

Summary of the EMS Advisory Board's Recommendations Pertaining to EMS Provider Appeals Process

Section of HB1856 Addressing EMS Provider Appeals

- I. The State Emergency Medical Services Advisory Board to, by July 1, 2014, develop and facilitate the implementation of (i) a process whereby an emergency medical services provider who is certified by the Office of Emergency Medical Services pursuant to § [32.1-111.5](#) and who has received an adverse decision related to his authority to provide emergency medical care on behalf of an emergency medical services agency under the authority of an agency operational medical director shall be informed of the appeals process.

EMS Provider Appeals Process Introduction

The integral involvement of physician/ medical directors in EMS has been recognized as part of the foundation on which a successful pre-hospital emergency patient care system is built. Several professional organizations involved with the provision of pre-hospital care and medical direction have described the importance of medical directors in EMS systems and patient care and the unique qualities of the relationship between physician medical directors and EMS providers:

Handbook for EMS Medical Directors, FEMA, March 2012:

http://www.usfa.fema.gov/downloads/pdf/publications/handbook_for_ems_medical_directors.pdf

NAEMT Position Statement: Medical Direction of Emergency Medical Services, 2010:

<http://www.naemt.org/Libraries/Advocacy%20Documents/3-30-10%20Medical%20Direction%20in%20EMS.sflb>

Position Statement: Medical Direction for Operational EMS Programs, National Association of EMS Physicians, 2010:

<http://www.naemsp.org/Documents/POSITION%20MedDirforOperationalEMSPrograms.pdf>

Position Paper: Physician Medical Direction in EMS, National Association of EMS Physicians.1998:

<http://www.naemsp.org/Documents/POSITION%20PhysicianMedDir.pdf>

Policy Statement: Physician Medical Direction of EMS Education Programs, 1997:

<http://www.naemsp.org/Documents/POSITION%20PhysicianMedDir-eduprograms.pdf>

The relationship between EMS providers and physician medical directors, referred to as an operational medical director or “OMD” in Virginia, is a unique relationship in healthcare. EMS providers function largely independently in the field, making complex decisions in patient assessment and subsequent decisions about patient care and disposition based on patient care protocols approved by their agency OMD.

Intimate physician involvement in certification training, continuing education, quality assurance and improvement functions, and provider discipline is different in many ways from physician interactions with other health care providers. It establishes a direct line of personal and professional responsibility on the part of the OMD for the patient care provided by EMS providers under his/her guidance and direction. Existing sections of Virginia Administrative Code (VAC) describe the scope of responsibility and authority of OMD’s:

Virginia Emergency Medical Services Regulations

12VAC5-31-1040. Operational medical director authorization to practice.

- A. EMS personnel as defined in § 54.1-3408 of the Code of Virginia may only provide emergency medical care while acting under the authority of the operational medical director for the EMS agency for which they are affiliated and within the scope of the EMS agency license. Privileges to practice must be on the agency's official stationery or indicated in the agency records which are signed and dated by the OMD.

12VAC5-31-1890. Responsibilities of operational medical directors.

- A. Responsibilities of the operational medical director regarding medical control functions include but are not limited to medical directions provided directly to prehospital providers by the OMD or a designee either on-scene or through direct voice communications.
- B. Responsibilities of the operational medical director regarding medical direction functions include but are not limited to:
 - 1. Using protocols, operational policies and procedures, medical audits, reviews of care and determination of outcomes for the purpose of establishing direction of education and limitation of provider patient care functions.
 - 2. Verifying that qualifications and credentials for the agency's patient care or emergency medical dispatch personnel are maintained on an ongoing basis through training, testing and certification that, at a minimum, meet the requirements of these regulations, other applicable state regulations and including, but not limited to, § 32.1-111.5 of the Code of Virginia.
 - 3. Functioning as a resource to the agency in planning and scheduling the delivery of training and continuing education programs for agency personnel.
 - 4. Taking or recommending appropriate remedial or corrective measures for EMS personnel, consistent with state, regional and local EMS policies that may include but are not limited to counseling, retraining, testing, probation, and in-hospital or field internships.
 - 5. Suspending certified EMS personnel from medical care duties pending review and evaluation. Following final review, the OMD shall notify the provider, the EMS agency and the Office of EMS in writing of the nature and length of any suspension of practice privileges that are the result of disciplinary action.

12VAC5-31-1900. OMD and EMS agency conflict resolution.

- A. In the event of an unresolved conflict between the OMD and an EMS agency, the issues involved must be brought before the medical direction committee of the regional EMS council or local EMS resource for review and resolution.
- B. When the EMS agency presents a significant risk to public safety or health, the OMD must attempt to resolve the issues in question. If a risk remains unresolved and presents an immediate threat to public safety or health, the OMD shall contact the Office of EMS for assistance.

**Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic:
Virginia Board of Medicine**

18VAC85-20-29. Practitioner responsibility.

- A. A practitioner shall not:
 - 1) Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners

shall delegate patient care only to subordinates who are properly trained and supervised;

Operational medical directors feel strongly that they must have control over the providers that provide patient care under their supervision given the medical director's direct responsibility for the providers' practice. In the vast majority of cases medical directors base their decisions related to provider practice based both on the quality of care provided to patients entering the EMS system as well as the quality of the entire pre-hospital experience for those patients, including provider/patient interactions and the interactions of the provider with family members and other members of the community, other fire/rescue personnel, law enforcement personnel, and other health care providers including medical office staff and hospital staff . Decisions regarding provider practice including limitations on practice, remedial training, or suspension of practice made by the medical director should be made in concert with and following discussion with the EMS agency's operational leadership and following existing policies and procedures. OMD's should be mindful that many EMS agencies have specific guidelines governing employee discipline that must be followed if a decision is contemplated that may affect the provider's position in the agency. It is understood that in some cases providers may feel that their medical director has rendered an adverse opinion related to their practice that they feel is in error for some reason. All efforts should be made to resolve such disagreements within the EMS agency involved, but there may be cases in which the provider still does not feel that their concerns have been adequately addressed and they desire another level of review and comment.

If the provider's EMS agency has a review and/or grievance procedure that is already in place then that procedure should be followed and the results of that process used to resolve any continued disagreement between the EMS provider and the OMD. This process could be described in an agency policy or procedure, and could include existing jurisdictional (e.g. county or city) procedures or corporate procedures and may be described in employer/employee contracts or other agreements. Completion of an existing agency appeal or grievance procedure would be considered to constitute final resolution of the disagreement.

In situations in which an EMS agency does not have an existing policy or procedure to address provider concerns, a resource or template is provided to assist EMS agencies in developing a process for resolution of concerns regarding a provider's privileges to practice. A variety of resources could be used in the development of an agency appeal policy including consultation with other EMS agencies, local governments, and legal consultants. In cases where the EMS agency does not have an internal appeal process the agency could follow the process for addressing unresolved conflicts between an agency medical director and EMS agency leadership described in 12VAC5-31-1900. An EMS provider who has received an adverse decision related to their authority to provide emergency medical care could address their concerns to the medical direction committee, medical advisory committee or equivalent of the regional council in which the EMS agency resides. The regional medical director and members of the council medical direction/advisory committee, including peer reviewers, would then review the decision of the medical director as well as the circumstances that led to the decision and provide recommendations to assist in resolution of the disagreement. The review committee is encouraged to make use of peer level review in the review of decisions and formulation of recommendations. A face-to-face meeting may or may not be required for review by the committee. Recommendations by the council review committee could not be held to be binding

on the medical director and his/her final decision on the provider's practice status, but would constitute recommendations for constructive resolution of disagreements.

Virginia EMS Advisory Board

Recommendations for EMS Provider Appeals

Provider Appeals Template

In Virginia's EMS System, an EMS provider's right to practice is based on endorsement by their Operational Medical Director. For the purposes of this procedure, a "provider" is any individual certified as an EMS provider in Virginia at the level of First Responder or higher. Operational Medical Directors are recognized as having responsibility for the oversight of patient care activities provided by EMS agencies and for remedial training or discipline of the EMS providers that they endorse. (12VAC5-31-1890. Responsibilities of Operational Medical Directors). If in the opinion of the Operational Medical Director (OMD or Medical Director) after review of appropriate information, an action (or failure to act) on the part of a provider has been determined to compromise patient care directly or indirectly, the actions described below shall occur.

- 1) The provider will be notified in writing of the issues/concerns that merit attention by the Medical Director. Notwithstanding this written notice provision, the provisions of 2 and 3 below, and based on the severity and nature of the act (or failure to act), the Medical Director may immediately suspend a practitioner's right to practice upon receipt of information sufficient in the judgment of the Medical Director to present an immediate threat to patient safety pending further investigation. If the Medical Director invokes an immediate suspension, this shall be followed by written notice to include electronic notice within an appropriate time frame of such immediate suspension.
- 2) A written, or electronic, explanation by the provider explaining the incident shall be presented to the Medical Director within three (3) working days of receipt of the Medical Director's issues/concerns. If no written explanation of the incident is sent to the Medical Director by that deadline, the Medical Director may base his/her decision upon such information that is available to him/her as of that deadline.
- 3) The Medical Director, or the provider, may request a meeting to further discuss the issues/ concerns. If this option is exercised, the meeting shall occur within an appropriate time frame of receipt of the request.
- 4) After reviewing all materials, the Medical Director will issue a disposition of the matter. The Medical Director may exercise one or more of the following options:
 - a) No action taken/matter resolved.
 - b) Recommendation for remedial training.

- c) Written warning.
- d) Requirement to precept at the endorsed level for a period of time or number of calls/runs.
- e) Temporary suspension of all practice privileges or suspension of specific practice privileges.
- f) Permanent suspension of practice privileges.

Any disciplinary action(s) taken by the OMD may extend to all agencies in which the provider is endorsed by the OMD. In addition, any disciplinary action(s) taken by the OMD may result in further enforcement action by the Office of EMS.

After the individual is notified in writing of the Medical Director's decision, he/she may appeal as per the agencies standard operating guidelines (SOG). This appeal must be presented in writing within an appropriate time frame of the decision of the Medical Director to the Medical Director or his/her designee.

- 5) The committee reviewing the recommendations of the OMD will meet as soon as is practical after the receipt of the written request for appeal. If the practitioner's ability to practice has been suspended for greater than seven.

(7) days, this meeting will be held with all deliberate speed and effort will be made to convene the meeting within ten (10) days. The committee may consist of the following representatives:

- a) Two (2) Physician members who are not the Medical Director such as the Regional Medical Director, or other physicians on the regional council.
 - b) In cases involving ALS providers, two (2) paramedics plus one (1) physician.
 - c) In cases involving BLS providers, one (1) ALS provider, one (1) BLS provider and one (1) physician.
- 6) One member of the review committee shall be designated as the presiding officer for purposes of hearing an appeal. The presiding officer may elect to hear the witnesses and cross examination is not allowed. The only individual who may address the committee is the provider. The recommendations of the committee shall be presented in writing to the Medical Director.
 - 7) In the event that the committee recommends that the provider be returned to practice under the license of the Medical Director, the Medical Director may continue the suspension. However, it is expected that the recommendations of the committee be considered in the Medical Director's final decision.