

Policy Title: **IMPAIRED BEHAVIOR and Fitness for Duty**

No. 1 - 4

Board Approval: 9/9/21

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I. Introduction

Drug abuse is much higher among paramedics and EMTs compared to other emergency responder professions. The limited research has not yet come to conclusions as to why, but it is believed to be a combination of factors including easy access to potent and addictive prescription medications and high stress exposure levels

<https://www.addictioncenter.com/addiction/emergency-responders/>.

II. Purpose

To promote safe practice standards and working environments that assure quality patient care and to protect the health and welfare of Northwest Community EMS System (NWC EMSS) students and members and the patients they serve. In achieving this goal, the NWC EMSS complies with Federal and State drug free workplace laws.

III. Definitions

- A. **Controlled substances:** Defined in Section 202 of the Controlled Substances Act, 21 U.S.C. 812 that places all substances which are in some manner regulated under existing federal law into one of five schedules (See Table 1). This placement is based upon the substance's medical use, potential for abuse, and safety or dependence liability. Some states (including Illinois) have passed laws allowing for the medical or recreational use of marijuana. These state laws do not alter the fact that marijuana remains a Schedule I medication under federal law.
- B. **Drug:** Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease and a substance other than food intended to affect the structure or any function of the body of man or animals (FDA, 2017).
- C. **Drug-free workplace** (Drug-Free Workplace Act of 1988): Workplace where "the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited."
- D. **Fitness for duty:** EMS personnel must have the skills, knowledge, character and health to practice their profession safely and effectively. If an EMS practitioner's fitness for duty is impaired they may be unable to practice safely and effectively.
- E. **Illicit drugs:** Any drug or controlled substance, the sale or consumption of which is illegal or any legally obtainable controlled substance, which has not been specifically prescribed by a licensed physician for treatment purposes or is not being used for prescribed purposes.
- F. **Impaired behavior/practice / Behavior under the influence:** Occurs whenever a person is behaving in a manner not suitable for the workplace or behavior that may be affected by drugs in any detectable manner including but not limited to: misconduct or impairment of physical or mental ability. This can be established by a lay person's opinion, a professional opinion or a scientifically validated test (e.g., person's blood alcohol concentration is 0.01 or greater. In the case of illegal or prescribed drugs, any detectable presence of drug metabolites).

Examples of observable behaviors suggesting impairment include, but are not limited to: drowsiness, lack of mental alertness, odor of alcohol on breath, slurred/incoherent speech, red eyes, aggressive behavior/loud voice, significant unexplained mood changes, abusive language, disheveled appearance, excessive or unexplained work errors, suspicion of diversion of medications or theft or forgery of prescriptions, lack of manual dexterity/coordination (eye, hand, gait, or balance) unexplained work-related accident or injury (causing or participating in any work-related accident or injury), frequent unexplained absences from work area (excessive absenteeism or tardiness that has no other logical documented explanation), comments referring to recent drug use, and disclosure that the person has undergone recent treatment of substance use disorder

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Under Illinois law, **employers may consider workers to be impaired if** the employer “has a good faith belief” that employees are showing symptoms that impact their job performance, such as those related to speech, physical dexterity, agility, coordination and demeanor, among others.

- G. **Reasonable grounds:** “Reasonable grounds” is based on documentation of specific, contemporaneous physical, behavioral, or performance indicators consistent with probable substance abuse or psychiatric or other medical conditions (see above definition of impaired behavior/behavior under the influence)
- H. **Substance use disorders** occur when the recurrent use of alcohol and/or drugs causes clinically significant impairment, including health problems, disability, and failure to meet major responsibilities at work, school, or home (www.samhsa.gov/find-help/disorders)

IV. POLICY

- A. The EMS Medical Director (EMS MD) requires that all System members perform their EMS-related duties competently and effectively without impaired judgment, coordination or skill in a manner that does not jeopardize the health and safety of patients, bystanders, colleagues, or themselves.
- B. **Self-reporting of possible drug effects:** EMS students and licensed personnel are required to inform their designated supervisor when reporting for EMS-related duty if their use of any drug may adversely affect their ability to satisfactorily perform their EMS job duties or may impair their safety or the safety of others (e.g. drowsiness, muscle relaxation). If it is determined that the EMS practitioner’s drug use (medically necessary or prohibited) would adversely affect their job performance, the person shall be removed from EMS-related duties until their cognition and behavior is unimpaired.
- C. **The following activities or actions are prohibited while acting as an agent of the NWC EMSS:**
 - 1. "Intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or stimulants in such manner as to adversely affect the delivery or performance of activities in the care of patients requiring EMS interventions.

Adversely affect means anything which could harm the patient or treatment that is administered improperly." - EMS Rules.

The System will review all allegations of impaired behavior/behavior under the influence and will take appropriate corrective action against any EMS practitioner who tests positive for any Federally designated drugs of abuse without Medical Review Officer (MRO) approval and/or one who uses legal substances in a manner that results in impaired behavior during any activity associated with the EMS program.

Marijuana use: Any products with >0.3% THC, however, remain a Schedule I substance as per Drug Enforcement Administration (DEA) regulation. See the Illinois Cannabis Regulation and Tax Act (HB 1438); Eff. Jan. 1, 2020.

“The Illinois General Assembly finds and declares that employee workplace safety shall not be diminished because of this act and employer workplace policies shall be interpreted broadly to protect employee safety.”

Therefore, while recreational marijuana use in adults may be legal in Illinois after 1/1/20, it is still a schedule I controlled substance on a Federal basis and its use is prohibited while on EMS duty or on call in a manner that would cause EMS personnel to demonstrate impaired behavior or behavior under the influence when reporting for duty.

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Employers may continue to enforce drug-free workplaces and “reasonable” zero tolerance policies “concerning drug testing, smoking, consumption, storage or use of cannabis in the workplace or while on call”. **Workers are considered to be on call when** they’re scheduled, with at least 24 hours’ notice, to be on standby or working. EMS drug screens must show negative results for THC while on duty per employer policy

To be reported positive, a specimen must test positive at or above the 50 ng/mL cutoff for the initial test and have a concentration of the delta-9 THCA that is equal to or greater than the 15 ng/mL confirmatory cutoff level. Infrequent marijuana use may cause positive initial test results for 1 to 5 days. With repeated smoking, THC accumulates in fatty tissue. Chronic smokers slowly release THC over a longer time and may continue to produce detectable levels of drug for longer periods of time (www.samhsa.gov/sites/default/files/workplace/MRO_Manual_2010_100908.pdf)

These provisions do NOT involve products sold legally as medical marijuana by prescription and/or products containing CBD. While CBD and THC possess similar chemical structures, their effects are quite different. Humans have 2 endogenous cannabinoid receptors: type 1 (CB1) and type 2 (CB2). THC activates CB1, which is responsible for its psychoactive properties. CBD does not directly act on CB1 and carries a different pharmacologic profile. CBD appears to have a neuroprotective effect and mitigates the incidence of THC-induced anxiety, psychosis, and cognitive impairment.

2. "Unauthorized use or removal of controlled substances, supplies, or equipment from any ambulance, health care facility, institution, or other work place location" (EMS Rules).
 3. The unlawful use, possession, sale, manufacture, distribution, dispensation, exchange, of alcohol, drugs and/or controlled substances.
 4. The diversion of EMS drugs intended for pts to a System member's own use.
- D. The NWC EMSS strongly advocates prevention, recognition, and treatment of SUD and providing support for those seeking or already in recovery. System members will aggressively recognize, intervene, attempt to rehabilitate and restore to health any EMS personnel whose practice is impaired as a result of substance use disorder.
- E. The EMS System respects the employee-employer relationship. The EMS System shall continue to collaboratively work with all Providers to investigate and resolve on-duty occurrences of impaired behavior/behavior under the influence. Each System Provider Agency must affirm the existence of personnel policy(ies) relative to Fitness for Duty and a Drug-free Workplace Program that includes, but is not limited to the management of EMS personnel who are impaired or suspected to be impaired while on duty or on call, as a part of their System Agreement.
- F. A drug-free workplace program shall have at least five key components:
1. A written policy
 2. Employee and supervisor education
 3. An employee assistance program (EAP) to aid rehabilitation; and criteria for monitoring the individual upon return to duty.
 4. Drug testing, interpretation, validation and use of the results
- G. An EMS practitioner must report to the EMS MD any criminal drug statute conviction, no later than five days after such conviction.
- H. *In the event that any rule of the Department or an EMS MD that requires testing for drug use as a condition of the applicable EMS personnel license conflicts with or duplicates a provision of a collective bargaining agreement that requires testing for drug use, that rule shall not apply to any person covered by the collective bargaining agreement.* (Sources: P.A. 100-1082, eff. 8-24-19; 101-81, eff. 7-12-19. 101-153, eff. 1-1-20.)

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V. **PROCEDURE IN THE EVENT OF AN ALLEGED OCCURRENCE of IMPAIRED BEHAVIOR**

- A. **Impaired behavior observed in work environment - Report impairment to immediate supervisor:** When, in the opinion of any System member, a student or member is demonstrating any behavior or conduct on duty that is impaired/behavior under the influence and which evidences reasonable grounds or probable cause to suspect impairment; or possession, sale or delivery while on duty of prohibited drugs or alcoholic beverages; or presence of prohibited drugs or alcoholic beverages; or of diverting drugs intended for a patient to their own use, regardless of the drug involved, this suspicion must be immediately reported to the person's immediate supervisor for implementation of the EMS Education Program or employer's Drug-Free Workplace/Fitness for Duty policy and procedure or applicable personnel policies.
- B. **Impaired behavior observed at hospital:** If a hospital employee suspects that an EMS student or practitioner is demonstrating impaired behavior/behavior under the influence, they shall initiate a Request for Clarification form per Policy G-1 and immediately contact the individual's direct supervisor. The System student or member suspected of having impaired behavior/behavior under the influence shall be retained at the hospital until an administrative representative of the Education Program or employer arrives to begin an investigation.
- C. **Discovery of facts/investigation:** An investigation will be conducted immediately by the EMS Education Program or person's employer to determine the possible validity of the reported impairment or violation of System standards. If the allegation is sustained and the investigation reveals that impaired practice exists, and/or System standards were breached, the supervisor must immediately consult with the EMS MD or his designee and immediate steps to temporarily prevent further patient contact will be implemented.
- D. **Suspension of EMS privileges:** If the allegation is sustained, and/or for probable cause, the System member has not been removed from EMS duty by their employer, the EMS MD may immediately suspend EMS privileges, pending further action to be taken by the member's employer in consultation with the EMS MD and/or his designee.
- E. **Due process rights:** System personnel found to have violated this policy will be afforded Due Process as specified in System Policies and pursuant to Section 535.260 of the EMS Rules. For just cause, disciplinary action by the EMS MD may include a recommendation to the Illinois Department of Public Health that the EMT's license be suspended or revoked.
- F. **Consequences of drug misuse conviction:** System members convicted of violations of criminal drug statutes must satisfactorily participate in drug abuse assistance or a rehabilitation program, or face sanctions up to and including a recommendation for revocation of licensure to the Illinois Department of Public Health. Any treatment will be monitored by the employer either through their EAP or use of an outside referral.

EMS Act after amendment by P.A. 101-153 Sec. 3.50. Emergency Medical Services personnel licensure levels. subsection (d)8: IDPH may Suspend, revoke, or refuse to issue or renew the license of any licensee, after an opportunity for an impartial hearing before a neutral administrative law judge appointed by the Director, where the preponderance of the evidence shows one or more of the following:

1. *(E) The licensee is physically impaired to the extent that he or she cannot physically perform the skills and functions for which he or she is licensed, as verified by a physician, unless the person is on inactive status pursuant to Department regulations;*
2. *(F) The licensee is mentally impaired to the extent that he or she cannot exercise the appropriate judgment, skill and safety for performing the functions for which he or she is licensed, as verified by a physician, unless the person is on inactive status pursuant to Department regulations;*

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3. *(G) The licensee has violated this Act or any rule adopted by the Department pursuant to this Act; or*
4. *(H) The licensee has been convicted (or entered a plea of guilty or nolo-contendere) by a court of competent jurisdiction of a Class X, Class 1, or Class 2 felony in this State or an out-of-state equivalent offense.*

G. **Reinstatement:** Before reporting back to EMS-related duties after a suspension of medical privileges due to impaired practice, the System member must present to the EMS MD or his designee documentation that he/she has submitted to, and successfully completed, their employer's procedure for investigating and managing (suspected) impaired practice and is now fit for duty. If the suspension results in a leave of absence exceeding 6 months, refer to System Policy I-1 Inactive Status.

VI. **Regulations relative to nurses (ECRNs, PHRNs) with impaired practice**

- A. *"Impaired nurse" means a nurse licensed under this Act who is unable to practice with reasonable skill and safety because of a physical or mental disability as evidenced by a written determination or written consent based on clinical evidence, including loss of motor skills, abuse of drugs or alcohol, or a psychiatric disorder, of sufficient degree to diminish his or her ability to deliver competent patient care. (225 ILCS 65/) Nurse Practice Act.*
- B. Select grounds for disciplinary action against nurses under the Illinois Nurse Practice Act (Sec. 70-5):
1. *Unlawful taking, theft, selling, distributing, or manufacturing of any drug, narcotic, or prescription device.*
 2. *Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that could result in a licensee's inability to practice with reasonable judgment, skill or safety.*
 3. *Physical illness, mental illness, or disability that results in the inability to practice the profession with reasonable judgment, skill, or safety.*
 4. *Prescribing, selling, administering, distributing, giving, or self-administering a drug classified as a controlled substance (designated product) or narcotic for other than medically accepted therapeutic purposes.*
 5. *Violating State or federal laws, rules, or regulations relating to controlled substances.*
- C. *All substance-related violations shall mandate an automatic substance abuse assessment. Failure to submit to an assessment by a licensed physician who is certified as an addictionist or an advanced practice registered nurse with specialty certification in addictions may be grounds for an automatic suspension, as defined by rule.*
- D. *See Sec. 70-10. Intoxication and drug abuse.*
- E. *Sec. 70-15. Disciplinary and non-disciplinary options for the impaired nurse.*
- F. **Peer Assistance Network for Nurses (PANN)**
- PANN exists to support nurses who are chemically dependent. Their Toll-free 24 hour confidential hot line is 1-800-262-2500.

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Table 1 **Schedules of controlled substances**

Schedule	Definitions	Examples
I	High abuse potential with no accepted medical use; medications within this schedule may not be prescribed, dispensed, or administered	Heroin, marijuana, ecstasy, gamma hydroxybutyric acid (GHB)
II	High abuse potential with severe psychological or physical dependence; however, these medications have an accepted medical use and may be prescribed, dispensed, or administered	Morphine, codeine, hydrocodone, hydromorphone, methadone, oxycodone, fentanyl, methylphenidate, pentobarbital
III	Intermediate abuse potential (ie, less than Schedule II but more than Schedule IV medications)	Hydrocodone/acetaminophen 5 mg/500 mg or 10 mg/650 mg; codeine in combination with acetaminophen, aspirin, or ibuprofen; anabolic steroids; ketamine
IV	Abuse potential less than Schedule II but more than Schedule V medications	Propoxyphene, butorphanol, pentazocine, alprazolam, clonazepam, diazepam, midazolam, phenobarbital, pemoline, sibutramine
V	Medications with the least potential for abuse among the controlled substances	<i>Robitussin AC, Phenergan with codeine</i>

References/Resources:

US Dept of Health and Human Services, Substance abuse and mental health services administration (SAMHSA). <https://www.samhsa.gov/>

41 U.S. Code CHAPTER 81—DRUG-FREE WORKPLACE

P.A. 100-1082, eff. 8-24-19; 101-81, eff. 7-12-19. 101-153, eff. 1-1-20.

Illinois Cannabis Regulation and Tax Act (HB 1438); Eff. Jan. 1, 2020

(210 ILCS 50/) Emergency Medical Services (EMS) Systems Act.

(225 ILCS 65/) Nurse Practice Act

[Drug and Alcohol Testing Industry Association \(DATIA\)](#)

[Substance Abuse Program Administrators Association \(SAPAA\)](#)

[U.S. Department of Transportation's \(DOT\) Office of Drug and Alcohol Policy and Compliance](#)

[Substance Abuse and Mental Health Services Administration's \(SAMHSA\) Workplace Helpline](#)

[American Association of Medical Review Officers \(AAMRO\)](#)

[Employee Assistance Professionals Association \(EAPA\)](#)

[Employee Assistance Society of North America \(EASNA\)](#)

<https://www.jems.com/2017/10/01/we-need-to-change-our-approach-to-substance-abuse-in-ems/>

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