

SB1088 IS NOW LAW IN CALIFORNIA: WHAT FIRE & EMS AGENCIES SHOULD ASK THEIR ATTORNEYS ABOUT ACCESS TO POLST FORMS

Dear Chiefs:

This letter is intended to highlight an issue that California Fire and public EMS agencies should consider discussing with their agency or municipal attorneys following the enactment of **SB1088, "Health care decisions: life-sustaining treatment," signed September 27, 2026**. NOTE: I am not an attorney, and this letter is not legal advice. Rather, it is intended to identify a potential intersection between SB1088, California's statewide electronic POLST infrastructure, patient-directed care in the field, and existing governmental immunity protections. I strongly advise that agency leaders ask their attorneys to evaluate the issue based upon the agency's specific circumstances, policies, protocols, and available technology.

Why SB1088 (And AB133 Before It) Matter to Fire & EMS

California law recognizes a patient's right to make decisions regarding life-sustaining treatment and provides protections when health care providers honor qualifying requests regarding resuscitative measures. SB1088 further clarifies that a request for resuscitative measures may include either:

1. a prehospital do-not-resuscitate form developed by the Emergency Medical Services Authority; or
2. a POLST form approved by the Emergency Medical Services Authority.

At the same time, California has established a statewide electronic POLST registry. Under Health & Safety Code §1862, the Emergency Medical Services Authority is responsible for establishing the POLST eRegistry for the purpose of collecting POLST information and disseminating that information to authorized users. That creates an important operational question for Fire and EMS agencies:

If California has established a statewide ePOLST registry for the purpose of collecting and disseminating a patient's documented wishes, what mechanism is available to a responding Fire/EMS crew to determine, in real time, that the patient has a POLST and what it requires?

This question becomes particularly important because Fire/EMS responders routinely make time-critical decisions about resuscitation and other life-sustaining interventions before a patient reaches a hospital. California law provides statutory governmental immunities that can protect public entities and employees under specified circumstances. **California Government Code §850.4**, for example, provides immunity in circumstances involving fire protection and firefighting activities, subject to the limitations established by statute and case law.

In **Quigley v. Garden Valley Fire Protection District (2019)**, the California Supreme Court held that immunity under §850.4 operates as an affirmative defense rather than a barrier to being taken to court in the first place (“a jurisdictional bar”). The Court also discussed the policy considerations underlying the statutory immunity. The significance of SB1088 for Fire & EMS agencies is that the newly signed law (with AB133, which it amended) raises questions for public agencies’ attorneys:

If a POLST form is stored in a system that is overseen by Cal-EMSA, but agencies in the field can’t access those forms during an emergency, will that create a conflict between the agency’s actions and the state’s policy in a manner that impacts the agency’s governmental immunity?

California Fire & EMS crews lack standardized real-time digital access to POLST forms in the field today. If a patient is resuscitated or not resuscitated against their will despite having codified their wishes on a POLST form, care providers and/or their agencies may face liability, for example, from a patient who is alive against their wishes, or the family of a loved one who is deceased—or alive—against their wishes.¹ In light of *Quigley*, agencies may find themselves asking courts to decide who is responsible if EMSA created a means to collect and disseminate patients’ POLST forms, but crews cannot access the forms at the patient’s side during a health crisis. *Quigley* raises the risk that “we did our best with what we knew at the time” may not alone address the immunity question **IF** SB1088 and AB133 set an expectation that POLST forms will be accessible when and where they are needed.

► **AT A MINIMUM...Public Fire & EMS Agency Leaders Should Consider Asking Their Attorneys:**

1. Does SB1088 change our agency's obligations regarding accessing or honoring POLST forms?
2. How are agencies expected to reliably determine that a patient has a POLST, and what it says? What does sufficient access to Cal-EMSA’s POLST registry mean for Fire & EMS agencies?
3. If, by virtue of Cal-EMSA’s simultaneous oversight of the ePOLST registry and of certain Fire & EMS compliance elements, an agency is determined to have reasonable access to POLST forms, does counsel think the lack of access in the field creates legal, operational or patient safety risk?
4. What policies, protocols, training, or technology should Fire & public EMS agencies consider to ensure that patients’ wishes are identifiable in the field, during a healthcare crisis, and honored?
5. Does the agency's existing analysis of California governmental immunity adequately account for SB1088, the electronic POLST registry, and the statutory protections associated with honoring qualifying patient requests?
6. **As shown below:** For agencies that are participating in blood administration programs, how do *Quigley*, SB1088 and AB133 apply in situations where the patient does not want to receive blood?

TWO PATIENT-DEFINED SECTIONS OF THE CA POLST. Does the patient want prehospital blood?

☐	Selective Treatment – goal of treating medical conditions while avoiding burdensome measures. In addition to treatment described in Comfort-Focused Treatment, use medical treatment, IV antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.
☐	Request transfer to hospital <u>only</u> if comfort needs cannot be met in current location.
☐	Comfort-Focused Treatment – primary goal of maximizing comfort. Relieve pain and suffering with medication by any route as needed; use oxygen, suctioning, and manual treatment of airway obstruction. Do not use treatments listed in Full and Selective Treatment unless consistent with comfort goal. Request transfer to hospital <u>only</u> if comfort needs cannot be met in current location.
Additional Orders: _____	

¹ "Filing Suit for Wrongful Life," *New York Times* (1/22/2021)