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CAROL A. SCHWAB
City Attorney

February 23, 2010

Tom McGinnis, Transportation Coordinator
California EMS Authority
1930-9th Street
Sacramento, CA 95811

Via E-mail tom.mcginnis@emsa.ca.gov and First Class Mail

Re: Comments to EMSA Guideline #141

Dear Mr. McGinnis:

This letter is to further explain the comments provided on behalf of the Culver City Fire Department (on the EMSA comment form) on the proposed changes to the Emergency Medical Services Authority (EMSA) policy #141 entitled "Review Criteria and Policy for Transportation and Exclusive Operating Area Components of the EMS Plan".

The second paragraph of Section C3 (p. 15, lines 10-14) is misleading as written. Draft Policy #141 does not address the final sentence of Health and Safety Code Section 1797.224 ("Section 224"), where it is expressly made subject to Health and Safety Code Section 1797.201 ("Section 201"). In the seminal case County of San Bernardino v. City of San Bernardino (1997) 15 Cal.4th 909, the California Supreme Court addressed the Section 201 reference in Section 224, stating,

> "...the reference to Section 1797.201 is most reasonably understood as providing that a local EMS agency's ability to create EOAs may not supplant the cities' or fire districts' ability to continue to control EMS operations over which they have historically exercised control." (15 Cal.4th at 932).

In Valley Medical Transport, Inc. v Apple Valley Fire Protection District et al. (1998) 17 Cal.4th 747, 759, the Court echoed what it stated in San Bernardino (and what is missing in Draft Policy #141):

> "...the ability to create EOA's in section 1797.224 is made expressly subject to 1797.201, and therefore would not permit a county or EMS

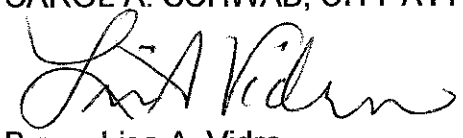
agency to unilaterally displace a city or fire district continuing to operate emergency medical services." (17 Cal.4th at 759).

Therefore, Draft Policy #141 should expressly state that the LEMSA cannot unilaterally create an EOA for a type of service within a city or fire district's jurisdiction, and award that EOA to an outside provider, if that city or fire district has the right under Section 201 to that particular service. Similarly, if a City or fire district has rights under Section 201 to all types of prehospital EMS within its jurisdiction, the LEMSA cannot award an EOA within that jurisdiction to another provider.

Please do not hesitate to contact me with any questions or comments regarding the above. Thank you for considering the Culver City Fire Department's comments.

Very truly yours,

CAROL A. SCHWAB, CITY ATTORNEY



By: Lisa A. Vidra
Deputy City Attorney

Enclosure

cc: Chris Sellers, Acting Fire Chief

Comments on Proposed Changes to EMSA Guideline 141;
REVIEW CRITERIA AND POLICY FOR TRANSPORTATION AND
EXCLUSIVE OPERATING AREA COMPONENTS OF THE EMS PLAN
45-day Public Comment Period
December 7, 2009 – January 20, 2010; extended to February 25, 2010

SECTION # Line # PAGE #	AGENCY	COMMENT	EMSA RESPONSE
Section C3 Page 15, lines 3-4	Culver City Fire Department	***"...that provided care (transporting and non-transporting)..."*** (p. 15, line 3-4). The term "care" is not defined in policy 141, the EMS Act or case law. The correct statutory terminology should be used. Section 201 applies to cities and fire districts that provided "prehospital emergency medical services."	
Section C3 Page 15, line 5	Culver City Fire Department	***"...to continue services at the same type..."*** (p. 15, line 5). It makes more sense to say cities and fire districts shall continue services of prehospital emergency medical services "at not less than the existing level" and of (not at) the same type than what was provided on June 1, 1980.	
Section C3 Page 15, line 5	Culver City Fire Department	***"...and can retain administration of care..."*** (p. 15, line 5). Again, incorrect terminology. Section 201 states that cities and fire districts shall retain "administration of prehospital EMS".	
Section C3 Page 15, line 6	Culver City Fire Department	***"...as long as a LEMSA maintains medical control of care."*** (p. 15, line 6) "Care" is not defined anywhere. Suggested language is "as long as a LEMSA maintains medical control pursuant to Chapter 5 of the EMS Act."	

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Section C3 Page 15, lines 10-14	Culver City Fire Department	The second paragraph of Section C3 (p. 15, lines 10-14) is misleading as written. Draft Policy #141 does not address the final sentence of Section 224, where it is expressly made subject to Section 201. **See attached letter for detailed comments on this issue**	