EMSRB PROPOSED WORKPLAN VIS-À-VIS OLA AUDIT REPORT

COMMENTS FROM MICHAEL JORDAN, PUBLIC MEMBER

11 MARCH 2022

In regard to the subject workplan, I offer the following feedback and input. However, in addition to responding to the content of the EMSRB Draft Workplan, this information is also intended to supplement and augment the findings and recommendations of the OLA Audit Report. While the Report is diagnostic to certain degree, it does not, in my opinion, provide as extensive analysis as is required to thoroughly address the specific, detailed shortcomings of the EMSRB operations.

In short, the Report is very successful in describing ‘*what is wrong’*. However, it does not provide sufficient exploration of *‘why it went wrong’.* Without an understanding of the circumstances that contributed to the reported operational deficiencies, and the willingness to adequately address them, the probability of successfully implementing the suggested recommendations is low. The amorphous criticism of the ‘organization’, alone, will not provide a foundation for the identification and application of an appropriate level of accountability. The adequacy of the performance of the ‘individuals’ who comprise the ‘organization’ must also be closely scrutinized.

Therefore, as contextual information, the following preamble delineates the relevant assumptions, observations, and perspectives that inform my opinion of *‘why it went wrong’* and affirm my analysis and recommendations:

* 1. Administrative and Regulatory agencies exist for the express purpose of translating Legislative intent into operational reality. Although the agency may be limited by its statutory authority and the Administrative Rule Making Process, it is, simultaneously, allowed certain prerogatives and latitudes in the execution of its statutory responsibilities. The existence of “permissive” language in the legislation presents the opportunity for the agency to exert its initiative and judgment in the pursuit of implementing legislative intent, in a consistent, rational and reasonable manner. There is, by design, a certain degree of ambiguity in the interpretation of statute. *It is the responsibility, and the obligation, of the agency to purposefully and professionally manage that ambiguity*;
	2. The EMSRB has consistently taken a conservative and passive approach in the interpretation and application of its administrative and regulatory authority. This has often resulted in *acquiescence in the execution of its duties*;
	3. The communication between the Executive Committee and the total Board membership is not consistently timely, comprehensive, or transparent. A relevant example of this ‘disconnect’ relates to the issue of the new EMSRB office space, the corresponding increase in lease expense, and its negative impact on operational capabilities. The following information/decision timeline is instructive (dates are the relevant Executive Committee & EMSRB meetings):
		1. 15 Oct 2020 – Executive Committee is informed of increased (X2) expense;
		2. 19 Nov 2020 – The Board is not informed of the matter during the regularly scheduled meeting;
		3. 17 Dec 2020 – Executive Committee further discusses the matter, with input from the Executive Director, Board of Psychology. Subsequently, a motion is approved to instruct the EMSRB Executive Director to move forward with finalizing the new lease;
		4. 21 Jan 2021 – First presentation of lease issue to the Board. The Board agrees to the new lease. The approval is positioned as a ‘fait accompli’, as a result of time constraints and commitment for EMSRB Executive Director.
		5. *My observation is that, from a communication and decision-making perspective, it seems inappropriate that almost 3 months would transpire from when the Executive Committee was first notified of this matter (a doubling of lease expense and commitment to more space than necessary) until it was presented to the total Board. At least, an electronic communication should have been issued to the Board, immediately. And, at best, an emergency meeting should have been scheduled*;
	4. *The analysis and recommendations of ad hoc Workgroups, chartered by the EMSRB, have not produced timely and/or effective improvements in EMSRB operations*. The EMS Base of Operations and Substations Report is an example of the work product of such a workgroup. The rationale for the establishment of this workgroup was to provide clarity relative to: (1) the efficacy and definition of the statutory concept of base of operations [BOA] (Chapter 144E.001, Subd. 4 & Rule 4690.0100, subpart 3); (2) the establishment of a more focused connection of the functionality of the Primary Service Areas [PSA] (Rule 4690.3400) to the need for a BOA; and (3) the examination and identification of methodologies to implement quantitative and/or qualitative performance measures, specifically related to EMS response times, rather than rely on BOA’s and PSA’s as a proxy for such measurements. Chartered on 16 July 2020, the workgroup completed its report on 10 December 2020, and that report was presented to the EMSRB on 21 January 2021. However, the report did little to provide clarity and/or additional operational or definitional specificity to the pertinent issues. Additionally, the date of completion preempted the possibility to formulate relevant recommendations for statute modification in the 2021 Legislative session. It is worth mentioning that I had attempted to address these same issues, suggesting an alternative methodology to develop a viable solution, in an email to the Board Chairman on 3 July 2020. Finally, while the report included information relative to operational behaviors in other states and embraced several generalizations relative to definitions of bases of operations and substations (defined in Rule 4690.0100, subpart 33), it did not include or examine information internal to the EMSRB that had been generated by staff. For example: (1) information was provided to all EMSRB members, relative to definitional issues, by ED Spector in response to a request by Dr. Ho on 17 June 2020, relating to descriptions and comparisons of several existing bases of operation in Minnesota, and (2) information was generated by EMSRB staff during various site inspections/tours, in January and February of 2020. This particular information provided, at the least, an ‘operational’ definition of a base of operations, since the inspections were conducted in order to support the decision to approve or disapprove a particular transfer of license application. And, an affirmative decision was finalized, incorporating the results of those inspections. *In summary, the EMSRB, today, is not significantly closer to the development of definitional clarity relative to base of operations/substations or to the development of performance measures than it was in July of 2020. This result may be a consequence of either the lack of a clear and concise charter for the workgroup (which I requested in an email to the EMSRB chairman on 17 July 2020), or the lack of execution of that charter by the workgroup membership, or perhaps some combination of both factors. However, regardless of the cause, the unfortunate result is the same*;
	5. The current structure and composition of the EMSRB is an impediment to the effective and efficient discharge of its responsibilities. The details of my concerns, related to this issue were described in documents presented to the EMSRB in March 2021, and will not be duplicated in this document;
	6. Finally, and perhaps as a consequence of its structure and composition, the EMSRB does not consistently engage in complex analysis and/or discussions regarding important issues that should be addressed. I have presented written materials, in an attempt to stimulate critical discussions at several board meeting, addressing matters of significance and of some urgency (September 2020 and March 2021). To some degree, those materials could be described as potentially ‘provocative’ and ‘controversial’. However, there was no significant discussion in board meetings and/or feedback to me related to these materials, either positive or negative. *This lack of candid and critical discussion, and the analysis that it would foster, is an additional impediment to the effective and efficient operation of the EMSRB*. As an aside, several of the issues that I identified in those materials were also topics of concern addressed in the OLA audit report.

*The issues and concerns that are detailed in this preamble are, from my perspective as the EMSRB’s public member, the most critical matters to be addressed from both a management and operational perspective. Although the OLA audit identified many critical shortcomings and the suggested recommendations will certainly result in some level of operational improvement, they represent necessary, but not sufficient responses to the summary finding that the “…EMSRB should improve its operations”. If the obstacles described in the preamble are not confronted and addressed, the level of improvement, and the resultant enhancement of organizational performance that was the rationale behind the audit, will not be realized!*

1. **OLA recommendation #3, EMSRB action item #1. (Local Input)**
2. I disagree, from an operational perspective, with the OLA recommendation and the options presented by the EMSRB.
3. Chapter 144E.16, Subd. 5(a) states that “Local units of government may, with the approval of the Board, establish standards for ambulance services which impose additional requirements upon such services….” The statute further states that any such standards…“(b) will establish additional requirements tending to protect the public health”, in concert with several additional criterial. Finally, “(c) The Board shall base any decision to approve or disapprove local standards upon whether or not [they] meet the criteria specified in paragraph (b)”.
4. In my opinion, *this section of statute provides the EMSRB with the necessary authority to develop and implement processes and procedures to proactively solicit and evaluate input from local units of government*. *Additionally, it allows for the promulgation of performance measures, such as ‘response time’, that obviously tend to enhance the “public health”.* *At the very least, the EMSRB should be able to establish an evaluation process, and appropriate metrics, to objectively analyze, evaluate, and approve or disapprove such requests*. The “Contested Case Procedure”, specified in Chapter 144E.11, Subd. 5, provides a relevant model that could be adapted and utilized for implementing such action;
5. However, the EMSRB has chosen not to evaluate the implementation of this potential, proactive approach. In fact, the EMSRB has offered no positive response, or implemented any tangible actions, relative to suggestions from me during several Board meetings in 2020, 2021, and 2022. Additionally, there have been several inquiries and/or commentaries from the Fire Chiefs of Burnsville, Eagan, Inver Grove Heights, and Rosemount, in both written and verbal presentations, in February and June of 2020 that have not received a direct response and/or action.
6. Further, on at least three separate occasions, verbally during board meetings, workgroup meetings, and in written feedback relating to H.F. 34 in 2021, I have suggested a methodology to solicit input from local governments. These have never been acknowledged and/or thoroughly considered by the EMSRB.
7. **OLA Recommendation #4, EMSRB action item #2.(EMS Agency Compliance with the Law)**
	1. This action item is acceptable, but it is limited in its potential operational effectiveness relative to the context of the OLA recommendation of ensuring “EMS Agency Compliance with the Law”. *There are most certainly many additional, potential situations and/or scenarios, in addition to ambulance inspections and investigation of complaints, wherein an agency might be out of compliance with the law, and corrective and/or enforcement action by the EMSRB would be both appropriate and required*.
	2. A relevant example of such a situation is the EMSRB decision relative to the Transfer of Ownership & License Renewal related to the merger of M Health Fairview, which was finalized on 21 January 2021. In summary, at least two major issues were in contention, and in my opinion, required enforcement action by the EMSRB: (1) Chapter 144E.14, requires that ownership “…may be transferred only upon the approval of the board.” The subject merger occurred in 2017 and the EMSRB was not contacted by the parties, and did not provide such approval before the merger was completed; and (2) Chapter 144E.15 requires that for any relocation of a base of operations, within a given PSA, “…a licensee must provide written notification to the board prior to relocating”. Although there was significant discussion and differences of opinion relating to the accurate and proper location of the subject base of operation relative to the PSA, there was no disagreement relative to the fact that prior notification of the relocation had been neither sought or approved. Although several excuses and/or explanations for non-compliance with the statutes were offered, it is arguable that they were not sufficient rationales for non-compliance. Therefore, some manner of enforcement action by the EMSRB, relative to the infractions by the party(s) in question, should have been imposed.
8. **OLA Recommendation #7 & #8, EMSRB action item #4. (Perfromance Standards)**
	1. In regard to the matter of Performance Standards, it is my opinion that *the EMSRB has not effectively and proactively utilized the statutory authority that it currently possesses. The options, identified in this action item, are overly passive and do not appropriately address the significance and urgency of the need to develop and implement relevant performance standards*, *and hold EMS agencies accountable* *to them.* The necessary statutory authority to pursue these standards is obtained from the following statutes:
		1. Chapter 144E.01, Subd. 6(3) specifies the Duties of Board. “The EMSRB shall “…make recommendations to the legislature on improving the access, delivery, and effectiveness of the state’s emergency medical services delivery system (EMSRB could have taken a more aggressive and proactive approach in utilizing this statutory authority);
		2. Chapter 144E.16, Subd. 4 addresses the matter of adoption of rules (EMSRB could have taken a more aggressive and proactive approach in utilizing this statutory authority);
		3. Chapter 144E.16, Subd. 5 addresses the matter of Local government powers (as referenced relative to comment #1 in this document. EMSRB could have more aggressively collaborated with local governments to address their concerns related to levels of service and/or performance from ambulance agencies).
	2. In addition to possessing the necessary statutory authority, there are several sources from which potential, relevant performance measures could be obtained. These sources have been available for consideration and potential application in Minnesota, for significant periods of time. However, they have not been evaluated, suggested for application, or actually implemented by the EMSRB. While they may not be ‘exactly’ what we require in Minnesota, they are most certainly applicable and eliminate the need to expend time and resources to ‘reinvent the wheel” in regard to identifying metrics. Those sources include:
		1. Local government agencies – fire departments and other emergency response entities are currently utilizing performance standards and procedures related to response time and other pertinent metrics;
		2. NHTSA Emergency Medical Services Performance Measures – 2009;
		3. CAAS Response Standards, Version 4.0 – 2021.
	3. Finally, consideration must be given to the possibility that if the proper process for the establishment of the performance standards is developed and implemented, such that it provides opportunities for a broad range of input and the development of consensus agreement, *it may be possible to implement effective performance metrics that can be operationalized based on ‘voluntary’ compliance, rather than by forced imposition via statute and/or rule. This would allow for the enhancement of the public health without the expenditure of time and resources required by legislation and/or rule making.* *If necessary, new statutes and rules could be implemented at later time.*
9. **OLA Recommendation #15, EMSRB action item #10. (Executve Director Oversight)**
	1. There is no disagreement with the OLA concerns, and recommendations, relative to the lack of oversight of the Executive Director and the resultant negative impact on the efficacy of the EMSRB. However, I disagree with the conclusion stated in the action item “overview”. While the issue of “infrequent evaluations of the EMSRB Executive Director” is most certainly a very relevant and significant issue, the more important question to ask, and problem to address, is why were those evaluations so infrequent? Which leads directly to another question, and that is ‘Who is responsible for that lack of oversight’?
	2. That said, one of the most important issues, and perhaps the motive force behind the initiation of the OLA audit, was the overall dysfunctional operation of the EMSRB. Because of the “ENDS (goals and objectives)/MEANS (methods to achieve the goals and objectives)” Model of Governance that is utilized by the EMSRB, it is of critical importance that the Board (ENDS) consistently and thoroughly monitors the Executive Director (MEANS) to ensure proper, overall agency performance. As evidenced by the OLA Audit, this oversight has not occurred!
	3. The implementation strategy, proposed in Table 7 of this action item, does not, with certainty or specificity, ensure an effective mechanism for the evaluation of the Executive Director, that would provide the proper level of accountability and oversight. Additionally, it does not provide answers to the following questions, which are critical to understanding why previous evaluation and/or monitoring efforts have been found to be lacking.
		1. As the entity responsible for the evaluation process, why has not the Executive Committee successfully executed that responsibility?
		2. On page 69 of the OLA Audit Report, there is an inference that the “questionable decision” by a former Executive Director resulted in serious financial jeopardy regarding EMSRB staffing levels. However, the timeline, detailed in item c of the preamble, offers an alternative scenario, and implicates the Executive Committee as an active participant in that decision. This issue requires additional clarification.
		3. During its regular interface with the Executive Director, what type of information did the Executive Committee monitor, review, or obtain from presentations, and/or questioning (eg. inspection and budget documents)?
		4. What was the role of the EMSRB Treasurer in monitoring overall financial status, and variances of actual compared to budgeted revenues/expenditures.
		5. Should the current Executive Committee, or its current membership, remain as the oversight authority?
		6. What are the “multiple fundamental changes” that are referenced (in addition to the assigning of “liaisons”, which I opposed as an effective oversight and/or management mechanism when it was announced)?
		7. What is the “standard state performance review process”? How is it implemented? Is it appropriate as a template for structuring item x, below?
		8. If such a process was previously available, why was it not utilized with the former Executive Director?
		9. I raised questions several times, in writing to the Board Chairman, regarding the; (a) timeliness of the evaluation of the former Executive Director (b) metrics that would be appropriate for use in the evaluation (2015, 2016, 2018, & 2021), (c) associated issues of the linkage to the EMSRB Work Plan (which is yet to be prepared as required by the IOP), and (d) development of qualitative and quantitative measures to be used in the evaluation. Why was no substantial follow-up action initiated by the Board Chairman?
		10. *In my opinion, the evaluation strategy, in Table 7, should be augmented with, at least the following suggested performance evaluation elements (it should be noted that similar evaluation metrics were suggested to the Board Chairman on 14 May 2018. Also, financial and operational reports were available in 2017 & 2018, and were included in Board meeting discussions. However, they have not been utilized for monitoring performance status in recent years);*
			1. *Management of the budget – regular reporting by Executive Director, and review by the Board, of relevant financial documents;*
			2. *Staffing-related issues – supervision, deployment, and relevant operational measures;*
			3. *Reports on interface with external entities, including kindred state agencies and relevant state legislative committees, legislation that effects EMSRB operations and/or responsibilities, and executive branch contacts;*
			4. *Reports on status of relevant regulatory responsibilities, such as inspections, licensing, and complaint investigation. These reports should include metrics that demonstrate current performance, compared to a planned objective (linked to IOP workplan and past performance).*
			5. *The IOP should be modified to specify the following Executive Director Evaluation Process, including but not limited to the following;*
				1. *The goals and objectives, extrapolated from the EMSRB Workplan, for the Executive Director will be established annually by the Board, and shared with the Executive Director by the January Board Meeting of each year.*
				2. *The Executive Director will report his/her progress toward those objectives at each Board meeting.*

*It should be a requirement that the goals and objectives of the Executive Director will ‘cascade’ to his/her direct reports, and that the progress of the EMSRB staff, on their objectives, will be available to the Board;*

* + - * 1. *An Executive Director Evaluation Committee will be appointed at the third Board meeting of each year. The composition of that committee will be changed each year, and will not include of any members of the Executive Committee;*
				2. *The Evaluation Committee will present a recommendation, to a closed session of the Board at the final Board meeting of each calendar year. The recommendation will contain; (1) a rating of the Executive Director’s performance, relative to the established goals and objectives (eg. exceeds, meets, fails to meet), and (2) specifics of actions that should be taken, relative to the Executive Director’s continued employment (eg. salary increase, performance improvement plan, discontinuation), in regard to that performance rating. The full Board will vote to accept, modify, or not accept that recommendation.*

This concludes my comments on the subject workplan. I look forward to further conversations, and implementation of future strategies and tactics that will enhance the functionality of the EMSRB, and thereby the constant and consistent improvement of EMS in Minnesota.

Michael Jordan

EMSRB Public Member

11 March 2022