

EMERGENCY MEDICAL SERVICES AUTHORITY

10901 GOLD CENTER DRIVE 4TH FLOOR
RANCHO CORDOVA, CA 95670
(916) 322-4336 FAX (916) 322-1441



April 4, 2019

SENT VIA U.S. MAIL & EMAIL

Elizabeth Heidig, Assistant Chief Counsel
Office of Administrative Law
300 Capitol Mall, Ste 1250
Sacramento, CA 95814-4335
Phone: (916) 323-6800
Email: eheidig@oal.ca.gov

**Subject: Section 280 certification
OAL matter nos. CTU2019-0204-01, CTU2019-0204-02, and CTU2019-0204-03**

Dear Ms. Heidig:

I am the Director of the State of California Emergency Medical Services Authority and am authorized to make this certification pursuant to Title 1, Section 280 of the California Code of Regulations.

I hereby certify that the Emergency Medical Services Authority will not issue, use, enforce, or attempt to enforce the alleged underground regulations contained in the following documents:

- (1) EMSA guidelines #141, "Competitive Process for Creating Exclusive Operating Areas", referenced in matter no. CTU2019-0204-01;
- (2) Draft EMSA guidelines #141-B, "Review Criteria and Policy for Transportation and Exclusive Operating Components of the EMS Plan", referenced in matter nos. CTU2019-0204-01 and CTU2019-0204-03;
- (3) EMSA 310-01 "EMS System Coordination and HS 1797.201 in 2010", referenced in matter nos. CTU2019-0204-02 and CTU2019-0204-03.

A copy of this certification has been sent to the petitioner via U.S. mail and electronic mail and the proof of service is enclosed with this letter. If you have any further concerns regarding this matter, please contact the Legal Division at (916) 322-4336 ext. 449.

Sincerely,

A handwritten signature in black ink that reads "Howard Backer".

Howard Backer, MD, MPH, FACEP, FAEMS
Director
Emergency Medical Services Authority

1 **DECLARATION OF SERVICE BY U.S. FIRST CLASS MAIL AND EMAIL**

2
3 In the Matter of the Petitions of California Fire Chiefs Association Petition to the Office of
4 Adminstrative Law, State of California:

5 OAL matter nos.: CTU2019-0204-01, CTU2019-0204-02, and CTU2019-0204-03

6 I declare:

7 I am employed by the Emergency Medical Services Authority which is the office of a member
8 of the California State Bar at which member's direction this service is made. I am 18 years of
9 age or older and not a party to this matter. I am familiar with the business practice at the
10 Emergency Medical Services Authority for collection and processing of correspondence for
11 mailing with the United States Postal Service. In accordance with that practice,
12 correspondence placed in the internal mail collection system at the Emergency Medical
13 Services Authority is deposited with the United States Postal Service that same day in the
14 ordinary course of business.

15 On April 4, 2019, I caused the following attached documents to be served:

16 **Section 280 Certification**

17 By placing a true copy thereof enclosed in a sealed envelope with first-class delivery postage
18 thereon fully prepaid in the internal mail collection system at the Emergency Medical Services
19 Authority, 10901 Gold Center Drive, Suite 400, Rancho Cordova, CA 95670, addressed as
20 follows:

21 Elizabeth Heidig, Assistant Chief Counsel
22 Office of Administrative Law
23 300 Capitol Mall, Ste 1250
24 Sacramento, CA 95814-4335
25 Email: eheidig@oal.ca.gov

Andrew E. Schouten, Esq.
402 West Broadway, Suite 1800
San Diego, CA 92101
email: aschouten@wlelaw.com

I declare under the penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 4, 2019, at Rancho Cordova, California.



Therese Davis



April 10, 2019

Sent VIA EMAIL ONLY

Ted Selby, EMS Administrator
Solano EMS Cooperative
355 Tuolumne St
Vallejo CA 94590

Mr. Selby,

It has come to our attention that Dr. Howard Backer, the Director of the State of California Emergency Medical Services Authority ("EMSA"), recently submitted a certification to the State of California Office of Administrative Law, dated April 4, 2019. I have attached a copy of the certification circulated by EMSA to this letter for your review. The certification was sent pursuant to several outstanding formal complaints lodged with the State of California Office of Administrative Law relating to alleged "underground regulations" promulgated by the EMSA, which have been repeatedly deemed unlawful in the State of California by virtue of their violation of the Administrative Procedure Act. Of particular note, Dr. Backer certifies that EMSA "will not issue, use, enforce, or attempt to enforce the alleged underground regulations contained in the following documents: (1) EMSA guidelines #141, "Competitive Process for Creating Exclusive Operating Areas", referenced in matter no. CTU2019-0204-01..."

This development is critical as EMSA guideline #141 was the justification that the EMSA relied upon in articulating their prior position that a local EMS agency only grant an exclusive operating area franchise for a maximum of ten (10) years without undergoing a competitive bid process. The EMS Act nowhere mandates this ten-year restriction and this "underground regulation" interpretation by the EMSA was the subject of much consternation from all stakeholders in the past several years. The implication of this recent certification by EMSA is significant in its application to SEMSC and Medic and a previously negotiated provision in the existing franchise agreement.

In the Second Amendment to Solano Emergency Medical Services Cooperative Ambulance Service Agreement ("Franchise Agreement"), effective October 9, 2014, Medic and SEMSC amended Section 1.3 of the Franchise Agreement such that upon the occurrence of any of five specified events prior to May 1, 2020 (collectively referred to as the "Extension Events" in the Franchise Agreement), "SEMSC shall grant to Medic an additional five (5) year extension of the Franchise Agreement, which would operate to extend the term through 12:01 a.m. on May 1, 2025. "

BUSINESS: (707) 644-1761 • FAX: (707) 644-1784 WEBSITE: medicambulance.net ADDRESS: 506 Couch Street, Vallejo, CA 94590

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In light of the recently submitted certification by the EMSA, Section 1.3(iii) and Section 1.3(v) of the Franchise Agreement mandate that SEMSC grant an additional five (5) year extension of the Franchise Agreement to Medic by virtue of the newly enunciated determination by EMSA that it cannot enforce or attempt to enforce EMSA guideline #141, which unambiguously now allows SEMSC to grant an exclusive operating area franchise for a period in excess of ten years without undergoing a competitive process.

Please do not hesitate to contact me should you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'JP', written over a horizontal line.

James Pierson
President / COO
Medic Ambulance Service Inc.

CC: Helen Pierson, CEO, Medic
Birgitta Corsello, SEMSC Chair