days of a current and/or valid mailing address;

(45) falsifying or altering clinical and/or internship documents for EMS students;

(46) falsifying or failing to complete daily readiness checks on EMS vehicles, medical supplies and/or equipment as required by EMS employers;

(47) engaging in acts of dishonesty which relate to the EMS profession and/or as determined by the department;

(48) behavior that exploits the EMS personnel-patient relationship in a sexual way. This behavior is non-diagnostic and/or non-therapeutic, may be verbal or physical, and may include expressions or gestures that have sexual connotation or that a reasonable person would construe as such;

(49) falsifying information provided to the department;

(50) engaging in a pattern of behavior that demonstrates routine response to medical emergencies without being under the policies and procedures of an EMS provider and/or first responder organization, and/or providing patient care without medical direction when required.

(c) Criteria for Denial of EMS Certification, or Paramedic Licensure. An EMS certification or paramedic license may be denied for, but not limited to, the following reasons:

(1) failing to meet standards as required in this section;

(2) previous conduct of the applicant during the performance of duties that are similar to those required of EMS personnel, whether performed as a volunteer or for compensation, but which such previous conduct that was committed is contrary to accepted standards of conduct as described or required in this section or Health and Safety Code, Chapter 773;

(3) having been convicted or placed on deferred adjudication community supervision, or deferred disposition for a criminal offense that directly relates to the duties and responsibilities of EMS personnel, as determined by the provisions of §157.37 of this title, except that a person's application for EMS certification or paramedic license shall be denied if the applicant is convicted, or placed on deferred adjudication community supervision or deferred disposition for a criminal offense, described in §157.37(e)(5) of this title;

(4) receiving disciplinary action relating to a certificate or license issued to the applicant in Texas, in another state, or in a U.S. territory, or in another nation, or by the National Registry of Emergency Medical Technicians' (NREMT), or any other organization that provides national recognized for EMS certification;

(5) falsifying any Texas application for certification or licensure or falsifying any application or documentation used to acquire registration, certification or licensure;

(6) issuing payment [a check for any reason] to the department which has been returned to the department or its agent **[for any reason];**

(7) misrepresenting any requirements for certification, recertification, licensure, or licensure renewal;

(8) staffing an EMS vehicle deemed to be in service while the person's previously issued certification or license is expired, suspended or has been revoked; and/or

(9) failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately perform the duties or meet the responsibilities required of a certified emergency medical technician or licensed paramedic.

(d) Notification. If the department proposes to suspend, revoke, or not renew an EMS certificate or license, or reprimand a certificant or licensed paramedic, or deny a person's application for an EMS certification or paramedic license, or disqualify a prescreening petitioner's eligibility to acquire an EMS certification or paramedic license, the certificant, licensed paramedic, applicant or petitioner shall be notified at the address as shown in the current records of the department. The notice must state the alleged facts or conduct to warrant the proposed action and state that the individual may request an appeal hearing.

(e) Appeal Hearing Request.

(1) A request for an appeal hearing shall be in writing and submitted to the department and postmarked within 30 days after the date of the notice. The appeal hearing and any appeal from that hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, and Chapter 2001.

(2) If the applicant, certificant, licensed paramedic, or petitioner does not request a hearing in writing within 30 days after notice, the individual is deemed to have waived the opportunity for an appeal hearing and the department may take the proposed action.

(f) Probation.

(1) The department may probate the suspension of an EMS certification or paramedic license and as a probationary condition may require the certificant or licensee to:

(A) report regularly to the department on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the department;

(C) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; and/or

(D) complete or continue to meet certain requirements or conditions related to the circumstances surrounding the certificant's or licensee's rule violations or background to assure that he or she will continue to meet and maintain general EMS standards.

(2) Because of certain circumstances or conduct in the background of a person making an initial application for an EMS certification or paramedic license, the department may grant the certification or license, but place the person on probation, subject to the person meeting certain probationary conditions during the certification or licensure period to assure that the person will meet and maintain general EMS standards.

(3) Any person, whose EMS certification or paramedic license has been revoked by the department and who later regains certification or licensee under this section, shall be placed on probation for one year and be required to meet certain conditions to assure that he or she will meet and maintain general EMS standards.

(g) Reapplication.

(1) Two years after denial, revocation of a license, or the voluntary surrender of a certificate or license while disciplinary action is pending, an individual may petition the department in writing for reapplication for certification or licensure. Expiration of a certificate or license during the suspension period shall not affect the two-year waiting period required before a petition can be submitted.

(2) The petitioner bears the burden of proving fitness for certification or licensure.

(3) The department may allow the petitioner to file an application for certification or licensure if there is proof that the health, safety, and confidence of the public will be protected.

(4) The department may deny any petitioner if, in the judgement of the commissioner or designee, the reason for the original action continues to exist or if the petitioner has failed to offer sufficient proof that there is no longer a threat to public health, safety, and/or confidence.

(5) If the reapplication is allowed, the petitioner shall be required to meet the requirements for licensure as described in §157.40 of this title (relating to Paramedic Licensure), or certification as described in §157.33 of this title (relating to Certification), §157.43 of this title (relating to Course Coordinator Certification), or §157.44 of this title (relating to Emergency Medical Service Instructor Certification) and in addition shall meet the terms of probation in subsection (f) of this section.

(h) Surrender of a certificate or license. Surrender of a certificate or license shall not deprive the department of jurisdiction in regard to disciplinary action against the certificant or licensee. An individual who wishes to surrender his or her certification or license prior to the expiration of the certificate or license may do so by:

(1) completing a Surrender of Certificate or License statement; and

(2) in the event that a disciplinary action is pending or reasonably imminent, the certificant or licensee must acknowledge that the surrender constitutes a plea of "no contest" to the allegations upon which the disciplinary action is predicated.

(i) Notification of disposition. A copy of the order of final disposition of proposed disciplinary action shall be sent to any licensed EMS provider, first responder organization, medical director, institution or facility with which the certificant or licensee is known to be associated at the address shown in the current records of the department.