

MOUNTAIN-VALLEY EMS AGENCY
POLICIES AND PROCEDURES

POLICY: **161.00**
TITLE: **APPEALS PROCESS**

APPROVED: SIGNATURE ON FILE IN EMS OFFICE
 Executive Director

 SIGNATURE ON FILE IN EMS OFFICE
 Medical Director

EFFECTIVE DATE 04/13/2005
SUPERSEDES: 02/2005
REVISED: 01/01/2009
REVIEW DATE: 01/2014
PAGE: 1 of 6

APPEALS PROCESS

1) **AUTHORITY**

Division 2.5, California Health and Safety Code, sections 1797.220 and 1798; Title 22, California Code of Regulations, Division 9, Chapter 6, Article 2, (Section 100209); Article 3; and Article 4. California Government Code Division 4, Chapter 9.6 and 9.7 (Section 3230 and 3300)

2) **DEFINITIONS**

- a) “Administrative Hearing” is a hearing that takes place outside the judicial process before hearing examiners who have been granted judicial authority specifically for the purpose of conducting such hearings.
- b) “Administrative Law Judge” is an official of a federal or state agency who hears, weighs, and decides on evidence in administrative proceedings, and makes recommendations for any necessary legal action.
- C. “Appealing Party” or “Appellant” means any individual or agency which has received notice of denial, probation, suspension, or revocation of certification, accreditation, authorization, or designation from Mountain-Valley EMS Agency.
- D.. “Investigative Review Panel” or “IRP” is a panel appointed and convened by the EMS Agency for the purpose of resolving disputes. The IRP evaluates evidence presented by an Appealing Party and the EMS Agency. An IRP consists of at least three (3) persons knowledgeable in the health care system and EMS Agency policies and procedures specific to the subject matter.

3) **PURPOSE**

To establish a process to appeal a decision of denial, probation, suspension, or revocation of certification, accreditation, authorization, or designation by the Local EMS Agency and to ensure due process.

4) **POLICY**

An Appealing Party whose certification, accreditation, authorization, or designation has been denied, placed on probation, suspended, or revoked by the Local EMS Agency may formally request an IRP, or in the case of a firefighter EMT or public safety officer, an administrative hearing in front of an Administrative Law Judge.

5) PROCEDURE

A. INVESTIGATIVE REVIEW PANEL (IRP),

1. TYPES OF IRPs

Per California Health & Safety Code Section 100211 & 100213, there are the three types of IRP. The following describes these different panels and their applications.

a. Preliminary IRP

Applies only to cases of immediate suspension where the facts have not been reviewed by a (“full”) IRP, and must be requested by the appellant. A preliminary IRP is actually a limited form of the formal review process. The Medical Director is not obligated to present all information gathered at that point in the investigation. A request for a preliminary IRP triggers an automatic request for a (post-action) full IRP unless the certificate holder rejects the opportunity.

b. Pre-action (FULL) IRP

This process may be convened only at the discretion of the Medical Director of the local EMS Agency. Its purpose is to assist in establishing the facts of the matter in question. It occurs prior to the Medical Director making a final decision regarding disciplinary action. All information gathered up to the time the IRP is convened must be presented.

c. Post-action (FULL) IRP

This process occurs after the Medical Director has made a decision regarding probation, suspension, revocation, denial or denial of renewal, and has notified the certificate holder / entity of the decision. It occurs either, (a) when requested by the certificate holder, or (b) in cases where there was an immediate suspension and preliminary IRP, it occurs automatically (except when rejected by certificate holder)

B. DENIAL OF IRP

The situations where a certificate holder/entity is NOT entitled to a post-action IRP are as follows:

1. When a Medical Director has denied certification to an individual who does not meet certification requirements.
2. When a pre-action IRP has already been convened in the case and the IRP Panel has made a recommendation to the Medical Director.

A certificate holder / applicant / entity may specify, in writing that they do not want further review of all of the facts in the case. In the event that the certificate holder / entity does not want a IRP, no further action is required by the Local EMS Agency. All actions should be documented and filed.

C. PRE-HEARING PROCEDURES

1. Notification

In the event of a suspension, probation, revocation, denial or denial of renewal of a certificate or other approved program designation, the appellant must be advised of the disciplinary action by certified mail within ten days of the decision of the Medical Director. For EMT-I certificate holders/applicants this letter shall include all information required under Sections 100217, Title 22, California Code of Regulations.

2. Request for IRP

For a *Preliminary* or *Post Action* IRP, the request for an IRP must be received, in writing by the local EMS Agency within fifteen (15) calendar days of the date (certified by mail) the certificate holder/entity received written notice of disciplinary action.

The Local EMS Agency shall convene an IRP no later than 30 calendar days from the receipt of the request unless a request for continuance is requested by the appellant.

3. Appointment of IRP Members

Under the consultation of the Medical Director or Local EMS Agency designee, a minimum of three (3) persons who are knowledgeable in the delivery of medical care and local policies and procedures should be selected to serve on the IRP. One (1) person on the IRP shall be mutually agreed upon by the certificate holder/applicant or entity and the Local EMS Agency, if the certificate holder / applicant / entity should so request. The IRP should not include the Medical Director or staff member of the local EMS Agency, or anyone who submitted allegations or evidence or was directly involved in the case.

Neither the appellant, nor Local EMS Agency staff shall discuss the facts of the case with panel members prior to the IRP.

4. Notification of IRP

Once the IRP Panel members have been identified, the appellant shall be notified by certified mail, at least ten (10) days prior to the IRP, of the following information as required by Sections 100211, Title 22, California Code of Regulations.

- a. The date, time, and location of the IRP review;
- b. The purpose of the IRP;
- c. Names of IRP members and the appellant's right to request disqualification of any one IRP member, for cause. This request, and the specific cause for request of disqualification, must be made to the Local EMS Agency no more that seven days following the receipt of the notification of the IRP;

- d. The appellant's right to be present during the presentation of any testimony before the IRP, call witnesses and to cross examine witnesses called by the Local EMS Agency, present an oral and/or written argument, and present and rebut relevant evidence;
 - e. The appellant's right to be represented by legal counsel at the IRP or to be accompanied to the IRP by any other person of the appellant's choosing to provide advice and support. If the appellant will be represented by legal counsel, the Local EMS Agency must be notified in writing at least five working days prior to the IRP;
 - f. The appellant's right to request that the IRP be open to the public. If the appellant wishes to have the proceedings open to the public the Local EMS Agency must be notified in writing at least five working days prior to the IRP. However, the Panel may order closure of all, or any part of, the proceedings for any of the following reasons: (a) To satisfy the federal or state Constitution, statute or other law, including but not limited to, laws protecting privileged, confidential, or other protected information; (b) To conduct the proceedings, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons. (CCR §100211(h));
 - g. A photocopy of Chapter 6, California Code of Regulations;
 - h. A photocopy of Local EMS Agency Policy and Procedures # 161.00 outlining the IRP Process;
 - i. Notification that any discussion with any of the panel members regarding the facts of the case prior to the IRP by the appellant, or representative is strictly prohibited.
5. Should the Medical Director convene a Pre-action IRP, the above "Notification of IRP" shall be sent via certified mail at least 10 days, but no more than 30 days prior to the scheduled date of the IRP. If the certificate holder / applicant / entity does not accept the certified letter, or does not contact the Local EMS Agency to request a change in the date and/or time of the IRP, the IRP will be conducted as scheduled even if it is in the absence of the certificate holder / applicant / entity.
 6. Prior to the IRP, the appellant may request written, or recorded evidence that the Local EMS Agency intends to present into evidence. (Nothing in this section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product. (California Government Code § 11507.6)

D. HEARING PROCEDURES

1. A Local EMS Agency staff member shall be assigned as Facilitator to clarify points of order, prior to, and during the proceedings.
2. During the opening of the IRP, the Facilitator will:
 - a. Introduce all parties present
 - b. Explain the nature of allegations and specific sections of the Health and Safety Code 1798.200 (c) that has allegedly been violated.
 - c. Explain the history of the incidents leading up to the IRP and advise if this is a *preliminary, pre action, or post action* IRP.
 - d. Describe the potential outcomes of the proceedings; (Recommendation for : reinstatement, probation, suspension, revocation, or denial)
 - e. Ask the panel members if they have any reason to believe that they cannot provide a fair and impartial review in this case
 - f. Ask the panel members if they have discussed this case with the appellant, a representative of the appellant, Local EMS Agency staff, or any other person, as such action may be cause for disqualification.
3. The IRP shall appoint a chair person who will be the primary spokesperson for the group and will be responsible for generating the final report from the panel.
4. The Facilitator shall review the points of order for the proceedings including:
 - a. The appellant shall be presumed innocent of all allegations until the evidence presented by the Local EMS Agency shows otherwise.
 - b. The burden of proof is upon the Local EMS Agency to demonstrate that the certificate holder / entity has performed their duties in an improper manner or has otherwise acted inappropriately so as to justify disciplinary action.
 - c. The IRP is not a legal trial and is thereby not subject to the same rules of technical evidence as a court trial.
 - d. Only a Preponderance of Evidence is required for action to be taken.
 - e. Hearsay evidence is admissible as long as it is determined by the Panel to be credible and pertinent to the case.
 - f. Either party in the case may call witnesses and cross-examine witnesses.
 - g. The party offering testimony of any Expert Witnesses shall be required to show evidence of the witnesses' qualification and expertise prior to providing testimony.
 - h. All witnesses with the exception of the appellant and presenting Local EMS Agency staff will be excluded from the proceedings until called to testify
 - i. All witnesses providing testimony shall be required to provide affirmation that the testimony they are about to give is truthful to the best of their knowledge.
 - j. The proceedings will be recorded
5. Presentation of Evidence:
 - a. An opening statement by the Local EMS Agency representative
 - b. An opening statement for the appellant.
 - c. Opportunity for rebuttal
 - d. Presentation of evidence and information by the representative of the Local EMS Agency

- e. Appellant rebuttal
- f. Presentation of evidence and information for the appellant
- g. Local EMS Agency rebuttal
- h. Final statements by the Local EMS Agency
- i. Final statements for the appellant
- j. Submission of the matter for written report and recommendation to the IRP Panel.
- k. If additional time is required to complete the proceedings of the IRP beyond the original date and time, the IRP may be continued to a date and time mutually agreed upon by the panel and all parties.

6. IRP Findings:

The IRP shall assess all the available information on the matter in order to establish the facts of the case and shall make a written report of its findings and recommendation to the Medical Director. The report shall be submitted to the Medical Director within fifteen (15) days of the date of the IRP review. (CCR §100211(i)). The time of submission may be lengthened by request of the IRP, and at the discretion of the Local EMS Agency Medical Director. The report shall contain, at a minimum, the following information: (1) the findings with respect to the specific allegation(s); and (2) whether the IRP agrees with the Medical Director's decision regarding disciplinary action, and, if not, the recommendation regarding appropriate disciplinary action.

The Medical Director will notify the appellant within ten days of reaching a final decision on the matter. If the action includes a change of action against an EMT-I or EMT-II, a revised *Negative Certification Action Report* will be submitted to the State EMS Authority.

- 7. If the appealing party is a firefighter, administrative hearing procedures shall be conducted in accordance with the Firefighters Procedural Bill of Rights Act (California Government Code Section 3250 et. Seq.)
- 8. If the appealing party is a public safety officer, administrative hearing procedures shall be conducted in accordance with the Public Safety Officers Procedural Bill of Rights Act (California Government Code Section 3300 et. Seq.)