

Summary Minutes

Meeting of the
Emergency Medical Services Regulatory Board
10:00 a.m., December 8, 2011
2829 University Avenue SE
Minneapolis, Minnesota

Members Present

Kevin Miller, Vice Chair
Brenda Brown*
Jennifer Deschaine*
Paula Fink Kocken, M.D.*
Michael Gormley*
Kathleen Haney*
Michael Jordan*
Pat Lee*
Gary Pearson*
Jill Ryan Schultz*
Mari Thomas, M.D.*

Members Absent

Lisa Consie
Sen. Gretchen Hoffman
Rep. Duane Quam
Paul Satterlee, M.D.
Mark Schoenbaum
Matt Simpson
Kelly Spratt, Chair
Marlys Tanner

Guests

Joe Glaccum*
Ron Robinson
Bill Snoke
Imo Sunderland*

Staff

Pam Biladeau, Executive Director
William Granger
Melody Nagy
Debby Teske

Karen Andrews, AAG*

I. Call to Order

Mr. Miller called the meeting to order at 10:04 a.m. Mr. Miller asked for introductions and conducted a roll call of members present. Members and guests who participated by phone have an asterisk after their name.

II. Approval of Agenda

Mr. Miller said that the EMS regions workgroup will be added to this agenda as a discussion item. Mr. Jordan moved to accept the revised agenda. Ms. Deschaine seconded. Motion carried.

Mr. Miller asked Board members to review the minutes that were just emailed.

III. Radio Communications Plan

Mr. Miller said that on the minutes from the November 17 meeting on page five is a motion. He read the motion. We have had questions about what that motion means. Mr. Miller asked what the questions are on this motion.

Mr. Jordan said he contacted Ms. Biladeau and Ms. Deschaine about this topic. He said that there was a conversation that we did not want to delegate authority away from the EMSRB. We want to keep ourselves open for maintaining this authority. The language was read and there was consensus that this language be included. That language is not in the motion that was passed.

Mr. Jordan said that this may be a time to do some “waitful” watching. We do not want to put ourselves in a place to enforce regulations that we do not have staff to enforce.

Mr. Jordan said that we have statutes in place. We do not know what the new statutes and rules would be from an enforcement standard. Mr. Miller asked if Mr. Jordan has read the radio plan or the radio guide. Mr. Jordan asked if this is law. Mr. Jordan said that the State Radio Board (SRB) can suggest guidelines but they are not law or rule.

Ms. Deschaine said she wanted to clarify that she voted no on the motion on page six of these minutes. She said that she cannot second a motion on this topic but can vote. She said that she has concerns that the motion passed was not clear and did not include the language suggested on page six in the minutes that refers to education standards. My concerns are outlined in the minutes. Looking at the SRB statute they have the authority to evaluate public/private entities radio plans. Why would we give them this authority?

Mr. Miller said that we are stating that we are following their plan. An ambulance service does not have to participate if they choose not to. Mr. Glaccum said that this is regarding use of the ARMER system.

Mr. Glaccum said that the minutes reflect that the SRB would have this authority and the SRB would object. The SRB has a radio communications guide and the workgroup voted on this guide. The workgroup will become a committee with membership to address the concerns of the EMSRB. Mr. Jordan said that the radio workgroup would become a bonafide committee? Bonified by whom. Mr. Glaccum said that the SRB will be making a motion on this at their next meeting.

Mr. Jordan said that they have a practice guide why is this enforceable. It must be statute or rule.

Mr. Glaccum said that he would disagree and the SRB has standards and if you have ARMER the standards must be followed. The SRB is authorized by the state. The rules are outdated and there are many steps to change rules.

Mr. Glaccum said that we want to look at one plan instead of two plans and the SRB is looking at the plan to make sure it is current. Mr. Glaccum said that every ambulance using ARMER must abide by the SRB plan. My organization is not in compliance with current rules. The current language is outdated.

Mr. Jordan said that the people have the option to follow ARMER or not. Mr. Glaccum said that a service has the option to not use ARMER.

Mr. Miller said that if a municipality chooses to user ARMER the ambulance must participate in the ARMER system. Mr. Miller said that a plan must be submitted and a contract is entered into with the SRB.

Mr. Robinson said that there are regional radio boards and if you look at statutes you lose the flavor of the rules. Mr. Robinson said that regional radio boards have the authority to enforce the local and state statutes. You enter into a contract. This language pushes the EMSRB to participate. There is VHF and 800 MHz. You are compelled to participate.

Dr. Thomas said that she liked the education standards language that was suggested. The language that was suggested allowed the EMSRB the option to address issues – such as medical direction without changing state statute. It gave us the ability to add or change the state plan. We want to have one plan not state and regional plans. We want the ability to modify the plan as needed by the Board.

Ms. Deschaine asked if there are municipalities that are not ARMER. Mr. Glaccum said that there are some municipalities that are not ARMER. Ms. Deschaine said that they would not be in compliance if we do not use the statewide communication plan. Mr. Glaccum said that included in the “to do” list was a side by side comparison with the statewide plan and the radio communication guide. The SRB would do the comparison and add language regarding medical control.

Mr. Glaccum said it is not just how the radios work there is a significant piece in other operational issues with VHF interoperability. Ambulances would have to follow the VHF regulations.

Mr. Miller said that there would be communication issues in talking with other counties that is what has been developed by the SRB those nuances are in that plan.

Ms. Deschaine asked how the SRB conducts an assessment for compliance for an ambulance service.

Mr. Glaccum said that the authority lies with the system administrator at the state, county or local level. The compliance in use of the system is there. How do we know that the ambulance service is using the radio to call the physician on a particular call group? That is beyond the SRB authority and that enforcement lies with the EMSRB.

Mr. Glaccum said that he wears many hats and the request that came to the EMSRB did not come from the SRB. It came from the user community. A solution was suggested. The users that you license made this suggestion. This was not an initiative of the SRB.

Mr. Jordan said that you have an obligation to enforce state statute that the EMSRB enforces. What has predominance? Which? As the public member of the EMSRB, I do not want to give authority to another agency.

Mr. Miller said that we do not enforce driver's licenses. They could say that all ambulance drivers must have a class A license. We would not have the authority to enforce this. Mr. Miller said that we have a radio plan that we spent a lot of money on that we do not enforce. We do not want to create our own drivers license for ambulances.

Mr. Jordan said we do not have control over the past radio communication plan. My concern is to move forward and to have this done as prescribed by statute.

Mr. Miller said we do not have the staff for enforcement. We do not want to monitor every person who has a driver's license. There is mandatory reporting. We can let SRB set standards that must be followed by ARMER users. We do not want to have competing standards.

Mr. Jordan said we do not want to do anything until we revise the EMSRB plan.

Dr. Thomas asked if there is a problem with the education standards language that was suggested. It would leave us more open. Are there objections to that language? Mr. Jordan read the language from page six of the minutes. Dr. Thomas said that she supports this language (as determined by the Board) and we can add what we need to our plan. Mr. Jordan asked Ms. Deschaine if she would support this change. Ms. Deschaine said that she would support the language with Dr. Thomas's language added.

Mr. Jordan said we want to work with the SRB and he suggested language as follows: "Shall develop an EMS communications plan that all ambulances must use" and add that to the language in quotes from the motion passed at the November 17th meeting. What do we need to add from Dr. Thomas's statement?

Dr. Thomas referred to the legislation and suggested replacing that last portion to read: "in accordance with the radio plan or its equivalent as determined by the Board".

Mr. Jordan said this change that helps me feel that we are keeping our authority. Dr. Thomas said it allows ease of adjustment. Mr. Miller asked Mr. Glaccum for his opinion. Mr. Miller repeated the motion.

Mr. Glaccum questioned “or equivalent” would there be two plans to follow. Mr. Miller said that the Board would have the opportunity to pull back from what we do not agree with. Mr. Glaccum said that every user must follow the state plan. What would be augmented?

Mr. Jordan said that my broad sense is that we do not know what is going to happen in the future and we want the Board to have the ability to maintain the authority granted in statute. I want the Board to maintain that option for decision making.

Ms. Ryan Schultz asked if this must be implemented by a certain date. Mr. Miller said that in his opinion if we take this language out others may try to change this language without Board input.

Mr. Miller asked Mr. Robinson to comment.

Mr. Robinson said that Mr. Glaccum and the workgroup have represented the MAA position well and the recommended change by the Board is important to the membership and ambulance services in the metro region. There are services that are out of compliance. The EMSRB uses discretion in not fining on this. We have been looking at this for four years. We are migrating to this. They too are going to have compliance issues with statute and rules. This is high on the MAA agenda and the metro region agendas. We do not want conflicting standards.

Mr. Snoke said that a police officer has discretion in issuing a ticket. He asked for Ms. Andrews’ opinion on the Board staff setting standards to apply to ambulance services rather than change the statutes. Ms. Andrews asked is this a delegation? Mr. Snoke said that would give staff authority to set standards. Mr. Andrews said this could be unpromulgated rulemaking and that you need to change the statutes or rules. Mr. Snoke asked how is that different than other standards such as police in issuing a citation. Ms. Andrews said if you are applying statute you cannot expand the authority of the statute. It must be fair to all parties. If you are talking about setting a standard that changes the law and it affects someone’s right you are rulemaking.

Ms. Biladeau said that from a staffing standpoint we had a conference call yesterday to discuss the questions. Ms. Biladeau said it is unclear as to what staff would be expected to regulate when pointing to a guideline versus rulemaking. These are unanswered questions and need clarification from the Board for policy.

Mr. Jordan referred to the minutes on page 6 and repeated language from the minutes. Whatever rules are in place we cannot forget them and adopt the radio guide. We have responsibility in rule. Mr. Miller said that the rules are unenforceable. Mr. Jordan said there are two different issues – we can’t decide to not follow the rules. This is not how rulemaking is done. Mr. Miller said that we are looking to repeal the rules.

Mr. Robinson said that in the original language from the reviser it refers to striking the rules and puts language in place for the rewrite. This would be included in the legislative language.

Mr. Miller said that the staff would not have to know every aspect. Ambulance services have a contract and that is the check box on the inspection form. That is the only change. We do not want to create more bureaucracy. Mr. Miller said that we want to reach middle ground. We can

demonstrate that we do not want to have a plan other than what is in the guide and the ability to have the authority to move from the SRB.

Ms. Biladeau said that we need to move forward with language. The process addresses rulemaking later and clarifies a statute. Mr. Miller said that we would have to add rulemaking authority. Ms. Biladeau said that I must have a clear understanding from the Board.

Mr. Miller said that we must repeal rules through the appropriate process. Mr. Snoke asked if statute changes can be made and then the rulemaking changes. Ms. Andrews said that this is separate process. Mr. Miller agreed.

Mr. Miller read the motion “an ambulance must be equipped with a two way radio that is programmed and operated in accordance with the most recent version of the statewide radio board shared radio and communications plan or its equivalent as adopted by the EMSRB.”

Ms. Biladeau asked for clarification of the word “adopted” and said that the motion stated used the word “determined”. What would the Board like to use for this motion.

Dr. Thomas moved that we change the language to “an ambulance must be equipped with a two way radio that is programmed and operated in accordance with the most recent version of the statewide radio board shared radio and communications plan or its equivalent as determined by the EMSRB. Mr. Jordan seconded. Voting yes: Ms. Brown, Ms. Deschaine, Mr. Gormley, Ms. Haney, Mr. Jordan, Dr. Fink Kocken, Mr. Lee, Mr. Pearson, Ms. Ryan Schultz, and Ms. Tanner. Motion carried.

Mr. Miller said that we want the Executive Director to follow the rulemaking process to make the necessary changes. Ms. Biladeau asked for a motion to clarify.

Mr. Miller moved that the Executive Director work to repeal rules that would be in conflict with the motion that was just passed. Motion withdrawn.

Mr. Glaccum said that the more important thing is to change the rules. That language is what is at risk. Ms. Biladeau said that we will be looking at the process to change rules. We need to eliminate lines 24.29 through 24.31 to the legislative package. Mr. Snoke said that the rulemaking process will occur in conjunction and the Revisor will determine what changes are needed.

Mr. Miller moved that lines 24.29 though 24.31 be eliminated from the legislative language and the Executive Director is authorized to follow the rulemaking process as determined by the Revisor’s Office and the Board. Dr. Fink Kocken seconded. Voting yes: Ms. Brown, Ms. Deschaine, Mr. Gormley, Ms. Haney, Mr. Jordan, Dr. Fink Kocken, Mr. Lee, Mr. Pearson, Ms. Ryan Schultz, and Ms. Tanner. Motion carried.

Mr. Glaccum said that we have a good compromise. Is the intent to not have an ambulance have more than one radio in an ambulance? Dr. Thomas said my intent is to have the ability to make changes necessary. We do not want to tell people how many radios to have.

Legislative Language (continued)

Ms. Biladeau said that at the last Board meeting Ms. Andrews provided language to be included in the legislative packet. The Board approved that language. Thank you to Ms. Andrews for providing the information for the changes. Since that meeting Ms. Andrews reviewed the proposed language and wanted to make the Board aware of these items:

In 144E.27 she noticed the language is for EMT, EMT-I, and Paramedic we need to include language for First Responders which is found in 13.13 through 14.36. Ms. Biladeau said that she discussed this with Mr. Miller whether or not this language should read the same. Mr. Miller said that anyone receiving a certification should be under the same requirements. He suggested adding this in the legislative package. The language is provided in the legislative package. Ms. Andrews said that we want appropriate language. I have not seen the final language. (come back to this conversation – Ms. Andrews reviewing language.)

Dr. Thomas left the meeting.

IV. Cooper/Sams Program (Longevity)

Ms. Biladeau said that she received a call from Senator Fischbach and that Paynesville Ambulance submitted forms that were not notarized and from a previous year. The Senator is asking to bring to the Board whether the Board would approve accepting service credits from a previous year. It would open us up to setting precedence for accepting credits from previous years. Ms. Biladeau said that she asked Ms. Vangsness to provide information to the Board on the financial impact.

Ms. Vangsness said that if we do accept this it sets precedence and it would affect future payouts. The deadline is August 1. The way the funding works is that there is \$700,000.00 appropriated and the additional state investment money. This will increase the payout to the individuals applying for these credits. The legislation would also involve a fiscal note.

Mr. Miller said that the language is provided in the Board packet and this is the Senator's suggested changes.

Ms. Vangsness said that this would eliminate the August 1 deadline. If there is no deadline people could submit credits at any time and staff would have problems determining a payout.

Ms. Biladeau said that the interpretation from the Senators office is that it does not specifically say notarization is required. It is generally understood that affidavit includes notarization. The statute gives EMSRB authority to administer Cooper/Sams. If this change were made that would give a one-time only window to submit for 2009. This would allow payment for Paynesville.

Ms. Vangsness said this is an opportunity for the Board to make clarifications for this program. The notarization is fine. We need to have a deadline (2 year time frame) we cannot have credits submitted anytime in the year. It would be difficult to project payments. We must have a specific date. Mr. Miller asked how a fiscal note is developed.

Ms. Vangsness said that Minnesota Management and Budget determines that a fiscal note is needed and the agency develops the fiscal note. Ms. Vangsness said that she works with the Executive Director to complete the fiscal note usually in a short timeframe. Mr. Miller said that a fiscal note would be appropriate in this situation.

Mr. Miller said that this is a challenge presented to the Board. We want to work with the Senator to include a deadline. We need a fiscal note. Ms. Biladeau said that she discussed this with the Chair of the Finance Committee and staff cannot take on additional activities. Is this an opportunity to ask for a staffing change? Ms. Vangsness said that this can be discussed but this would not be the year for a budget bill to include language for staffing. We would address this in the base budget and include the impact of programs and it also depends on deficit or surplus budgets.

Mr. Jordan said that we talked about this in Finance Committee a year ago. We need a solid explanation of why staff cannot do anymore. We cannot have additional unfunded mandates. We need to explain the loss of staff and our efficiencies enacted. We cannot do anymore. We would suffer in providing services to the community.

Mr. Miller suggested giving the Executive Director the authority to work with the Senator and asked for a fiscal note. We would be opposed to not having a deadline in the language.

Ms. Brown said that the August 1 deadline has been in place for years. We have missed this deadline some years. I have suffered because of this and it is my responsibility.

Mr. Miller moved that the Board direct the Executive Director to meet with Senator Fischbach to identify the fiscal concerns and the Board's opposition to omitting the deadline and suggest keeping the August 1 deadline in place. Mr. Jordan seconded.

Mr. Jordan asked if August 1 is a good deadline. It has been working for 10 years. This is not a difficult deadline. Ambulance services must be held accountable.

Ms. Ryan Schultz said that the August deadline is great. The Board should have been notified at that time by the service that there were problems.

Ms. Teske said that staff has worked hard to assure ambulance services are in compliance. We communicate the deadline to ambulance services and regional programs.

There was a call for a vote on the motion. Voting yes: Ms. Deschaine, Ms. Haney, Mr. Jordan, Dr. Fink Kocken, Mr. Pearson, Ms. Ryan Schultz. Abstaining from this vote: Ms. Brown, Mr. Gormley, Mr. Lee. Motion carried.

Legislative Language (continued)

Ms. Andrews said the statute quote is incorrect. 144E.127 should be 144E.27. we do not need additional changes because it is covered in other language. Ms. Biladeau said "grounds" was in the original language. What is the intent? Are we going to discipline for failure to report. It was suggested to strike line 9 from the legislation.

Mr. Jordan moved to approve modifications to 144E.27 as recommended by the Attorney General. Mr. Lee seconded the motion. Voting yes: Ms. Brown, Ms. Deschaine, Mr. Gormley, Ms. Haney, Mr. Jordan, Dr. Fink Kocken, Mr. Lee, Mr. Pearson, Ms. Ryan Schultz. Motion carried.

EMS Regions Workgroup

Mr. Miller said that we want to discuss the issue of conflict of interest in having membership to the EMS Regions Workgroup. Ms. Biladeau asked for an opinion from the Attorney General's office. Mr. Miller said that a lot of Board members could potentially have a conflict.

Ms. Andrews quoted the statute. How direct is the conflict. There is a Code of Conduct for Board members referred to in the IOP. This is clear in the IOP and statute your loyalty to the Board must supersede your individual involvement.

Mr. Pearson said that almost everyone on the Board has some conflict in relationship with the regions. This would restrict participation on the workgroup in receiving information and having discussion.

Mr. Miller said that if you are receiving compensation on a regional board that would be a conflict. Mr. Miller said that as the regional appointee he must look at this from the Board perspective and separate his roles.

Ms. Andrews said that she would need to know the roles of the Board members and would need more information about the workgroup. As a Board member you need to know if you have a conflict. You can't make a decision if you have a conflict but you can give advice on the workgroup effort and recuse yourself in the vote. Mr. Miller suggested that it would be the same as the regional program vote.

Ms. Andrews said that it would depend on how much comes to the board as advice and the Board cannot rubber stamp the workgroup decision. Ms. Andrews said she wants to discuss this further with Executive Director. Mr. Miller if we go by past practice we have a process in place.

Mr. Jordan asked if we can go outside the Board to gather all the perspectives to present the pros and cons to the Board. Then the Board members with a conflict would recuse themselves in the vote.

V. Other Business


None.

Mr. Miller complimented staff and wished everyone a happy holiday season.

VI. Adjourn

Mr. Jordan moved to adjourn. Mr. Pearson seconded. Motion carried. Meeting adjourned at 12:05 p.m.

Reviewed and Approved by:



1/4/12

Pat Lee, Secretary

Date

Kelly Spratt, Chair

Date