

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HEALTH**

In the Matter of the ALS License  
Application of Waseca Ambulance  
Service, Inc. of Waseca, Minnesota

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Diane Townsend-Anderson commencing at 7 p.m. on Wednesday, March 27, 1996 at the Waseca County Courthouse Annex, in Waseca, Minnesota. The hearing was held pursuant to a Notice of Completed Application and Notice of and Order for Hearing dated February 15, 1996. The record closed at the conclusion of the hearing on March 27.

James D. Wobschall, co-owner, Director of Operations, Waseca Ambulance Service, Inc. P.O. Box 46, Waseca, Minnesota 56093, appeared on behalf of Waseca County Ambulance Service, Inc. (Applicant). No one petitioned to intervene in this proceeding or filed any written comments opposing the license application, and eighteen persons appeared at the hearing in support of the application. Apart from Mr. Wobschall, no one else testified.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Health will make the final decision after review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Anne M. Barry, Commissioner, Minnesota Department of Health, P.O. Box 944, 717 Delaware Street SE, Minneapolis, Minnesota 55414, telephone (612) 623-5000, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether Waseca County Ambulance Service, Inc. should be licensed to provide advanced life support (ALS) in its primary service area under Minn. Stat. § 144.802, subd. 3(g) (1994).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Effective July 1991, Waseca County Ambulance Service, Inc. purchased the capital assets and operating license was transferred to the Applicant. On or about January 13, 1996, the Applicant filed a license application with the Department to change the type of service it provides in Waseca County from basic life support (BLS) to advanced life support (ALS).

2. On February 15, 1996, the Commissioner of Health, Anne M. Barry, issued a Notice of Completed Application and Notice of and Order for Hearing wherein she scheduled a public hearing on the application. On Monday, February 20, 1996, the Notice of Completed Application and Notice of and Order for Hearing was published at 19 State Register 1903, and on February 26, 1996, it was published in the Waseca County News and LeCenter Leader.

3. Copies of the Commissioner's Notice of Completed Application and Notice of and Order for Hearing were mailed by the Department to the Waseca County News and LeCenter Leader, the Waseca County Board of Commissioners, the Waseca-LeSueur Community Health Board, the Community Health Services Administrator, the Southcentral Minnesota EMS System, the New Richland, Montgomery, New Prague, Faribault County, Blue Earth County, Rice County, Steele County and Freeborn County Hospital Ambulance Services and the mayor of the City of Waseca.

4. The Applicant is currently licensed to provide BLS services throughout Waseca County under License No. 348. Two other ambulance services operate in parts of Waseca County: New Richland Community Ambulance Service and Gold Cross Ambulance Service.

5. As part of its application, the Applicant proposes to restrict its primary service in Waseca and LeSueur County to the following areas:

<u>Township</u>	<u>Range</u>	<u>Section</u>
Waseca County		
107N	24W	All Sections
107N	23W	All Sections
107N	22W	All Sections
108N	24W	All Sections
108N	23W	All Sections
108N	22W	All Sections
106N	24W	Sections 1-18
106N	23W	Sections 1-18
106N	22W	Sections 1-18
LeSueur County		
109	24W	Sections 10-13
109	24W	Sections 22-27
109	24W	Sections 34-36
109N	23W	Sections 7-36

6. The Applicant has executed primary service area (PSA) agreements with the one of the other ambulance services serving Waseca County. Under these agreements, the other services will be the primary provider in the following areas:

New Richland Ambulance Service

<u>Township</u>	<u>Range</u>	<u>Section</u>
-----------------	--------------	----------------

105N	24W	All Sections
105N	23W	All Sections
105N	22W	All Sections
106N	24W	Sections 19-36
106N	23W	Sections 19-36
106N	22W	Sections 19-36

7. The Applicant's base of operations is located at 200 3rd Avenue SE, Waseca, Minnesota. It operates one substation at 220 No. State Street, Waseca, Minnesota. The Applicant is affiliated with the Immanuel St. Joseph's Hospital in Mankato. Immanuel St. Joseph's Hospital apparently will be the primary hospital Applicant will use.

8. The Applicant has mutual aid agreements with other ambulance services who have agreed to provide back-up coverage for it. The two back-up services are Gold Cross Ambulance Service of Mankato (EMS No. 146), the Gold Cross Ambulance Service of Owatonna (EMS No. 189).

9. The Applicant's maximum response time to the most distant point in its PSA is seventeen minutes, but its average response time is expected to be approximately six minutes. The Applicant will serve approximately 28,000 residents and 3,200 visitors. It projects that it will have 650 annual runs. Most of them (602) will be advanced runs. Only 43 are expected to be basic runs. The Applicant will provide ALS intercepts for other ambulance services bringing patients to the hospital in Mankato.

10. Respondent will not be the recipient of governmental subsidies but will operated strictly on a fee-for-service basis. Its average BLS patient charges currently are \$565. Its BLS fees will not increase if its application is approved. Its ALS fee will be \$675 per run. Because most of its runs will now be ALS, fees will increase by approximately \$110 for most runs. The \$675 ALS fee proposed is consistent with the ALS fees charged by the Applicant's owner, Waseca County Ambulance Services, Inc., under licenses it operates covering parts of Waseca and LeSueur Counties. Most of the Applicant's fees will be paid by third-party payers; only 30 percent of the runs will be paid by the patients themselves.

11. The public service answering point in Waseca County is in the City of Waseca at the Sheriff's department. The Waseca County sheriff dispatches ambulances in the PSAs served by the Applicant and the New Richland Ambulance Service. The sheriff does not directly dispatch ambulances to those areas of Waseca County served by the Gold Cross Ambulance Services. Ambulances are dispatched to those areas by the sheriffs of Blue Earth and Steele Counties respectively.

12. The Applicant's application to upgrade its license is supported by the Mayor of Waseca, Waseca County Sheriff, Waseca Fire Department, Waseca Chief of Police, Waseca Area Memorial Hospital, Waseca County Board of Commissioners, South Central Minnesota EMS Board and City of Wauban.

13. Approving the application will reduce morbidity and mortality in the Applicant's proposed PSA.

14. The application is consistent with the Consolidated Community Health Systems Plan for Waseca and LeSueur Counties, and is consistent with the State's 1993 Emergency Medical Services Plan.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Commissioner of the Minnesota Department of Health and the Administrative Law Judge have authority to consider the license application filed by Waseca Ambulance Service, Inc. under Minn. Stat. §§ 14.50 and 144.802 (1994).

2. Proper notice of the application and of the hearing were given full compliance with the provisions of Minn. Stat. § 144.802, subd. 3 (1993).

3. The notice of and Order for Hearing was proper in form and content and the Department and the Applicant have complied with all relevant substantive and procedural requirements of statute and rule.

4. The Applicant has the burden of proof under Minn. Rules pt. 1400.7300, subp. 5 (1993) to show that upgraded license is needed and will not have a deleterious affect on the public health. Matter of Rochester Ambulance Service, 500 N.W.2d 495, 498-99 (Minn. Ct. App. 1993).

5. Under Minn. Stat. § 144.802, subd. 3(g), the Administrative Law Judge is required to review and comment on the city's application and make written recommendation regarding its deposition to the Commissioner. In making those recommendations, the Judge must consider and make written comments concerning the need for the service proposed based upon a consideration of the following factors:

1. the relationship of the proposed service, change in base of operations or expansion in primary service area to the current community health plan as approved by the Commissioner under section 145A.12, subdivision 4;
2. the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;
3. the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the licensure;
4. the estimated effect of the proposed service, change and base of operation or expansion in primary service are of the public health;
5. whether any benefit accruing to the public health would outweigh the costs associated with the proposed service, change in base of operations, or expansion in primary service area.

6. The ALS ambulance service license the Applicant proposes to obtain is consistent with Waseca County's current community health plan and is supported by the Waseca County Board of Commissioners and communities in the proposed primary service area.

7. The Applicant established that upgrading its BLS license to an ALS level will enhance the public health in those areas of Waseca County not currently served by an ALS ambulance service.

8. There will be no duplication of ambulance services if the Applicant's application is approved because there will be no overlapping primary service areas in Waseca County.

9. Granting the application will reduce mortality and morbidity within the Applicant's new primary service area.

10. The benefits accruing to the public health of citizens in the Applicants proposed PSA will outweigh the costs associated with the Applicant's proposed upgrading of its license to an ALS level.

11. ALS ambulance service is needed in the Applicant's proposed PSA.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Health GRANT Waseca Ambulance Service, Inc. an advanced life support ambulance license for those areas of Waseca County it proposes to serve consistent with its agreement with other ambulance services.

Dated this \_\_\_\_ of April, 1996

\_\_\_\_\_  
Diane Townsend-Anderson  
Administrative Law Judge

Reported: Taped, 1 Tape

## NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## MEMORANDUM

The Commissioner of Health is empowered to license ambulance services within the state of Minn. Stat. § 144.802, subd. 1. Under the statute, an ambulance service desiring to provide a higher level of service must obtain a new license from the Commissioner. One of the predominant purposes of the statute is to eliminate competition among the ambulance services. In Twin Ports Convalescent, Inc. v. Minnesota State Board of Health, 257 N.W.2d 343, 348 (Minn. 1977), the court discussed this purpose stating:

We interpret Minn. Stat. § 144.802 to manifest a legislative intention to protect the public welfare against deleterious competition in the ambulance services field. The provision embodies a legislative determination that the ambulance service business is one in which the public welfare is not promoted by free enterprise. Ambulance service is essential to a community. It is also a service for which demand is inelastic and expenses largely fixed. Where the demand is insufficient to support additional services, either quality is sacrificed or rates and public subsidies are increased, but in either event, the tax payer-consumer suffers.

Accord Matter of Rochester Ambulance Service, 500 N.W.2d 495, 499 (Minn. Ct. App. 1993).

The Applicant's proposed PSA technically does not overlap any other PSAs. Therefore, there should be no deleterious competition between the Applicant and other ambulance services in or about Waseca County. Although there will be no overlapping PSAs if the Applicant's application is granted, one factor deserves further consideration.

The application filed by the Applicant received widespread support, and no one submitted any comments or testimony in opposition to it. Granting an ALS license to the Applicant will enhance the public health because it will be able to provide medical services it cannot now provide under its current BLS license. Ambulance services licensed to provide BLS services cannot use esophageal obturator airways, cardiac monitors or defibrillators. Furthermore, they cannot establish or maintain intervenous therapy or intervenous infusion and cannot administer drugs other than oxygen, syrup of ipecac and nonprescription drugs. Minn. Rules pt. 4690.0800, subps, 2 and 4 (1993). If the license request is granted, these additional, higher-level ambulance services can be provided. This will obviously benefit citizens of Waseca County by making life-saving treatments more immediately available to them. Prompter and more thorough ALS services will help save lives and reduce the seriousness of some injuries. This will, in the long run, save costs.

The proposed licensure at an ALS level does not involve a cost increase. However, the proposed fees for ALS runs is consistent with the fees charged by ambulance services serving Rice, Steele, and Blue Earth Counties and was not shown to be unusual or excessive. Some cost increases must be expected in upgrading licensure levels due to the need for more highly trained staff and more sophisticated equipment. Under the circumstances, it is concluded that the benefits to the public health of Waseca County citizens will outweigh the costs associated with the higher level of service the Applicant proposes to provide.