

**CHAPTER 3**  
**PROGRESSIVE DISCIPLINE**  
**REVISED SEPTEMBER 2023**  
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## CHAPTER 3

### PROGRESSIVE DISCIPLINE

#### 1. INTRODUCTION.

- a. Progressive discipline is intended to modify an employee's behavior and should instruct and train the employee to act and perform in accordance with established standards of conduct. Likewise, progressive discipline provides the employee with the tools and awareness to bring performance to an acceptable level.
- b. Employees are expected to meet reasonable and acceptable rules of performance and conduct.
- c. Supervisors and managers are expected to:
  - (1) Ensure employees are informed of expectations via briefings, ride-alongs, one-on-one discussions, training days, Memorandum of Expectations, written acknowledgments of policy review, etc.
  - (2) Recognize employees meeting or exceeding standards by providing positive reinforcement and recognition, e.g., documented comments on monthly reviews, commendable CHP 2, Incident Report, etc.
- d. Whenever an employee's performance or conduct does not meet established expectations, the commander should determine if the employee has been provided with adequate training or notice of performance expectations. If not, appropriate training and/or guidance should be provided. If the employee has been provided with adequate training or notice of performance expectations, progressive discipline should be utilized.

#### 2. PROGRESSIVE DISCIPLINE PROCESS.

- a. Overview. The Department's goal is to have employees whose behavior demonstrates the Department's mission and organizational values. Employees should look to their managers and supervisors, whose behavior shall always be above reproach, as a model of departmental expectations. When an employee's actions or performance are substandard, departmental managers and supervisors should adhere to the progressive discipline process with the goal of improving employee behavior and/or performance. The Department's progressive discipline process will first look to prevent poor performance or misconduct, take corrective

action if needed, and finally, take adverse action if the employee does not respond to preventative and/or corrective actions, or the acts of misconduct are severe.

b. Interim Reporting. Although not intended to be disciplinary, interim reporting may be included in the progressive discipline process when substandard performance is an issue. The goal of interim reporting is to provide the employee with the tools and assistance reasonably necessary to bring their performance to an acceptable level. Refer to Highway Patrol Manual (HPM) 10.10, Performance Appraisal Manual.

3. PREVENTATIVE ACTIONS. Proactive steps that reduce or eliminate the need for corrective or adverse action. Managers and supervisors have the responsibility to engage and lead the employee in the right direction, as opposed to merely documenting the actions of the employee. Examples of preventative actions include, but are not limited to, the following:

a. Training. Provide adequate ongoing training for all classifications. Managers and supervisors must ensure that employees attend required training and address training issues in a timely manner when appropriate (e.g., officer safety, policy changes).

b. Defined Expectations. Clearly define job duties, conduct, expectations, and objectives. Employees must know their job duties, the expected levels of conduct, and the performance standards.

c. Workplace Communication. Ensure employees have positive and respectful workplace communication with the chain of command, peers, and subordinates. To improve communication managers and supervisors shall:

(1) Conduct regular and open discussions with employees on job-related issues.

(2) Actively consider issues and concerns presented by employees, union job stewards, and employee representatives.

(3) Provide information on law or policy changes that affect the employees or their jobs.

(4) Provide privacy when performance or disciplinary discussions occur.

(5) Provide an opportunity to discuss problems or conflicts with supervisors, managers, and coworkers.

(6) Provide access to higher-level supervisors or managers, if requested for conflict resolution.

d. Routine Assessment. Provide periodic and routine assessment and feedback of job performance to all employees. Provide employees with critical, constructive, and comprehensive feedback regarding job performance and conduct on an on-going basis before a problem develops.

e. Supervision. Provide fair, engaged, and impartial supervision. Managers and supervisors must also model appropriate conduct and professional job performance, at all times. The importance of leading by example cannot be overstated.

f. Employee Assistance Program. Managers and supervisors should make referrals to the Employee Assistance Program when appropriate.

4. CORRECTIVE ACTIONS. The goal of written or verbal corrective actions is to bring the employee's performance to an acceptable level and to prevent continued misconduct or poor performance. This is accomplished by providing specific directives to the employee. Corrective actions may be initiated by a supervisor but are usually prepared with the concurrence and approval of the commander. Corrective actions include informal and formal counseling, and any corresponding corrective documentation issued as a result. The primary purpose of corrective documentation is to memorialize corrective actions. Examples of corrective actions include the following:

a. Informal Counseling. During an informal counseling session, the manager or supervisor meets with the employee and discusses the misconduct or substandard performance. Informal counseling is considered a routine business communication and, therefore, is not subject to the grievance process, nor is the employee entitled to representation.

(1) Informal counseling provides the opportunity for a supervisor to speak with an employee in a relaxed manner regarding a problem in a private setting away from other departmental employees. It is often the first attempt by a supervisor to address an issue.

(2) The manager or supervisor conducting the informal counseling should include concise expectations for the employee's conduct, and potential consequences should the employee fail to meet those expectations.

(3) A supervisor may document the informal counseling of an employee for purposes of memorializing their own activity, i.e., CHP 112, Management Summary.

b. Formal Counseling. In a formal counseling session, the manager or supervisor meets with the employee and discusses the misconduct or substandard performance. Formal counseling is considered a routine business communication and, therefore, is not subject to the grievance process, nor is the employee entitled to representation.

(1) The primary difference between formal and informal counseling is documentation. After formal counseling, the employee shall receive documentation in the form of comments on the employee's monthly evaluation form, (e.g., CHP 100, Officer's Evaluation/Activity Summary, CHP 100PSD, Monthly Job Performance Summary, and CHP 112). If the employee does not have a monthly evaluation form, the counseling session shall be documented on a Memorandum of Counseling (MOC), which is then issued to the employee.

(2) A formal counseling session should be documented on the supervisor's evaluation form (e.g., CHP 112) in general terms which are not intended to be used against the counseled employee but, rather, to document the supervisor's actions in a work capacity.

c. Monthly Evaluation Comments. A manager or supervisor may provide written comments including directives and expectations on the employee's monthly evaluation (CHP 100, CHP 100 PSD, CHP 112). The monthly evaluation comment shall not contain the Bazemore admonition.

d. Memorandum of Counseling. A memorandum issued to an employee to formally document supervisory counseling pertaining to misconduct, behavior, or poor performance. An MOC does not normally contain the Bazemore admonition. If seeking to add the Bazemore admonition, the Office of Internal Affairs (OIA) should be consulted. (Refer to Annex A for a sample MOC.)

e. Censurable CHP 2, Incident Report. This corrective documentation is a record of censurable acts or omissions which is intended to correct inappropriate behavior, conduct, or performance. A censurable CHP 2 should be used for a single act which is unlikely to recur in the future and shall not contain the Bazemore admonition. A censurable CHP 2 shall not be issued if adverse action will be taken against the employee for the same acts. (Refer to Annex B for a sample censurable CHP 2.)

f. Memorandum of Direction. A memorandum issued to an employee to formally document misconduct, behavior, or poor performance, and to provide specific direction to preclude a recurrence. A Memorandum of Direction (MOD) is remedial or counseling in nature. The Bazemore admonition shall be included in all MODs. (Refer to Annex C for a sample MOD.)

g. Considerations. The following considerations should be evaluated prior to taking corrective action:

- (1) Read and understand the Public Safety Officers Procedural Bill of Rights Act when considering any form of corrective action. (Refer to Chapter 11, Public Safety Officers Procedural Bill of Rights Act, of this manual.)
- (2) Clearly identify the specific act or omission that is unacceptable, along with corresponding policy.
- (3) After identifying the act or omission, be sure to fully understand the nature and extent of the problem. If adverse action is considered, do not discuss the issue with the employee outside of an administrative interrogation.
- (4) Gather all the pertinent facts relative to the misconduct or substandard performance.
- (5) Discuss the issue with the employee before making a decision to take corrective action.
- (6) Review the employee's personnel folder. Has this current problem been an issue in the past? How long ago? What prior progressive discipline steps were taken? What was the result? Does a pattern exist?
- (7) Discuss the issue with other supervisors or management to determine if the issue is an isolated event or if the employee has established a pattern of similar behavior.

h. Appeal Process. In accordance with the Collective Bargaining Agreement (CBA) for Bargaining Unit (BU) 5, California Highway Patrol officers, adverse comments are subject to the Informal Dispute Resolution process (refer to the CBA for BU 5). For grievance or appeal procedures involving other bargaining units, refer to the employee's respective CBA. Additionally, employees in BU 5 and BU 7, Protective Services and Public Safety (Public Safety Dispatchers and Motor Carrier Specialist), have the right to submit a written response within 30 days to any adverse comment entered into the employee's personnel file, including a censurable CHP 2, MOD, or Memorandum of Findings. A copy of the employee's response shall be attached to all copies of the corrective documentation.

NOTE: However, departmental employees represented by a BU other than BU 5 and BU 7, or are not excluded employees, are not bound by 30 days to file a written response. As such, the wording below shall be included on all corrective documents and/or closing documentation:

*“In accordance with your bargaining unit Memorandum of Understanding, you are hereby advised of your right to file a written response to the above-referenced matter as specified in your contract. Such written comments shall be attached to and accompany this document during its retention period.”*

5. **ADVERSE ACTIONS.** If the employee does not respond to preventive and/or corrective actions, or the acts of misconduct are severe, a formal request for adverse action should be initiated. It is incumbent upon managers and supervisors to recognize when adverse action is appropriate since it is the most severe option in the progressive discipline process. When considering adverse action, all involved supervisors and managers should review Chapter 11 of this manual before proceeding.

a. **Conditions Needed for Cause.** Ensure there is sufficient cause for the discipline prior to initiating an investigation. If the cause for action is not legally sufficient, or if management has acted arbitrarily, capriciously, or discriminatorily, the manager or supervisor may be subject to disciplinary and legal repercussions. The following conditions must be met to establish cause:

(1) The rules or standards the employee has violated must bear a reasonable relationship to the employee’s specific job and/or the goals and mission of the Department.

(2) The employee must have clear knowledge of the rules or standards the employee is charged with violating, preferably supported by signed documentation indicating the employee received relevant training or even copies of the rules and standards.

(3) The rules or standards must be equitably enforced.

(4) If adverse action results from an employee’s off-duty conduct, there must be a rational relationship (nexus) between the misconduct and the employee’s position. This may include the use of one’s official position to obtain favorable treatment or gratuity.

(5) The investigation must be thorough, impartial, and objective to determine whether the misconduct occurred as alleged.

(6) There must be sufficient, legally admissible preponderance of evidence to support that the alleged misconduct occurred, as defined in Government Code Section 19572.

b. **Penalty Types.** The six types of adverse actions are as follows:

(1) Formal Written Reprimand. A formal written reprimand is the lowest penalty level in the adverse action process and may be used when a penalty greater than corrective action is necessary. A formal written reprimand shall be retained for three years as an official part of the employee's personnel record. Like other adverse actions, an employee receiving a formal written reprimand can appeal the penalty to the State Personnel Board (SPB). The OIA should be consulted prior to seeking a penalty of formal written reprimand.

(2) Salary Reduction. A salary reduction may be one or more salary steps down to the minimum salary of the employee's class and is normally imposed in lieu of a suspension when an employee's continued service is necessary. This penalty is not available for an employee working at the minimum salary for the employee's classification.

(3) Suspension. Suspension shall be specified in working days and may consist of a penalty ranging from one workday to several pay periods. A suspension is considered a temporary separation during which the employee does not work, and salary is docked for the specified period. Any holiday falling within the suspension is not counted as a working day. An employee's service credits and health benefits may be affected, depending upon the length of the suspension. If a Work Week Group E, managers and above as defined in HPM 10.3, Personnel Transactions Manual, Chapter 28, Attendance Reporting, Annex A, or Work Week Group SE, attorneys and above as defined in HPM 10.3, Chapter 28, Annex A, employee receives a suspension penalty, it shall not be in less than full week increments to comply with the provisions of Labor Code Section 515 and Title 29 of the Code of Federal Regulations, Section 541.118.

(4) Involuntary Transfer. The involuntary removal of an employee from their current assignment through administrative transfer to another assignment. Includes involuntary transfer out of a specialized position. An involuntary transfer used as a penalty in an adverse action is subject to review by SPB.

(5) Demotion. Demotions shall occur when continued service is of value, but the employee is not working at the expected performance level. A demotion may also be for a single incident of sufficiently egregious misconduct. A demotion shall be imposed only when the employee qualifies for and can be expected to do a satisfactory job at the lower level. Demotion may be to any salary range in a lower class that does not exceed the salary the employee last received. A demotion may be permanent or temporary. If temporary, the employee automatically returns to their former class on the date specified, and at the salary step determined by the hiring authority. If permanent, the employee can participate in a promotion testing process at a later date.

(6) Dismissal. Dismissal is appropriate for exceptionally serious misconduct, misconduct that is not correctible through discipline, or misconduct which immediately renders the individual unsuitable for continued employment. Dismissal may or may not be preceded by other forms of adverse action (i.e., progressive discipline). Dismissed employees shall not thereafter be permitted to take any state civil service examination or be certified from an eligible list to any position in the state service, without the prior consent of the SPB Executive Officer (Title 2, California Code of Regulations, Section 211).

## ANNEX A

### SAMPLE MEMORANDUM OF COUNSELING

State of California

Transportation Agency

#### Memorandum

#### C O N F I D E N T I A L

Date: October 27, 2020

To: PSD Terricita T. Mallin, ID A59685

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**  
Red Rock Area

File No.: 887.59977.A54210

Subject: MEMORANDUM OF COUNSELING

On October 26, 2020, at approximately 0930 hours, while working the service desk position at the Red Rock Communications Center, Public Safety Dispatch Supervisor I (PSDSI) C. Hague, ID A59412, overheard you answer a cellular 911 call by stating, "Don't you have anything better to do than call with another bogus emergency?"

It was later determined the caller was attempting to report an injury collision involving a vehicle into a downed tree. Unfortunately, the caller, who was confused by your inappropriate method of answering the call, was hesitant to provide you with any further critical information, which then delayed the response of needed emergency medical services. Fortunately, the injury was minor, and the party did not need medical transportation.

As discussed, the manner in which you answered the 911 call was improper and in violation of Highway Patrol Manual (HPM) 40.11, *Telecommunications Dispatch Operations*, Chapter 3, (2), *Public Contact*. The manner in which you answered the call not only delayed the arrival of medical services but brought discredit to the Department.

You are reminded that while performing your duties as a Public Safety Dispatcher (PSD), it is imperative you maintain a high level of professionalism at all times. Although you indicated that this call followed three previous "crank calls" on the 911 line, each call is a separate event, and you should have handled the call much differently. As an experienced dispatcher, you are relied upon to provide necessary public services.

*Safety, Service, and Security*



*An Internationally Accredited Agency*

CHP 51WP (Rev. 06/2013) OPI 076

**ANNEX A**

**SAMPLE MEMORANDUM OF COUNSELING (*continued*)**

PSD T. Mallin, ID A59685  
Page 2  
October 27, 2020

To ensure your understanding in this matter, you are to review departmental policy contained in HPM 40.11, Chapter 3 (2). After completing the review, you are to submit a memorandum to Area within ten (10) working days from the date of receipt of this document indicating that you have read and understand the specified policy.

In accordance with your bargaining unit Memorandum of Understanding, you are hereby advised of your right to file a written response to the above-referenced matter as specified in your contract. Such written comments shall be attached to and accompany this document during its retention period.

D. P. ALLRED, A54210  
Public Safety Dispatch Supervisor I

I hereby acknowledge receipt of this memorandum.

\_\_\_\_\_  
Employee's Signature                      ID                      Date

\_\_\_\_\_  
Supervisor's Signature                      ID                      Date

# ANNEX B

## SAMPLE CENSURABLE CHP 2, INCIDENT REPORT

<i>For editing, press Ctrl+E. Selected fields will have this option available.</i>	
STATE OF CALIFORNIA DEPARTMENT OF CALIFORNIA HIGHWAY PATROL	
<b>INCIDENT REPORT</b> CHP 2 (Rev. 1-22) OPI 031	
REPORT TYPE <input type="checkbox"/> Commendable <input checked="" type="checkbox"/> Censurable	
EMPLOYEE'S NAME Nicholas Mitchell	I.D. NUMBER 51599
ASSIGNED COMMAND AND LOCATION CODE Culver City / 588	CLASSIFICATION Officer
INCIDENT DETAILS (include date, time and location of incident as appropriate) On December 22, 2022, you were involved in a non-injury, preventable patrol vehicle crash.	
Specifically, while attempting to back out of your assigned parking space in the rear lot of the Culver City CHP Area, you failed to look over your shoulder and failed to properly utilize your rear view mirror. This resulted in the right rear quarter panel of your assigned patrol vehicle #4756 striking a pole, causing minor damage to the patrol vehicle.	
You are hereby admonished for your actions in this matter. An officer with your level of experience and time on the job should be far more cognizant of how to safely and properly operate a patrol vehicle to avoid such mishaps.	
In accordance with your bargaining unit Memorandum of Understanding, you are hereby advised of your right to file a written response to the above referenced matter as specified in your contract. Such written comments shall be attached to and accompany this document during its retention period.	
Nick, I know you are a hard worker and I consider you a tremendous asset to both the Culver City Area as well as the Department. I am also confident this is an isolated incident and am sure you will take all necessary precautions to prevent incidents of a similar nature from occurring in the future.	
(Empty area for additional details or comments)	
This document will be retained in the personnel file for three years from the date of issuance.	
<input type="checkbox"/> See attached	
<b>EMPLOYEE DISCUSSION AND REVIEW</b>	
EMPLOYEE'S SIGNATURE	DATE
SUPERVISOR'S SIGNATURE	I.D. NUMBER
CLASSIFICATION	DATE
Use previous editions until depleted	
Chp2_0122.pdf	

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## ANNEX C

### SAMPLE MEMORANDUM OF DIRECTION

State of California

Transportation Agency

#### Memorandum

#### C O N F I D E N T I A L

Date: April 4, 2020

To: Officer Stanley F. Dominic, ID 57027

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**  
St. Helena Area

File No.: 938.55000.59087

Subject: MEMORANDUM OF DIRECTION

On April 3, 2010, you failed to appear in court to testify on a case arising from a citation you issued. Additionally, on March 18, 2010, you failed to appear in court to testify, an incident for which your supervisor, Sergeant Winters, made a comment on your CHP 100 Form. After checking the subpoena records, as well as speaking with the subpoena clerk, Ms. Watson, it was discovered that each of the subpoenas were signed and returned for processing by you, which indicated you were aware of your departmental and legal obligation to appear in court.

You advised Sergeant Winters that you understood your obligation to appear in court; however, you indicated that you don't keep a personal calendar at home, and as each of these court appearances fell on an RDO, you "simply forgot" that you had been called to appear. You also acknowledged that you didn't advise a supervisor of your failures to appear, as is required by St. Helena Area Standard Operating Procedure (SOP).

As a result, you are hereby directed to read Chapter 4, Sections 2 and 3, of the St. Helena SOP, and submit a memorandum by April 11, 2010, to Sergeant Winters indicating that you have read and understood the material.

*Your conduct on this occasion was unacceptable and will not be tolerated by this Department. If you engage in similar conduct in the future, the Department may take adverse action against you based on the incident cited in this document, as well as any future incidents.*

*Safety, Service, and Security*



*An Internationally Accredited Agency*

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**ANNEX C**

**SAMPLE MEMORANDUM OF DIRECTION (*continued*)**

Officer S Dominic, ID 57027  
Page 2  
April 4, 2020

In accordance with your bargaining unit Memorandum of Understanding, you are hereby advised of your right to file a written response to the above-referenced matter as specified in your contract. Such written comments shall be attached to and accompany this document during its retention period.

J. R. POZZO, Captain  
Commander

I hereby acknowledge receipt of this memorandum.

\_\_\_\_\_  
Employee's Signature      ID      Date

\_\_\_\_\_  
Supervisor's Signature      ID      Date