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Forest Service Manual 6900 – Emergency Medical Services
Chapter 40 – Legalities and Ethics

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Responsible Staff: Emergency Medical Services (EMS), Office of Safety and Occupational Health (OSOH)

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Explanation of changes: Following is an explanation of the changes throughout the directive by section.

6940: Revises chapter in its entirety. Removes NPS referenced materials and processes. Updates Forest Service specific language and Performance and Conduct sections to include Forest Service specific processes and details outline of various Board and Committee memberships updated.

6941.05: Updates definitions on Consent and Refusal, adds Legal Capacity will vary depending on the State Law; categories of consent number 3 implied consent; adds definition of implied consent.

6941.4: Updates direction on Patient Confidentiality and clarifies direction.

6941.12: Updates direction on Responding to Incidents While Off-Duty.

6942.11: Establishes code, caption, and sets forth direction on Integrity of Records.

6942.4: Removes direction on Goals and replaces with EMS Code of Ethics, previously set out at 6942.5.

6943.3: Removes NPS Branch Chief, Emergency Services and Director of EMS.

6943.31: Removes Director of EMS, replaces with EMS National Program Manager; adds National EMS Medical Director; adds Forest Supervisor.

6943.32: Updates direction on Membership.

6943.41: Removes Director of EMS, replaces with National EMS Program Manager; adds Local or National EMS Medical Director.

Effective June 15, 2020

6940: Establishes new chapter and sets forth codes, captions, and direction for Legalities and Ethics.

Table of Contents

This chapter defines terms and outlines procedures for assuring proper documentation and reporting, complying with Occupational Safety and Health Administration (OSHA) and other Federal regulations, and assuring the rights of patients who come under the care of employees of the Forest Service.

6941 – Legal Aspects of Emergency Medical Services

Laws, statutes, regulations, policies, and procedures (see section 6901 of this manual), as well as training and certification levels (see section 6908 of this manual), have been established to protect patients as they move through the emergency care system. Accordingly, Forest Service Emergency Medical Services (EMS) providers have a responsibility to act in a manner consistent with current EMS program policy and procedures ensuring appropriate patient care within the framework of current healthcare law and clinical standards of care.

6941.01 – Authority

See section FSM 6900, Zero Code, section 6901, Authority. Additionally, authorities listed below pertains only to this chapter.

1. **Cohn, Bruce M., JD, EMT-CC, and Alan J. Azzara, JD, EMT-P. Legal Aspects of Emergency Medical Services. W.B Saunders Company, 1998**. This book is a valuable resource that explains legal implications of delivering emergency medical care and legal considerations that may arise under specific situations. Coverage includes advanced directives, do not resuscitate orders, medical record confidentiality, malpractice, infectious disease information disclosure, risk management, and sexual discrimination and harassment.

2. **Federal Torts Claims Act, 28 USC 2672 et seq**. This Act provides exclusive remedy for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the government while acting within the scope of their office or employment is against the United States. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

6941.05 – Definitions

Abandonment. In EMS, abandonment means that the provider terminated care that they had a duty to provide. In the case of an EMS provider, the situation usually arises when the provider fails to assure that the patient has been formally turned over to another agency or professional with an adequate level of training/certification to care for the patient's illness or injury, when that patient requires ongoing care (Cohn, 1998).

In some cases, it is acceptable to turn a patient over to a provider with a lower level of qualification than the initial responder. This situation may arise when the patient's care needs clearly do not include the techniques possessed solely by the initial responder (for example, Advanced Life Support certification is not required for a patient with isolated bumps and bruises). The responder with a more advanced level of certification may be needed elsewhere. Turning a patient over to a provider with a lower level of qualification is not in itself abandonment.

Breach of Duty to Act and Standard of Care. A breach of duty to act is a "departure or deviation from good and accepted practice" (Cohn, 1998). The law asks what a "reasonably prudent person" would do in the same situation. The "good and accepted practice" is also referred to as the Standard of Care. Standard of Care differs depending on the level of certification of the provider. There are often several alternatives in a specific situation. The standard is defined through the use of textbooks; level of care provided by like providers in the community; State, Department of Transportation, and local protocols; and the agency's own operating procedures, policies, and rules.

Consent and Refusal. The informed consent of a patient is necessary before an EMS provider renders treatment (Cohn, 1998). Patients have the right to refuse treatment, except in certain special circumstances (detailed below). There are three essential elements that must be considered regarding consent:

1. **Legal capacity**: Is the patient legally capable of consenting? The patient must be of legal age to consent (see exceptions below), legal capacity will vary depending on the State Law.
2. **Mental capacity**: Can the patient understand their medical condition and the consequences of not being treated?
3. **Information**: Has the patient been provided with sufficient information to make a reasonable decision?

There are three categories of consent:

1. Informed consent: voluntary and based on the three factors above.
2. Expressed consent: the patient, verbally or otherwise agrees to specific treatments.
3. Implied consent: not expressed, but implied from the presentation of the patient, because the patient is incompetent, or because the patient is a minor with no guardian available. If a person is unable to consent but the condition of the patient is such that a reasonable person would want treatment, consent can be implied.

Patients do not have to consent to treatment. If a patient refuses treatment, evaluate the patient on the three elements above. If the patient is competent and informed, he/she can legally refuse treatment. There are several elements of refusal:

1. Document the situation thoroughly, and have witnesses document it as well, if possible.
2. Ask the patient again and enlist family and friends to help convince the patient to accept treatment.
3. Contact medical direction/control for assistance in convincing the patient they require care.
4. Advise the patient that they can change their mind at any time and suggest that he/she seek other medical help or advice.
5. Ask the patient to sign the Waiver of Treatment on the Patient Care Report and obtain a witness' signature. To be valid, the refusal must be based on adequate information regarding possible consequences and the elements of refusal listed above.
6. The most important part of refusals is the Electronic Patient Care Report or paper Patient Care(ePCR/PCR) documenting the exact situation and that more than one attempt to convince the patient they needed treatment has taken place. The conversation needs to avoid confusing terms, medical terms and be in a language they can understand.

Special cases of consent and refusal:

1. **Minors**. In general, EMS providers must obtain consent from the legal guardian to treat a minor. However, if the guardian is not present and there is a clear need to provide emergency care to prevent serious injury or death, consent is implied. A minor may also be emancipated in certain situations. A parent who is a minor can consent to the treatment of their child, for example. In some cases, minors can be termed "mature," or reasonable enough to consent to treatment despite chronological age. Please refer to local State Law.

   Parental refusal to allow a child to be treated should be dealt with in the same way as any other refusal to allow care. Refer to Mandatory Reporting Requirements below (sec. 6941.3, Mandatory Reporting Requirements) if parental refusal poses harm to the minor.

2. **Incompetent adults**. A patient is incompetent when he/she is unable to make a rational, informed decision regarding their condition or medical care. Causes of incompetence/incapacity include head injury, shock, alcohol or drug use, mental illness, and other situations. Providers have an obligation to treat patients but are not required to endanger themselves to do so. If a true emergency exists,

assistance should be requested to transport an incompetent adult who is refusing treatment.

3. **Do Not Resuscitate Orders**. A valid Do Not Resuscitate (DNR) is the same as any other patient refusal. However, when there is doubt as to the validity or applicability of a DNR, the provider should initiate care and document the situation thoroughly. The provider should also attempt to validate the DNR by contacting local medical control.
4. **Prisoners in Custody**. Competent prisoners have the same rights to accept or refuse treatment as anyone else. Incompetent prisoners may be treated as any other incompetent adult.

Duty to Act. A duty to act is an obligation on behalf of the provider to provide treatment to a patient. The duty to act exists if the provider is functioning as an EMS provider within the scope of their employment with a designated agency and is on-duty in the location in which the designated agency is responsible for EMS response. Duty to act may be created by mutual aid agreements, formal or otherwise. The actions of acknowledging a call and agreeing to respond may be sufficient to create a duty to act (Cohn, 1998). See FSM 6900, Emergency Medical Services, chapter Zero, section 6901.2 Jurisdictions, section 6901.3 Authorized EMS Activities, Section 6902.1 Goals. for further specifics on when Forest Service EMS providers have a duty to act.

If a provider is not on-duty, a duty to act may still exist in some circumstances. If the provider responds to a call or offers services at an incident, a duty to act has been created.

Scope of Employment. The range of activities that an employee is reasonably expected to do as part of their job which furthers the business of the employer and are not personal business.

Scope of Practice. The extent and limits of the medical interventions that a health care provider may perform.

6941.1 – Claims

The possibility always exists that claims may be filed for alleged negligent or wrongful acts or omissions of Forest Service EMS providers (see Federal Torts Claims Act, 28 U.S.C. 2672 et seq.). The exclusive remedy provisions of the Act do not extend to claims that allege acts are outside an employee's scope of employment.

6941.2 - Bloodborne Pathogens

FSH 6709.11 Health and Safety Code, section 52.3 Bloodborne Pathogens Program articulates the scope and training requirements of the Bloodborne Pathogens Program. EMS providers shall be included on the unit's Exposure Control Plan (ECP), (FSH 6709.11, Health and Safety Code, sec. 52.32, Exposure Control Plan) which will meet the requirements at 29 CFR 1910.1030 Bloodborne Pathogens.

6941.3 - Mandatory Reporting Requirements

Virtually every State mandates emergency services providers report certain specific types of incidents and conduct. Each region or station should provide a summary of the State's applicable reporting requirements to its EMS providers. All EMS providers should become familiar with State statutes regarding reporting requirements.

Incidents which must be reported in most States include, for example:

1. Suspected child or elder abuse.
2. Wounds from guns or knives.
3. Assaults.
4. Deaths.
5. Rape and sexual assault and abuse.

In general, personnel who properly report suspected incidents or conduct meeting the above definitions are protected from civil liability arising from that reporting requirement or process.

6941.4 - Patient Confidentiality

Medical information about a patient will not be shared with any third party without the consent of the patient unless there is a legitimate medical or legal need to do so. Confidentiality applies to the written ePCR/PCR, any other written notes, and oral statements made by the patient (Cohn, 1998).

Many States have specific statutes regarding patient confidentiality and what information may or may not be released, and to whom. EMS providers should become familiar with the regulations and statutes in their respective States. When operating on incidents out of the provider's State of residence or certification, such information may be obtained from local Forest Service EMS providers or medical directors.

It is not necessary to obtain patient consent to release information necessary for proper patient care and transport during an incident, such as a patient status conveyed over the radio. ePCR/PCR copies may also be given to other care providers. In addition, patient information

may be reviewed for quality assurance/quality improvement by formal committees or quality assurance/quality improvement personnel. However, information may be shared among health-care providers only when it is necessary to provide appropriate patient care. This does not apply to informal discussions of patient injuries and care as long as the patient cannot be identified.

A patient may authorize the release of an ePCR/PCR or other records by providing a written request. This information may be forwarded to an attorney, physician, or other party if specifically requested by the patient in writing. Otherwise, it should be forwarded to the patient.

Some States have laws requiring that ePCR/PCRs be turned over to law enforcement personnel investigating criminal conduct that is related to the incident. If such a law is not present in the State, ePCR/PCRs should be obtained via subpoena. EMS providers who are called to testify regarding events at which they provided EMS care may, on advice of an attorney, refuse to answer questions which would violate patient confidentiality. These requirements differ from State to State, and it is essential that EMS providers become familiar with the regulations in their respective State.

Without written consent, any use of photographs in which the patient can be identified may constitute an invasion of privacy. Photographs used to show nature of injury or mechanism of injury to emergency department personnel for medical purposes may not constitute an invasion of privacy.

Patient care reports and other reports that include patient information that can be connected to a specific patient may not be posted in public files.

Specific State laws may limit the release of human immunodeficiency virus information, above and beyond the requirements for release of other patient information. EMS providers should become familiar with the State's statutes regarding human immunodeficiency virus (HIV) information.

6941.5 – Equipment

Unexpected failures of patient care and medical monitoring equipment can affect the care provided. It is the responsibility of the provider to reduce potential for reduction in quality of care by assuring that equipment is in working order. Following are suggested steps:

1. Analyze the intended use of a piece of equipment, the abilities of the end users, and the advantages and disadvantages of a variety of types or models before purchase or lease. Consider the track-record of the company providing the equipment and the equipment itself.

2. Obtain all documentation regarding the equipment and use it for training and familiarization purposes. Keep it in a location where it is accessible to personnel using the equipment.
3. Train personnel in all aspects of the equipment, including its use, indications for its use, contraindications, storage location, and maintenance requirements. Train on the actual model that will be used to eliminate operator error.
4. Maintain records of maintenance, inspection, service, parts replacements, breakdowns and how any problems with equipment were resolved. Maintain equipment according to manufacturers' specifications; this includes vehicles. Develop a course of preventative maintenance for all equipment.
5. Use up-to-date and modern equipment that meets the current industry standard.
6. Develop standards for shift checks of equipment.
7. Make sure all operators of any equipment have the necessary licenses or certifications for that equipment and that they remain current.

6941.6 - Medical Control

The failure of an EMS provider to provide the emergency physician with complete and accurate assessment information may make it difficult for the physician to provide meaningful direction and may result in reduction of quality of care. Other actions that could affect quality of care include failing to follow medical control's directions, administering medications or treatments without authorization, failure to update assessment information, issuance of incorrect orders, refusal to authorize necessary treatments which it is within the provider's capability to perform, or directing the patient to the wrong facility.

Providers may refuse the local EMS Medical Advisor's directions under certain specific situations.

1. The provider has been directed to perform procedures or administer treatments or medications which are beyond their scope of practice/level of certification or beyond the established protocols.
2. The provider reasonably believes that the order would cause harm to the patient.

In these cases, the provider must clarify the reported assessment information and indications the provider is observing and discuss treatment options with the online medical control. The circumstances involved in the refusal of the local EMS medical advisor's directions will be documented on the ePCR/PCR by the EMS provider.

6941.7 – Instructors

Instructors or training facilities are responsible for assuring that students are not subjected to discrimination, sexual harassment, or other actions prohibited under Federal anti-discrimination laws.

Instructors and training facilities must exercise reasonable care to avoid injuries to students. Instructors should follow official curricula and document each student's participation and proficiency in the class.

6941.8 - Physicians on Scene

Occasionally, a physician may be at or happen on a scene of a medical emergency within the National Forest Systems' Lands. See chapter 30, section 6931.2, Components of Medical Oversight, Physician on Scene.

6941.9 - Hospital Selection

The selection of a facility to which the patient will be transported should be determined by the local EMS agency's destination guidelines/protocols.

6941.9a – Dispatch

Regions, Forests, Stations and Law Enforcement and Investigations unit (R/F/S/LEI) use a wide variety of dispatch services, ranging from within R/F/S/LEI through county and other federal agencies. In general, it is the responsibility of the dispatch office to obtain accurate and complete information, interpret that information to determine the nature of the emergency, contact and dispatch appropriate services, provide responders with accurate information, assist the caller in providing aid, and document the call accurately and in a timely manner.

6941.9b - Responding to Incidents Involving the Public While On-Duty

Forest Service EMS personnel are not authorized to provide scheduled, regular, or on-call assistance to the public, including the following activities:

1. Forest Service EMS employees are not authorized to provide any type of regular on-call medical assistance to the public, or to be available for dispatch by local jurisdictions for EMS calls.

2. Forest Service EMS employees are not authorized to provide non-incidental treatment of members of the public at private homes/businesses.

3. Forest Service EMS employees are not authorized to respond to motor vehicle accidents on public roads outside of National Forest System lands; and such activities are likely to

be considered outside the scope of their employment. It is recognized that happenstance response events may occur when Forest Service EMS providers happen to be first on scene, and these responses are deemed to be within the scope of employment, but routine EMS responses off federal property are not authorized.

The Forest Service recognizes there are circumstances when employee providers may be first on scene for incidents which may not involve employees, contractors, or cooperators. These incidents may take place off of National Forest Systems' land, as well and it is appropriate for the Forest ServiceEMS provider to respond and render care under those circumstances until the primary response agency is able to take over. Accordingly, such responses are deemed to be within the scope of employment, and the provider will be covered under the Federal Tort Claims Act for suits alleging simple negligence. The primary response agency with jurisdiction must be called immediately. Forest Service EMS personnel shall transfer patient care to the primary/higher level of care responders as soon as they arrive on scene. Forest Service EMS personnel may continue to assist on the incident, if requested by the primary response EMS agency.

6941.9c - Responding to Incidents While Off-Duty

EMS providers may also encounter incidents outside National Forest System lands while off-duty. If the provider is not acting on official duty as an agent of the Government, then they cannot perform EMS under their Forest Service licensed authority. The provider may be able to operate under Good Samaritan laws. Good Samaritan laws vary from State to State and thorough understanding of local law is important.

6942 – Principles and Code of Ethics

All action taken by EMS providers should be directed toward accomplishing the mission of the Forest Service. EMS is one method to achieve this goal but is not a goal unto itself.

6942.1 – Integrity

Public respect is essential. To establish this respect, the EMS provider must always render care in good faith and within the scope of training.

6942.11 – Integrity of Records

If the EMP (Emergency Medical Provider) believes they are being pressured to provide information that could result in possible ethical, civil, or criminal proceedings (for example, falsify or change records), they should document any requests, refuse to execute these requests, and notify their immediate superiors and/or EMS Program Leadership (for example, Anyone from their local EMS Coordinator/Local Emergency Medical Advisor to program leadership in Washington, DC).

6942.2 - Versatility

Providing EMS is not a primary function for an EMS provider in the Forest Service. EMS providers will focus on their primary job and may provide EMS when necessary.

6942.3 - Compatibility

The role of the EMS provider is just one of several directed at the same mission. The Forest Service employee must have the capacity to understand the purpose and function of these other activities and must be able to work in concert with others in pursuit of the common goal.

6942.4- EMS Code of Ethics

1. An EMS provider will faithfully abide by all laws, rules, regulations, and policies governing the performance of my duties and I will commit no act that violates these laws or regulations, or the spirit or intent of such laws and regulations while on or off duty.
2. An EMS provider will never knowingly violate any local, State, or Federal law or regulation, recognizing that I hold a unique position of public trust that carries an inherent personal commitment, in performing official activities. I understand that this code places special demands on me to preserve the confidence of the public, my peers, my Supervisors, and society in general.
3. An EMS provider will commit no act in the conduct of official business or in my personal life that subjects the Department of Agriculture or the Forest Service to public censure or adverse criticism.
4. An EMS provider will neither accept outside employment nor make any display, representative of the Department of Agriculture or the Forest Service that will in any way conflict with the interests or jeopardize the activities or mission of the Department of Agriculture or the Forest Service or give the appearance of conflict.
5. An EMS provider will maintain professional competence and demonstrate concern for the competence of other members of the EMS health care team.
6. An EMS provider will always place the safety and welfare of a patient, and my safety above all else during an emergency medical services incident.
7. As a representative of the Department of Agriculture and Forest Service, EMS providers will render emergency care impartially and in good faith, and document the results thereof fully, objectively, and accurately.
8. An EMS provider will work harmoniously with, and sustain confidence in, other members of the emergency medical services health care team.

9. EMS providers will refuse to participate in unethical procedures and assume the responsibility to expose incompetence or unethical conduct of others to the appropriate authority in a proper and professional manner, in all cases.
10. EMS providers will be judicious at all times and will release information pertaining to their official duties, orally or in writing, only in accordance with the law and established policy, in the course of rendering care and throughout the incident.
11. EMS providers will respect and hold in confidence all information of a confidential nature obtained in the course of their duties unless required by law to release such information.
12. Forest Service employees will accept no gift, gratuity, entertainment, or loan except as provided by Departmental regulations, in connection with their official duties.

6943 - Performance and Conduct

6943.02 - Objective

The objective of the EMS Program Performance and Conduct is to uphold the integrity of the EMS Program by establishing a fair process that encourages learning from unintended outcomes to the greatest extent possible while ensuring that the standard of care necessary for a pre-hospital care system is maintained.

6943.1 - Disciplinary Review

If it appears that a provider has acted in a manner inconsistent with policies or established standards of care or should a provider's behavior call into question their suitability to perform emergency medical care, the Agency must take prompt action. Such actions may include training, counseling, suspension of an EMS credential, or other corrective action as appropriate (see ch. 30, Medical Oversight and Training, sec. 6932.5, Credentialing). In some instances, a formal review may be recommended. For relatively simple issues with limited potential for system wide implications, initial review will be initiated and conduct by the local EMS Coordinator in conjunction with the local medical director. Incidents that raise more complex issues or have the potential for broader implications, including the potential for suspension or revocation of an EMS provider's EMS Credential, may be elevated to higher level review conducted by a Board of Inquiry. Employees holding State credentials may also be subject to State proceedings to revoke or suspend credentials.

The intent of review, in all cases, is to identify the context and influences leading to the incident being reviewed, understand improvements needed to the system, identify any corrective measures that are needed, and provide recommendations to the appropriate Supervisor and Line Officer should any performance or conduct issues be identified.

6943.2 - Employee Rights for all Review Levels

Bargaining unit employees have the right, commonly known as the Weingarten Right, to be represented by their Union (such as, the National Federation of Federal Employees) during any examination of the employee by a representative of the Agency in connection to an investigation, if they reasonably believe that the examination may result in disciplinary action against them, and they request representation.

6943.3 – EMS Board of Inquiry

When an EMS provider's performance indicates non-compliance with policies or established standards of care or demonstrates any behavior that calls into question their suitability to provide EMS care safely and effectively, in accordance with current policy, the Agency must take prompt action. Such actions may include training, counseling, suspension of authority to provide EMS care, or other corrective action as deemed appropriate. This action may also include the recommendation to convene an EMS Board of Inquiry.

EMS Boards of Inquiry may be convened by Region/Station Line Officers for the purpose of making a focused inquiry into alleged or potential deviations from EMS policy and procedures or established clinical standards of care on the part of one or more individual EMS providers. The scope and purview an EMS Board of Inquiry examination and analysis will strictly focus on the implementation of policies and procedures and deviations from established standards of care, including the situational circumstances of such incidents. They should in no way be perceived to substitute or interfere with employee management policy and procedures described elsewhere. Findings and recommendations of an EMS Board of Inquiry should be applied, where appropriate, to bring about needed changes or modifications to the EMS program, and where appropriate, should be incorporated into incident summaries and training bulletins disseminated to the field to facilitate learning through the documented experiences of others.

The requirements to conduct such a board, under certain specific circumstances, do not relieve Supervisors or Managers of their responsibilities to provide ongoing review and evaluation of EMS programs and the individual actions of EMS providers.

Copies of all Boards of Inquiry should be provided to the Washington Office, National EMS Program Manager.

Boards of Inquiry should be conducted in accordance with the procedures specified in this chapter.

6943.31 - Convening an EMS Board of Inquiry

An EMS Board of Inquiry may be convened only on approval of one of the following:

1. Washington Office, National EMS Program Manager.
2. Washington Office, National EMS Medical Director.
3. Regional Forester, Station Director, or Director of LEI.
4. Forest Supervisor.

6943.32 - Membership

An EMS Board of Inquiry will consist of at least three but not more than seven voting members. The immediate Supervisor of the employee whose actions are being reviewed will not be included as a member of the board. Board members will be chosen as follows:

The employee whose actions are being scrutinized may select one other Forest Service employee as a member of the board, for example the employee may identify a "co-worker" or non-management official to serve as a member of the Board. This employee may be anyone within a 500- mile radius who was not involved in the incident and must currently be an employee in good standing with no record of disciplinary action within the last three years and have at least a fully successful performance rating. If the employee whose actions are being reviewed declines to select a board member, the convening official will appoint an EMS provider who is of the same grade and whose duties are similar to those of the employee whose actions are being reviewed and who is currently an employee in good standing with no record of disciplinary action within the last three years and has at least a fully successful performance rating.

1. One member will be a Forest Supervisor, Station Director, or Director of LEI leader selected by the convening official.
2. All other voting board members will be EMS personnel from within or outside of the Forest Service.
3. Where training may be an issue or factor, one member will be a recognized training specialist selected by the Forest Supervisor, Station Director, or Director of LEI. If concern centers on medical care, the LEMA or Washington Office, National EMS Medical Director should be included.

6943.33 - Functions of Board

The functions of a Board of Inquiry include the following, at a minimum:

1. Finding the facts and circumstances of the incident, situation, or conduct resulting in an alleged or potential deviations from EMS policy and procedures or established clinical standards of care along with any relevant contributing factors.
2. Identifying legal and policy requirements that apply to the facts of the incident, situation, or conduct and determining compliance with those requirements by all individuals involved.

3. Conducting an objective critique of the incident, situation, or conduct, including a review of applicable operational procedures.
4. Making written findings to the convening official for the purpose of recommending corrective action. The board's recommendations may address, as appropriate, the areas of policy, procedures, equipment, training, counseling, the continuation of the suspension of an EMS credential, or the revocation of an EMS credential.

6943.33a - Preliminary Arrangements

The convening official is responsible for coordinating and making all necessary arrangements for the board. This includes making all board assignments, consistent with policy.

6943.33b - Scheduling

The convening official is responsible for scheduling the board as soon as practical, considering the circumstances of the incident, situation, or conduct, but no later than 60 days from the date a determination is made that a Board of Inquiry is required.

6943.33c - Consultation

In a case where there is a reasonable likelihood of criminal prosecution or tort claim action as a result of the incident, the USDA Office of General Council (OGC) will be consulted before the board is convened. The directions of OGC may, as necessary, affect compliance with other sections of this chapter (especially with respect to timelines).

6943.33d - Chairperson

When convening an EMS Board of Inquiry, the convening official will appoint a chairperson to lead its deliberations.

6943.33e - Record Keeping

The chairperson is responsible for ensuring that a record is maintained of all information gathering proceedings of the board, including all testimony presented and all written material reviewed by the board. Oral testimony may be tape recorded for the board’s later use in its deliberations and for inclusion in the record of proceedings. At the discretion of the chairperson, internal discussions and deliberations of the board that occur after all relevant information has been presented may be omitted from the record of proceedings. The record must reflect the issues, findings, rationale for findings, and recommendations of the board.

6943.33f - Notification to Employee

The chairperson will inform any employee subject to an EMS Board of Inquiry, in writing, of any specific allegations being made in relation to EMS care provided by him/her, including citation

of relevant sections of policies, specific incidents, or patterns of behavior. This notification will occur as soon as possible, but no fewer than two weeks before the board holds its first meeting.

6943.33g - Employee Rights

The employee whose actions are being reviewed has the following rights:

1. The employee may remain present during all meetings of the board but will be excluded from the board's decision-making deliberations.

2. The employee may be accompanied by an attorney, provided at the employee's expense, during all meetings of the board. The attorney's role, however, is limited to that of an observer and an advisor to their client. The attorney may not question witnesses, may address the board only with the consent of the chairperson, and will not be present during the board's deliberations.

3. The employee may request the testimony before the board of any Forest Service employee, including their Supervisor or subordinate, who has knowledge of facts related to the incident being reviewed.

6943.33h - Witnesses

Subject only to other legal precedence, the board is authorized to require the appearance and testimony of any Forest Service employee who has knowledge of facts related to the incident being reviewed. The board is also authorized to solicit the opinion of subject matter experts to assist in its review.

6943.33i - Past EMS Performance

When considering the revocation of an EMS Credential, the board may consider the employee's prior EMS program performance and professional conduct relative to the provision or emergency medical care.

6943.34j - Exigent Circumstances

Deviation from policies, directives, and other restrictions articulated in Forest Service Manuals or Handbooks may be warranted in certain emergency situations. Boards evaluating such actions may exercise reasonable discretion in finding that non-compliant actions on the part of an EMS provider were, nevertheless, reasonable under existing emergency conditions. Where such a finding is rendered, the involved employee may, at the board's recommendation, be held free from fault and/or corrective action.

6943.33k – Disclosure

Internal deliberations of a board are confidential, consistent with the Privacy Act and other administrative procedures designed to protect all employees. Members of a board must not discuss the board's deliberations with individuals not on the board and must not share documents or information received during the board's work with individuals not on the board. The board's open record and final report, however, may be considered a public document and should be prepared accordingly. Additionally, the Washington Office, National EMS Program Manager may edit and use selected materials from the board to develop case summaries for distribution in training applications.

6943.4 - Boards of Review

Significant EMS incidents require a thorough and objective review. These actions or incidents should be the subject of a Board of Review.

A Board of Review is a fact-finding body that objectively reviews significant EMS actions or incidents. It serves the same function (and may otherwise be known) as an "incident critique," "incident review," or "after-action review." The primary purpose of the review is to identify organizational strengths and weaknesses, to take corrective program action where appropriate, and to build on successes.

A Board of Review may on occasion result in a subsequent Board of Inquiry (sec. 6943.3, EMS Board of Inquiry).

Boards of Review will be conducted in accordance with the procedures specified in this chapter.

6943.41 - Convening an EMS Board of Review

An EMS Board of Review may be convened by one of the following or their designees:

1. Washington Office, National EMS Program Manager.
2. Regional Forester. or Station/Area Director.
3. Director of LEI.
4. Forest Supervisor.
5. Local or Washington Office, National EMS Medical Director.

6943.42 - Membership

The convening official will designate the membership of the board. The board will consist of at least three, but not more than seven members.

6943.43 - Functions and Proceedings of an EMS Board of Review

At a minimum, the functions of an EMS Board of Review include the following:

1. Finding the facts and circumstances of the incident, situation, or actions being reviewed and those that may have contributed to it.
2. Identifying legal and policy requirements that apply to the facts of the incident, situation, or action evaluating compliance with those requirements by all individuals involved.
3. Conducting an objective critique of the incident, situation, or conduct, including a review of applicable operational procedures.
4. Based on the facts of the incident, situation, or action, making written findings and recommendations to the Forest Supervisor, Station Director, or Director of LEI for the purpose of recommending corrective action. The board's recommendations may address, as appropriate, the areas of policy, procedures, equipment, training, or other general EMS program issues.
5. Where a Board of Review is initially convened but findings revealed during or as a result of the hearings disclose misconduct or unacceptable performance by an EMS provider, the board may proceed but will include within its report a recommendation that a Board of Inquiry subsequently be convened. This report will State the reason(s) for the Board of Inquiry.

6943.43a - Preliminary Arrangements

The Forest Supervisor, Station Director, or Director of LEI of the affected R/F/S/LEI is responsible for coordinating and making all necessary arrangements for the board.

6943.43b - Scheduling

The convening official will schedule the board as soon as practical, considering the circumstances of the incident, situation, or action, but no later than 60 days from the date a determination is made that a Board of Review is called for.

6943.43c - Consultation

In a case where there is reasonable likelihood of tort claim action as a result of an incident, OGC and the State prosecuting attorney's office (if that office is to assume jurisdiction) will be consulted before the board is convened.

6943.43d - Chairperson

When convening a Board of Review, the Forest Supervisor, Station Director, or Director of LEI will appoint a chairperson to lead its deliberations.

6943.43e - Record Keeping

The Chairperson is responsible for ensuring that a record is maintained of all information gathering proceedings of the board, including all testimony presented and all written material reviewed by the board. Oral testimony may be tape recorded for the board's later use in its deliberations and for inclusion in the record of proceedings. At the discretion of the chairperson, internal discussions and deliberations of the board that occur after all relevant information has been presented may be omitted from the record of proceedings.

6943.43f - Witnesses

The board is authorized to require the appearance of any Forest Service employee who has knowledge of facts related to the case or incident being reviewed. The board is also authorized to solicit the opinion of subject matter experts to assist in its review.

6943.43g - Disclosure

Except where otherwise directed by the OGC, deliberations, conclusions, and records of a board's proceedings are considered internal documents and confidential during the investigation. The board's final report, at the conclusion of the investigation, may be considered a public document and should be prepared accordingly.