

**LETTER OPINION
2002-L-27**

May 8, 2002

Terry L. Dwelle, MD, MPHTM
State Health Officer
Department of Health
600 E Boulevard Ave Dept 301
Bismarck, ND 58505-0200

Dear Dr. Dwelle:

You asked my opinion regarding the implementation of N.D.C.C. § 57-40.6-10(1)(k). Section 57-40.6-10(1)(k), N.D.C.C., enacted by the 2001 Legislature, provides:

1. The governing body of the local governmental unit with jurisdiction over an emergency 911 telephone system shall be or shall designate a governing committee of the emergency 911 telephone system which shall [among other things]:

* * * *

- k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.

The North Dakota Department of Health (Department) licenses emergency medical services (EMS), which includes basic life support ambulance services, advance life support ambulance services, air ambulance services and quick-response unit services. N.D.C.C. §§ 23-27-01(1), 23-27-02. Currently the Department only licenses surface basic life support and advanced life support ambulance services. N.D.A.C. § 33-11-01-03, chs. 33-11-02, 33-11-03. Section 57-40.6-10(1)(k) puts the onus on the governing body of a local governmental unit such as a city or county that has a 911 telephone system to

implement that section and ensure that the closest EMS is dispatched by a 911 telephone system or emergency call center “regardless of city, county, or district boundaries.”

Your initial question is whether dispatching an EMS that will arrive at the emergency scene sooner than an EMS that is physically closer to the scene of the emergency is in compliance with N.D.C.C. §57-40.6-10(1)(k). The underlying question is what is the meaning of the “closest” EMS. A statute is construed to ascertain the intent of the legislature. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). Intent must be sought from the language of a statute. Id. Unless defined in the code, words are to be given their plain, ordinary and commonly understood meaning. Id. Furthermore, construction of any statute must effect its objects and promote justice. N.D.C.C. § 1-02-01. “Closest” means “[n]ear in time or space.” The American Heritage Dictionary 282 (2d coll. ed. 1991). Thus, the fact that an ambulance service is physically closer but cannot respond as quickly as another EMS, would justify the dispatcher in sending the EMS that can respond more quickly. This interpretation is not only consistent with the meaning of the word “closest” which allows a dispatcher to evaluate the time a response will take before dispatching an EMS, but is consistent with the testimony before the Legislature in support of HB 1409 which enacted N.D.C.C. §57-40.6-10(1)(k). For example, the sponsor and author of HB 1397, which contained a similar provision and which was incorporated in HB 1409¹, Representative Audrey Cleary, explained its purpose at a hearing before the House Political Subdivisions Committee. She stated, “This bill seeks to make certain . . . that the person needing assistance receives the quickest possible response.” Hearing on H.B. 1397 Before the House Political Subdivisions Comm. 2001 N.D. Leg. (Feb. 2) (Statement of Rep. Cleary). The director of the Division of Emergency Health Services for the Department, Timothy Wiedrich, testified that “it is important that [the] closest emergency medical service (EMS) unit respond to an emergency regardless of city, county or district boundaries. EMS response time is critical when a medical emergency occurs.” Hearing on H.B. 1409 Before the Senate Political Subdivisions Comm. 2001 N.D. Leg. (Mar. 1) (Statement of Timothy Wiedrich). In my opinion a 911 telephone system dispatcher is in the best position to determine which EMS is closest in terms of time as well as space or distance. It would be unreasonable, for example, to dispatch an EMS which is on the other side of a river only two miles from the emergency scene, if it would have to drive 100 miles to cross the river and reach the scene, when another EMS may be 10 miles away from the emergency scene but on the same side of the river. Such a result would be an absurdity and flies in the face of the plain meaning of the words in the statute which requires the quickest response. Statutes must be construed logically so as not to produce an absurd result. In Interest of M.Z., 472 N.W.2d 222, 223 (N.D. 1991).

¹ See Hearing on H.B. 1409 Before the House Political Subdivisions Comm., 2001 N.D. Leg. (Feb. 2) (Statement of Rep. Severson).

Your request also questions whether a 911 dispatch center would be in compliance with the law if it dispatched the closest quick-response unit to the scene of the emergency, but dispatched an ambulance service that is affiliated with the quick-response unit through business or organizational ties even if it is not the closest ambulance service to the emergency. Section 57-40.6-10(1)(k), N.D.C.C., requires the “closest available” EMS be dispatched to the scene of medical emergencies. The law does not modify its requirement for the “closest” EMS based on organizational or corporate affiliation with a quick-response unit, or any other entity, that may also be responding to the emergency. The manifest purpose of this statute is to insure quick response times. To send an ambulance service that is not the closest ambulance service simply because of common ownership with a quick-response unit already at the scene cannot be justified under N.D.C.C. § 57-40.6-10(1)(k) and would unreasonably delay the provision of necessary emergency services in contradiction to the intent of this statute.

A member of your staff contacted this office to supplement your request for an opinion concerning issues arising when dispatching different types of EMS services to a particular emergency. The statutes governing dispatch leave a great deal of discretion with the emergency 911 dispatch centers, but the very nature of the various types of EMS available will impact the dispatcher’s judgment. For example, a quick-response unit is considered to be a stop gap measure for communities without an ambulance and does not have the capability of transporting persons.² Therefore, if a basic life support or advanced life support ambulance is needed but a quick-response unit is not needed, N.D.C.C. § 57-40.6-10(1)(k) does not require the 911 dispatch center to dispatch both an ambulance and the quick-response unit. Your staff member also mentioned that an ambulance jurisdiction was planning to implement a policy where one of its ambulances would meet an ambulance dispatched from another jurisdiction and transport the patient from that point. Not only would such a policy clearly violate the underlying principal in N.D.C.C. § 57-40.6-10(1)(k) concerning dispatching the closest EMS “regardless of city, county or district boundaries,” but would also result in unreasonable delay in transporting a patient to a hospital or trauma center. Any unreasonable and unnecessary delay may result in civil liability if it causes harm to the patient.

While local governing bodies and their 911 telephone systems are required to implement N.D.C.C. § 57-40.6-10(1)(k), the Department is to provide those systems with necessary geographical information to assist in the implementation. I am advised that the Department has furnished a list of contact personnel for licensed ambulance services and quick-response units together with state maps designating the locations of the ambulance services and the quick response units. It would be helpful to the 911 telephone systems if

² These units “are trained to provide care while an ambulance is enroute [sic] to the scene.” Hearings on H.B. 1409 Before the Senate Political Subdivisions Comm. 2001 N.D. Leg. (Mar. 9) (Statement of Timothy Wiedrich). They are not trained for transporting patients. Id.

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the Department provided uniform circles of time and distance around each location. This concept was discussed during the legislative hearing by Mr. Wiedrich, the director of the Department's EMS Division. In response to a question, he indicated the Department was plotting EMS areas of coverage on a mapping system. Hearing on H.B. 1409 Before the Senate Political Subdivisions Comm. 2001 N.D. Leg. (Mar. 9) (Statement of Timothy Wiedrich). This would assist the local 911 dispatch centers in determining which EMS can most quickly respond, and facilitate the local 911 dispatcher's ability to judge various factors influencing the time it takes to respond, including variables such as a road being out or under construction and a detour in place.

Sincerely,

Wayne Stenehjem
Attorney General

tam/vkk