

Final Report of Preliminary Findings and Recommendations

By the  
Technical Committee for the  
Review of the Application for  
Certification of  
First Responders in  
EMS to the  
Nebraska Department of Health

To the  
Nebraska Board of Health  
Director of Health  
and the  
Nebraska Legislature

October 24, 1989



The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the First Responders Technical Committee are as follows:

Dick J. Jeffers, D.D.S. (Chairperson), Private Practitioner (Valentine)

James M. Egr, Attorney (David City)

Rita Gallagher, First Responder in EMS (Cairo)

Paul Madison, M.D., Private Practitioner (Nebraska City)

Richard Noyes, Executive Director, NNEMSC, Inc. (Norfolk)

Virginia Pullen, Businessperson (Fremont)

Diana R. Waggoner, Client Services, Life and Health Insurance, Don  
Waggoner and Associates (Omaha)



## INTRODUCTION

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407) in 1985, is a review process advisory to the Legislature which is designed to assess the necessity of the state regulation of health professions in order to protect the public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Director of Health. At that time, an appropriate technical committee is formed to review the application and make recommendations after a public hearing is held. The recommendations are to be made on whether the health occupation should be credentialed according to the four criteria contained within Section 71-6221 Nebraska Revised Statutes; and if credentialing is necessary, at what level. The relevant materials and recommendations adopted by the technical committee are then sent to the Board of Health and the Director of Health for the review and recommendations. All recommendations are then forwarded the the Legislature.



## SUMMARY OF THE APPLICANT'S ORIGINAL PROPOSAL

The proposal requested certification for first responders in order to provide liability protection, a statutory definition for first responders as a group, and a statutory foundation for a delineation of first responder services. The original proposal called for a separate board of examiners for first responders.

The proposal was amended by the applicant group upon the recommendation of the technical committee to call for administration of the certification of first responders by the Board of Ambulance Attendants.



## SUMMARY OF COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

The committee recommended that first responders be certified under the Board of Ambulance Attendants. The committee also recommended that the Legislature merge all EMS boards into one all-inclusive board, and that the Legislature update all EMS statutes according to these changes in EMS board structure.



## ISSUES RAISED BY THE FIRST RESPONDERS PROPOSAL

### Applicant Group Comments on the Harm Inherent in the Current Practice Situation of First Responders

The applicant group stated that there is harm to the public inherent in the current practice situation of first responders because of the absence of sufficient liability protection for first responders. The applicant group stated that some local governments and communities are reluctant to organize first responder units because of their concerns about the absence of clearly-defined statutory language that would provide first responders with liability protection. The applicant group stated that because of this situation, many communities that cannot afford an ambulance service are unable to provide any emergency care. The applicant group stated that these limitations on access to emergency medical care mean that lives are being lost that would otherwise be saved. This problem is most endemic in rural areas of Nebraska where access to an ambulance service is much more problematical than in urban areas of the state. (The Application, pp. 10-12)

The applicant group stated that the costs of maintaining an ambulance service is prohibitive for many small rural communities. The applicants stated that it costs \$400 or more per run for a licensed ambulance service, and that it isn't cost-effective for a small village to have a \$40,000 ambulance that makes fewer than five runs per year. The applicants added that the costs associated with providing 110 hours of training and 30 hours of continuing education for ambulance personnel is an additional burden that small communities find difficult to bear. (The Application, p. 9) The applicant group presented information

purporting to show that the costs of maintaining a first responder unit are considerably less than the costs associated with maintaining a licensed ambulance service. (The Application, p. 13) The applicants stated that their proposal would make it easier for those small communities that have an ambulance service to downgrade their ambulance service to a first responder unit in order to provide emergency care at a lower cost. The applicants stated that this would greatly increase access to emergency care in rural Nebraska. (The Minutes of the Second Meeting, August 10, 1989.)

The applicant group stated that another source of harm to the public inherent in the current situation is the fact that there are no uniform standards of care in the provision of first responder services. (The Application, p. 9). The applicants stated that the absence of uniform standards of care and a codified scope of practice means that some members of the public might receive incompetent or inappropriate care from first responders. The applicants stated that their proposal would establish standards of care for first responders. The proposal would accomplish this by creating a clearly-defined scope of practice for this group.

#### Technical Committee Discussion on the Harm in the Current Situation

During the meetings of the technical committee, the committee members sought to clarify the degree to which the current situation of first responders is a source of harm to the public. One committee member responded to this concern by stating that the services of first responder units that are part of a fire department are covered by the liability insurance of their respective fire departments. This committee member added that the services of first responder units that are not part of a

fire department are covered by the liability insurance of the city or county which established the unit in question. According to this committee member, the principal problem associated with liability coverage for first responders is the fact that liability coverage for them does not extend to them as individuals for services rendered when not on duty. (The Minutes of the Second Meeting, August 10, 1989)

Another committee member stated that first responders are not protected by the "good samaritan law" which protects the average citizen from being sued for actions taken while lending assistance in an emergency situation. This is because they have training in emergency care, whereas it is assumed that the average citizen does not possess such training. This committee member added that the "good samaritan law" was created for the expressed purpose of protecting the untrained citizen from liability, and as such does not pertain to any level of trained personnel. (The Minutes of the Second Meeting, August 10, 1989)

Concern was also expressed by some committee members as to whether the concept of "gross negligence" applies to first responders. This concept protects EMT-A personnel from liability for any emergency services perceived by members of the public as being negligent. At present it is unclear as to the applicability of this concept to first responder services. (The Minutes of the Second Meeting, August 10, 1989)

The representative of the applicant group on the committee stated that all of these uncertainties about liability are having an adverse impact on the ability of the public to gain access to good quality first responder services. This committee member stated that many small, rural communities are reluctant to form first responder units because of

these concerns. These communities are often not prosperous enough to form an ambulance service. Consequently, the residents of these communities must rely on emergency medical services of other communities, which are often far removed from the community in question. This situation subjects these people to needless risk of harm.

Discussion on the need for additional State assurance of quality care in the provision of First Responder Services

The applicant group stated that there is a need for greater standardization in the provision of first responder services in Nebraska. The applicants stated that there is a need for a statutory definition for first responders as well as a need for a clearly-defined scope of practice for first responders.

The Discussion of the technical committee members revealed that here is no consensus as to what functions first responders may perform. One committee member stated that first responders may use such devices and procedures as "airways", spinal immobilizations, splints, suction devices, and oxygen. This committee member stated that these are procedures denied to ordinary citizens. However, some committee members were concerned that at least some of these procedures might be part of the Medical Practice Act. These committee members stated that these uncertainties about what first responders can and cannot do highlights the need to statutorily define functions for this group. (the Minutes of the Second Meeting, August 10, 1989)

Are there alternatives to the proposal?

Some committee members stated that there might be better ways of addressing these concerns about the current situation of first responders than those stated in the applicants' proposal. These

committee members discussed the following alternatives to the proposal:

- 1) Include first responders on the list of EMS groups that are currently given liability protection in Nebraska statute "35-107"), or
- 2) create a statutory definition for first responders that delineates their scope of practice, defines minimum standards of care, and provides them with liability protection, or
- 3) certify first responder units rather than first responder personnel, or
- 4) make no changes in the current practice situation of first responders.

(The Minutes of the Fourth Meeting, September 26, 1989)

These committee members sought alternatives to the proposal to certify first responders because establishing a certification process for first responders would probably be very expensive. The committee was informed by the applicant group that the cost of establishing certification for first responders might be as much as \$170,000 for the first five years (the applicants Proposal, p.18). These committee members expressed doubt about the ability of certification to provide liability protection, in any case.

The representative of the applicant group on the committee responded to the concerns of these committee members by stating that the proposal is the best means of addressing the liability problems raised in the current review. This committee member stated that adding first responders to statute "35-107" would not be sufficient to provide liability coverage for private first responder units. The applicant group also expressed concerns about the idea of certifying first

responder units rather than first responder personnel. The applicants expressed concern that a regulatory board might establish equipment standards for first responder units that are too stringent for many poor, rural communities under this concept of regulation. In addition, the applicants expressed concern that creating a statutory definition for first responders without formally credentialing them might jeopardize continuing education programs currently in place for first responders. The applicants also expressed concern that none of the above-mentioned alternatives adequately address the need to establish standards of practice for first responders. They stated that only credentialing can ensure that adequate standards of practice are established and maintained for first responders throughout Nebraska so as to protect the public from harm.

Some of the other committee members also expressed support for the idea of certifying first responders, more because they saw it as a means of ensuring quality of care than because of benefits in the area of liability protection.

However the committee discussion also revealed that some committee members were uncertain as to whether this certification proposal would do anything to improve quality of care, giving the fact that the proposal would not significantly alter the current training procedures, curriculum, or standards for becoming a first responder.

#### The Costs to the State of Regulating First Responders

The committee members were concerned about the costs associated with establishing and maintaining a board of examiners for first responder certification. The committee was informed by the applicant group that the cost of implementing and administering their proposal could be up to

\$170,000 for the first five years. (The Applicants' Proposal, p. 18)

These funds would come either from general funds or from department operating funds. There would be no fees.

Some committee members requested that the applicant group amend its proposal so as to make the proposed first responder board part of the ambulance board, thereby reducing the costs of regulating first responders. The applicant group amended its proposal in accordance with this committee request. (Minutes of Meeting Four, September 26, 1989)



## COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

At the fourth meeting, the applicant group, at the request of the technical committee, amended the proposal so as to merge the proposed first responders board with the Board of Ambulance Attendants rather than have a separate board for first responders. This was done in order to lessen the costs of the proposal to the public.

The committee members took action on the four criteria of the credentialing review statute at this meeting. The first criterion states: "Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument." There was a consensus among the members of the committee that there is harm to the public inherent in the unregulated practice of first responder services.

The discussion of the first criterion revealed that the majority of the members of the committee were in agreement that as yet there is no evidence that harm has occurred to the public because first responders are not regulated. However, the majority of committee members agreed that there is potential for harm inherent in the current situation. Some committee members were concerned that if the proposal were not approved, many small rural communities that might otherwise form first responder units would not form such units because of their concerns about liability protection. Because of these concerns, the committee members determined that the proposal satisfied the first criterion.

The second criterion states: "Regulation of the profession does not impose significant new economic hardship on the public, significantly

diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest." There was a consensus among the members of the committee that the proposal would not create any barriers to service. In their judgment, it would actually remove a barrier to service. The committee members determined that the proposal satisfied the second criterion.

The third criterion states: "The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state." There was a consensus among the members of the committee that the public would benefit from improved quality of care in first responder services that state credentialing could provide. For this reason, the committee members determined that the proposal satisfied the third criterion.

The fourth criterion states: "The public cannot be effectively protected by other means in a more cost-effective manner." There was a consensus among the members of the members of the committee that there is no other alternative to the proposal that can address the problems identified in the application as effectively as the proposal. The committee members considered such alternatives as adding first responders to statute "35-107" (for liability protection), creating a statutory definition of first responders and of standards for first responder practice, and creating a certification process for first responder units rather than for each individual first responder personnel. However, the committee members concluded that none of these alternatives adequately addressed all of the problems with the current situation discussed during the review. For these reasons the committee members determined that the proposal satisfies the fourth criterion.

The committee members then made several additional recommendations. The committee members unanimously approved a motion calling for the restructuring of all EMS boards at some point in the future such that all are merged into a single, all-inclusive board of examiners. The committee members felt that this would be a more cost-effective way of regulating EMS in Nebraska.

The committee members also approved a motion to advise the Legislature to revise EMS statutes in accordance with the recommended restructuring of EMS boards.



## OVERVIEW OF COMMITTEE PROCEEDINGS

The First Responders Technical Committee first convened on July 18, 1989 in Lincoln at the Nebraska State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas touched upon were the charge to the committee, the four criteria for credentialing contained within Section 21 of the Credentialing Review Statute and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on August 10, 1989 in Lincoln at the Nebraska State Office Building. After study of the proposal and relevant material compiled by the staff and submitted by interested parties between the meetings, the committee formulated a set of questions and issues it felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions were made.

The committee convened on August 19, 1989 in Lincoln at the Nebraska State Office Building for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their views on the proposal and the question raised by the committee at their second meeting. Interested parties were given ten days to submit final comments to the committee.

The committee met for the fourth meeting on September 26, 1989, in Lincoln at the Nebraska State Office Building. At this meeting the committee, with the consent of the applicant group, amended the proposal.

Dr. Paul Madison moved that the applicant group amend its proposal so that the proposed first responders board be merged with the Board of Ambulance Attendants. Jim Egr seconded the motion. Voting aye were Waggoner, Pullen, Noyes, Madison, Gallagher, Egr, and Jeffers. There were no nay votes or abstentions.

The committee formulated its recommendations on the proposal at this meeting by taking action on the four criteria of the credentialing review statute.

Criterion one states, "Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument." Those committee members who believed that there was harm inherent in the current situation of first responders expressed their views by voting in the affirmative on criterion one. Voting aye were Egr, Gallagher, Madison, Noyes, Pullen, and Waggoner. Dr. Jeffers abstained from voting.

Criterion two states, "Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest." Those committee members who believed that there would be no new barriers to service inherent in the proposal expressed their views by voting in the affirmative on criterion two. Voting aye were Egr, Gallagher, Madison, Royes, Pullen, and Waggoner. Dr. Jeffers abstained from voting.

Criterion three states, "The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability by the state." Those committee members who

believed that the proposal satisfies this criterion expressed their views by voting in the affirmative on criterion three. Voting aye were Egr, Gallagher, Madison, Noyes, Pullen, and Waggoner. Dr. Jeffers abstained from voting.

Criterion four states, "The public cannot be effectively protected by other means in a more cost-effective manner." Those committee members who believed that the proposal is the most cost-effective means of addressing the problems identified in the application expressed their views by voting in the affirmative on criterion four. Voting aye were Egr, Gallagher, Madison, Noyes, Pullen, and Waggoner. Dr. Jeffers abstained from voting.

By virtue of these four votes, the committee members decided to approve the proposal as amended.

The committee members made two additional recommendations on the proposal. Dr. Paul Madison moved that the committee recommend that the Legislature merge all EMS boards into a single all-inclusive board of examiners in such a way that first responders would continue to have a separate and distinct identity from other EMS groups. Jim Egr seconded the motion. Voting aye were Egr, Gallagher, Madison, Noyes, Pullen, Waggoner, and Jeffers. There no nay votes or abstentions.

Jim Egr moved that the committee recommend that the Legislature revise the various EMS statues to comply with the proposed changes in board structure if the Legislature were to adopt these changes. Rick Noyes seconded the motion. Voting aye were Egr, Gallagher, Madison, Noyes, Pullen, Waggoner, and Jeffers. There were no nay votes or abstentions.

