

Monroe Livingston Regional EMS Meeting  
Special NEQ CON Meeting  
November 15, 2010  
Meeting Minutes

Call to order – Paul Bishop

Chair Report – Paul Bishop

- This meeting is for the express purpose of considering the CON application brought forth from Northeast Quadrant Life Support
- We have a court stenographer present for this meeting
  - She has asked that you wait to speak until you're recognized by the Chair; I will recognize you by name so that the transcription is accurate
  - Please do not speak over one another; even if you don't agree with what someone has said; wait for them to finish speaking
- We have quorum and therefore can proceed
- The agenda was sent out via email earlier today – we will review it briefly
- First, we will receive the report from the ad hoc hearing and the ad hoc CON hearing committee, including their recommendation which will be in the form of a motion
- Second, we will review the conflict of interest procedure/policy as well as the letter our lawyer, Mr. Pinsky wrote to us re: this matter
- At this point, we will ask each member of Council to consider whether or not they may be conflicted – this should be done in writing using the forms provided
- These forms will be turned over to our secretary who will read out loud
- We will consider as a Council whether or not that person is indeed conflicted and whether or not their vote should be disqualified today or whether they should be banned from voting altogether
- Once this is complete, we will discuss the motion which is the recommendation from the CON hearing committee
- Any questions re: the agenda?
- We will now hear from the ad hoc CON hearing committee – Mr. Connolly

CON Hearing Committee Chair – Marc Connolly

- The committee met last week
- We had the report from the Hearing Officer & stenographer's transcription
- We had no additional information presented to us – we worked specifically from those two sources
- The CON Committee is on the board
- The Hearing Committee concurs with the finding of the facts in the Hearing Officer's report
- The Hearing Committee concurs with the Hearing Officers report that a public need exists as defined by the NYS DOH Policy 606 & the Council's own definition of public need policy
- The Committee came up with a motion – seconded and here's the motion as presented:
  - Based on the Committee's findings, the North East Quadrant Advanced Life Support, Inc be granted the Certificate of Need to operate an ambulance as requested in its application to Monroe-Livingston Regional EMS Council. The motion was unanimously approved by four of the five members who were in attendance at the time
  - It was approved by the four members who were present; the fifth member was absent
- (Paul Bishop) At this point, can we have a motion to receive the report? We're not endorsing or approving the motion, just receiving the report – Mr. Batty
- (Darrin Batty) Seconds the motion
- (Dick Tripp) All those in favor of receiving the report?
- Ayes – Any opposed? Motion carries

### Chair – Paul Bishop

- We have received that report
- Now we must discuss conflict of interest
- The conflict of interest policy and letter from our attorney, Brad Pinsky will be passed around
- The first page of the packet is the statement we're going to ask everyone to use in order to indicate whether or not they're conflicted
- Please submit that paper back to me and the Council secretary
- The third page is the start of our conflict of interest policy
- While preparing for this hearing, a grammatical error was found – a rather substantial one
- You'll note on the 3<sup>rd</sup> line of disclosure of Council and committee meetings, toward the end it states, "...whether as an owner, officer, director, fiduciary..." and then continues on the 4<sup>th</sup> line "...employee, consultant or supplier of goods or services"
- I asked Mr. Pinsky specifically if there is a term in use called a "fiduciary employee" and he was not aware of the term
- Separately, those terms do exist – it is our belief, that when the document was prepared, somewhere along the line, the comma disappeared – but there should be a comma between "fiduciary" and "employee"
- Does any member of the Council disagree with that premise?
- Tom Bonfiglio would like the definition of "fiduciary" – that is in Mr. Pinsky's letter
- On the first page, "fiduciary" is defined as: "a person who owes the duty of trust and loyalty to the entity"
- For instance, "a treasurer has a fiduciary duty to the corporation to oversee and safe guard the finances, and at that point he suggests that"
- Everyone should take a few minutes to review Mr. Pinsky's letter to us
- Does anyone have any questions?
- OK – please indicate on the form whether or not you believe you have a conflict of interest & pass them to Mr. Frost
- If a majority of the members feel that a person has a conflict, we will then disqualify them from the vote
- They can still participate in the discussion re: the matter but would not be able to vote

### Council Secretary – Tim Frost

- Two people believe they are conflicted
- Julie Jordan – believes she is conflicted because she is an employee of the agency requesting the CON
- Discussion re: Julie Jordan and her confliction
  - (Reg Allen) According to the lawyers interpretation, you're not conflicted
  - (Tim Czapranski) I agree with Reg; she's not conflicted; If we choose to decide that Ms. Jordan is in conflict, it still would not remove her from the denominator; you remove the seat from the denominator
  - (Elizabeth Murray) If we remove Julie based on that, then I ask to what end those people employed as Medical Directors, etc need to be removed
- We will need 14 affirmative votes in order to grant an operating certificate to them if that's what the council chooses to do
- (Paul Bishop) If we declare Ms. Jordan in conflict and disqualify her from the vote, then that's one person who can't vote
  - Any other questions/concerns?
  - Those in favor of disqualifying Ms. Jordan from voting today should signify by saying "Aye"
  - Those opposed should say "nay"
  - Nays
  - Based on a voice vote – note that the member in question abstained, as did Mr. Coyle and Mr. Czapranski
  - The motion did not carry; Mr. Jordan is not disqualified from the vote

- Tom Coyle – believes he is conflicted because he is a share holder of more than 5% of Monroe Ambulance
- Monroe Ambulance is against this CON
- All those in favor of disqualifying Mr. Coyle from the vote please do so by saying “Aye”
  - Ayes
  - Those opposed signify by saying “nay”
  - Mr. Coyle abstained from the vote
  - Based on the vote, the motion carries – Mr. Coyle is disqualified from the vote

Chair – Paul Bishop

- The motion will be read into the record: North East Quadrant Life Support, Inc be granted the Certificate of Need to operate an ambulance as requested in its application to the Monroe-Livingston Regional EMS Council
- Motion by Joseph Giorgione; Seconded by Robert Faugh; Forwarded to the Regional Council by the ad hoc CON Hearing Committee
- Please only speak once you have been recognized
- Only members of the Council and NEQ ALS will be able to speak
- The floor is open to discussion

Tom Bonfiglio

- I contacted Paul last week with information re: this issue that I believe is new information – although it was a certified letter to the Systems Committee received prior to the hearing
- one of the grounds for determining public need is whether or not resources can be reallocated to the area by existing CON holders
- In this letter, Rural Metro offered to service the territory under their existing CON
- This was not mentioned in the hearing report, within the hearing committee, and it appears not to have been taken into account at all
- Since the hearing, RMMS signed an agreement with Union Fire Department to place an ambulance permanently in its district
- This took effect last week and RMMS will service the territory in question
- NEQs certificate of incorporation prohibits that agency from transporting patients
- On its face, the application never should have been considered
- The Systems Committee should have rejected the application

Robert Meddaugh – NEQ ALS

- It's true about our incorporation papers, which were filed in 1988
- At the time, NYS instructed us to file papers in this way
- Back then, NEQ was formed to provide paramedic intercept service
- We are currently in the process of modifying our incorporation papers
- The term, “illegally providing ambulance service” is overly dramatic for the actual situation
- We are aware of the contract RMMS has with Union Hill FD
- Union Hill FD also has a contract with North East Joint Fire District
- The North East Joint Fire District is a taxing entity in the East Webster Fire District

Tim Czapranski

- We are getting new information; this is not in the application

Robert Meddaugh

- I was responding to the assertions

Paul Bishop

- Mr. Czapranski is stating that he believes we are hearing new information
- There's nothing from our MLREMS CON process that we can't hear from the applicant

- We can ask questions of the applicant
- Mr. Meddaugh is simply responding to a statement, not a specific question
- We can hear this information from the applicant

#### Robert Meddaugh – NEQ ALS

- I just wanted to address those couple of different assertions
- The incorporation papers were addressed in a letter of clarification we sent to both regions hearing officers – the day after the hearing
- Again, the contact with Union Hill is not within the North East Joint Fire District

#### Tom Bonfiglio

- Two things:
  - If the clarification of incorporation was known to NEQ, they should have changed it before their application was ever done
  - Today, we need to decide on their application on its face
  - Today, NEQ is not legally permitted to provide transport
  - Secondly, the North East Joint Fire District is happy about the contract with Union Hill
  - I met with the fire commission last week
  - They approved the contract and entered it into their minutes of the commissioner's meeting

#### Tim Frost

- Does NEQ have a timeline when they expect to have their incorporation papers changed?
- There's still the assertion that the burden of proof lies on the agency that is applying for the operating certificate
- To my knowledge, NEQ has not shown any documentation that it has approached any of the primary operation certificate holders to improve on existing services, whether that be Union Hill FD, West Webster FD, RMMS, or Monroe
  - Mr. Meddaugh, two questions, I would like you to respond to the first being, do you have a timeline when the incorporation papers will be modified?

#### Robert Meddaugh – NEQ ALS

- It's in the process now
- When lawyers are involved it's difficult to get a definite timeline
- I would state that this is a two – three month process, depending how long it takes NYS to turn this around and for the judge to sign off
- We obviously couldn't start riding the service until we had our updated incorporation papers
- Regarding Mr. Frost's assertion about going to other agencies
  - We have gone to them
  - We have a manpower agreement with West Webster FD to staff their ambulances with basic EMTs
  - We also crew share with Union Hill FD and West Webster FD
  - We have made an effort to improve the local response
  - We have sat down with Chief Ball, but their solutions were not financially feasible because we're not a taxing entity so there's no reimbursement
- I have not had discussion with RMMS
- Also, to be clear – we were never approached by anyone from the proposed territory until two weeks ago when Union Hill called me
- Both Mr. Coyle and Mr. Frost are indicating that Monroe had not been contacted to reallocate services to that area

#### Darrin Batty

- The Hearing Officer's recommendation was to grant the CON with some contingencies
- I do not see that from the Hearing Committee's recommendation'

- Is that an omission or an oversight?

CON Hearing Committee Chair – Marc Connolly

- There were no contingencies placed on that decision at all

CON Hearing Committee Member – Robert Faugh

- We're not allowed to do that
  - We can only make a determination of the hearing officer's report on whether to grant a CON
  - We're unable to add contingencies to any decision rendered
- (Paul Bishop) According to 0606, we're allowed to place contingencies on an applicant

CON Hearing Committee Chair – Marc Connolly

- Our charge was to review and determine whether we thought there was demonstrated need
- That is what we presented to you
- If the Council chooses to make an amendment to that, that can be done
- We did not view that as part of our charge however, and therefore did not discuss it

Darrin Batty

- The Council can amend the motion at any point and place contingencies on it
- In a separate issue, Mr. Bonfiglio addressed some of the issues re: Union Hill

Tom Bonfiglio

- We don't need a contract to operate out there
- We sought one and spoke to Union Hill because we wanted to be respectful of district boundaries which already exist
- The ambulance is available to the entire area and will cross the county line as well because our CON extends into the neighboring county
- The ambulance will be placed in the Union Hill FD so it's available to West Webster

Tim Frost

- The burden of proof rests on the applicant, not with the other CON holders
- NEQ has to demonstrate a lack of coverage and the lack of ability to augment the existing services

Marc Connolly

- Questions re: the statement made by Mr. Bonfiglio about a contract with Union Hill FD
- What's the length of the contract?
- It could end tomorrow?
- Does it cover the entire area for which this application was made?
- Would the service be provided if the contract did not exist?

Tom Bonfiglio

- It's an indefinite contract
- Yes, the contract could end at any given time
- The contract covers the Union Hill FD and the board of commissioners in the North East Joint FD is aware of our presence and has expressed interest in our services
- If the contract went away, we still our CON wouldn't end. We would still post an ambulance in that area

#### Tim Czapranski

- Questions for NEQ
- Do you bill residents' insurance carriers?
- Proof of adequacy & funding sources – you list your number of calls & revenue – you assume a 100% transport rate?
- In the NEQ agreement with the Town of Webster, it says NEQ ALS will provide ALS service and duplicate any service available, is this still the case?

#### Robert Meddaugh – NEQ ALS

- Answers in response to above questions
- We don't bill residents' insurance carriers and we will continue to not bill through the end of this year; effective next year, we will start to bill. We have modified our contracts with the three towns to allow us to bill
- No, we don't assume a 100% transport rate. The paragraph further up explains this. As a paramedic intercept, we can bill Ontario Emergency Squad, etc.
- Currently, we don't have an ambulance but we would like this to be modified.

#### Reg Allen

- Questions for NEQ
- The agencies up there have more than one ambulance, right?
- This is not an issue of not having the resources; this is an issue of not staffing the resources they have. So they have the resources, they just don't staff them, am I missing something?
- I asked a direct question and he won't give me a direct answer – he danced around it

#### Robert Meddaugh – NEQ ALS

- Answers in response to above questions
- Yes
- No

#### Paul Bishop

- Mr. Allen – we understand but order needs to be maintained
- It's difficult to give direct answers to every potential situation

#### Marc Connolly

- It appears as though NEQ ALS is trying to fill a need on a permanent nature
- I have difficulty believing this need can be solved with the reallocation of existing resources

#### Elizabeth Murray

- NEQ was charged with contacting other agencies to see if resources could be reallocated
- Both RMMS & Monroe were not contacted
- When contacted, RMMS approached the area
- We have no way of knowing how long this will last
- We have no way of knowing what will happen tomorrow; we can't prove that
- We have evidence that clearly supports the fact that NEQ did not meet what they were charged with

#### Paul Bishop

- Was that a request to call the question?

#### Elizabeth Murray

- Yes, I will call the question

#### Paul Bishop

- We do not need a second on that
- Everyone please refresh themselves on what the definition of “need” is
- We will soon go into roll call vote on the motion
- The secretary will roll call the members
- Members will vote “yes” or “no” or “abstain”
- The motion will carry if 14 members of Council vote in favor and a CON will be granted
- If the motion does not carry, this will end the application process and the CON will be declined
- We do not need second to vote this down
- Mr. Secretary, roll call please

#### Tim Frost – Secretary

- Reg Allen – No
  - Louis Aponte – No
  - Donna Bailey – Abstain
  - Darrin Batty – No
  - Paul Bishop – No
  - Thomas Bonfiglio – No
  - Randy Campbell – Not Present
  - Lee Collins – No
  - Marc Connolly – Yes
  - Tom Coyle – Conflicted
  - Jeremy Cushman – No
  - Tim Czapranksi – No
  - Karen Dewar – Not Present
  - Robert Faugh – Yes
  - Tim Frost – No
  - Joe Giorgione – Yes
  - Julie Jordan – Yes
  - David Leven – Not Present
  - Elizabeth Murray – No
  - Ann Peterson – No
  - Manish Shah – No
  - Boris Shmigel – Not Present
  - Laurie Thiele – No
  - Mark Tornstrom – Not Present
  - Dick Tripp – Yes
  - Gwen Williams – No
- Motion Fails – 5 for; 14 against; 1 abstention; 1 conflict;

#### Paul Bishop

- Thank you to all Council members for your hard work re: this process

#### Tim Czapranksi

- Motion for the Chair, Paul Bishop, to draft a letter to the NYS DOH for clarification of the Supreme Court decision on the conflict of interest & to produce guidance to REMSCo on how to interpret that
  - Seconded; All in favor?; Ayes

#### Paul Bishop

- Thank you to NEQ for their hard work in preparing the application and their effort to meet what they believed as the citizens’ need in their district

Darrin Batty

- Would like to publicly thank Nicoletta, Tracy, Paul, Hearing Committee, and the Hearing Officer for the diligent work they did throughout this process

Next Council Meeting will be December 20<sup>th</sup> at PSTF

Meeting Adjourned.