


## **Agenda Item 6:**

**The HSC 1798.200(c)(9) violation: how are misuse of and excessive use of alcohol and other substances of abuse defined, and discussion of progress on AB 450 mandate.**

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**The HSC 1798.200(c)(9) violation:  
The addiction to, the excessive use of, or the misuse  
of alcoholic beverages, narcotics, dangerous drugs,  
or controlled substances.**



**What are the definitions of “misuse”  
and “excessive use” of alcohol or  
substances of abuse?**



# **“Misuse” & “Excessive Use” of Alcohol or Substances of Abuse per HSC 1798.200 (c)(9)**

**“Misuse” and “excessive use” of alcohol or substances of abuse are not specifically defined in violation language of HSC 1798.200(c)(9).**

- There are no more specific or more articulated definitions of the terms “misuse” and/or “excessive use.”
- ALJ’s generally do not adhere to a bright line definition of “misuse” or “excessive use.”
- Misuse, excessive use, and addiction have been used together to describe the same facts.

# Sources of Definitions

1. National Institute on Alcohol Abuse and Alcoholism (NIAAA)
2. Center for Disease Control and Prevention
3. California Health and Safety Code

Definitions encompass the effects of usage on personal physical and mental abilities as well as the effects of such usage on others and social consequences.

# National Institute on Alcohol Abuse and Alcoholism: Alcohol Misuse

## Alcohol Misuse:

Drinking in a manner, situation, amount, or frequency that could cause harm to the person who drinks or to those around them.

Alcohol consumption that puts individuals at increased risk for adverse health and social consequences.

# National Institute on Alcohol Abuse and Alcoholism: Excess Consumption

- Excess daily consumption defined as:
  - More than 4 drinks per day for men, or more than 3 drinks per day for women
- Excess total consumption
  - More than 14 drinks per week for men, or more than 7 drinks per week for women

# Centers for Disease Control and Prevention: Misuse

## Alcohol Misuse:

A pattern of drinking that results in harm to one's health, interpersonal relationships, or ability to work.

- For women, more than 1 drink per day on average
- For men, more than 2 drinks per day on average



# Centers for Disease Control and Prevention: “Excess Consumption”

## Binge Drinking:

- Women: 4 or more drinks during a single occasion
- Men: 5 or more drinks during a single occasion

# Centers for Disease Control and Prevention

## Health and Social Consequences of Misuse

CDC lists the following as health and social consequences:

- 79,000 deaths attributable to excessive alcohol use each year in the U.S.
- Injuries, e.g., motor vehicle accidents, falls
- Violence, e.g., homicide, suicide
- Diseases of the central nervous system, e.g., stroke, dementia
- Heart disease & cancers
- Risky behaviors

# Centers for Disease Control and Prevention

## Health and Social Consequences of Misuse

- Workplace costs including absenteeism, decreased productivity due to poor work performance, employee turnover, accidents, and increased health care costs
- More than 700,000 Americans receive alcoholism treatment daily. But there is a growing recognition that alcoholism represents only one end of the spectrum of “alcohol misuse.”

# California Health and Safety Code

## General Definitions for Drug and Alcohol Programs

- “Alcohol and other drug problems” means problems of individuals, families, and the community that are related to the abuse of alcohol and other drugs

HSC section 11752.1(h)

# California Health and Safety Code

## General Provisions for Drug and Alcohol Programs

- “Alcohol abuser” means anyone who has a problem related to the consumption of alcoholic beverages whether or not it is of a periodic or continuing nature.
- This definition includes, but is not limited to, persons referred to as “alcoholics” and “drinking drivers.”
- *These problems may be evidenced by substantial impairment to the person’s physical, mental, or social well-being, which impairment adversely affects his or her abilities to function in the community.*

HSC section 11752.1 (i)

# Comparison of the Language of Drug and Alcohol Violations to other Licenses: EMSA

EMSA, HSC 1798.200(c)(9):

- **Addiction to**, the **excessive use of**, or the **misuse of**, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

# Comparison of the Language of Drug and Alcohol Violations to other Licenses: Medical Board

## California Medical Board:

- **Excessive use** of controlled substances (B&P 2239)
- **Excessive use** of Alcohol (B&P 2239)
- Practice under the influence of a narcotic or alcohol (B&P 2280)

# Comparison of the Language of Drug and Alcohol Violations to other Licenses: Registered Nursing

## Board of Registered Nursing:

“**Use of**” any controlled substance, narcotic, dangerous drugs, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired (B&P 2762 (B))



# Summary: Terms *Misuse* or *excessive use* are consistent with other California licensing boards, CDC, NIAAA, and HSC

- **EMSA:** “misuse,” & “excessive use”
- **Medical Board:** “excessive use,” & “Practice under the influence”
- **Board of Registered Nursing:** “use” of any narcotic, dangerous drugs, or alcohol
- **NIAAA & CDC:** “misuse”
- **HSC 11752 (h)(i) and (j):** “abuse of” alcohol and/or other drugs



# Pause for Questions

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Any Questions?

# Case Sample 1:

## ALJ finds facts of DUI constituted misuse of alcohol

### Facts:

- EMT-P at restaurant drinking with friends, drove, pulled over by police.
- BAC was 0.21%.

### Court Case:

- Convicted of DUI, sentenced to 3 years informal probation, fines, fees, and attended DUI programs.

# Case Sample 1: ALJ finds facts of DUI constituted misuse of alcohol

## ALJ Case:

- EMT-P drank socially, not daily, but denied having a problem with alcohol, never exhibited alcohol-related dangerous, violent, or out of control behavior, and no evidence was introduced he had a problem controlling his alcohol intake.

# Case Sample 1: ALJ finds facts of DUI constituted *misuse* of alcohol

## ALJ Disciplinary Decision:

- ALJ found complainant (EMSA) established the EMT-P **misused** alcohol by drinking and driving with a BAC exceeding 0.20% (BAC was 0.21%), more than 2x the legal limit of 0.08%.
- License placed on 3 years' probation.

# Case Sample 1: ALJ Modifies Optional Conditions

- ALJ modified optional conditions:
  - One year of random fluid testing rather than 3 BECAUSE 1 year should be sufficient to protect the public and determine whether the EMT-P suffers from alcohol abuse given the absence of any evidence of alcoholism, excessive use of alcohol, or regular alcohol misuse.
  - No diversion or detoxification program because EMT-P already completed a 6-month DUI program.

# Case Sample 2:

## ALJ finds BAC in excess of legal limit was *excessive use and misuse*

### Facts:

- EMT-P crashed motorcycle with passenger injuring the passenger.
- BAC was 0.25% - 3x the legal limit.

# Case Sample 2:

## ALJ finds BAC in excess of legal limit was *excessive use* and *misuse*

### ALJ Disciplinary Decision:

- ALJ characterized alcohol use as misuse and excessive use:
  - This level of intoxication showed EMT-P consumed **excessive** amount of alcohol.
  - His consumption also constituted **misuse** of alcohol because he was at increased risk for adverse health and social consequences.



# Case Sample 2:

## ALJ Consideration of Disciplinary Consideration Factor: Rehabilitation

### ALJ consideration of Rehabilitation (CCR 100176):

- 22 months sober since DUI
- Completed court ordered 9-month Alcohol Rehab program
- Over 200 negative alcohol screening tests
- Attended daily AA meetings for a year, worked all 12 steps
- Attended EAP counseling to cope with work trauma
- Multiple support letters from friends, family, coworkers, and bosses
- **ALJ:** EMT-P has begun to rehabilitate with 22 months' sobriety, committed to rehabilitation suggesting he was not a risk to public so long as he maintains sobriety and receives professional support
- **DISCIPLINE:** 60-day suspension and 5 years' probation

# Case Sample 3:

## ALJ finds drinking the evening prior to shift with BAC under the legal limit was *misuse by excessive drinking*

### Facts:

- EMT-P out drinking heavily night before shift, stopping 9 hours prior to shift.
- Reported to work. It was reported to battalion chief EMT-P smelled of alcohol.
- BAC was 0.061%

# Case Sample 3:

## ALJ finds drinking the evening prior to shift with BAC under the legal limit was *misuse by excessive drinking*

### ALJ Disciplinary Decision:

- ALJ characterized alcohol use was ***misuse by excessive drinking*** the night prior to a shift, smelling of alcohol while on duty, and having a BAC of 0.061%.
- Placed on 3 years' probation

## Case Sample 4a:

**ALJ finds drinking the evening prior to shift with BAC under the legal limit was *excessive use* based on admission by EMT-P.**

### Facts:

- EMT-P drank heavily at a holiday party, drove to work the next day, captain observed he was shaky and smelled of alcohol and sent him for drug and alcohol testing
- BAC was 0.076%

### ALJ Disciplinary Decision:

- ALJ noted EMT-P admitted he drank to excess.
- Public safety is secure with 4 years' probation.

# Case Sample 4b:

## ALJ finds drinking the evening prior to shift with BAC 5x the legal limit was *excessive use*.

### FACTS:

- EMT-P reported to work intoxicated after drinking on New Years' eve.
- Supervisor noticed signs of intoxication, requested an alcohol screen.
- BAC .390%

### ALJ Disciplinary Decision:

- BAC of .390% nearly 5x the legal limit of 0.08%
- Nearly 10x the legal limit of 0.04% which is considered impaired to drive a commercial motor vehicle.
- License revoked for insufficient evidence of rehabilitation and little insight into problem with alcohol.

# Case Sample 4b:

## ALJ Consideration of Disciplinary Consideration Factor: Rehabilitation

### ALJ consideration of Rehabilitation:

- EMT-P alleged drinking problem recent but admitted he had been drinking since age 19
- He had liver damage and possible brain damage due to alcohol consumption
- EMT-P had prior EAP help for alcohol use within the year prior to the DUI
- Sought EAP assistance after DUI and referred to 30-day program
- Began attending AA 1 to 4 times weekly with a sponsor, sometimes missing 2 weeks
- Sober 3 months
- **ALJ:** EMT-P made some strides toward rehabilitation but sobriety too new, lacks insight into severity of problem and not doing everything possible to ensure sobriety
- **Discipline:** license revoked as too much risk to public

## Case Sample 5:

**ALJ finds charge of drunk in public with BAC over the legal limit was *misuse* as EMT-P unable to care for self or others**

### Facts:

- EMT-P out with friend in area with several bars. EMT-P and friend seen in middle of street by police who warn them to get out of the street but later saw them back in the street again. Police take friend and EMT-P into custody planning to transport them to a detox facility, but they were uncooperative, and were arrested.
- BAC was 0.173%

## Case Sample 5:

ALJ finds charge of drunk in public with BAC over the legal limit was *misuse* as EMT-P unable to care for self or others

### ALJ Disciplinary Decision:

- ALJ held EMT-P **misused** alcohol to such a degree he was unable to exercise care for his own personal safety and that of others.
- License was revoked because the EMT-P had prior license discipline for a DUI for which he was on probation.



# Case Sample Addiction

## Facts:

- EMT-P stole various narcotic medications (Hydrocodone, Tramadol and Percocet) from 4 patients while responding to EMS calls.
- Patients/families reported the thefts.
- CURES report indicated the EMT-P filled 15 prescriptions for narcotic medications in the prior 12 months.
- At ALJ hearing, EMT-P admitted stealing the medications because he was addicted to pain medication stemming from a back injury.

# Case Sample Addiction

## ALJ consideration of required factors in determining discipline:

- **Actual Harm:** ALJ found EMT-P entering patients' homes while responding to EMS calls and stealing their medications deprived patients of pain relief constituting actual harm to patients.
- **Harm to Public:** EMT-P posed a potential risk of harm to the public due to his addiction, self-administration of controlled substances, and propensity for theft.
- **Nature and Severity of the Act:** EMT-P's larceny was not an isolated incident; he stole medications 4 times before he was caught.

[Recommended-Guidelines-for-Disciplinary-Orders-and-Conditions-of-Probation.pdf \(ca.gov\)](#)

# Case Sample Addiction

- **History of discipline:** None, but violations were “egregious”
- **Potential risk of harm to public:** addiction, self-administration of controlled substances, propensity for theft, proclivity for dishonesty, and misused position to take advantage of the vulnerable person for whom he was supposed to provide emergency care.
- **Employer-imposed discipline:** license revoked, and criminal charges levied.
- **Rehabilitation:** insufficient evidence and premature given length/severity of addiction, dishonest and illegal acts.
- **Considering all of the disciplinary consideration factors:** “tilts the scale toward greater discipline.”
- **License Revoked**



# Pause for Questions

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Any Questions?

# The HSC 1798.200(c) Violation Language is Statutory

## HSC 1798.200(c)(9):

- This language is statutory as is the language of all the (c) violations.
- It has been in existence in this form since the statutory scheme setting up EMSA was drafted.
- AB-450 made no changes to any of the language of the (c)-violations.

HSC 1798.200(b)(2) and (c).

# Recommended Guidelines For Disciplinary Orders And Conditions of Probation, July 26, 2008

- The Disciplinary Orders (MDOs) were developed via consensus of a broad stakeholder group to align disciplinary actions for all EMS personnel in California (EMTs and EMT-Ps, i.e., LEMSA-issued EMT certifications and EMSA-issued EMT-P licenses).

RECOMMENDED GUIDELINES FOR  
DISCIPLINARY ORDERS AND CONDITIONS OF  
PROBATION

JULY 26, 2008



# The AB 450 Mandate

- AB 450 established the PDRB within EMSA
- Gave the PDRB the authority to act on appeals of licensure discipline and denials of license applications and to make final determinations
- Mandated the PDRB develop criteria to aid it in making final determinations

# The AB 450 Mandate - Develop Criteria

The PDRB's role is to review the Model Disciplinary Orders and progressive discipline and to consider new factors set forth in AB 450 which include:

- Consideration of the investment made by both the employer and licenseholder in terms of:
  - education to secure the license,
  - training and continuing education to maintain the license, and equipment and appropriate adjuncts to perform the duties of the license.



# The AB 450 Mandate-Develop Criteria

The legislature mandated the PDRB develop and implement progressive discipline criteria setting forth 13 factors the PDRB must consider:

1. Nature and duties of a paramedic
2. The time that has elapsed since the licenseholder's offence
3. The nature and gravity of the offense
4. The employer-imposed discipline for the offense
5. The licenseholder's prior disciplinary record
6. Mitigating evidence
7. Prior warnings to the licenseholder on record or prior remediation
8. The actual harm to the patient and the actual harm to the public
9. Evidence of the licenseholder's rehabilitation
10. Evidence of an expungement proceeding, if applicable
11. The licenseholder's compliance with the terms of their sentence or a court order, if criminally convicted
12. Aggravating evidence
13. The licenseholder's overall criminal record

# The AB 450 Mandate-Fines

- PDRB was also given the authority to address administrative fines which the board addressed at the December 7, 2023 meeting.

HSC 1798.210

# PDRB has completed the AB-450 Mandate

- PDRB Staff and EMSA Regulations Team to Update The Recommended Guidelines For Disciplinary Orders And Conditions of Probation.

**RECOMMENDED GUIDELINES FOR  
DISCIPLINARY ORDERS AND CONDITIONS OF  
PROBATION**

JULY 26, 2008





# Pause for Questions

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Any Questions?

# Index of Administrative Law Judge Proposed Decisions

- Can read cases at <https://emsa.ca.gov>
  - Select “About”
    - Select “Paramedic Disciplinary Review Board”
      - Under Helpful Links:
        - Select “EMSA’s Index of Administrative Law Judge Proposed Decisions on Paramedic Licensure”