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## 2015 Annual Conference

### **“Legislative and Regulatory Changes Affecting Fire Service Delivery of EMS” Thursday, October 1, 2015**

#### **Patrick Whitnell, General Counsel**

1. The Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act (“EMS Act”) (Health & Saf. Code sec.1797 *et seq.*)
  - a. Enacted in 1980.
  - b. Provides for the creation of emergency medical procedures and protocols, certification of emergency medical personnel, and coordination of emergency response by providers within an emergency medical services system.
  - c. Creates two-tiered system of regulations: the Emergency Medical Services Authority (“EMSA”) at the state level and local emergency medical services agencies (“LEMSA”) at the local level.
  - d. Grandfathers cities and fire districts that had EMS programs in place prior to June 1, 1980 to continue the services they had been providing prior to the EMS Act’s enactment at not less than existing levels.
  
2. “201” Rights and Limitations (Sec. 1797.201)<sup>1</sup>
  - a. Grandfathering Provisions
    - i. Applies to cities and fire districts that provided, or contracted for, EMS prior to June 1, 1980.
    - ii. Services include: basis life support, advanced life support (“ALS”), and limited ALS.
    - iii. May also include emergency medical dispatch.
  - b. Continuation of Service
    - i. EMS shall be continued to be provided at not less than the level existing as of June 1, 1980 until the city or fire district, at its request, enters into a written agreement with the county for providing EMS for that city or fire district.
    - ii. The level of services may be increased, but new types of services that had not been provided as of June 1, 1980 may not be added.

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<sup>1</sup> In addition to the legal authorities cited in this outline, additional analysis of 201 Rights can be found in an article by Derek Cole Esq., Cota Cole, LLP in the Fall 2014 edition of the Public Law Journal, available at <http://publiclaw.calbar.ca.gov/Publications/Journal.aspx>.

(*County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4<sup>th</sup> 909.)

- c. Reduction in Service
  - i. Services may be reduced where the city council or the board of the fire district determines, after a public hearing, that the reduction is necessary.
  - ii. No statutory definition or judicial guidance has been provided as to when a reduction in service is “necessary”.
- d. Medical Control
  - i. The EMS Act requires LEMSAs to assert medical control over the local EMS system. (Sec. 1798(a).)
  - ii. Section 1797.201 provides that a LEMSA’s medical control applies to cities and fire districts asserting their grandfathered rights.
  - iii. Medical control is broadly defined to include policies concerning dispatch, patient destination policies, patient care guidelines, and quality assurance requirements. (Sec. 1797.220; see also *County of San Bernardino*, 15 Cal.4<sup>th</sup> 909.)
- e. Termination of Rights and Resumption
  - i. A city or fire district with grandfathered rights may ask to enter into an agreement with its LEMSA to provide EMS.
  - ii. Upon entering such an agreement, the city or fire district’s grandfathered rights are terminated.
  - iii. Once grandfathered rights have been terminated, a city or fire district cannot later unilaterally resume services. (*Valley Medical Transport, Inc. v. Apple Valley Fire Protection Dist.* (1998) 17 Cal.4<sup>th</sup> 747.)
  - iv. The Attorney General has concluded that grandfathered cities and fire districts are not required to have a written agreement with a LEMSA in order to participate in the EMS system under state regulations.
  - v. The Attorney General further concluded that an agreement between a city or fire district and a LEMSA for county-supplied emergency medical equipment does not terminate the city or fire district’s grandfathered rights.
  - vi. The Attorney General lastly concluded that an agreement between a city or fire district and a LEMSA related to medical control and oversight does not terminate the city or fire district’s grandfathered rights. (97 Ops. Cal. Atty. Gen. 90 (December 16, 2014).)