

17 November 2025

Chief Brian Fennessy, *President*
CALIFORNIA FIRE CHIEFS ASSOCIATION
Mr. Jaison Chand, *President*
CALIFORNIA AMBULANCE ASSOCIATION
Ms. Jennifer Moore Ballentine, MA, *CEO*
COALITION FOR COMPASSIONATE CARE OF CALIFORNIA
Via Electronic Mail

Re: California's New ePOLST System May Impose Risk on All Fire & EMS agencies

Dear Chief Fennessy, Mr. Chand, Ms. Ballentine, Chiefs and EMS Agency Leaders:

I am writing to alert you urgently about a problem with the rollout of California's new statewide ePOLST Registry. Given how the State set up this system (as showcased last month), I am concerned that Fire & EMS agencies could face serious liability risk. To be clear, I am **not** accusing any vendor of wrongdoing. As described herein, I believe public agencies may lose certain immunity protections for failing to obey a patient's POLST form because they could not access it. (Private EMS may face even greater liability risk.) Normally such an admission would be an "affirmative defense." But what if the access barrier was due to a choice made by the California EMS Authority (CalEMSA) itself?

Chapter 14 of AB133 created the California ePOLST Registry: "...require the Emergency Medical Services Authority to establish a statewide electronic POLST registry system for the purpose of collecting a patient's POLST information and disseminating that information to an authorized user. The bill would require the authority to promulgate regulations necessary for the operation of the POLST eRegistry." In light of this requirement, CalEMSA procured a data system but without any public procurement process. It announced its decision via a post on the website only after it was complete. (I asked CalEMSA for information about the procurement and its technical requirements as far back as 2022.) In a letter dated September 24, 2025, Adam Dondro, Director of the CalHHS Office of Technology and Solutions Integration, said the system supports "access to ePOLST information in the field via electronic devices." But at the 2025 Coalition for Compassionate Care of California conference, CalEMSA said (on video) that Responders should "download" POLST forms to their computers and open them (as insecure PDFs) during emergencies. This creates major privacy issues and breaks EMS workflows. The CalEMSA Branch Chief who made this statement has not responded to several requests, by me, for clarification. Arizona faced a similar problem: in 2022, a Battalion Chief there warned the State that having EMS log into a separate system during a 911 call "creates a tremendous barrier to care." Our population is ~5x that of Arizona's, so one can easily imagine how large the problem could become here.

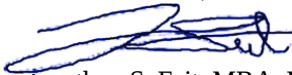
CalEMSA's decision intersects peculiarly with a 2019 California Supreme Court decision. I am concerned that Fire services (and for public agencies, your cities and districts) could face potential liability for wrongful death, "wrongful life" or failure to honor a patient's treatment wishes. Private EMS agencies without qualified immunity could face even greater liability risk. When combined with California Probate Code §4782(b) (2018), seriously ill patients and their families gain a clear expectation that Fire & EMS services will be able to access POLST form via a system managed by CalEMSA. Had CalEMSA used a normal public procurement process, EMS access to the POLST data would have come up early—including by me. Instead, the State appears to have spent at least \$3.8 million (per its May 2024 budget change request) on a system that it has never shown can interoperate with ePCRs.

This may sound "in the weeds" but under CA Probate Code §4782 (2018), as amended by AB133, Responders are expected to access POLST forms using the State's registry. To the public, the ePOLST Registry is a repository of patients' wishes for use during medical emergencies. If the State's opaque and technically erroneous procurement renders those forms inaccessible—but CalEMSA says agencies can do so (even using an untenable process)—who bears responsibility? In *Quigley v. Garden Valley Fire Protection District* (2019), the Court stated that Gov't Code §850.4 protects public entities if they can justify their actions (which might have otherwise lead to liability) with a valid policy reason. Agencies may be challenged to justify an affirmative defense—"We did not follow the POLST because we could not access it"—since CalEMSA (involved in setting statewide policy) is "home" to the data system. Due to *Quigley*, I see the risk of agencies losing their shield from wrongful death, "wrongful life" and other lawsuits.

The issues here pertain to *knowledge* and *data*: If Responders know that the patient has a POLST form, should they be able to access it from the registry? California's Code of Regulations (Tit. 22, §71811) says "Gross negligence means the failure of a person to exercise any care, or the exercise of so little care that it is apparent that the person is indifferent to the consequences of his or her conduct and to the welfare of others." California Probate Code cites "knowledge...inconsistent." The Government Code references "examination." I see no issue with the laws themselves; they are quite clear. But CalEMSA did not ensure that its chosen software can interoperate with EMS & Fire data systems. If your crews cannot practically access those forms in the field, agencies face a conflict that may impart new and/or expanded risks as a result of the **loss of an affirmative defense** (i.e., lack of knowledge or access to the forms).

I urge every Fire & EMS agency to notify its legal counsel so they understand the risks created by the State's opaque, non-public, schedule-based procurement process, as well as its misunderstanding about the technical and operational requirements involved in presenting POLST forms to crews in the field. This may be a rare occasions where it would be safer for all involved for the State to acknowledge its error and start over, undertaking a proper, public procurement that engages the Responder community to ensure appropriate access to critical data. Thank you for your consideration.

Yours in service,



Jonathon S. Feit, MBA, MA
Co-Founder & Chief Executive
Beyond Lucid Technologies, Inc.

I am not an attorney so please present the following citations to your Counsel:

1. CA Government Code § 844.6 (2024)
(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; ***except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state for malpractice arising from an act or omission in the scope of his employment,*** and shall pay any compromise or settlement of a claim or action, based on such malpractice, to which the public entity has agreed.
2. CA Gov't Code § 845.6 – This section mostly deals with policing, but the following statement is broader:
...Nothing in this section exonerates a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from its obligation to pay any judgment, compromise, or settlement that it is required to pay under subdivision (d) of Section 844.6.
3. CA Government Code § 855.6
Except for an examination or diagnosis for the purpose of treatment, neither a public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination, of any person for the purpose of determining ***whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others.***
4. CA Bus & Prof Code § 2727.5 (2024)
2727.5. A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care. ***This section shall not grant immunity from civil damages when the person is grossly negligent.***
5. CA Prob Code § 4782 (2024)
A health care provider who honors a request regarding resuscitative measures is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, as a result of his or her reliance on the request, ***if the health care provider*** (a) believes in good faith that the action or decision is consistent with this part, and (b) ***has no knowledge that the action or decision would be inconsistent*** with a health care decision that the individual signing the request would have made on his or her own behalf under like circumstances.