

# **AUSTIN PUBLIC SAFETY COMMISSION CIVIL** **SERVICE BRIEFING**

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**February 2, 2015**



# I. Civil Service Act: Local Government Code Chapter 143

- Austin voters approved Civil Service for ATCEMS in November 2012.
- LGC 143.051: Disciplinary Actions – Suspension or Removal: A civil service employee may only be removed or suspended for a violation of a civil service rule and only after a finding of the truth of the specific charges against the employee.
- The Act specifies 12 categories of violations for which a civil service employee may be suspended or removed as a disciplinary action:



# Disciplinary Actions

- 1) conviction of a felony or other crime involving moral turpitude;
- (2) violations of a municipal charter provision;
- (3) acts of incompetency;
- (4) neglect of duty;
- (5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;
- (6) acts showing lack of good moral character;
- (7) drinking intoxicants while on duty or intoxication while off duty;
- (8) conduct prejudicial to good order;
- (9) refusal or neglect to pay just debts;
- (10) absence without leave;
- (11) shirking duty or cowardice at fires, if applicable; or
- (12) violation of an applicable fire or police department rule or special order.



# Disciplinary Actions

- 1965 - Texas Supreme Court - the Act only applies to those types of terminations specifically enumerated in the Act, not all types of terminations (*City of Sweetwater v. Geron*).
- The only cause for termination under the Act is for disciplinary reasons.
- The Act does not prevent a City from legislating in other fields which may cause the dismissal of an employee.
- Non-disciplinary reasons for termination include not being fit for duty or failing to meet the minimum qualifications/condition of employment.



# Disciplinary Actions

- The Civil Service Commission and a Hearing Examiner only have jurisdiction to hear appeals related to:
  - Disciplinary Suspensions
  - Demotion
  - Promotional Examinations
- If the termination is for a non-disciplinary reason there is no right of appeal under the Act.



## II. Medical Director

- Statutory Authority:
  - Occupations Code Chapter 157.001: Authority of Physician to Delegate Certain Medical Acts – General Authority of Physician to Delegate:
    - a) A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician:



# Medical Director

- (1) the act:
  - (A) can be properly and safely performed by the person to whom the medical act is delegated;
  - (B) is performed in its customary manner; and
  - (C) is not in violation of any other statute; and
- (2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice medicine.
- (b) The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts.



# Medical Director

- Health and Safety Code Chapter 773.007: Emergency Medical Services
  - Supervision of Emergency Prehospital Care.
    - (a) The provision of advanced life support must be under medical supervision and a licensed physician's control.
    - (b) The provision of basic life support may be under medical supervision and a licensed physician's control.





# Medical Director

- Texas Administrative Code 197.3: Emergency Medical Service: The Off-Line Medical Director:
  - "Determines standards and objectives for all medically related aspects of operations of the EMS including the inspection, evaluation, and approval of the system's performance specifications."
  - Shall be required to "approve the level of prehospital care which may be rendered locally by each of the EMS personnel employed by and/or volunteering with the EMS under the medical director's supervision, regardless of the level of state certification or licensure, before the certificant or licensee is permitted to provide such care to the public."



# Medical Director

- May "take or recommend appropriate remedial or corrective measures for EMS personnel, in conjunction with local EMS administrations, which may include, but are not limited to, counseling, retraining, testing, probation, and/or field preceptorship."
- May "suspend a certified EMS individual from medical care duties for due cause pending review and evaluation."



# Medical Director

- Credentialing
  - Decisions related to patient care and credentialing within ATCEMS rest solely with the Medical Director.
  - It is within the sole discretion of the Medical Director to whom he delegates the privilege to practice medicine under his medical license.
  - The Medical Director credentials medics employed by ATCEMS and firefighters employed by AFD.
  - The Chief of ATCEMS and the Fire Chief have no authority over credentialing decisions.



# Medical Director

- The grounds for the revocation of credentials to practice are set forth in the OMD Clinical Operating Guidelines:
  - 1) Integrity Violation
  - 2) Intentionally Withholding Care
  - 3) Intentionally Harming a Patient
  - 4) Impairment By Drug/Alcohol While on Duty
  - 5) Failure to Remediate
- If the recommendation is to revoke credentials, the medic or firefighter has the right to review the evidence, present his/her side of the incident, and have legal representation during his/her meeting with the Medical Director.



# Medical Director

- Texas Courts have held termination for not obtaining or maintaining a license, certification, or credential that constitutes a condition of employment is not a disciplinary action under the Act:
  - Jackson v. City of Texas City (Ct. Appeal - Houston [1<sup>st</sup> Dist] 2008)[firefighters terminated for failing to satisfactorily complete EMS training]
  - Grote v. City of Mesquite, (Ct. Appeal – Dallas 2001) [firefighter terminated for failing to maintain Paramedic certification].
  - In both cases the Courts of Appeals rejected the firefighters claims that they were disciplined entitling them to an appeal under the Act.



# Medical Director

- These Courts rejected the argument that failing to obtain/maintain a certification was an act of misconduct, an act of incompetence, or constituted shirking duties under LGC 143.051.
- Since de-credentialing is not a disciplinary action, there is no right to appeal a termination using the Act's appeal process.
  - A Hearing Examiner or Civil Service Commission has no authority to order the Medical Director to allow a particular person to practice medicine under his medical license.
  - A Hearing Examiner or Civil Service Commission cannot order an employee reinstated to a civil service job that he/she he is no longer qualified for (Texas Supreme Court: only civil service employees may perform civil service duties).



# Medical Director

- If a medic or firefighter's credentials are revoked by the Medical Director the EMS or Fire Chief may, but is not required to, consider placement in a non-civil service position.
- The Medical Director has a letter agreement with the EMS Chief outlining the specific responsibilities and authority of each. The agreement describes the process or procedure by which the Medical Director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Services Act, the Health and Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards.



# III. Meet and Confer/Collective Bargaining

- LGC 143.031: Meet and Confer: APD & ATCEMS: voluntary bargaining – no agreement has to be reached.
- LGC 174: Collective Bargaining – AFD: mandatory bargaining on specific subjects – agreement can be imposed on the parties by an arbitrator or court.
- 143.307: City and the Association may enter into an agreement that “supersedes a previous statute concerning wages, salaries, rate of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute...This Agreement “preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.”





# Meet and Confer and Collective Bargaining

- 174.005: “preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality...A state or local civil service provision prevails over a collective bargaining agreement under this chapter unless the collective bargaining contract specifically provides otherwise.”



# Meet and Confer and Collective Bargaining

- During the Urban Affairs Committee consideration of HB 554 on March 16, 2011, extending Chapter 143 civil service to Austin EMS, Steve Stewart, then President of the Austin EMS Employees Association testified that:

*“It does not apply to, there is another state law that allows medical directors to have total control over who practices under their license, so this would not convey civil service, uh, benefits to medical issues. That would be kept totally separate from EMS.”*



# Medical Director

*“In Texas you have, um, a separate statute that gives the medical director, the physician, that we all operate under his medical license, so it would not convey any appeals of disciplinary action for medical reasons. The Medical Director would retain all that control. Specific medical issues would be under the complete control of the medical director who is a physician.”*

[http://tlchouse.granicus.com/MediaPlayer.php?view\\_id=26&clip\\_id=3854](http://tlchouse.granicus.com/MediaPlayer.php?view_id=26&clip_id=3854)



# Meet and Confer and Collective Bargaining

- During the ATCEMS contract negotiations, the City made it clear to the Association that it did not have the ability to negotiate a contract provision that superseded the Medical Director's statutory authority.
- Any change to the Medical Director's statutory authority has to be made by the Legislature.
- Even if the parties could negotiate over the Medical Director's credentialing decisions, no agreement is mandated.
- Even if the parties could expand the jurisdiction of the Civil Service Commission or a Hearing Examiner to include the appeal of a non-disciplinary termination, neither the Commission nor the Hearing Examiner can restore the medic or firefighter to his/her prior civil service position if that person's credentials have been revoked.



# Meet and Confer and Collective Bargaining

- The EMS Association's membership approved the 2013-2017 Meet and Confer Agreement by an overwhelming majority despite the City's position that it could not bargain over the Medical Director's authority and de-credentialing decisions.



QUESTIONS??

