

Los Angeles Area Fire Chiefs Association



April 8, 2008

Daniel R. Smiley, Chief Deputy Director
Emergency Medical Services Authority
1930 9th Street
Sacramento, CA 95814

**RE: PART 1- REQUESTED ACTIONS REGARDING IMPLEMENTATION OF
STANDARD FIELD TREATMENT PROTOCOLS**

Dear Mr. Smiley:

It was a pleasure to meet you at the March 26, 2008 Commission on Emergency Medical Services meeting in Los Angeles. As I shared with the EMS Commission, I am the current President of the "Los Angeles Area Fire Chief's Association" (LAAFCA) representing the 31 Fire Departments in the Los Angeles County area.

The LAAFCA has been working with the Los Angeles County Emergency Medical Services Agency to address conflicting requirements for a "written agreement" found in "Title 22, California Code of Regulations" and State EMS Authority issued "EMS Systems Standards and Guidelines" documents. The LAAFCA believes that these state "regulatory" requirements and "minimum standards" conflict with California "Health and Safety Code § 1797.201," as this statute has been interpreted by the California courts.

For purposes of clarity, we have separated the issue of whether "written agreements" are required for eligible ".201" agencies to participate in the "Standard Field Treatment Protocol" (SFTP) process (Part 1), from the issue of whether or not a conflict exists between existing state regulations, minimum standards, and recommended guidelines; and California "Health & Safety Code § 1797.201" (Part 2).

I. Background

The Los Angeles County EMS Agency desires to enhance a category of "advanced life support" (ALS) protocols which licensed EMT-Paramedic personnel will use to function in the prehospital EMS setting. This category of ALS "Level" protocols is collectively referred to as the "Standard Field Treatment Protocols" or SFTP's.

The Los Angeles County EMS Agency is requesting "written agreements" from public provider agencies in the following two circumstances: First, for a public provider agency to *continue* to administer and provide SFTP's; and second, as a *condition precedent* for any new public provider agency being allowed to administer and provide SFTP's.

On January 14, 2008, the LAAFCA met with the Los Angeles County EMS Agency and their legal counsel to discuss the "written agreement" requirement to administer SFTP's. The Los Angeles County EMS Agency legal counsel stated that because the local EMS agency had "been written up" by the State EMS Authority for not having written medical control agreements with *all* public provider agencies, SFTP contracts transitioned into a mechanism to compel local public provider agencies to enter into such "written agreements." After a lengthy discussion regarding "Health and Safety Code § 1797.201's" rights and protections vs. other state regulations, minimum standards, and recommended guidelines - which appear to be compelling the Los Angeles County EMS Agency to have "written agreements" - the Los Angeles County EMS Agency legal counsel further stated that because SFTP's were an *increase* in the "type" of EMS service, a "written agreement" was also required due to potential liability concerns.

For the reasons set forth below, the LAAFCA respectfully dissents from this position. In sum, the LAAFCA believes that there is a clear legal distinction between "Types" and "Levels" of prehospital EMS service; that SFTP's are a derivative of the *existing* prehospital ALS "Level" of service; that SFTP's are, in fact, neither an *increase* in the "Level" of service, or, alternatively, not an *expansion* into a new "Type" of prehospital EMS service; that eligible ".201" agencies are not required to enter into "written agreements" to become an *authorized part* of the local EMS system, but that ".201" provides such *authorization* from statutory command; and that ".201" itself commands adherence to "medical control" as a condition precedent to ".201" eligibility, making a "written agreement" requirement for eligible ".201" agencies redundant.

II. "TYPES OF SERVICE" AND "LEVELS OF SERVICE"

In County of San Bernardino v. City of San Bernardino, 15 Cal. 4th 909 (Cal. 1997), the "California Supreme Court" (Court) articulated the concept of "Types" and "Levels" of prehospital EMS services. Fundamental to the Court's analysis was a *distinction* between a "Type" of prehospital EMS service *and* a "Level" of prehospital EMS service. At issue in San Bernardino, was whether or not the "City of San Bernardino" (City) had historically engaged in the provision and administration of prehospital "emergency ambulance" services.

The LAAFCA believes that an understanding by all parties of this "Types" and "Levels" of service paradigm is essential to resolving the issue at hand.

a. "Types of Service"

In Part III of the San Bernardino decision, the Court concluded that although the City provided non-transport prehospital EMS services as of "June 1, 1980," and therefore qualified as an eligible ".201" agency; the City did not provide general "emergency ambulances" services as of the qualifying date.

The Court said, in pertinent part:

*...we conclude that section 1797.201 was designed to confine EMS operations by cities and fire districts to those **types** in which they were historically engaged as of June 1, 1980 (emphasis added). San Bernardino at 932.*

Consistent with the Court's approach, the "Types" of prehospital emergency medical services under "§ 1797.201's" *shared authority* provisions are asserted to be, in sum:

- Prehospital emergency medical dispatching services
- Prehospital emergency medical non-transport services
- Prehospital emergency ambulance services (including air ambulance/air rescue)

b. "Levels of Service"

Also in Part III of the San Bernardino decision, the Court set forth the analytical approach to the "Levels" of service analysis. In response to local EMS agency assertions that eligible ".201" agencies are locked into a particular "Level" of service, the Court said:

The County and its amicus curie are *not correct*, however, inasmuch as they suggest that this *status quo is quantitative*, i.e., section 1797.201 fixes a ceiling of service above which the cities and fire districts cannot go. An earlier draft of section 1797.201 prior to its enactment provided that before a city or fire district entered into an agreement, "*the existing level and manner of prehospital services shall be maintained...*" (Sen. Bill No. 125 (Reg. Sess. 1979-1980) as amended June 17, 1980.) This language was abandoned, and with it the notion that the cities or fire districts would be rigidly locked into a particular levels of service. Such a scheme would likely have been unworkable, given that a city or fire district could remain without an EMS agreement for an indefinite period of time, and given the desirability of allowing cities and fire districts to change their staffing levels, equipment, and so forth in light of expanding needs and changing technologies. Instead, the more flexible notion of retaining "*administration*" was settled on, allowing cities and fire districts to maintain control of the services they operated or contracted for in June, 1980, and permitting them to make decisions as to the appropriate manner of providing those services (emphasis added). San Bernardino at 930.

Consistent with the Court's approach, the "Levels" of prehospital emergency medical services under "§ 1797.201's" *shared authority* provisions are asserted to be, in sum:

- First Responder or Advanced First Aid
- Basic Life Support or BLS (EMT-I)
- Limited Advanced Life Support or LALS (EMT-II)
- Advanced Life Support or ALS (EMT-P)

c. Affirmation of the San Bernardino "Types of Service" and "Levels of Service" Analysis

In Valley Medical Transport, Inc. v. Apple Valley Fire Prot. Dist., 17 Cal. 4th 747, (Cal. 1998), the California Supreme Court again revisited the "Types" of service and "Levels" of service distinction. At issue in Apple Valley was whether or not a *previously eligible* ".201" agency, the "Apple Valley Fire Protection District" (District), who provided and administered prehospital emergency ambulance services, and then subsequently *abandoned* the provision of this "Type" of service, could *unilaterally resume* the provision and administration of emergency ambulance services. The Court concluded that the previously eligible ".201" agency did not have a "unilateral right of resumption"...absent county consent" under California "H&SC § 1797.201."

Prior to reaching this conclusion, however, the Court found it necessary to reaffirm the San Bernardino Court's prior holding on the "Types" and "Levels" of service analysis. This was required, we believe, because it was first necessary to establish that the District originally possessed ".201" rights to provide and administer emergency ambulance service before the Court could reach the *abandonment/resumption* issue.

In reaffirming the "Types" of service and "Levels" of service analytical approach, the Apple Valley Court said:

...At the core of our holding on the expansion issue in *County of San Bernardino* is a distinction between types and levels of emergency medical services. A section 1797.201 city or fire district may increase the level of emergency medical services above what it was in 1980...and may decrease that level if the statutorily prescribed procedures are followed. But it may not expand into new types of emergency medical services previously administered by the local EMS agency.

Thus, although the City of San Bernardino could **increase the levels of service** it had historically provided as of 1980, and had continued to provide since then, **it could not expand the scope of its operation into ambulance services** that had been previously administered by the county and local EMS agency (emphasis added). Apple Valley at 757.

In sum, the Apple Valley Court continued the *distinction* between a "Type" of prehospital EMS service and "Level" of prehospital EMS service; and further reaffirmed the conclusion that a ".201" agency could increase the "Level" of prehospital EMS services *without* county consent.

III. SFTP'S ARE NEITHER AN INCREASE IN THE "LEVEL" OF SERVICE NOR A NEW "TYPE" OF PREHOSPITAL EMS SERVICE

The LAAFCA believes that SFTP's at issue are a derivative of the *existing* ALS "Level" of prehospital EMS services, and are, in fact, neither an *increase* in the "Level" of prehospital EMS service, or, alternatively, not an *expansion* into a new "Type" of prehospital EMS service, within the meaning of San Bernardino, Apple Valley, and Schaefer.

a. SFTP's are Not an Increase in the "Level" of Prehospital ALS Service

As provided above, the term "Level" of service pertains to the medical certification/licensure of the personnel at issue, as this medical training pertains to the functional categories of "basic life support," "limited advanced life support," and "advanced life support" services. This view was reinforced by the appellate court decision in Schaefer's Ambulance Service v. County of San Bernardino, 80 Cal. Rptr. 2d 385 (Cal. App. 4th Dist. 1998).

In Schaefer's, a California appellate court addressed the issue of whether or not the exclusivity provisions of "California Health and Safety Code §§ 1797.85, 1797.224" included the "basic life support *level of service*," as this exclusivity pertains to the "Type" of prehospital EMS services known as "Interfacility" transport services. At that time, it was well settled that "H&SC §§ 1797.85, 1797.224" exclusivity provisions applied to the "advanced life support" and "limited advanced life support...*levels of service*" for Interfacility transfers. See A-1 Ambulance Service v. County of Monterey, 83 Fed. Rptr. 3d 298 (9th Cir. 1996).

The Schaefer's appeals court validated this "Levels" of service approach when the appeals court concluded that the term "emergency ambulances services," as used in "H&SC § 1797.85," included the "Level" of prehospital EMS service known as "basic life support."

The LAAFCA believes that consistent with the above prior legal interpretations, the term "Level" of service refers to the general category of "levels of care" provided for in the EMS Act, and not to derivative sub-categories within an *existing* "Level" of prehospital care (e.g., "prior to contact" protocols, "radio communication failure" protocols, and here, "standard field treatment" protocols).

For example, when "radio communication failure" protocols were first implemented - protocols allowing EMT-Paramedic personnel to initiate *expanded care* when on-line base station hospital medical control cannot be established in the field - this enhancement was not an *increase* in the "Level" of service *within the meaning* of San Bernardino, Apple Valley, and Schaefer.

In sum, a medical protocol which confines itself to merely enhancing the medical care available to be provided by EMT-Paramedics, where such care providers are employed by an eligible ".201" agency, is not an *increase* in the "Level" of prehospital EMS service, as these terms are applied in San Bernardino, Apple Valley, and Schaefer.

b. SFTP's are Not A New "Type of Service"

Alternatively, the LAAFCA believes that SFTP's are not a new "Type" of prehospital EMS service within the meaning of San Bernardino and Apple Valley. First, SFTP's are provided and administered by the "Type" of EMS provider recognized as "prehospital emergency medical *non-transport*" service providers. Moreover, SFTP's pertain to care administered by the *existing* recognized "Level" of prehospital care known as EMT-Paramedics or ALS. As such, the availability for application of SFTP's by eligible ".201" agency's does not *require* additional "county" consent in the form of a "written agreement."

IV. ELIGIBLE ".201" AGENCIES ARE NOT REQUIRED TO ENTER INTO "WRITTEN AGREEMENTS" TO BECOME AN AUTHORIZED PART OF THE LOCAL EMS SYSTEM

The San Bernardino Court directly addressed the issue of "written agreements," as these "written agreements" pertain to an eligible ".201" agency.

a. The EMS Act Itself does Not Command "Written Agreements" for Eligible ".201" Agencies

In San Bernardino, the Court responded to the County's argument that the EMS Act itself commands an eligible ".201" agency to enter into a "written agreement." The Court said:

The County claims that its construction of section 1797.201 finds support in section 1797.178, which states in pertinent part that "[n]o person or organization shall provide advanced life support or limited life support unless that person or organization is an authorized part of the emergency medical services system of the local EMS agency..." But section 1797.178 does not state that an EMS provider must be authorized **by** the local EMS agency, but merely that it must be an "authorized part of the EMS system." Under section 1797.201, the cities and fire districts authorization to provide EMS comes **directly from the statute**, rather than from the local EMS agency. Thus all parties agree that in the period before entering an agreement, section 1797.201 cities and fire districts may retain administration of their own EMS services, section 1797.178 notwithstanding. Where the County errs is in the insupportable assertion that the "pre-agreement" period contemplated by section 1797.201 is of limited duration (emphasis added). San Bernardino at 924.

In a preceding section of the San Bernardino Court's opinion, the Court explained the rationale for excluding an eligible ".201" agency from the otherwise required local EMS agency "authorization" requirement. This rationale is presented next.

b. “Written Agreements” for Eligible “.201” Agencies would be “Meaningless”

In San Bernardino, the Court reasoned that a “written agreement” between an eligible “.201” agency and the local EMS agency would be “meaningless.” In response to the County arguments that a “written agreement” is a “precondition to the exercise of section 1797.201 rights,” the Court said:

Only when a county or local EMS agency attempts to assert authority in a manner that is contrary to the perceived interests of cities and fire districts would these latter agencies have the occasion to decide whether or not they wish to formally assert against a county their section 1797.201 rights. If they do assert such rights, then it is **illogical** that this assertion must come in the form of a **“request”** for an agreement if the cities and fire districts seek nothing other than the preservation of the status quo. Even under a county’s view that a request for an agreement is a precondition to the exercise of section 1797.201 rights, **such a request is meaningless, since it would be for an agreement to do something – continue to provide EMS – that these cities and fire districts would then have a right to do without an agreement under section 1797.201.** Rather than adopt this illogical reading of the statute, **we conclude that under section 1797.201 a county may not *contravene the authority of eligible cities and fire districts to continue the administration of their prehospital EMS without the latter’s consent, either through acquiescence or through formal agreement*** (emphasis added). San Bernardino at 924.

The LAAFCA believes that the San Bernardino Court’s holding is therefore dispositive of the “written agreement” issue, as these “written agreements” requirements apply to eligible “.201” agencies and the provision and administration of the SFTP’s.

V. H&SC § 1797.201 COMMANDS ADHERENCE TO MEDICAL CONTROL AS A CONDITION PRECEDENT TO “.201” ELIGIBILITY

Finally, the Los Angeles County EMS Agency has asserted, in various forms that “written agreements” are necessary to enforce “medical control.” The LAAFCA believes that while such arguments seem plausible, these arguments are misplaced. California “Health and Safety Code § 1797.201” states:

Upon the request of a city or fire district that contracted for or provided, as of June 1, 1980, prehospital emergency medical services, a county shall enter into a written agreement with the city or fire district regarding the provision of prehospital emergency medical services for that city or fire district. Until such time that an agreement is reached, prehospital emergency medical services shall be continued at not less than the existing level, and the administration of prehospital EMS by cities and fire districts presently providing such services shall be retained by those cities and fire districts, except the level of prehospital EMS may be reduced where the city council, or the governing body of a fire district, pursuant to a public hearing, determines that the reduction is necessary.

Notwithstanding any provision of this section the provisions of Chapter 5 (commencing with Section 1798) shall apply (emphasis added).

The LAAFCA believes that adherence to local EMS agency "medical control" is a fundamental portion of "§ 1797.201's" grant of *shared* statutory authority between an eligible ".201" agency and the local EMS agency. Just as no "written agreement" is required for an eligible ".201" agency to be "*an authorized part of the emergency medical services system of the local EMS agency,*" no "written agreement" is necessary to ensure an eligible ".201" agency's compliance to "medical control" - the terms of "§ 1797.201" itself expressly provides for adherence to the local EMS agency's "medical control" authority by the eligible ".201" agency.

VI. CONCLUSION

In sum, the LAAFCA believes that under these circumstances "written agreements" between an EMS public provider agency and the local EMS agency are not required until such time as a request for a *voluntary* "written agreement" is initiated by the public agency. Moreover, the LAAFCA believes that an eligible ".201" agency is not required to sign a "written agreement," where the eligible ".201" agency is not attempting to *expand* into a new "Type" of prehospital EMS service. Furthermore, even if a SFTP is incorrectly categorized as an *increase* in the "Level" of prehospital EMS service, the San Bernardino decision clearly allows an eligible ".201" agency to increase its "Level" of service without a "written agreement" with the local EMS agency. Finally, the position that a "written agreement" between an eligible ".201" agency and the local EMS agency is required to enforce and maintain "medical control" is not supported by the San Bernardino or Apple Valley Courts.

In conclusion, the LAAFCA believes the current mechanism to ensure proper processes and procedures are followed in the delivery of prehospital emergency medical services is through clear and specific policies drafted in a collaborative manner between the local EMS agency and the public provider agency. All previous prehospital emergency medical service procedures have been administered with success through the policy process and to require "written agreements" to administer another procedure is inconsistent and exceeds regulatory authority.

VII. REQUESTED ACTIONS

For the reasons outlined above, the LAAFCA respectfully requests that the California State EMS Authority issue a written opinion clarifying the rights of ".201" agencies as they pertain to *utilizing SFTP's* at the current BLS and ALS "Levels" of prehospital EMS service.

Specifically, we ask that the Authority properly determine that:

1. "Written agreements" to effectuate the SFTP's at issue are not *required* by statute for eligible ".201" agencies.
2. The implementation of SFTP's is not an *increase* in the "Level" of prehospital EMS service, nor are SFTP's an *expansion* into a new "Type" of prehospital EMS, as those *terms* have been interpreted by the San Bernardino and Apple Valley Courts.

The LAAFCA is aware that local EMS agencies strongly desire to encompass all prehospital EMS providers in some form of a "written agreement," but the issue of what is *desired* and what is *required* under the EMS Act pertaining to eligible ".201" agencies is a matter which has been clearly decided.

Thank you for your time in addressing the concerns of this correspondence. We look forward to a quick resolution of these questions regarding SFTP's. It is the strong desire of the Fire Departments with adequate resources within the LAAFCA to implement the SFTP program to benefit all EMS system participants. As previously indicated, a second letter (Part 2) will address the issue of whether or not specific "state regulations," "state minimum standard," and "state guidelines" irreconcilably conflict with California "Health & Safety Code §1797.201" statutory protections.

Please feel free to contact me if you have any questions or desire further information.

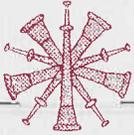
Sincerely,



Jim Hone, Fire Chief
Santa Monica Fire Department
President, Los Angeles Area Fire Chief's Association

cc: Cathy Chidester, Acting Director, Los Angeles County EMS Agency
Fire Chief Sheldon Gilbert, President, California Fire Chief's Association

Los Angeles Area



Fire Chiefs Association

April 8, 2008

Daniel R. Smiley, Chief Deputy Director
Emergency Medical Services Authority
1930 9th Street
Sacramento, CA 95814

RE: PART 2- REQUESTED ACTIONS TO ELIMINATE CONFLICTING REGULATORY REQUIREMENTS

Dear Mr. Smiley:

Once again, it was a pleasure to meet you at the March 26, 2008 Commission on Emergency Medical Services meeting in Los Angeles. As indicated in our first letter, this correspondence seeks to clarify and reach resolution on whether or not a conflict exists between current state regulations, minimum standards, and recommended guidelines; and California "Health & Safety Code § 1797.201." As presented in our first letter, we have included again the pertinent background information concerning this issue.

I. Background

The Los Angeles County EMS Agency desires to enhance a category of "advanced life support" (ALS) protocols from which licensed EMT-Paramedic personnel will use to function in the prehospital EMS setting. This category of ALS "Level" protocols is collectively referred to as the "Standard Field Treatment Protocols" or SFTP's.

The Los Angeles County EMS Agency is requesting "written agreements" from public provider agencies in the following two circumstances: First, for a public provider agency to *continue* to administer and provide SFTP's; and second, as a *condition precedent* for any new public provider agency being allowed to administer and provide SFTP's.

On January 14, 2008, the Los Angeles Area Fire Chief's Association (LAAFCA) met with the Los Angeles County EMS Agency and their legal counsel to discuss the "written agreement" requirement to administer SFTP's. The Los Angeles County EMS Agency legal counsel stated that because the local EMS agency had "been written up" by the State EMS Authority for not having written medical control agreements with *all* public provider agencies, SFTP contracts transitioned into a mechanism to compel local public provider agencies to enter into such "written agreements."

After a lengthy discussion regarding "Health and Safety Code § 1797.201's" rights and protections vs. other state regulations, standards, and guidelines - which appear to be compelling the Los Angeles County EMS Agency to have "written agreements" - the Los Angeles County EMS Agency legal counsel further stated that because SFTP's were an *increase* in the "type" of EMS service, a "written agreement" was also required due to potential liability concerns.

For the reasons set forth below, the LAAFCA respectfully requests the California EMS Authority to issue a written clarification concerning "H&SC § 1797.201," as this statute pertains to the identified regulatory "written agreement" requirements.

II. THE REGULATORY CONFLICT

As stated above, the LAAFCA believes that a conflict exists between state policy as articulated by the California EMS Authority in the form of regulation; and state policy as articulated by the California Legislature in state statute. We will attempt to clearly identify our concerns below.

a. The Regulatory Scheme

The statutory scheme (EMS Act) commands that a local EMS agency *annual review* process be done and the "EMS Systems Standards and Guidelines" documents detail the process. However, the individual "minimum standards" and "recommended guidelines" from which the measurements are derived must originate first from an enabling statute, and then second by an interpretive regulation.

b. Health & Safety Code § 1797.178

In this case, the enabling statute for the "written agreement" requirement appears to be California "H&SC § 1797.178." Thus, any derivative "regulation," "minimum standard" or "recommended guideline" from this statute cannot be expanded past the original statute's defined (interpreted) authority.

If a subsequent "regulation," "minimum standard" or "recommended guideline" could *independently* compel a "written agreement" requirement for eligible ".201" agencies then "H&SC § 1797.201" means nothing. The applicability of the "written agreement" requirement to "eligible cities and fire districts" was considered in the seminal case of County of San Bernardino v. City of San Bernardino. In San Bernardino, the "California Supreme Court" (Court) expressly rejected the plaintiff "County's" assertion that eligible "§ 1797.201 cities or fire districts" must have a "written agreement" with local EMS agencies in order to provide "prehospital EMS services." The "Court" stated:

...The County claims that its construction of section 1797.201 finds support in section 1797.178, which states in pertinent part that "[n]o person or organization shall provide advanced life support or limited life support unless that person or organization is an authorized part of the emergency medical services system of the local EMS agency..."

But section 1797.178 does not state that an EMS provider must be **authorized by the local EMS agency**, but merely that it must be an “**authorized part of the EMS system.**” **Under section 1797.201, the cities’ and fire districts’ authorization to provide EMS comes directly from the statute, rather than from the local EMS agency. Thus all parties agree that in the period before entering an agreement, section 1797.201 cities and fire districts may retain administration of their own EMS services, section 1797.178 notwithstanding.** Where the **County errs** is in the **insupportable assertion** that the “pre-agreement” period contemplated by section 1797.201 is of **limited duration** (emphasis added). San Bernardino at 924.

In sum, the LAAFCA believes that the view that “§ 1797.201” *means nothing* was firmly rejected by the Court in San Bernardino, which had every opportunity to give “§ 1797.201” a “null” meaning. Instead, the San Bernardino Court declared:

...We conclude that the Court of Appeal was essentially correct as to the first issue – that eligible cities and fire districts may retain administrative control of their emergency medical services until they agree otherwise with the counties in which they are located... San Bernardino at 914.

...We conclude that under section 1797.201 a county may not contravene the authority of eligible cities and fire districts to continue the administration of their prehospital EMS without the latter’s consent, either through acquiescence or through formal agreement... San Bernardino at 924.

We further believe that the Apple Valley Court subsequently reaffirmed that “§ 1797.201” has a meaning in that Court’s opening statements.

...At the core of our holding on the expansion issue in *County of San Bernardino* is a distinction between *types* and *levels* of emergency medical services. A section 1797.201 city or fire district may increase the level of emergency medical services above what it was in 1980...and may decrease that level if the statutorily prescribed procedures are followed. But it may not expand into new types of emergency medical services previously administered by the local EMS agency. Thus, although the City of San Bernardino could increase the levels of service it had historically provided as of 1980, and had continued to provide since then, it could not expand the scope of its operation into ambulance services that had been previously administered by the county and local EMS agency... Apple Valley at 757.

c. Title 22, Division 9: Prehospital Emergency Services, Chapters 1- 12

As mentioned above, the LAAFCA has identified at least five potential sources of regulatory conflict involving a requirement, or an implied requirement for a “written agreement” with an EMS Provider agency. The LAAFCA believes that eligible “H&SC § 1797.201” agencies have been excluded from this requirement by legislative policy and judicial interpretation.

The potential conflicts are:

i. Chapter 4, § 100167(b)(4), "Approved Paramedic Providers"

(b) An approved paramedic provider shall:

(4) Have a **written agreement** with the local EMS agency to participate in the EMS system and to comply with all applicable State regulations and local policies and procedures, including participation in the local EMS agency's QIP as specified in Chapter 12 of this Division (emphasis added).

ii. Chapter 3, § 100105, "EMT-II LALS Service Providers"

(b) No person or organization shall offer an EMT-II training program or hold themselves out as offering an EMT-II training program, or provide limited advanced life support services, or hold themselves out as providing limited advanced life support services utilizing EMT-IIs unless that person or organization is **authorized by the local EMS Agency** (emphasis added).

iii. Chapter 3, § 100107, "EMT-II LALS Service Providers"

100107. Responsibility of the Local EMS Agency.

The local EMS Agency, **which** authorizes a limited advanced life support program, shall establish policies and procedures which shall include, but not be limited to, the following (emphasis added).

iv. Chapter 8, § 100300(b)(4), "EMS Aircraft Providers"

(b) A local EMS agency may integrate aircraft into its prehospital patient transport system. Each local EMS agency choosing to integrate such aircraft into its prehospital care system shall develop a program which at minimum:

(4) Develops **written agreements** with air ambulance or rescue aircraft providers specifying conditions to routinely serve their jurisdiction (emphasis added).

v. Chapter 8, § 100300(c)(1) – "EMS Aircraft Providers"

(c) In those jurisdictions where a local EMS agency has chosen to integrate aircraft into its prehospital patient transport system:

(1) No person or organization shall provide or hold themselves out as providing prehospital Air Ambulance or Air Rescue services unless that person or organization has aircraft which have **been classified** by a local EMS agency or in the case of the California Highway Patrol, California Department of Forestry, and California National Guard, the EMS Authority (emphasis added).

vi. The Regulatory Conundrum

The LAAFCA believes, to the extent that the above regulations either imply or state a *unilateral authority* for the local EMS agency to “authorize” all EMS system participants; or that the regulations imply or state that a “written agreement” is *required* between eligible “.201” agencies and the local EMS agency, we believe an *irreconcilable* conflict is created by the regulations as currently written or interpreted. Local EMS agencies attempting to discharge their duties in “good faith” or ensure compliance to state promulgated regulations may become confused by an otherwise “plain reading” of the regulation.

d. State Minimum Standards & Guidelines

The LAAFCA also believes we have identified the most likely *recent* source of the controversy regarding Los Angeles County EMS Agency efforts to enter into a “written agreements” with every public provider agency. It appears that the impetus for the recent controversies may be found within the documents entitled: “EMS Systems Standards and Guidelines,” June 1993, EMSA #101 and June 1994, EMSA #103.

Under California “H&SC § 1797.254,” each LEMSA is supposed to submit an EMS Plan for annual review by the State EMS Authority. The State EMS Authority then uses the published “EMS Systems Standards and Guidelines” documents to evaluate both the local EMS agency and system performance. According to EMSA #103, the stated objectives of this annual review process are to:

- Provide a framework for the planning and implementation of LEMSA;
- **Demonstrate that LEMSA meets minimum state standards;**
- **Demonstrate that LEMSA complies with various state laws and regulations;**
- Demonstrate that LEMSA is planning, implementing, and evaluating a system which provides well managed, patient-oriented emergency health care, taking into consideration the coordination of resources with neighboring EMS systems;
- Be a useful tool to LEMSA in development of long-range goals and annual workplans; and
- Be the primary mechanism to collect system information to avoid duplication and streamline the information collection process.

The LAAFCA believes that the highlighted portions of these objectives are in conflict; specifically, state “minimum standards” do not comport with the San Bernardino decision.

i. Minimum Standard 1.24 – Enhanced Level: Advanced Life Support

The state “minimum standard” that is most likely generating this controversy is found within EMSA #101 on page 17, “Section IIIA – System Organization and Management, sub-section 1.24: Enhanced Level: Advanced Life Support.”

This state "minimum standard" states:

- 1.24 Advanced life support services shall be provided only as an approved part of a local EMS system and **all** ALS providers **shall have written agreements** with the local EMS agency (emphasis added).

ii. Assessment Criteria

Using the assessment matrix depicted in the publication "EMS Systems Standards and Guidelines," June 1994, EMSA #103, a local EMS agency is "penalized" for not having a "written agreement." Under the publicized assessment for each criterion established, a local EMS agency can receive one of three pertinent evaluations:

- **Does not currently meet the standard**
- Meets minimum standard
- Meets recommended guideline

One again, the LAAFCA believes that the "*Does not currently meet the standard*" evaluation is being misapplied to local EMS agencies who do not currently have "written agreements" with eligible ".201" agencies.

iii. Potential Negative Implications for Local EMS Agencies

The LAAFCA believes, for reasons not detailed in whole within this letter, that a negative evaluation of a local EMS agency may pose serious consequences. For example, if successful compliance to this evaluation process is evidence of successful application of the states' role in providing "active state supervision," then a negative state evaluation may jeopardize a county's ability to claim "immunity" under the federal antitrust laws, where a county has established exclusive operating areas. This is just one of several potential negative consequences.

iv. Unintended Consequences of "Written Agreement" Approach

Finally, the LAAFCA believes that under the current application of the state "annual review" process, the local EMS agency may feel compelled to incorporate a ".201 waiver" into every proposed "written agreement." This *all or nothing* approach has serious consequences. By attempting to incorporate a ".201 waiver" into every "written agreement" where written documentation is required...*hurts*, not helps, the coordination and administration of the local EMS system.

Many collateral functions may require some form of written documentation to reach a purpose agreeable to both parties. However, the specter of a potentially asserted subsequent *all inclusive* ".201 waiver" will inhibit this agreement from taking place. The LAAFCA believes that this "every written agreement is a .201 waiver" approach has already generated wasteful litigation by at least one other local EMS agency in the recent past.

III. CONCLUSION

In sum, the LAAFCA believes that this matter can be easily resolved by the State EMS Authority. We believe that the correct interpretation and application of both the San Bernardino and Apple Valley decisions is dispositive; and that the State EMS Authority is best positioned to provide clarity to the issues identified.

We would also like to emphasize that the public agencies within Los Angeles County have been providing prehospital emergency medical services for *over three decades* without the scope of "written agreements" contemplated by the concerned parties. We further wish to reiterate that the LAAFCA firmly embraces the concept of "medical control," but that we cannot agree that such "medical control" authority reaches down to every single aspect of providing prehospital emergency medical services.

IV. THE REQUESTED ACTIONS

For the reasons outlined above, the LAAFCA respectfully requests that the California State EMS Authority issue a written opinion clarifying the rights of ".201" agencies as these rights pertain to the "*written agreement*" requirements contained within the above cited state regulations and state minimum standards.

Specifically, we ask that the Authority properly determine that:

1. "Written agreements" are *not required* with eligible ".201" agencies for the purposes of establishing a local EMS agency's compliance with these state regulations- "Chapter 4, § 100167(b)(4)," "Chapter 3, § 100105," "Chapter 3, § 100107," "Chapter 8, § 100300(b)(4)," "Chapter 8, § 100300(c)(1).
2. "Written agreements" are *not required* with eligible ".201" agencies for the purposes of establishing a local EMS agencies compliance with state "Minimum Standard 1.24".
3. Local EMS agency's who have eligible ".201" providers will receive a "Meets minimum standard" assessment, where the "written agreement" evaluation criterion is applied to eligible ".201" agencies.

Once again, thank you for your time in addressing the concerns of this correspondence. We also look forward to a quick resolution of these questions regarding "written agreements" and eligible ".201" agencies. If you have any questions or concerns, please feel free to contact me at your convenience.

Sincerely,



Jim Hone, Fire Chief
Santa Monica Fire Department
President, Los Angeles Area Fire Chief's Association

cc: Cathy Chidester, Acting Director, Los Angeles County EMS Agency
Fire Chief Sheldon Gilbert, President, California Fire Chief's Association