

8-0900-8458-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Norman County  
Ambulance, Ada, Minnesota.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde commencing at 7 p.m. on Tuesday, January 18, 1994 at the Dekko Community Center, 4th Avenue East, Ada, Minnesota. The hearing was held pursuant to a Notice of Completed Application and Notice of and Order for Hearing dated December 7, 1993.

William W. Larson, R.N., director of the Norman County Ambulance Service, Ada Municipal Hospital, 405 East 2nd Avenue, Ada, Minnesota 56510, appeared on behalf of the Norman County Ambulance Service. No one petitioned to intervene in this proceeding and no public testimony was presented in opposition to the application by interested persons at the hearing. However, written comments were submitted to the Administrative Law Judge in opposition to the application after the hearing but before the January 20, 1994 deadline for submitting written comments set by the Commissioner of Health. Because the Norman County Ambulance Service did not have an opportunity to respond to comments submitted to the Administrative Law Judge after the hearing was held, copies of those comments were provided to Norman County Ambulance Service, and it was given an opportunity to respond. The record closed on February 4, 1994, the last day allowed by the Administrative Law Judge for the Applicant to respond to public comments submitted after the hearing but before the January 20, 1994 deadline.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Health will make the final decision after a 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 parties 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 Mary Jo O'Brien, Commissioner, Minnesota Department of Health, 717 Delaware Street Southeast, 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 the ambulance service operated by the Ada Municipal Hospital should be upgraded to authorize it to provide advanced life support ambulance services throughout Norman County under Minn. Stat. 144.802, subd. 3(g) (1992).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. The Ada Municipal Hospital, located in Ada, Minnesota, is the only hospital in Norman County, Minnesota. It owns and operates the Norman County Ambulance Service (NCAS). The NCAS is currently licensed to provide BLS ambulance service throughout Norman County, its primary service area (PSA). Ambulance services are provided from the hospital, which serves as its base of operation. NCAS operates no substations.

2. Norman County is rectangular in shape. It abuts the state of North Dakota on the west, Polk County on the north, Mahnomen County on the east, and both Clay and Becker Counties on the south. Ada is situated in the northeast corner of the southwest quarter of the county.

3. The Ada Municipal Hospital took over NCAS approximately three years ago at the request of the Norman County Board of Commissioners. Since then, its call volume has increased from 197 calls in 1990 to 565 in 1993.

4. NCAS is the only ambulance service available in most of Norman County. However, two other ambulance services serve part of the County: County EMS and Mahnomen Ambulance. County EMS serves six towns in the northeast corner of Norman County: Lockhart, Spring Creek, Sundal and Bear Park, which are bounded on the north by Polk County, and the Towns of Strand and Waukon, which abut Sundal and Bear Park Towns on the north. County EMS, based in Fertile, Minnesota, is licensed to provide ALS ambulance services in Polk County and the six towns in the northeast corner of Norman County. Fertile is close to the boundary line between Polk and Norman Counties and is located just north of the Town of Sundal in Norman County. Mahnomen Ambulance is licensed to provide BLS ambulance services in the eastern part of Norman County. The record does not show the precise areas within Norman County served by Mahnomen Ambulance.

5. The six towns in Norman County served by County EMS represent one third of County EMS's primary service area. NCAS

has only received approximately four calls from the towns served by County EMS in the last two years. See, Application Section VI, Part II, Question 3. There is no evidence in the record that the services County EMS provides in the six towns is, in any way inadequate, or that there is a need to license NCAS in that area.

6. County EMS has formed working relationships with individuals and rescue squads in the six towns and within the City of Gary. It provides education and training to rescue squad members. These rescue squads, being first responders, provide basic life support emergency care until County EMS's ambulance arrives.

7. The Gary Rescue Squad and County EMS recently established an early defibrillation program within the rescue squad. The program requires a physician to serve as the medical director. County EMS's medical director provides the controls, education and oversight for that program. Due to County EMS's medical director's participation in the early defibrillation program, any patient treated by the Gary Rescue Squad with early defibrillation equipment must be transported by County EMS. The Gary Rescue Squad and County EMS jointly purchased a defibrillator for the program. It uses a data card for recording the entire patient event. The recording is used by the medical director for program evaluation and oversight. The defibrillator's data card is compatible with the data card and collection system in the medic ambulance so the transfer of care from the rescue squad to County EMS and the transfer of data is not interrupted.

8. NCAS has mutual aid agreements with the F-M Ambulance Service, Inc. of Fargo, North Dakota; Polk County Ambulance in Crookston, Minnesota; and Mahnomen Ambulance, Mahnomen, Minnesota. Under these agreements, the other ambulance service have agreed to provide back-up coverage in Norman County for NCAS.

9. In 1993, NCAS filed an application to upgrade its license to the ALS level in order to provide more comprehensive services to the citizens and visitors of Norman County. There are approximately 7,975 residents and 4,000 visitors in the county. The most distant point in Norman County from the Hospital's base of operations in Ada is 30 miles, and it takes approximately 30 minutes to respond to calls from that point. However, the average response time for NCAS is 8 minutes. In most areas of Norman County which are served by County EMS, County EMS can respond sooner than NCAS. One exception is in the area of Gary, Minnesota where NCAS can respond about as quickly as County EMS.

10. In Norman County, ambulances are dispatched through a 911 public safety answering point.<sup>1</sup> The public safety answering point in Norman County apparently is the sheriff's office in Ada. The sheriff either directly dispatches public services, such as ambulances, or extends, transfers or relays 911 calls to them under Minn. Stat. 403.02, subd. 5. The record does not show what the 911 service areas in Norman County are.

11. NCAS does not propose to change existing 911 districting

or dispatching. In those portions of the county served by County EMS, County EMS will continue to serve persons requesting its service if existing practices continue; also law enforcement personnel would only call NCAS if no ambulance

-----

1. The emergency telephone system in Minnesota is governed by Minn. Stat. 403.01 et seq. and rules promulgated by the Department of Administration. See, Minn. Rules, pt. 1215.0100 et seq. (1991). Under the statute, each county is required to design a 911 system for police, firefighting and emergency medical and ambulance systems. service is requested and NCAS is closer. If the County EMS is requested or is closer, it would be called under existing practices. Even when NCAS is called, it notifies County EMS that it is responding, and County EMS can respond if it wishes.

12. The Ada Municipal Hospital has specialists in family practice and internal medicine, but not in cardiology, surgery and neurology. Therefore, patients needing tertiary-level care must be transported to Fargo, North Dakota. NCAS seeks an ALS ambulance license in order to provide these tertiary patients with a higher level of care en route to the hospital and during interhospital transfers. From three to five tertiary patients weekly need ALS ambulance service.

13. NCAS currently has 15 attendants and drivers: eight of them are Minnesota certified Emergency Medical Technicians (EMTs), five are Minnesota Paramedics, and two are registered nurses. Exhibit 4. The compensation paid to NCAS staff will not increase if NCAS's license is upgraded to the ALS level. NCAS already staffs the ambulance like an ALS service with at least two paramedics on call. Although NCAS is a BLS service at this time, it has received variances for monitor/defibrillation, IVs and advanced airways. It does not, however, have any authorization to administer medication.

14. Licensure will not result in equipment changes and no cost or subsidy increases are anticipated. The public health generally will benefit from the higher level of care ALS licensure will enable NCAS to provide, and cost savings should result because tertiary patients will not have to be transported by air to Fargo, North Dakota. Also, in cases of cardiac arrest, for example, NCAS will be able to provide more vigorous field treatment if ALS licensure is granted.

15. The Norman County Board has set up an emergency medical services steering committee that monitors NCAS's overall management. The steering committee consists of two county commissioners, the mayor of Ada, a city council person, the Ada

Municipal Hospital's administrator, and the director of emergency medical services. One of the steering committee's objectives is to guard against unfair or extreme pricing for ambulance services.

16. Notice of the completed application and a Notice of and Order for Hearing were published in the State Register on Monday, December 20, 1993 and published in the Norman County Index on Tuesday, December 28, 1993 and Tuesday, January 4, 1994. Also, the notices were mailed to the Norman County Board of Commissioners, the Community Health Boards in Rochert and Detroit Lakes, Minnesota; the governing body of the Regional EMS System in East Grand Forks; the ambulance services in the Crookston, Detroit Lakes, Fertile, Fosston, Mahnomen, Red Lake Falls, and White Earth, Minnesota and Fargo, North Dakota. The notices were also sent to the mayors of Ada, Borup, Gary, Halstad, Hendrum, Perley, Shelly, and Twin Valley, Minnesota.

17. The board of Directors of the Northwest Minnesota Emergency Medical Services Corporation has determined that NCAS is in compliance with the regional emergency medical services plan and that the number of its runs which could be classified as ALS support its license request.

18. The application filed by NCAS is supported by the Norman County Board, and businesses, individuals and municipalities in Norman County. Letters of support were filed by the mayor of Ada, the NCAS steering committee, Twin Valley Women of Today, Ada Police Department, Multi-County Nursing Service, Ada Medical Clinic, Ada Municipal Hospital, Halstad Rescue Squad, Wild Rice Conservation Club of Twin Valley, Twin Valley Rescue Squad, Twin Valley Lioness Club, Lutheran Memorial Home Corporation (a nursing home operator in Twin Valley and Halstad), Twin Valley Booster's Club, Schep's Clothing in Twin Valley, Norman County Agricultural Society, Volunteer Homemakers Club of Ada, Norman County Fire Department Association, Jubilee Homemakers of Ada, Modern-aires Home Study Club of Ada, First State Bank of Ada, Ada Garden Club, Prairie Dental Centers of Ada, Twin Valley and Lake Park, Ada Veterans of Foreign Wars, Ada Fire Department, Norman County Sheriff, City of Perley, City of Hendrum, and the Shelly Rescue Squad.

19. County EMS objects to the license application insofar as it would authorize NCAS to provide advanced life support within the six townships where County EMS is now licensed to provide those services. The Towns of Waukon, Bear Park, Strand and Sundal all filed comments indicating their desire to continue receiving ambulance services from County EMS.

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 Norman County Ambulance Service under Minn. Stat. 14.50 and 144.802 (1992).

2. Proper notice of the application and of the hearing were given in full compliance with the provisions of Minn. Stat. 144.802, subd. 3 (1992).

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

4. NCAS has the burden of proof under Minn. Rules, pt. 1400.7300, subp. 5 (1991) to show that an upgraded license is needed and will not have a deleterious effect 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 upon the City's application and make written recommendations regarding its disposition 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 the 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 license;

(4) the estimated effect of the proposed service, change in base of operation or expansion in primary service area on 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.

5. The ALS ambulance service license NCAS proposes to obtain is consistent with Norman County's current community health plan and is supported by the Norman County Board of Commissioners and many communities to be served.

6. NCAS established that upgrading its BLS license to an ALS level will enhance the public health in those areas of Norman County not currently served by an ALS ambulance service.

7. NCAS failed to establish that any need exists for licensing it at an ALS level in those portions of Norman County

currently provided with ALS services by County EMS, but showed that a need exists for upgraded services in other parts of Norman County.

8. Licensure of NCAS in those areas of Norman County currently served by County EMS could have a deleterious effect on the public health by jeopardizing the financial viability of County EMS or fostering competition.

9. The benefits accruing to the public health of citizens in Norman County outside the areas currently served by County EMS would outweigh the costs associated with NCAS's proposed upgrade in its license from BLS to ALS.

Based on the foregoing conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Health grant NCAS an advanced life support ambulance service license for all of Norman County except that portion currently served by County EMS.

Dated this            day of February, 1994.

JON L. LUNDE  
Administrative Law Judge

Reported: Taped

#### MEMORANDUM

Under Minn. Stat. 144.802, subd. 1, the Commissioner of Health is empowered to license ambulance services within the state of Minnesota. When a licensee desires to provide a new type of service, it must obtain a new license from the Commissioner. The purpose of the statute was addressed by the Minnesota Supreme Court in *Twin Ports Convalescent, Inc. v. Minnesota State Board of Health*, 257 N.W.2d 343, 348 (Minn. 1977) where the court stated:

We interpret Minn. St. 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

taxpayer-consumer suffers.

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

The application filed by NCAS to provide advanced life support ambulance services in all of Norman County should not be granted because NCAS failed to show that its proposed level of service is needed in those areas of Norman County currently served by County EMS. County EMS already provides ALS ambulance services in its primary service area. There is no evidence that County EMS is not meeting the needs of the public in those portions of Norman County where it is licensed to provide ALS ambulance services or that NCAS can provide better services to those areas. In fact, the contrary is true. County EMS can serve the areas it is licensed to serve quicker than NCAS can serve them. Moreover, the demand for NCAS's services in the areas served by County EMS is virtually nonexistent as is evidenced by the fact that it receives only two requests for ambulance services annually in those areas.

Although the application filed by NCAS received widespread support, it did not receive support from those areas of the county currently served by County EMS. In fact, the towns served by County EMS have requested that their ties to County EMS not be disrupted. Also, NCAS has indicated that it does not intend to change existing use patterns in those areas served by County EMS. In other words, in its view, County EMS would still be dispatched to those areas of Norman County it is licensed to serve. If NCAS does not intend to provide any significant ambulance service in those areas of the county served by County EMS, there is no reason to conclude that it should be licensed to provide services in those areas. If County EMS needs backup, it can enter into a mutual aid agreement with NCAS or NCAS can provide services under Minn. Rules, pt. 4690.3500 (1991) without a license.

NCAS failed to establish that its county-wide licensure will not have a deleterious effect on the public health. The record indicates that one third of County EMS's service area consists of six towns in Norman County. If NCAS started competing with County EMS to serve those six towns, if the sheriff changed the manner in which emergency calls are relayed, or if the public began to use NCAS instead of County EMS in those areas, deleterious competition could result. This could threaten the economic viability of County EMS, increase costs, or result in unnecessary duplication of services. For all these reasons, the Administrative Law Judge is persuaded that NCAS has failed to establish that its license should include those areas of Norman County currently served by County EMS.

Apart from the areas currently served by County EMS, NCAS showed that it should be authorized to upgrade its current BLS license to an ALS level. The upgrading it seeks is supported by the Norman Board of Commissioners and municipalities in the County as well as a significant number of rescue squads, business organizations, social organizations, and citizens. Apart from those areas currently served by County EMS, granting an ALS license to NCAS would enhance the public health because it will

enable NCAS to provide timely medical services it cannot now provide. Without a variance, BLS ambulance services cannot use esophageal obturator airways, cardiac monitors or defibrillators, establish or maintain intravenous therapy or intravenous infusion, and cannot administer drugs other than oxygen, syrup of ipecac and nonprescription drugs. Minn. Rules, pt. 4690.0800, subps. 2 and 4 (1991). NCAS has variances for intravenous therapies, esophageal obturator airways, and cardiac monitors/defibrillators, but not for the administration of drugs. The ability to administer drugs to persons experiencing heart attacks, chest pain, strokes, insulin shock, asthmatic problems, chronic obstructive pulmonary disease, and injuries, will clearly enhance the public health. This is especially true in an area like Norman County which has only one hospital and where it may take up to an hour or more to get an ambulance to a patient and return the patient to the hospital for treatment. The ability to administer drugs to those patients under detailed protocols and oversight by qualified medical personnel will be an obvious benefit to citizens in the county. Prompt and thorough treatment will not only help save lives but will also help to reduce the seriousness of some injuries which, in the long run, will save costs.

The proposed licensure will not involve any significant cost increases. NCAS is currently staffing at ALS licensing levels and is providing many of the services ALS licensed ambulance services can provide to patients. Furthermore, no new equipment purchases will be required. Therefore, it is concluded that the benefits to the public health of citizens in Norman County outside the area served by County EMS substantially outweigh the costs associated with the higher level of service NCAS proposes to provide.

On the basis of the entire record, the Administrative Law Judge is persuaded that the license application filed by NCAS to provide advanced life support ambulance services in Norman County should be granted but that the primary service area should be limited to those parts of Norman County not currently served by County EMS.

JLL