

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

In the Matter of the License
Applications of Polk County
Ambulance Service, Crookston,
Minnesota, and County Emergency
Medical Services, Fertile, Minnesota

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on August 17 and 18, 1995, at the Northwest Correctional Center, Crookston, Minnesota. Harold A. Frederich, Attorney at Law, Fryberger, Buchanan, Smith & Frederich, P.A., 700 Lonsdale Building, 302 West Superior Street, Duluth, Minnesota 55802, appeared on behalf of Polk County Ambulance Service (PCAS). Steven Belau, Chief Executive Officer, County Emergency Medical Services, 308 North Mill Street, P.O. Box 68, Fertile, Minnesota 56540, appeared on behalf of County Emergency Medical Services (CEMS). Richard A. Wexler, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Department of Health. Many people attended the hearing and several spoke during the public portion of the hearing. Many letters supporting one applicant or the other were submitted at or before the hearing and 18 additional public comments were received after the hearing. The record was closed on August 29, 1995.

This Report is a recommendation, not a final decision. The Commissioner 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 Anne M. Barry, Commissioner, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55414, telephone (612) 623-5470, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Whether the ambulance service operated by PCAS should be upgraded to authorize it to provide advanced ambulance services in its primary service area in and around Crookston, Minnesota, under Minn. Stat. § 144.802, subd. 3(g).
2. Whether the advanced ambulance service operated by CEMS in its primary service area in and around Fertile, Minnesota, should be granted a specialized

license authorizing it to provide advanced ambulance interfacility transfers originating from Riverview Hospital in Crookston, Minnesota, under Minn. Stat. § 144.802, subd. 3(g).

FINDINGS OF FACT

Procedural History

1. On April 11, 1995, CEMS filed an application with the Department for advanced ambulance-specialized service originating from Riverview Hospital in Crookston, Minnesota. Exhibit 3.
2. On April 13, 1995, the Department received an application from PCAS for a change in type of service from basic ambulance to advanced ambulance. Ex. 2. Those levels of service were formerly known, and are still commonly referred to, as Basic Life Support (BLS) and Advanced Life Support (ALS).
3. On April 25, 1995, the Commissioner of Health issued a Notice of Completed Application and Notice of an Order for Hearing regarding the PCAS application and setting a public hearing for June 15, 1995, in Crookston, Minnesota. Copies of the notice were mailed to the Polk County Board, the Community Health Board, the Northwest Minnesota MS Corporation, CEMS, United Hospital Ambulance, Warren Volunteer Ambulance Service, and the city of Crookston, by the Department. The notice was published in the State Register on May 1, 1995.
4. On May 22, 1995, the Administrative Law Judge received a Petition to Intervene in the PCAS matter from CEMS. By Order of June 6, 1995, that petition was granted.
5. On June 7, 1995, the Commissioner issued a new notice of hearing consolidating the petitions of PCAS and CEMS in a single hearing. Exhibit 1.
6. Notice of the consolidated hearing was published in the State Register and the Crookston Daily Times. Crookston is the county seat of Polk County. Notice was also served on the Polk County Board, the Polk County Community Health Board, the Polk County Community Health Service, Northwest Minnesota Emergency Medical Service Corporation, and the Mayor of the City of Crookston. PCAS was given notice of the CEMS application. CEMS, United Hospital Ambulance, and Warren Volunteer Ambulance Service were given notice of the PCAS application.

Polk County Ambulance Service Background

7. PCAS has provided BLS ambulance service from 1974 to 1982 to a Primary Service Area (PSA) covering the western portion of Polk County from a line eight miles south of the northwestern county border. The western border of the PSA follows the county border south from East Grand Forks to the county's southern border. The southern border of the PCA for PCAS follows the southern border of Polk County eastward to a point just west of Winger. The PCA's eastern border extends northward to the edge of Erskine, and further to the Polk County border with Red Lake County. The northern border of the PSA is the county line between Polk and Red Lake Counties.
8. In 1983, Polk County and the Northwest EMS Corporation established funding and 911 response patterns for five ambulance services within the PCAS PSA.

In the north, EMS zone 258 routed calls to the Warren Volunteer Ambulance Service. To the west, zone 094 routed calls to United Hospital Ambulance. The area around Erskine falls within zone 086 and those calls are routed to Fosston Ambulance. The area around Fertile running from the Red Lake County border south to the border with Norman County falls within zone 370 and those calls were routed to CEMS. The central area of Polk County around Crookston was designated zone 305 and those calls were routed to PCAS.

9. The Polk County funding mechanism incorporates a tax, included in the property tax for specific ambulance services, directed specifically to the ambulance provider. The tax subsidy is not intended to cover all the costs of the ambulance service. The ambulance services bill insurers, Medicare, and individuals for services provided. The subsidy is intended to make up the difference between amounts received and the service's costs.

10. CEMS has provided ALS ambulance service to the 370 zone since 1982. This service has included transportation of patients to the Riverview Hospital in Crookston. On many occasions, physicians at Riverview Hospital have contacted CEMS for ALS transport of patients from the hospital to hospitals in East Grand Forks or Fargo.

11. In addition to the tax subsidy, CEMS has a subscription service available to persons not subject to the property tax addition. The subscribers pay \$48 per year per household, or per room at a nursing home, and are eligible for ambulance service from CEMS at no additional charge.

PCAS Existing Service

12. At present, PCAS provides BLS ambulance service and provides all advanced services available to a BLS service pursuant to waivers obtained through the Department of Health. PCAS has twenty-six employees, twenty working primarily for PCAS and the remaining six working as volunteers. Exhibit 22. Twenty staff members are certified emergency medical technicians (EMTs) and six are paramedics. One EMT has submitted her application to the Department of Health for paramedic certification.

13. PCAS uses three ambulances, a 1985 Ford Modular, a 1986 Ford Modular, and a 1994 Ford Modular, to provide service to its PSA. All the equipment required for a BLS service is currently owned and used by PCAS. PCAS also has the equipment for the advanced airway variance, monitor/defibrillator variance, and an IV-fluids variance. PCAS uses a two-way radio communication system to keep in contact with physicians while caring for patients being transported to a hospital.

14. Upgrading to an ALS license would allow emergency medical technicians to administer medications under protocols and under the direction of an on-line physician to patients at the scene and en route to the hospital. Persons suffering from various cardiac conditions, seizures, overdoses, strokes, and hypertension can receive medication treatment. Persons experiencing respiratory distress and pulmonary edema would also benefit from such service.

15. PCAS receives a subsidy of \$66,200 per year from Polk County. Payments from fees, insurers, and Medicare are expected to total \$324,000. The estimated expenses for PCAS in 1996 is \$387,000.

16. PCAS anticipates increased revenue in the amount of \$50.00 per ALS run over the BLS rate when PCAS is allowed to charge for ALS ambulance runs.

Polk County Ambulance Service PSA Needs

17. Zone 305 of Polk County has a resident population of 16,000 and 18,000 visitors annually. A number of farms and industrial plants are located within the zone. The zone has a significant number of older persons who are likely to need aggressive intervention during transport to a hospital. Two nursing homes are located within the city of Crookston.

18. The shape and road network of zone 305 make road intercepts by the existing ALS ambulance services unlikely and inefficient. The distances and response times involved make transport to the Riverview hospital the most effective method of increasing the level of care available, absent upgrading PCAS to provide ALS ambulance services.

19. PCAS has estimated 510 ALS ambulance runs and 160 basic runs will be required in zone 305 in the next year. This estimate is based upon past experience in runs within zone 305 and includes the transfers from Riverview hospital currently performed by CEMS.

CEMS Background

20. In 1982, CEMS was licensed as an ALS ambulance service serving the Fertile area. CEMS has a PSA of zone 370, usually bringing patients to the Riverview hospital in Crookston. CEMS has provided the ALS transfers requested by Riverview hospital from Crookston to East Grand Forks or Fargo. There have been no complaints about CEMS having inadequate equipment, staffing, or training to provide this service. The ALS transfers from Riverview hospital were performed for subscribers from zone 370 and persons from within the PCAS PSA.

21. CEMS receives no subsidy from Polk County to support its operation. Residents in the CEMS PSA do not pay additional property tax. In 1992, CEMS received \$87,601 in subscriptions, \$202,543 in fees, and \$9,553 from other sources. CEMS had \$199,541 in expenses and had a surplus of \$83,770. When added to the carryover surplus from the preceding year, CEMS has a total surplus of \$191,127.

22. The service arrangement entered into between CEMS and its subscribers provides that CEMS will not charge the subscriber a fee for transport, even if the transport occurs outside the CEMS PSA.

23. CEMS estimates that it receives \$64,906.66 annually from ALS transfers originating from Crookston. Exhibit 33, at 7.

Relationship to Community Health Plan

24. PCAS's application for an upgrade from BLS to ALS ambulance service is consistent with the Polk County Community Health Plan goal to "maintain or improve

the level of service currently existing in the County.” The ambulance services to the east and west of zone 305 are ALS ambulance services. PCAS has improved its service from a BLS ambulance service through waivers. The only additional improvement that could be made is to upgrade the service to ALS status.

25. CEMS’s application is consistent with the Polk County Community Health Plan , so long as PCAS cannot provide ALS service. Once ALS service can be provided by the ambulance provider within the PSA, there is no improvement to service afforded by granting CEMS’s application.

26. As part of this application, PCAS is reducing its PSA to the 305 zone and has entered into agreements with neighboring ambulance services to accomplish this change. The reduction of the zone eliminates overlap between providers and improves the climate for coordination of emergency medical services in Polk County.

Comments of Governing Bodies and Public Officials

27. Douglas Pederson, Executive Director for Northwest Minnesota Emergency Medical Services, related that body’s support of PCAS’s application and that body’s disapproval of any application over an existing provider in a PSA. Exhibits 2 and 34.

28. Roger D. Moe, Senate Majority Leader, Senate District 2 of the State of Minnesota wrote a letter in support of CEMS’s application to “allow the hospital a choice of services if the Polk County ALS application is approved.” Exhibit 48. Senator Moe also supported PCAS’s application as “important that the rural communities of Minnesota receive the highest level of emergency care available” and having “nothing but positive repercussions for the people of Northwestern Minnesota.” Exhibit 2.

29. Don Bakken, Polk County Commissioner, wrote “to relieve the patient of additional costs, I support the practice of County EMS of Fertile, transporting persons from Riverview Hospital or Northwestern Clinic in Crookston, to another health care facility as may be directed by their physician, provided that the patient resides within the primary service area (PSA) assigned to County EMS, is covered by their subscription plan, and that the patient and/or immediate family has requested the services of County EMS.” Exhibit 11. The Polk County Board of Commissioners supports the PCAS license upgrade to ALS ambulance service. Exhibit 2.

30. The Fertile Area Emergency Medical Services Tax District Committee wrote in support of CEMS’s application based on the public response to that application, the quality of CEMS’s service, and the likelihood that subscribers would have increased expenses for ambulance service if transfers were no longer available from CEMS. Exhibit 12.

31. Bernard L. Lieder, State Representative, District 2A, Polk, Norman, and Clay Counties wrote a letter supporting PCAS’s application due to the shorter response times for improved service and the large portion of Polk County’s population not presently covered by ALS service. Exhibit 2.

32. Douglas A. Qually, Polk County Sheriff, wrote in support of PCAS's application, citing its record of no problems or complaints with the Sheriff's Department. Exhibit 2.

33. Donald G. Sargeant, Chancellor of the University of Minnesota-Crookston, supports PCAS's application to improve the response time of ALS ambulances to emergencies within the Crookston area. Exhibit 2.

Deleterious Effects on the Public Health From Duplication of Ambulance Services

34. Other than the specialized service provided by CEMS and occasional air transport, there is no ALS ambulance service in the 305 zone. The granting of PCAS's application will substantially reduce the number of ALS transfers that CEMS can make from Riverview hospital. The revenue to PCAS will increase if its application is granted, since it can charge more for ALS runs. PCAS, under a former owner, nearly went bankrupt. CEMS has operated with a substantial surplus in prior years. Denying CEMS's application will impose costs for ambulance transport on subscribers within CEMS's PSA. According to the public comments, subscribers typically do not have insurance coverage to pay for ambulance service, hence they subscribe to the CEMS service. There would be no additional cost to subscribers in allowing CEMS to transfer them from Riverview hospital and therefore, no additional revenue to CEMS. There is no evidence that CEMS or any other ambulance service would be substantially harmed if the application of PCAS is granted. PCAS will be harmed by allowing unrestricted specialized ALS transfer service originating from Riverview hospital in Crookston.

Estimated Effect on the Public Health

35. Making ALS ambulance service available from PCAS in the Crookston area will benefit the level of public health there because patient care for those requiring ALS will be improved during transport to Riverview hospital, East Grand Forks, or Fargo. PCAS employs specially trained advanced level personnel, including paramedics and EMTs for patients in need of critical care. The availability of medications, administered under the direction of a physician as the patient is being transported, will provide faster access to ALS measures. These measures can be a determining factor in the survivability of persons in need of care. Improving the level of ambulance service in zone 305 will provide a clear public health benefit as there will be immediate access to needed medical care for patients in transit.

Benefit to Public Health Versus Cost of the Proposed Service

36. Granting the application of PCAS will increase the cost of runs where ALS services are provided by \$50.00 per run, and the cost of supplies used. This is a marginal increase, particularly in light of the benefits of more rapid administration of medications. Zone 305 will benefit from PCAS receiving the upgrade, since the ability for PCAS to charge more per run under the Medicare system will ensure that the Crookston area will retain locally-based ambulance service.

37. Granting the application of CEMS without modification will harm public health by allowing selective operation of an ALS ambulance service within another ambulance service's PSA. That selective operation could include transfers from

Riverview hospital of patients originating within zone 305 and deny the ambulance service for zone 305 the revenues needed to maintain operations. Granting the application of CEMS for transfer of only those patients who are subscribers within zone 370 will benefit the public within that zone by precluding the imposition of a charge for a service that has already been paid for by the subscriber.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 144.802 (1992). The Notice of Hearing was proper in all respects in all procedural and substantive requirements of law and rule have been fulfilled.

2. Minn. Stat. § 144.802, subd. 3(g) (1990) provides:

The administrative law judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receipt of the notice of the application. In making the recommendations, the administrative law judge shall consider and make written comments as to whether the proposed service . . . is needed, based on consideration of the following factors:

(1) The relationship of the proposed service, change in base operations or expansion;

(2) The recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) The deleterious effect 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.

The administrative law judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. . .

3. The burden of proof to show that the license should be granted is on the applicant. North Memorial Medical Center v. Minnesota Department of Health, 423 N.W.2d 737, 739 (Minn. Ct. App. 1988); In Re City of White Bear Lake, 311 Minn. 146, 150, 247 N.W.2d 901, 904 (1976). In this consolidated hearing, each applicant has the burden to show that its application should be granted.

4. After due consideration of all the factors enumerated in the above-quoted statutory provision, the Administrative Law Judge concludes that the Polk County Ambulance Service has met the statutory criteria and that its application should be granted to provide ALS service and realign its primary service area for both ALS and BLS service to the 305 zone.

5. After due consideration of all the factors enumerated in the above-quoted statutory provision, the Administrative Law Judge concludes that the County Emergency Medical Service application to provide specialized service in Crookston should be granted solely for the ALS transfer of persons who are subscribers to that ambulance service.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Health GRANT the application of Polk County Ambulance Service to upgrade its current license to that of advanced life support and that the Commissioner of Health GRANT the application of County Emergency Medical Service to provide specialized service in Crookston, Minnesota, provided that such specialized service is limited to those persons who are subscribers to the ambulance service.

Dated this 13 th day of October, 1995.

/s/

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

CEMS has relied upon the ALJ report in its own 1990 license application and the Commissioner of Health's report in PCAS's 1987 license upgrade application to assert that its application should be granted and PCAS's application should be denied. The Commissioner of Health rejected the ALJ recommendation in 1990, citing the lack of endorsement of governing bodies, likely duplication of ambulance service, and a lack of coordination between ambulance services. PCAS's application in 1987 would have allowed it to provide ALS service throughout the extended PSA it was originally granted. There would have been complete duplication of the ALS service provided in zone 370 by CEMS. No public bodies supported the application. Each of these factors has changed from 1987.

The PSA proposed by PCAS is much smaller than the PSA in the 1987 application. PCAS has entered into agreements with neighboring ambulance services to eliminate overlap in PSAs and eliminate duplication of service. A number of public officials, including the Polk County Board, support the PCAS application. The 1987 denial of PCAS's application does not control this application.

PCAS has demonstrated the need for ALS service throughout the 305 zone. The variety of emergency situations likely to require ALS service and the distance between emergency responders supports the PCAS upgrade. The overwhelming public support within the zone for the upgrade, expressed both in letters and in a substantial financial subsidy, demonstrates the need to grant PCAS's application in this matter

CEMS maintains that there will be no adverse economic impact on PCAS by granting the specialized service license to CEMS for ALS service from Crookston. The former owner of PCAS could not keep the business running and in 1991, ownership reverted to the seller, who has now applied for an ALS upgrade. ALS service generates more revenue per run than does a BLS service. Crookston is in the center of PCAS's PSA. There would be an unmistakably adverse economic impact on PCAS by allowing CEMS to make ALS runs that otherwise would be performed by PCAS.

CEMS has argued that denial of its application would cause significant harm to its operation. At present, CEMS has an annual surplus of approximate \$80,000. CEMS estimates that it earns \$65,000 in revenue from the service for which CEMS seeks licensure. While CEMS will experience a reduction in surplus, this will not place CEMS at risk of financial collapse.

The PSA system is designed to ensure that each licensed ambulance service has a sufficient area to support the cost of its operations. In its application, CEMS characterizes its proposed PSA as the Riverview Healthcare Association (Riverview hospital) and Northwestern Clinic, both in Crookston. In its summary comments, CEMS maintains that:

The Crookston Tax District will play a role in CEMS actions in the Crookston area; the number of runs will be affected by any competition created by PCA [PCAS] being licensed at the same level as CEMS within the same area; if competition is created within the area, rates will be subjected to free market enterprise principles to the limits of economic feasibility.

CEMS Hearing Summary Comments, at 3.

This comment demonstrates the extent to which granting a license for unrestricted specialized ALS service to CEMS violates the purposes for having PSAs. The people living in zone 305 will not be well served by having their property tax subsidy split between CEMS and PCAS. Such competition is likely to weaken the service of the local provider. If the "limits of economic feasibility" are reached by PCAS, the people in zone 305 could have no local ambulance service. The sort of competition envisaged by CEMS is not in the interest of persons in zone 305.

Minn. Rule 4690.3500, subp. 1, precludes an ambulance service from regularly providing its services within an area other than its primary service area. Since there was no ALS ambulance service in the 305 zone, CEMS has been appropriately providing ALS transfers from Riverview hospital in Crookston to other hospitals. With PCAS having shown that an ALS upgrade is appropriate, the rule would ordinarily work to eliminate CEMS from operating in Crookston. However, under the peculiar history and facts of this case, it is in the best interest of the public in both the Crookston and Fertile areas to grant CEMS a limited special license to serve its own subscribers on transfers out of Riverside Hospital.

Firstly, the funding mechanism used by Polk County heavily subsidizes all ambulance providers in the County, except for CEMS. CEMS substitutes subscriptions for the County subsidy. To ensure that subscriptions continue, CEMS must be able to offer subscribers the transfer service that they have come to expect, without additional charge. Thus, the system of PSA monopolies must be flexible enough to accommodate this unusual arrangement or significant portions of Polk County may lack a local ambulance provider.

Secondly, many of the transfers afforded to CEMS by this Recommendation do not generate additional revenue. Since the ambulance service is already obligated to provide the service at no additional cost to the subscriber, there is no financial incentive to take runs that would otherwise go to PCAS. This fact minimizes the possibility for “cherry-picking” by a neighboring service.

Thirdly, the financial impact on subscribers in the 370 zone cannot be ignored. Many people there subscribe because they lack insurance to pay for the cost of an ambulance. While the \$48.00 annual household fee is modest, the cost of a single ALS transfer from Riverview hospital using PCAS is more than ten times that amount. Imposing that cost on persons is contrary to public health where it can be reasonably avoided.

Fourthly, PCAS has agreed that ALS transfers of subscribers from Riverview hospital should be done by CEMS. PCAS has not urged a strict enforcement of Minn. Rule 4690.3500, even though such an application would financially benefit PCAS. With the issue of ALS operation within zone 305 resolved and a reasonable accommodation for subscribers in the 370 zone reached, the ambulance providers in central Polk County should be able to coordinate their efforts, rather than continue the state of affairs disapproved of previously by the Commissioner of Health. In the Matter of License Application of County Emergency Medical Services, Fertile, Minnesota, AL-90-1-MDH (Commissioner’s Order April 11, 1990).

At the hearing, CEMS characterized its application as being for a new license. This approach is apparently to avoid the prohibition of operating in PCAS’s PSA under Minn. Rule 4690.3500. If the application were to be treated as a new license, the recommendation would be that CEMS’s application be denied. CEMS has failed to identify the staff, resources, and location of its “new” organization. The application relies exclusively upon the financial and professional history of CEMS to support its demonstration of fitness to hold the specialized ALS license. With the granting of an ALS upgrade to PCAS’s license, there would be complete duplication of services to the

detriment of the people residing in zone 305. The Judge has examined CEMS's application and concluded that CEMS is fit to provide specialized ALS transfer service, but that service can only be provided to subscribers to the CEMS service to avoid harm through duplication of service.

S.M.M.