

## MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on February 21, 1994 in Room 531-N of the Capitol.

All members were present except: Senator Bogina  
Senator Lee

Committee staff present: Julian Efird, Legislative Research Department  
Fred Carman, Revisor of Statutes  
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Representative Ed McKechnie  
Tuck Duncan, Medevac Medical Services, Inc.  
Bob McDanel, Board of Emergency Medical Services  
Mary Feighny, Office of the Attorney General

Others attending: See attached list

Chairman Ramirez called the meeting to order at 1:40 p.m. He welcomed Representative McKechnie to the committee. Representative McKechnie was present on behalf of Senator Phil Martin who could not be present to give testimony on **SB 476** - Emergency Medical Services Board.

Representative McKechnie distributed copies of his testimony (Attachment 1) This act codifies many of the rules and policies of the Emergency Medical Services Board. Once an investigation of the Board is complete the requirement is for the file to be open to the public. Representative McKechnie stated the need for the bill arose from an incident that began in Crawford County more than two and one-half years ago. Representative McKechnie's attachment also contained the dates of the Pittsburg Police/Ambulance Investigation and also a consolidated version from the Legislative Post Audit report that was entitled, "The Board Gave Pittsburg and Crawford County Time To Consolidate Ambulance Services."

Representative McKechnie read from the Post Audit Recommendations.

Representative McKechnie was asked if he could expand on the ambulance personnel records being falsified. He responded it began by the falsification and signing of training cards. All the personnel were not trained appropriately. There were people working in the ambulances that shouldn't have been working there; all of this was known by the EMS Board and was part of the investigation.

Representative McKechnie was asked if the specific intent of **SB 476** was to establish specific guidelines and directions to the EMS Board for the future handling of circumstances such as the one that occurred. He replied in the affirmative. He stated in order to require the investigations committee once they are done to release their report, the investigations committee has to be put in statute. The investigations committee is permanently a policy or creation of the EMS Board and is not in the statute books. Representative McKechnie referred to page 2, line 10 of the bill subsection (f) "After one of the actions specified in subsection (e) has been taken by the investigations committee, the investigation file created for the allegations shall be open to public inspection." This is the peanut of the bill.

In response to a question from staff, Representative McKechnie replied by referring to page 1, line 19 (b) where all of the investigations will be closed. They do not want to make it difficult for the investigators or anyone else. Once the investigation is complete whatever is found, the meeting be open.

The Chairman thanked Representative McKechnie.

The Chairman asked Barbara Hinton, Legislative Post Audit, if the information found by the Board was held for a long period of time. Ms. Hinton replied that the timetable for this was contained in Representative McKechnie's testimony. The complaint was received in October of '91; the investigation started in January of

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N Statehouse, at 1:30 p.m. on February 21, 1994.

'92, and the initial settlement agreement was May of '92; the Board of EMS received a signed settlement agreement from the City of Pittsburg. The records were kept closed during this entire period because the EMS Board considered that to be part of the on-going investigation. Even though a determination had been made in May they were monitoring the situation. Senator Martin expressed the concern to Post Audit when they were starting the audit. Ms. Hinton conferred with Cindy Denton, Audit Supervisor, and decided this was in the spring. He stated that he had contacted the Board and had asked for information regarding the investigation after December of '92 and could not get copies. Post Audit had no problem getting access to records, but the law gives them access. There may have been some difference of opinion as to when the investigation was done. So long as the ambulance service was being monitored, that would have been part of the investigation until it was taken over in December of '92 by the county.

Further discussion centered on the audit and time frame for events that took place in the investigation.

The Chairman stated that testimony in opposition to **SB 476** was received from Representative Nancy Brown (attachment 2) and also Mr. T.W. Pollan, Director Sedgwick County, Kansas Emergency Medical Service (Attachment 3)

Tuck Duncan, Medevac Medical Services, Inc. testified next on the bill and distributed copies of his testimony. (Attachment 4) Mr. Duncan stated he has no problem with the direction the bill is trying to take in terms of formalizing a few matters. The basic hearing process that the Board of EMS follows is under the administrative hearings provision of the law. There are some things that need to be codified that would help the Board. Two different interests are being balanced; the concern with the public's right to know as relates to an emergency service that is providing them with taking care of their health and safety needs and the personal rights of individuals or services involved where there are accusations of violations of what is tantamount to criminal law. An attachment handed out by Mr. Duncan at a later date was labeled (4a).

Bob McDanel, EMS Board, distributed his testimony (Attachment 5) and spoke in opposition to the bill. His testimony stated that the bill would single out the Board for an important public policy change; mandates by statute operating procedures which are currently board policy, and limits the Board's ability to properly conduct investigations and take regulatory action by requiring the Board to release its investigation files prior to taking final action.

Mr. McDanel was asked if he thought the present legislation was adequate to operate efficiently. He answered in the affirmative.

Mary Feighny, Assistant Attorney General was present to testify in opposition to **SB 476**. Her testimony stated that the Open Records Act is sufficient to address the issue of investigative files. (Attachment 6) The bill is ill-advised from a policy perspective because it threatens the adjudicative process by releasing information prematurely.

Ms. Feighny stated that the intent of the bill was to release information prior to an administrative adjudication. Legislative Post Audit exonerated the Board of Emergency Medical Services. There were no findings that anything should be changed concerning the disposition of investigation files.

Ms. Feighny made a response to some of Mr. Duncan's statements. She disagrees that these records are criminal investigation records. While the statutes does provide that a violation of the EMS statutes is a criminal violation, it is up to the District Attorney to bring charges. Any charges that he would bring and any investigation that he completes - those are criminal investigation files and are completely separate from the administrative agency that conducts its own investigation. It would be the opinion of the Attorney General that these are not criminal investigation files.

After a few further comments Ms. Feighny ended her testimony.

The Performance Audit Report entitled "Reviewing the Regulatory Activities of the Emergency Medical Services Board" is labeled (Attachment 7).

The Chairman stated the hearing on **SB 476** was concluded.

The meeting was adjourned.

The next meeting is scheduled for February 22, 1994.

## GUEST LIST

COMMITTEE : SENATE GOVERNMENTAL ORGANIZATION

DATE: Feb. 21, 1994

[illegible]

ED McKECHNIE  
REPRESENTATIVE, THIRD DISTRICT  
224 W. JEFFERSON  
PITTSBURG, KANSAS 66762  
(316) 231-1669



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
CHAIRMAN OF THE DEMOCRATIC CAUCUS  
MEMBER: EDUCATION  
INTERSTATE COOPERATION  
LEGISLATIVE POST AUDIT  
NCSL TASK FORCE ON  
DEVELOPMENTAL DISABILITIES

February 21, 1994

Testimony On S.B. 476  
Senate Committee on Governmental Organization

My name is Ed McKechnie and thank you Mr. Chairman and members of the committee for the opportunity to testify in favor of S.B. 476. This act codifies many of the rules and policies of the Emergency Medical Services Board and specifically requires that once an investigation of the Board is complete the file be open to the public. I am here also on behalf of Sen. Phil Martin who is at a family funeral and could not be here today.

The need for this bill arises from an incident that began in Crawford County more than two and one-half years ago. At that time a complaint was filed against the Pittsburg Police Ambulance Service that ambulance personnel records had been falsified. During the work of the EMS investigations committee and staff during the next six months, important information was uncovered reflecting on the quality of care ambulance customers received by the Pittsburg Police Ambulance Service.

Rather than go before the Board for penalties to be assessed, the City of Pittsburg agreed to forfeit their license and the requirement for the service fell to the County which had never been involved in any of the discussions of the Pittsburg Ambulance Service up to that point.

We believe at the point in time Pittsburg agreed to surrender its license and the case was closed the information obtained by the Board should be opened to the public. I know that EMS board may have some objections to this bill and we do not oppose them as long as the basic tenet of public's right to know is not lost.

Thank you for the opportunity to speak to the Committee, and if you have any questions, I, or Sen. Martin upon his return to the Statehouse, would be happy to answer them.

*Sen. Gov. Org.  
Attachment 01  
2/21/94*

*Call Chair*  
*- 2-12-10*

**Pittsburg Police  
Invest**

Pittsburg  
Prosser

- 20 21 10

17  
1. *Wash*

- [Handwritten signature]*

174

- 1-2

- 05-08-92 - Amendments made to settlement agreement and sent to Pittsburgh. Some minor changes requested by Pittsburgh officials.
- 05-14-92 - Board of EMS received signed settlement agreement from Pittsburgh.
- 05-18-92 - Met with Crawford County and Pittsburgh City officials in Girard to discuss settlement agreement and other problems or concerns.

## The Board Gave Pittsburg and Crawford County Time To Consolidate Ambulance Services

Until recently, both Crawford County and the City of Pittsburg operated licensed ambulance services. To fund these services the County levied a special tax that generated about \$80,000 in 1991. In the same year, the County's ambulance service was funded by about \$42,000 from the special tax, \$208,000 from its General Fund, and \$185,000 from user fees. As required by law and other agreements with the City, the County gave the City a portion of the tax dollars it collected to spend on ambulance services. The City's ambulance service, which was operated by its Police Department, was financed by about \$64,000 it received from the County, \$64,000 from its General Fund and \$94,000 from user fees.

Problems with the City's ambulance service came to the Board staff's attention on October 28, 1991. Staff received an anonymous complaint that the Pittsburg ambulance service director had faked attendants' cardiopulmonary resuscitation cards to show that they had completed training for 1992. In November, the director submitted application materials to the Board to renew the City's ambulance permit, which included copies of the falsified training documents.

In January 1992, when the director heard the Board was going to investigate Pittsburg's ambulance service, he confessed to the Chief of Police, who demoted him from the position. In late January, Board staff started an investigation of Pittsburg's ambulance service, which was operating under a new director.

In March, staff reported to the Board's Investigations Committee that they had completed their investigation at Pittsburg and confirmed violations of State law including:

- falsification of training documents
- unauthorized personnel attending patients
- substandard patient care, including not using cervical collars, not providing oxygen, and not taking patient's vital signs (such a blood pressure and heart rate).

With these violations confirmed, the Board began the process of revoking the City's ambulance license. In April, when Board staff informed City officials of the Committee's recommendation to revoke the City's license, City officials decided to cooperate with the Board to avoid formal charges being filed.

Faced with a possible license revocation, City officials decided to close their ambulance service and turn the responsibility of providing service to Pittsburg over to Crawford County. (The County legally was obligated to provide ambulance service to the City because it levied a tax for emergency medical services.)

In May 1992, the Board and the City signed an agreement allowing the City's ambulance service to remain in operation under close monitoring. The agreement required that City of-

ficials develop a plan by June 15, 1992, for the County to take over the service no later than September 1, 1992. The Board did not formally notify the County of its agreement with the City, but the Board's administrator said he did notify County officials through telephone conversations with the Crawford County Counselor. In addition, City officials provided the County with a copy of the agreement before it was signed.

On June 4, 1992, Pittsburg officials requested that the transition time for the County to assume ambulance service for the City be extended. The Board amended the agreement dates to August 1 for the City to reach an agreement with the County, and to January 1, 1993, for the County to take over ambulance service. Even with the additional time, the City and County were unable to reach an agreement.

On August 7, 1992, in response to the lack of progress towards a City-County agreement, the Board informed City officials that it would no longer require the City and County to reach an agreement, but that it would allow the City's license to expire on December 31, 1992.

The major obstacles that kept local officials from reaching an agreement were the location and funding for an ambulance station in the City. The County had built an ambulance station about five miles north of Pittsburg in 1990. County officials stated that, without additional funding, this station would have to provide coverage for the City. According to County officials, to provide a station within the City limits would require the City to give the County three of its four ambulances and all of its equipment and supplies. In addition, the County wanted the City to forego its share of the taxes the County owed it for 1992, and to give the County an additional subsidy of \$105,000 per year.

The City countered with an offer to give the County the ambulances and related equipment, and to forego \$20,000 of the estimated \$65,000 in tax levies that the County owed it. However, City officials refused to pay the \$105,000 subsidy because City residents would be taxed twice for ambulance service.

In November, the County did locate a building in the City to serve as an ambulance station. City officials agreed to repair and enlarge the driveway and parking lot of this building.

Even though they had seven months, City and County officials were unsuccessful in reaching an agreement. Instead, the City's license expired, and the City gave the County what the City had originally offered.

On January 1, 1993, the County began providing ambulance service for all Crawford County residents, including those in the City of Pittsburg. County officials said the tax levy for ambulance service was increased from 0.256 mills to 2.790 mills.



**NANCY BROWN**

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TOPEKA

HOUSE OF  
REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

LOCAL GOVERNMENT, CHAIRMAN  
TAXATION

COMMUNITY DEVELOPMENT BLOCK GRANT  
ADVISORY BOARD  
EMERGENCY MEDICAL SERVICES BOARD  
NCSL, STATE-LOCAL-TRIBAL RELATIONS,  
CHAIRMAN  
NCSL, THE WOMEN'S NETWORK BOARD

February 21, 1994 - Senate Government Organization Committee

**Hearing on SB 476 - EMS Investigation and disposition of complaints**

Senator Ramirez and members of the Senate Government Organization Committee: my apologies for not attending in person to express my concerns about SB 476, but I am chairing the House Local Government Committee at this time and have four hearings scheduled. In any event, I would like to appear in front of you wearing another hat. . . the hat of an Emergency Medical Services Board member.

When Senator Martin, a relatively new EMS Board member, mentioned this bill to the EMS Board there was grave concern. The two of us had hoped to meet and discuss the proposed legislation, but our busy schedules did not permit a meeting either before or after the bill was requested by the Post Audit Committee. If I would have been able to meet with Senator Martin or the Post Audit Committee, the following thoughts would have been expressed.

I am gravely concerned about lines 10-12 on page 2, which states "the investigation file created for the allegations shall be open to public inspection." Why should the EMS Board, prior to final disposition of a complaint, be required to open the records? In a small community of EMS responders and services, can you imagine how fast comments and rumors could spread and damage an individual or ambulance services reputation just because the hearing panel determined "there is an adequate basis to hold an informal investigative inquiry"?

My interest is not only in protecting the individual under investigation, but also the individual who made the complaint. Opening the records will discourage individuals from making complaints. It should be recognized that emergency medical responders deal with life and death issues. The Board wants legitimate complaints to be made so corrective action can be taken. The Board also seeks to remedy any violation and might even "determine there is an adequate basis for the board to enter into a consent agreement with the alleged violator," for example, entering a treatment center. This information is protected under the Open Records Act. If SB 476 would pass the investigation file would be open to the public. This is wrong!

I have worked with the investigations committee as a hearing officer and have taken the position of confidentiality very seriously. I simply do not believe an individual or service is "guilty" until proven so. . . yet, by opening for public inspection the records of an alleged violator, assumptions will be made and based on rumors and not facts. This simply should not happen!

I am not an attorney and others can speak who knows more than I about legal matters, but I do want to go on record to say that I am **adamantly opposed to amending the Open Records Act and to singling out one particular administrative agency.**

*Senate Gov. Org.  
Attachment 2  
2/21/94*



# SEDGWICK COUNTY, KANSAS

## EMERGENCY MEDICAL SERVICE

OFFICE OF THE DIRECTOR  
P.O. BOX 607  
WICHITA, KANSAS 67201  
316-383-7239

TO: Chairperson Al Ramirez and Honorable Members of the  
Senate Committee on Governmental Organization

FROM: T. W. Pollan, Director

DATE: February 19, 1994

SUBJ: SB 476

RE: Oppose as Written

Due to other business, I will not be able to attend the committee hearing on SB 476 on Monday, February 21st. I would request that you accept my written testimony in opposition to SB 476.

Sedgwick County operate largest EMS provider of pre-hospital health care in the State of Kansas. Sedgwick County EMS provides services to 1008 sq. miles and a population of 409,000. One out-of-every five requests for EMS in the State of Kansas occurs in Sedgwick County. Therefore Sedgwick County has a vested interest in ensuring continuity for the provision of EMS and the quality of care provided by EMS.

Although there will be others who will have concerns about placing the Board of Emergency Medical Service's (Board) investigation and complaint disposition in state statute, my focus will be on the impact of SB 476 on the "peer review" requirements and files of EMS providers. Subsection (f) states:

After one of the actions specified in subsection (e) has been taken by the investigations committee, the investigation file created for the allegations shall be open to public inspection.

Clearly this subsection intends to open the entire investigations file to public inspection.

This places SB 476 in direct conflict with Administrative Procedure Act which only opens the records at public hearing and then states in K.S.A. 77-523 (f), "The hearing is open to public observation, except for the parts that the presiding officer states to be closed pursuant to a provision of law expressly authorizing closure." In

*Senate Gov. Org.*  
*Attach 3*  
*2/21/94*

the case of a peer review file completed by a "peer review committee" or "peer review officer", K.S.A. 65-4915 gives clear exemption to public observation. Subsection (4) (b) of the peer review act states, "...records of peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors."

As well, subsection (f) places SB 476 in conflict with the Kansas Open Records Act. K.S.A. 45-221 states that certain records are not required to be open to the public. Subsection (1) of KORA states, "Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure" do not have to be open for public inspection.

The Kansas Administrative Procedure Act, Peer Review Act, and the Kansas Open Records Act have recognized the necessity of protecting the confidentiality of certain records. The Board of Healing Arts, the Board of Nursing, the Board of Emergency Medical Services, and past legislators have recognized that without a peer review process the competency of health care providers and the quality of our health care system will suffer. Therefore, without deletion or amendment to subsection (f) to exempt "peer review" files, I stand in opposition to SB 476.

Thank you for your time and consideration of my comments regarding SB 476. Should you have any questions, please contact me at the above phone number.

TWP:twp

cc: Willie Martin, Intergovernmental Relations



**Medevac Medical Services, Inc.**  
**401 Jackson, Topeka, Kansas 66603**

To: Senate Committee on Governmental Organization  
From: R.E. "Tuck" Duncan, General Counsel, Medevac Medical Services  
RE: Senate Bill No. 476

February 21, 1994

This bill has positive elements upon which to build, and certain provisions that need modification.

We propose the following:

Rationale:

Sec. 1-- (a) The administrator may initiate an investigation without a written complaint if the administrator determines adequate cause exists and upon approval of the investigations committee established in paragraph (d).

There should be an initial review process to ascertain whether probable cause exists. With the administrator taking his/her concerns to the committee this requirement is satisfied.

(b) "...shall not be disclosed except as provided in ~~this~~ section (f) or by K.S.A. 45-221(10).

These are criminal investigation files and should be accorded the protection otherwise provided by law.

(c) "...The identity of any complainant or other person providing information to the board or administrator regarding any such allegation shall ~~not~~ be required to be included in the investigation file."

The respondent should have the right to confront his/her/their accusers, as provided by the Sixth Amendment to the United States Constitution, and Section 10 of the Kansas Bill of Rights.

(d) no proposed changes

(e) no proposed changes

(f) "...the investigation file created for the allegations shall not be a part of the regular files of the board and shall not be disclosed except as provided by K.S.A. 45-221(10), except if the investigations committee makes a determination pursuant to (e) (2),(3), or (4), the file shall be made available to the respondent service, instructor-coordinator or attendant." ~~be open to public inspection.~~

As set forth by the constitutional guarantees above, the Respondent should have access to the "complaint" in order to proceed in an investigation, a consent proceeding or a formal hearing.

(g) no proposed changes

(h) no proposed changes

*Summary: These changes are necessary because K.S.A. 65-6137 provides that "any person violating any provision of this act [Article 65, Emergency Medical Services] or any rule or regulation issued hereunder shall be deemed guilty of a class B misdemeanor."*

Thank you for your consideration of these matters.

*Sen. Gov. Org.  
Attachment 4  
2/21/94*

**Medevac Medical Services, Inc.**

**401 Jackson, Topeka, Kansas 66603**

February 22, 1994

To: Senate Governmental Organization Committee  
From: R. E. "Tuck" Duncan  
Re: EMS Records

I believe yesterday's hearing demonstrated that there is confusion about the public accessibility to records of the EMS Board. On one hand the committee was told to let the public records act control; but then told the records in question are not considered criminal investigation records. Only if the records are considered criminal investigation records does it appear the public records act protections apply.

At the same time the Assistant Attorney General stated hearings were governed with the same protection as a criminal proceeding. If so, why are not the records (which means the people who are the object of the inquiry) afforded some safeguard, particularly if a determination of no wrong is made? It is clear there is confusion.

Please clarify this confusion by the following substitute bill for Senate Bill 476, which language comes from the Nursing Act. (Contrary to the testimony, various boards do have statutory provisions on this matter):

65-\_\_\_\_. Complaint or information relating to complaint confidential; exceptions (a) Any complaint or report, record or other information relating to the investigation of a complaint about a person licensed by the board which is received, obtained or maintained by the board is confidential and shall not be disclosed by the board or its employees in a manner which identified or enables identification of the person who is the subject or source of such information except:

(1) In a disciplinary proceeding conducted by the board pursuant to law or in an appeal of the order of the board entered in such proceeding, or to any party to such proceeding or appeal or such party's attorney:

(2) to the proper licensing or disciplinary authority of another jurisdiction, if any disciplinary action authorized by K.S.A. 65-\_\_\_\_ and amendments thereto has at any time been taken against the licensee or the board has at any time denied a license certificate or authorization to the person; or

(3) to the person who is the subject of the information, but the board may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information.

(b) This section shall be part of and supplemental to the Kansas Emergency Medical Services Act.

Thank you for your kind consideration of this matter.

*Senate Gov Org*  
*Attach (7-2)*  
*7-2*  
*2/21/94*





Bob McDanel  
Administrator

# State of Kansas

## BOARD OF EMERGENCY MEDICAL SERVICES

109 S.W. 6TH STREET, TOPEKA, KS 66603-3805

(913) 296-7296 Administration  
(913) 296-7403 Education & Training  
(913) 296-7299 Examination & Certification  
(913) 296-7408 Planning & Regulation

Joan Finney  
Governor

DATE: February 21, 1994

TO: Senate Governmental Organization Committee

FROM: Bob McDanel *BM*

SUBJECT: Opposition to SB 476

SB 476 establishes parameters for the way the board conducts investigations, takes regulatory action and releases information on those investigations. In attempting to provide interested persons with timely information on board investigations, SB 476 would create several new problems for the board. These problems are discussed below:

1) It singles out the Board of EMS for an important public policy change, rather than changing the Kansas Open Records Act, which controls all state agencies.

2) It mandates by statute operating procedures which are currently board policy, and are policy for other state regulatory agencies. For example, SB 476 specifies the number of members for a board committee.

3) It limits the board's ability to properly conduct investigations and take regulatory action, by requiring the board to release its investigation files prior to taking final action. The publicity caused by this premature release of information would have the following consequences:

- a. It would be difficult to select an impartial hearing panel or hearing officer.
- b. Possible witnesses would be known; their testimony could be adversely affected.
- c. It would be difficult for the board to use consent agreements and informal investigative inquiries to resolve problems.

SB 476 was requested by the Legislative Post Audit Committee, apparently because some committee concerns were not resolved by a recent Division of Post Audit study on the board's investigation and regulatory activity. That audit, which is readily available to committee members, concluded the board was in full compliance with Kansas statutes and administrative regulations.

The Board of Emergency Medical Services opposes SB 476 and requests the committee to not recommend it to the Senate.

*Sen. Gov. Arg.*  
*Attachment 5*  
*2/21/94*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

Testimony of Mary Feighny  
Assistant Attorney General  
Before the Senate Governmental Organization Committee  
Re: Senate Bill 476  
February 21, 1994

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman, Members of the Committee:

My name is Mary Feighny and I am an assistant attorney general and legal counsel for the board of emergency medical services. I am here on behalf of General Stephan and the board to oppose S.B. 416.

This bill provides that once the board completes its investigation of a regulatory violation, the investigation file will be open to public inspection prior to the commencement of any formal or informal adjudicative hearing.

The present law which now governs these investigation files is found in the Open Records Act (K.S.A.45-221(a)(11) which allows an agency to refuse to disclose "records of agencies involved in administrative adjudication or civil litigation compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent."

It is the Attorney General's position that the Open Records Act is sufficient to address the issue of investigative files and this bill is unnecessary. Furthermore, this bill singles out the emergency medical services agency for special treatment from other administrative agencies for no apparent reason.

More importantly, however, this bill lacks the exemptions which the Open Records Act provides for certain documents. These exceptions are found at K.S.A. 45-221(a) and include the following:

1. documents which are prohibited from disclosure under federal law, state law or Supreme Court rule. (e.g.: K.S.A.

*Senate Gov. Org.  
Attachment 6  
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65-4050 and 65-5225 prohibit disclosure of medical records relating to alcohol and drug treatment; K.S.A. 1993 Supp. 65-4915 prohibits disclosure of peer review committee reports concerning the competency of paramedics)

2. records privileged under the rules of evidence (e.g.: memos from legal counsel to the board or staff)
3. medical records including psychiatric and psychological treatment records
4. personnel records (e.g.: performance ratings for paramedics employed by an ambulance service)
5. record of a person's test score
6. correspondence between the agency and an individual
7. attorney work product
8. documents containing information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of privacy.
9. criminal investigation records

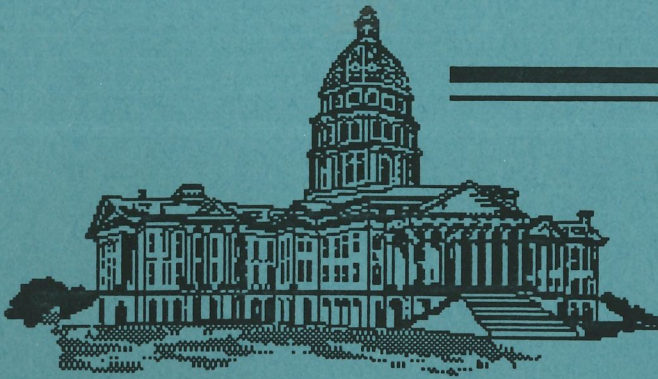
This bill contains none of these exemptions from disclosure. Consequently, it is our opinion that if this bill is enacted the agency would not be able to remove documents which are currently protected from disclosure under the Open Records Act with the possible exception of information which is specifically prohibited by federal and state law.

Finally, this bill is ill-advised from a policy perspective because it threatens the adjudicative process by releasing information prematurely. It is vital that any hearing panel be insulated from learning about the case prior to the actual hearing so that they can come to a decision based on the evidence presented and not on hearsay and innuendo.

This scenario is avoided when investigation files are released when the adjudicative proceeding is over which is why the Open Records Act is adequate to address this situation.

On behalf of the board and the Attorney General, we oppose this bill and urge the committee not to recommend it to the Senate.





# PERFORMANCE AUDIT REPORT

Reviewing the Regulatory Activities of the  
Emergency Medical Services Board

A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
August 1993

93-46

*Senate Gov. Arg.  
Attachment 7  
2/21/94*



# ***Legislative Post Audit Committee***

## ***Legislative Division of Post Audit***

**THE LEGISLATIVE POST** Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$6 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

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7-2



# **PERFORMANCE AUDIT REPORT**

## **REVIEWING THE REGULATORY ACTIVITIES OF THE EMERGENCY MEDICAL SERVICES BOARD**

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### **OBTAINING AUDIT INFORMATION**

This audit was conducted by Cindy Denton, Jim Davis, and Trish Pfannenstiel, Auditors, of the Division's staff. If you need any additional information about the audit's findings, please contact Ms. Denton at the Division's office.

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## **REVIEWING THE REGULATORY ACTIVITIES OF THE EMERGENCY MEDICAL SERVICES BOARD**

### **Summary of Legislative Post Audit's Findings**

The Emergency Medical Services Board is responsible for regulating ambulance services throughout Kansas. The Board is responsible for ensuring that ambulance personnel are properly trained and certified, and that equipment meets strict standards. It also grants operating licenses to ambulance services.

**Has the Emergency Medical Services Board established and followed policies and procedures governing its staff's involvement with local communities when ambulance services are discontinued or consolidated?** Although the Board has no statutory authority to order ambulance services to consolidate, licensing action the Board takes can lead to consolidation of ambulance services. Board officials told us that although there is no requirement to do so, they provide assistance to communities that are in danger of losing an ambulance service. That assistance may include offering suggestions on how to select a new ambulance service or where stations should be located to provide an optimal or desired response time, or monitoring an existing ambulance service to ensure it provides proper care to patients while the community makes a transition to a new service.

The Board had no formal policies governing notification of parties affected by Board actions, the types of assistance it would provide to communities, or when and to whom the results of its investigations would be released.

Legislative concerns had been expressed about the way in which the Board dealt with officials in Pittsburg and Crawford County when the City of Pittsburg was about to lose its license to operate an ambulance service. Although the Board lacked formal policies, we found that the Board did not appear to place any unreasonable demands on Pittsburg, and did not treat it differently than it treated other communities. In our opinion, the Board may have erred by not involving Crawford County officials as soon as it was clear that the City would surrender its ambulance license. However, much of the difficulty in Pittsburg and Crawford County appeared to be related to disagreements between City and County officials who were trying to find a way to provide ambulance service while operating within budgetary constraints, rather than to anything the Emergency Medical Services Board did.

This report recommends that the Emergency Medical Services Board develop formal policies for its staff to follow in dealing with communities whose ambulance services are affected by Board actions. We would be happy to discuss this recommendation or any other items in the report with any legislative committees, individual legislators, or other State and school district officials.

  
Barbara J. Hinton  
Legislative Post Auditor

## **Reviewing the Regulatory Activities of The Emergency Medical Services Board**

The Emergency Medical Services Board is responsible for regulating emergency medical services (ambulance services) in the State. Such regulation includes setting equipment requirements for ambulances and rescue vehicles; setting qualifications and training requirements for attendants and instructor-coordinators; and defining requirements for licensing ambulance and rescue services.

The Board also is responsible for developing a State plan for the delivery of emergency medical services. The plan looks to the year 2000 to address future needs for emergency medical services in the State including issues such as how ambulance service might be provided in rural areas with shrinking populations.

Legislative concerns have been raised about how the Board decides when one ambulance service should be consolidated with another and what procedures the Board has established to ensure that appropriate budget adjustments are made when services are consolidated. Those concerns were focused on the City of Pittsburg and Crawford County case in which the emergency medical service territories were consolidated. The scope statement approved for this audit posed the following questions:

1. **Has the Emergency Medical Services Board established and followed policies and procedures for determining when the territory of one ambulance service should be absorbed by another service?**
2. **Has the Emergency Medical Services Board established and followed procedures for ensuring that affected parties are consulted and appropriate budget adjustments are made when it recommends consolidating emergency medical services?**

Because these two questions are closely interrelated, for reporting purposes we combined them into the following question:

**Has the Emergency Medical Services Board established and followed policies and procedures governing its staff's involvement with local communities when ambulance services are discontinued or consolidated?**

To answer the audit question, we reviewed the statutes governing the authority and responsibilities of the Emergency Medical Services Board. We interviewed the Board's staff regarding their procedures and methods of providing assistance to communities in which emergency medical services are discontinued as a result of Board action. We reviewed documentation on all cases in which emergency medical services were discontinued as a result of Board action, and talked with the Board's staff and local officials about specific cases. In addition, we contacted other Kansas regulatory boards about their policies relating to the release of investigation

information. Finally, we interviewed officials from other states' emergency medical services agencies about what aspects of the industry they regulate. In conducting this audit, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office.

In general, we found that the Emergency Medical Services Board has no statutory authority to order ambulance services to consolidate. Although its licensing actions could lead to consolidation of ambulance territories, the Board does not have formal policies for consulting with parties affected by its actions. The Board provides assistance to communities that request it, and the level of assistance it provided to the City of Pittsburgh was similar to what it provided to other communities. The Board appeared to have erred by not notifying or involving Crawford County officials when it signed an agreement with the City of Pittsburgh requiring the City and County to take certain actions. However, some of the problems that occurred in the consolidation of the Pittsburgh and Crawford County ambulance services may not have had anything to do with the actions of the Board.

These and related findings are discussed following a brief overview of the Emergency Medical Services Board.



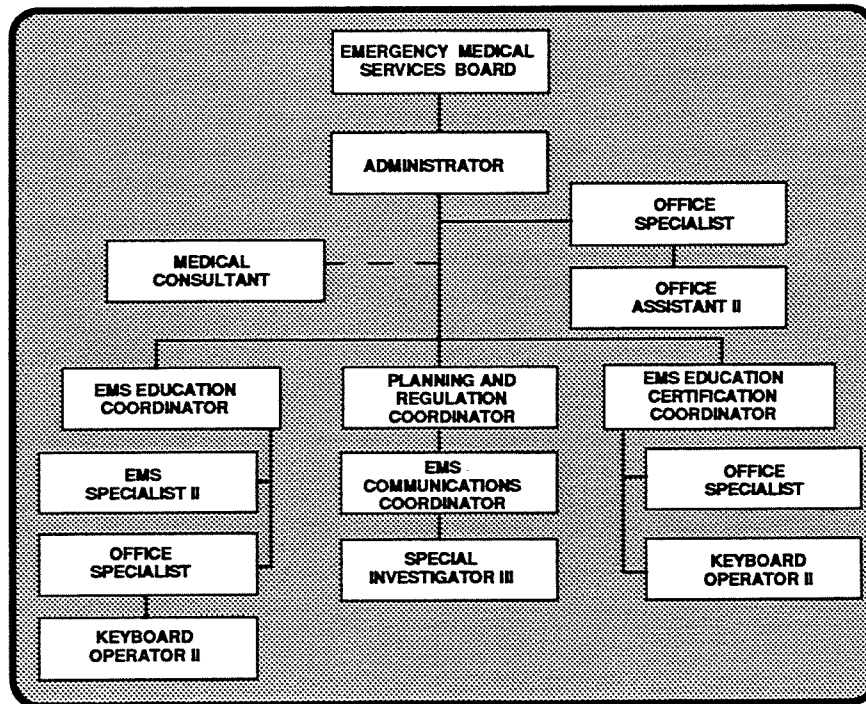
## Overview of the Emergency Medical Services Board

In 1988, the Legislature transferred the responsibility for regulating emergency medical services (ambulance services) from the Department of Transportation to the Emergency Medical Services Board.

The Board consists of 13 members representing the various geographical areas of the State. Nine members are appointed by the Governor, and four are members of the Senate and House of Representatives appointed by Senate and House leadership. The law requires the Governor's appointees to include one member of the Kansas Medical Society actively involved in emergency medical services, two county commissioners from counties levying a tax for ambulance service, one instructor-coordinator, one hospital administrator actively involved in emergency medical services, one member of a fire-fighting unit that provides emergency medical services, and three attendants actively involved in emergency medical services.

Board members serve four-year terms and meet six times a year. According to the Board's budget documents, the purpose of the emergency medical services program "is to protect the public's health and welfare by assuring appropriate pre-hospital care and transportation for sick and injured people." The Board's duties include establishing policy, conducting hearings for all regulatory matters, and approving training programs for emergency medical service personnel. It also appoints an Administrator to head the Emergency Medical Services Board's staff.

Assisting the Board in attaining its goals are an administrator and a staff of 12 employees. The following chart shows how the organization is structured.



### **New Regulations Put A Greater Burden On Volunteer Ambulance Services**

In September 1992, the Emergency Medical Services Board increased the minimum training requirements for second attendants on ambulances. The Board will begin enforcing this new regulation on July 1, 1994. Concerns have been expressed that the new training requirements will put an undue burden on volunteer services, which could force them out-of-business.

Previously, the Board allowed individuals to serve as second attendants if they had Red Cross or American Heart Association training in first aid and cardiopulmonary resuscitation. Such training recently has been reduced to 6 to 12 hours of instruction, which the Board determined was not enough.

The new regulations will require second attendants to be certified as First Responders. The First Responder training program requires 45-70 hours of instruction.

According to Board statistics, most volunteer ambulance services are in small communities with populations of 5,000 or fewer. Such operations typically have a full-time, paid director. Attendants are usually volunteers that hold full-time jobs elsewhere and are called when an emergency arises.

The concerns expressed by some volunteer services are that, because those who volunteer as attendants generally have to pay for their own training and attend training programs on their own time, many may decide they can no longer afford to be volunteers. Without sufficient numbers of properly trained volunteers, many volunteer services may not be able to continue operating, leaving their communities without ambulance service.

According to the Board's staff, the increase in training will enhance patient care, be a hedge against potential ambulance service liability, and give the Board authority over these individuals. Previously, the Board did not have direct regulatory authority over second attendants because they were not certified by the Board.

### **The Board Regulates the Training and Certification of Emergency Personnel, And Issues Operating Licenses to Ambulance Services**

The Emergency Medical Services Board is responsible for the regulation of local ambulance services throughout Kansas. It requires that emergency personnel be properly trained and certified.

The three basic levels of training and certification for ambulance attendants are shown below:

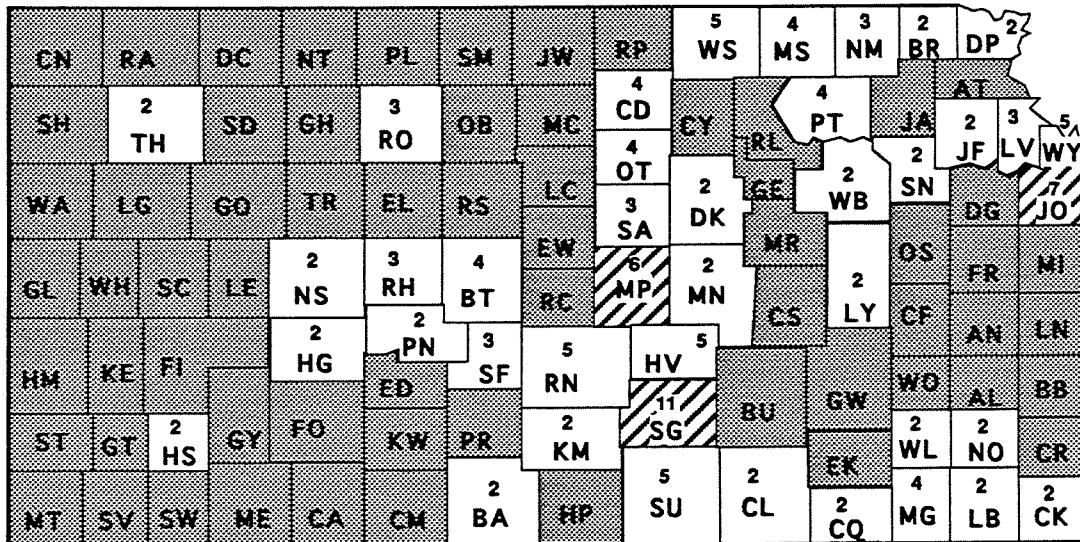
- **First Responder** - Provides basic first aid and requires 45-70 hours of training
- **Emergency Medical Technician (EMT)** - Provides basic life support and requires 120-200 hours of training
- **Mobile Intensive Care Technician (Paramedic)** - Provides advanced life support and requires a minimum of 1,200 hours of training

The Board requires ambulance personnel to receive continuing education each year to maintain their certification.

The Board also grants operating licenses to ambulance services, and requires that equipment meet strict

standards. In 1993, there were nearly 200 ambulance services licensed in Kansas. Many of the services are considered "essential" services. An essential service is the primary emergency medical service in the community. If a community has more than one ambulance service, the primary service is the one that will respond when a citizen dials "911." The map at the top of the facing page indicates the location of all ambulance services in the State.

## Emergency Medical Services Licensed in Kansas



### LEGEND:

One emergency medical service    2 - 5 emergency medical services    6+ emergency medical services

The numbers above the two letter county abbreviation in counties with more than one service, represent the number of emergency medical services licensed in the county.

The map shows that the larger metropolitan areas of Kansas City, Wichita, and Topeka tend to have more than one ambulance service. However, the map also shows that even sparsely populated counties have at least one licensed service.

The Board licenses three basic types of ambulance services:

- **Services that provide basic life support:** These are the most common type of services. They must be staffed by emergency medical technicians and first responders.
- **Services that provide advanced life support:** These operations must be staffed by paramedics and emergency medical technicians.
- **Services that provide the same level of life support as an emergency room:** These services are hospital based and are staffed by a variety of highly trained professionals, ranging from paramedics to physicians. They usually are located in larger cities.

Kansas residents also have access to 10 aircraft/ambulance transport services, again primarily in larger cities.

**Municipalities may fund their ambulance services through a special tax levy.** The State does not provide funding for ambulance services. According to State law, a municipality (usually a city or county) may levy an annual tax of up to three

mills on tangible property within that municipality to fund its ambulance service. Some cities or counties also subsidize local ambulance services with money from their general funds.

Once a municipality imposes a mill levy to fund a service, it is responsible for ensuring that the service is provided. The Board's responsibility is to regulate the service the locality provides. The Board has no statutory responsibility to ensure that all communities have ambulance service.

Ambulance services also can be privately owned and funded strictly by user fees. Privately owned services usually are found in larger cities and operate in addition to a service operated or contracted by a municipality. Also, most communities have volunteer ambulance services. Volunteer services usually are found in areas with populations of 5,000 or less. (See the box on page four for more detailed information.)

## Has the Emergency Medical Services Board Established and Followed Policies and Procedures Governing Its Staff's Involvement With Local Communities When Ambulance Services are Discontinued or Consolidated?

The Emergency Medical Services Board has no statutory authority to order ambulance services to consolidate. Licensing actions the Board takes can lead to consolidation of ambulance territories, but the Board does not have formal policies for consulting with parties affected by its actions. The Board provides assistance to communities that request it, and the level of assistance it provided to the City of Pittsburg was similar to what it provided to other communities. However, the Board appeared to have erred by not notifying or involving Crawford County officials when

### State Regulation of Emergency Medical Services Is Similar in Kansas and Surrounding States

	<u>Kansas</u>	<u>Colorado</u>	<u>Missouri</u>	<u>Nebraska</u>	<u>Oklahoma</u>
Set Education and Training Standards for Personnel	Yes	Yes	Yes	Yes	Yes
Set Equipment and Vehicle Requirements for Services	Yes	No Licensed by County	Yes Licensed with Service	Yes Licensed with Service	Yes Licensed with Service
License, Inspect, Investigate, and Regulate Services	Yes	No Licensed by County	Yes	Yes	Yes
Revoke and Suspend State License	Yes	Yes, but... Service License Regulated by County	Yes	Yes	No Service License Regulated by Commissioner of Health
Force Services to Consolidate Territories	No	No	No	No	No
Ensure Statewide Ambulance Coverage	No	No	No	No	No
Maintain On-going Investigation Records As Confidential	Yes	Yes	Yes	Yes	Yes

We contacted the four surrounding states and found that their regulatory agencies for emergency medical services had similar authority as the Emergency Medical Services Board of Kansas. However, Kansas had the only regulatory agency that operated as a separate agency. The other States' agencies were divisions of the Department of Health. Colorado was the only State that licensed ambulance services at the county level.

it signed an agreement with the City of Pittsburg requiring the City and County to take certain actions. However, some of the problems that occurred in the consolidation of the Pittsburg ambulance service with the Crawford County ambulance service may not have had anything to do with the actions of the Board. These findings are explained in more detail below.

### **The Emergency Medical Services Board Has No Statutory Authority to Order Services to Consolidate**

One of the original questions asked when this audit was authorized was whether the Emergency Medical Services Board had adopted and followed policies and procedures for determining when the territory of one ambulance service should be consolidated with another service. We reviewed the statutes governing the authority of the Board and found that its primary responsibilities are establishing and enforcing training requirements for ambulance personnel, setting standards for ambulance equipment, and the like. The Board has no specific authority to order one ambulance service to merge or consolidate with another. However, it can take regulatory action and revoke the license of any ambulance service that does not comply with State rules and regulations. In some cases, this can have the affect of causing the consolidation of ambulance services.

We contacted the surrounding states of Colorado, Missouri, Nebraska, and Oklahoma to determine what regulatory power their emergency medical service agencies had (see chart on the previous page) and found that, like Kansas, these other states' agencies do not have authority to order consolidation of ambulance services.

### **The Emergency Medical Services Board Has No Formal Policies for Consulting with Parties Affected by Its Actions**

When an ambulance service has its license revoked, a number of people may be affected. These include county officials, city officials, private ambulance operators and, of course, the public being served by the ambulance service. To ensure that all communities are treated consistently by the Board, we expected the Emergency Medical Services Board to have formal procedures governing such things as:

- Who should be notified when an ambulance service's license has been or is about to be revoked, when that notification should occur, and what form the notification should take.
- How long the Board will monitor an existing ambulance service to give a community an opportunity to replace the service whose license was being revoked.
- What types of assistance the Board's staff will provide to communities to help them replace their ambulance service, who in the community may request such assistance, and whether that request must be written.
- Who may see information about the Board's investigations of ambulance service violations, and when.

### **The Board Gave Pittsburg and Crawford County Time To Consolidate Ambulance Services**

Until recently, both Crawford County and the City of Pittsburg operated licensed ambulance services. To fund these services the County levied a special tax that generated about \$80,000 in 1991. In the same year, the County's ambulance service was funded by about \$42,000 from the special tax, \$208,000 from its General Fund, and \$185,000 from user fees. As required by law and other agreements with the City, the County gave the City a portion of the tax dollars it collected to spend on ambulance services. The City's ambulance service, which was operated by its Police Department, was financed by about \$64,000 it received from the County, \$64,000 from its General Fund and \$94,000 from user fees.

Problems with the City's ambulance service came to the Board staff's attention on October 28, 1991. Staff received an anonymous complaint that the Pittsburg ambulance service director had faked attendants' cardiopulmonary resuscitation cards to show that they had completed training for 1992. In November, the director submitted application materials to the Board to renew the City's ambulance permit, which included copies of the falsified training documents.

In January 1992, when the director heard the Board was going to investigate Pittsburg's ambulance service, he confessed to the Chief of Police, who demoted him from the position. In late January, Board staff started an investigation of Pittsburg's ambulance service, which was operating under a new director.

In March, staff reported to the Board's Investigations Committee that they had completed their investigation at Pittsburg and confirmed violations of State law including:

- falsification of training documents
- unauthorized personnel attending patients
- substandard patient care, including not using cervical collars, not providing oxygen, and not taking patient's vital signs (such a blood pressure and heart rate).

With these violations confirmed, the Board began the process of revoking the City's ambulance license. In April, when Board staff informed City officials of the Committee's recommendation to revoke the City's license, City officials decided to cooperate with the Board to avoid formal charges being filed.

Faced with a possible license revocation, City officials decided to close their ambulance service and turn the responsibility of providing service to Pittsburg over to Crawford County. (The County legally was obligated to provide ambulance service to the City because it levied a tax for emergency medical services.)

In May 1992, the Board and the City signed an agreement allowing the City's ambulance service to remain in operation under close monitoring. The agreement required that City of-

ficials develop a plan by June 15, 1992, for the County to take over the service no later than September 1, 1992. The Board did not formally notify the County of its agreement with the City, but the Board's administrator said he did notify County officials through telephone conversations with the Crawford County Counselor. In addition, City officials provided the County with a copy of the agreement before it was signed.

On June 4, 1992, Pittsburg officials requested that the transition time for the County to assume ambulance service for the City be extended. The Board amended the agreement dates to August 1 for the City to reach an agreement with the County, and to January 1, 1993, for the County to take over ambulance service. Even with the additional time, the City and County were unable to reach an agreement.

On August 7, 1992, in response to the lack of progress towards a City-County agreement, the Board informed City officials that it would no longer require the City and County to reach an agreement, but that it would allow the City's license to expire on December 31, 1992.

The major obstacles that kept local officials from reaching an agreement were the location and funding for an ambulance station in the City. The County had built an ambulance station about five miles north of Pittsburg in 1990. County officials stated that, without additional funding, this station would have to provide coverage for the City. According to County officials, to provide a station within the City limits would require the City to give the County three of its four ambulances and all of its equipment and supplies. In addition, the County wanted the City to forego its share of the taxes the County owed it for 1992, and to give the County an additional subsidy of \$105,000 per year.

The City countered with an offer to give the County the ambulances and related equipment, and to forego \$20,000 of the estimated \$65,000 in tax levies that the County owed it. However, City officials refused to pay the \$105,000 subsidy because City residents would be taxed twice for ambulance service.

In November, the County did locate a building in the City to serve as an ambulance station. City officials agreed to repair and enlarge the driveway and parking lot of this building.

Even though they had seven months, City and County officials were unsuccessful in reaching an agreement. Instead, the City's license expired, and the City gave the County what the City had originally offered.

On January 1, 1993, the County began providing ambulance service for all Crawford County residents, including those in the City of Pittsburg. County officials said the tax levy for ambulance service was increased from 0.256 mills to 2.790 mills.



Board officials told us that although they had informal policies governing some of these issues, no formal policies had been committed to writing. They told us that the assistance the Board's staff will provide to communities includes:

- offering suggestions on how to select a new ambulance service
- suggesting where stations should be located to provide an optimal or desired response time
- providing estimates of costs to fund an ambulance service with a desired number of ambulance stations
- monitoring an existing ambulance service to ensure it provides proper care to patients while a community makes a transition to a new ambulance service

The Board's staff told us they thought formal policies and procedures were unnecessary. Technical assistance generally was provided as a courtesy to the community, so that continuous ambulance service could be maintained and future problems could be prevented. In addition, Board staff said that each situation was unique, and that they needed some flexibility to provide the assistance needed by the community.

#### **The Board Took About the Same Steps to Help Pittsburgh As It Did In Other Communities**

Because legislative concerns have been raised about whether the Board followed proper procedures in how it handled the transition in ambulance service between the City of Pittsburgh and Crawford County (see the box on the previous page for more detailed information about this case), and because the Board has no written policies and procedures governing what it will do in these situations, we reviewed how the Board handled all similar situations during the past three fiscal years. That review was made to determine whether the Board's actions appeared to be reasonable and consistent in all cases.

Our review included all cases where an ambulance service's license was either voluntarily surrendered, threatened with revocation, or revoked because of potential or actual licensing action by the Emergency Medical Services Board. There were seven such cases during the three-year time period we reviewed.

- Two of the seven cases required no monitoring or assistance by the Board. These were secondary ambulance services in communities that already had another ambulance service. These two services generally were involved in transporting non-emergency patients from hospitals to nursing homes and the like. In each of these cases, the service was closed down after the Board revoked the service's license to operate. No Board assistance was provided to the communities in securing another ambulance service because these communities already had another service.
- Five of the seven cases required some type of monitoring or assistance by the Board. In three of these five cases, the Board monitored the existing services until they either closed down or were replaced by another service. In the

remaining two cases, the Board not only monitored the existing service, but at the request of local officials, provided information to assist them in selecting another ambulance service.

**The Board allowed the City of Pittsburg as much or more time to make the transition to a new ambulance service as it allowed other communities.** For the five cases that required some type of monitoring, we found that the amount of time the Board allowed the existing ambulance services to operate ranged from about three months to eight months. In the Pittsburg/Crawford County case, the Board originally agreed to monitor the existing service from May until September—about four months—until the County was able to take over the service. In June 1992, at the City's request the Board agreed to extend that monitoring period an additional four months until the City's ambulance license expired on December 31, 1992. The County took over the service on January 1, 1993. There was no evidence in the information we reviewed to indicate that the Board placed any unreasonable or burdensome time deadlines on the City of Pittsburg.

**The Board provided similar types of information and assistance to the City of Pittsburg as it did to other communities that were being faced with the loss of an ambulance service.** When communities are dealing with the loss of an ambulance service because of licensing action by the Emergency Medical Services Board, the types of assistance they need may vary with the specific situations. Nonetheless, we reviewed the case files to determine the general types of information and assistance the Board provided to communities to determine whether there was anything unusual about the way the Board handled the Pittsburg case.

#### **Osage County Officials Found the Board's Assistance Helpful**

In January 1993, Osage County officials requested the Board's assistance in replacing its then-current ambulance service. The Board, at that time and without the County's knowledge, was conducting an investigation of the service concerning complaints of inadequate patient care, delayed response, staffing, and faulty equipment, and was ready to report the case to the Investigations Committee.

County officials told the Board that the current service was not providing the County with three ambulance stations, as required by the provisions of the contract, and it had decided to terminate the service's contract and hire a new service.

In an effort to provide continuous service to its citizens while it searched for a new service, the County extended the termination date of the contract. In addition, the Board monitored the service, and the service agreed to surrender its license when a new service began operation.

The Board's monitoring of the service included increased inspections and visits to the ambulance station. Board officials stated they monitored the service in order to protect the

welfare of the citizens of Osage County and ensure they had access to an emergency medical service until the new service was operational.

The Board's staff attended several County Commission meetings to answer questions and provide information about emergency medical services to the community. The Board also provided Osage County officials with information about:

- cost estimates for different levels of service
- suggestions on how to solicit bids for, and select an ambulance service
- call volumes, budgets, staffing levels, and populations served by other ambulance services in the State.

Osage County officials told us that at no time did the Board's staff try to influence the decision of the County Commissioners, and that the community was extremely pleased with the assistance it received from the Board.

The County contracted with a new ambulance service which began providing service to Osage County in mid-March 1993. The previous ambulance service surrendered its license to the Board on March 15, 1993.

During the past three years, only one other community requested and received the level of assistance that Pittsburg received. That case involved the Osage County ambulance service. (See the box on the preceding page for more detailed information about this case.) In the other cases we reviewed, the Board's involvement was limited mainly to monitoring the ambulance services while they discontinued their operations.

Pittsburg officials requested and received assistance from the Board to help them identify alternatives to having their ambulance service's license revoked by the Board and, later to assist them through the transition to the County's service. Before the City decided which course of action to take, the Board's staff provided information on ways to make an ambulance service more efficient, such as ideas on how to restructure a service's use of equipment. In addition, the staff provided information on how the City's service compared to others licensed in Kansas.

After the City decided to discontinue its service, the Board's staff responded to the City's request for information about ambulance response times from various locations within the County and City. The Board's staff monitored the service in order to provide the City with continuous ambulance coverage until the County could take over. They also attended several City Commission meetings and kept in contact with local officials by phone.

In Osage County, the Board's staff assisted County officials in much the same manner. Since Osage County officials had chosen to replace their ambulance service, the Board was not asked to provide assistance on identifying alternative courses of action. The Board's staff did provide assistance through its transition to a new service, and responded to the County's request for information to help them decide how many ambulance stations it could afford. As in Pittsburg, the Board's staff monitored the out-going service, attended several Commission meetings, and kept in contact with local officials by phone.

Both the Osage County officials and the Pittsburg City officials told us they were happy with the assistance the Board provided.

**The Board Appeared to Have Erred  
By Not Involving or Notifying Crawford County  
About an Agreement Which Directly Affected the County**

In response to complaints it had received about the Pittsburg ambulance service, the Emergency Medical Services Board initiated an investigation of the service in late January 1992. The Board's investigation found serious violations of regulations, and the results of that investigation were reported to the Board's Investigations Committee in March 1992. The Board's Investigations Committee voted to take formal licensing action against Pittsburg's ambulance service.

In April, when the Board's staff informed the City of its intent to take formal action against the ambulance service, City officials agreed to cooperate with the

Board and do whatever was necessary to avoid formal licensing action. The Board and the City held negotiations and signed an agreement on May 12, 1992, which stated that the Board would monitor the City's ambulance service and allow it to continue operating until September, under the following conditions:

- The settlement agreement would be made available for public viewing.
- The ambulance service would waive all rights to appeal the findings of the Board's investigation.
- The ambulance service would voluntarily surrender its operator's permit when the County began providing service.
- The ambulance service would submit logs of ambulance calls and copies of quality assurance reviews performed by the service's medical services director on a biweekly basis.
- The City would arrange with Crawford County to mutually develop a plan to assume the emergency medical services of the City of Pittsburg by no later than June 15, 1992. That plan was to be implemented no later than September 1, 1992, and had to address the following:
  - the location of ambulance stations
  - the number and distribution of ambulances
  - the employment the City's ambulance service personnel
  - the dispatching of all ambulance and first response personnel in Crawford County.

Even though the terms of the agreement between the Board and the City directly involved the County, County officials were not notified by the Board or involved in negotiations until after the agreement was signed in May 1992. It seemed unusual to us that the City and the Board would negotiate an agreement which required the County's involvement, without making the County a party to those negotiations. Further, it did not appear to us that the Board would have had to break any duty of confidentiality of investigation records to inform County officials that an investigation of the City's ambulance service had revealed serious problems and that the City had indicated it would surrender its license. These facts were extremely important to Crawford County officials, because the County levied a tax to fund emergency medical services and was responsible for providing service to the City if that service were discontinued.

According to County officials, the Board did not notify the County in August 1992, when it decided to allow the Pittsburg ambulance service to operate until the end of December rather than the first of September. County officials told us they thought the Board should have notified them about the closing of Pittsburg's ambulance service and the extension of time, because both of these actions directly affected the County and the amount of ambulance coverage it would have to provide.

County officials also were concerned that they were unable to get information about the types of violations the Board had found in its investigation of the Pittsburg ambulance service. County officials said they

requested information from the Board about the City service's regulatory violations, to help them decide whether to hire City personnel being displaced by the closing of the City ambulance service. The agreement between the City and Board stated that the employment of the City's attendants should be addressed as part of the plan for the County take over of ambulance service. Because the investigation was still on-going, the Board's Administrator denied the requests, explaining that investigation records were closed until the investigation was completed. Because of the Board's monitoring of the City's service, the investigation records were confidential until the requirements of the agreement between the City and Board had been met, which occurred on December 31, 1992.

Since the confidentiality of investigation records was a problem only in the Pittsburg/Crawford County case, we could not evaluate the Board's consistency in the application of this policy. However, based on our review of the Kansas Open Records Act and conversations with the Attorney General's Office and other licensing boards, it appears that the Board does have the statutory authority to keep on-going investigation records confidential, and that this is a fairly standard practice among the other licensing boards we contacted.

#### **Some Problems That Occurred In Pittsburg and Crawford County May Not Have Had Anything to Do With Actions By the Emergency Medical Services Board**

In our conversations with local officials in Pittsburg and Crawford County, we learned of a lot of hard feelings among local officials. Both the City and the County were dealing with their own budgetary problems while trying to find a way to provide ambulance service for the City. Consequently, there was a lot of disagreement about what each of the municipalities should provide. These disagreements were generally beyond the control of the Emergency Medical Services Board.

One of the major points of disagreement was the location of an ambulance station to serve the City. The County had placed its ambulance stations outside the City limits of Pittsburg under the assumption that the City would continue operating its own service. When the County first learned that it would be required to provide ambulance service to the City, it proposed that its station five miles north of Pittsburg serve the City. County officials stated that they lacked the resources to provide a station inside the City limits. City officials thought that the response time from this station north of Pittsburg would be too long and wanted a station located in the City.

Another area of disagreement was how much funding the City would provide for the ambulance service. In the past, the County had provided the City with its share of the tax revenue collected from the County mill levy to fund ambulance services. The City's share of those tax revenues for 1992 was an estimated \$65,000. When the County found out it would have to take over the ambulance service, it wanted to keep all of the City's share of the tax revenues, and wanted the City to pay it an additional subsidy of \$105,000 to operate the ambulance service. City officials agreed to give up \$20,000 of the amount due from the County, but refused to pay the

\$105,000 subsidy requested by the County because they thought that would mean the City residents would be taxed twice for ambulance service.

County officials told us that the County did not create the City's ambulance problem, but the City and the Emergency Medical Services Board expected the County to fix the problem. City officials told us that they thought the County did not act in good faith and tried to take advantage of the situation.

In the end, the money the City had used to subsidize its ambulance service was absorbed into other areas of the City's budget. The County issued temporary notes to meet the expense of the expanded service. In addition, the 1993 County tax levy for emergency medical services was increased more than two mills, from 0.256 mills to 2.790 mills, to provide a source of permanent funding.

The County purchased a building inside the City limits to serve as the ambulance station for Pittsburg. The City gave the County three of its four ambulances, agreed to forego \$20,000 in tax payments it would have received from the County for providing ambulance service, and also agreed to waive the utility hook up fees, widen the driveway, and pave the parking lot of the building the County purchased for an ambulance station.

### **Conclusion**

Many of the problems encountered by the City of Pittsburg and Crawford County did not appear to be attributable to anything that the Emergency Medical Services Board did. Most of those problems appeared to result from the two municipalities disagreeing on what was the best way to provide ambulance service with scarce resources, while knowing that the City must surrender its license to operate an ambulance service. It did not appear that the Board placed unrealistic time constraints on the City of Pittsburg or treated City officials any differently than it treated other communities in similar situations. Nonetheless, the Board has no formal policies and procedures for dealing with local officials when a licensing action results in the closure of an ambulance service. If the Board had procedures governing things like when to notify affected parties, it might have done a better job of keeping Crawford County informed about what was happening with the City's ambulance license and what the implications would be for the County to provide service.

### **Recommendation**

To ensure that the Emergency Medical Services Board deals consistently with all communities affected by its regulatory actions, the Board should develop formal policies for its staff to follow. At a minimum, those policies should address who should be notified when an ambulance service will surrender or lose its license, what actions the Board's staff may take to assist communities that are losing an ambulance service, and when the Board will release the results of regulatory investigations.



## **Appendix A**

### **Agency Response**

On August 9, we provided copies of the draft audit report to the Emergency Medical Services Board. Its response is included as this appendix.



# State of Kansas

## BOARD OF EMERGENCY MEDICAL SERVICES

109 S.W. 6TH STREET, TOPEKA, KS 66603-3805

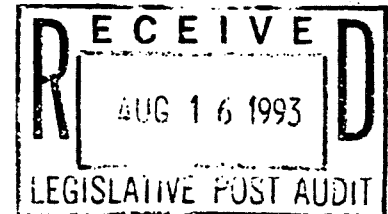
(913) 296-7296 Administration  
(913) 296-7403 Education & Training  
(913) 296-7299 Examination & Certification  
(913) 296-7408 Planning & Regulation

Bob McDanel  
Administrator

Joan Finney  
Governor

August 16, 1993

Barbara J. Hinton  
Legislative Division of Post Audit  
Merchants Bank Tower  
800 SW Jackson, Suite 1200  
Topeka, KS 66612-2212



Dear Ms. Hinton:

Thank you for providing me the opportunity to respond to the draft copy of your performance audit report, "Reviewing Regulatory Activities of the Emergency Medical Services Board." This audit of the board's regulatory role provides a well-balanced review of the board's activities.

After reviewing the draft report, I want to assure the committee that Crawford County was notified of the settlement agreement. As I stated during the audit, the Crawford County Commission was provided a copy of the settlement agreement immediately after it was signed by the City of Pittsburg. The board followed the guidance of its legal counsel in not providing any information to the county until that agreement had been signed.

I agree with the Legislative Post Audit recommendation that the board should adopt formal policies governing regulatory action and technical assistance. Although the lack of formal policies has not been a problem in the past, such policies may prevent problems in the future.

In closing, I want to thank you and your staff for helping to make the performance audit a positive experience for this agency.

Sincerely,

Bob McDanel  
Administrator

RM/st

7-23