

**FINDINGS, REPORT AND RECOMMENDATIONS OF A MAJORITY OF THE COLLIER  
COUNTY EMERGENCY MEDICAL AUTHORITY  
TO THE BOARD OF COLLIER COUNTY COMMISSIONERS  
REGARDING THE MARCO ISLAND REQUEST FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO OPERATE TRANSPORT AMBULANCES**

May 9, 2018

Introduction

As directed by the Board of County Commissioners in Section 7 of Collier County Ordinance 2016- \_\_\_\_ (December 13, 2016, amending Ordinance 2012-23), the Collier County Emergency Medical Authority has evaluated the pending request of the City of Marco Island for a Certificate of Public Convenience and Necessity to operate two first-line advanced life support ambulances with transport authority, and makes this written report to the BCC of its majority findings and recommendation.

In addition to the directive of Section 7 of the EMA Ordinance, in Sections 1 through 6, the County Commissioners have tasked the Authority to analyze issues related to EMS in all of Collier County, to work to improve and enhance EMS in the entire County, to serve as a catalyst to effect cooperative arrangements among all resources within the County, including municipalities, for improvement of EMS Countywide and, finally, to make written recommendations to the BCC regarding those subjects.

Scope of EMA Review

The scope of the Emergency Medical Authority's review of the Marco Application included the following:

- a. Review of all paperwork comprising the City's application, including its written answers to questions posed by Collier County Staff and the EMA;
- b. Hearing comments and receiving questions from the public at several of the EMA's regular public meetings prior to the May 1 Hearing;
- c. Review of positions taken and pronouncements made by Fitch & Associates in *prior* engagements and writings, because Fitch contributed so heavily to the work product behind Marco Island's application, and because the City has offered up Fitch as the author of its "third party financial analysis," which is one of the conditions in the State statute.
- d. Holding a special meeting on May 1, 2018, for the sole purpose of a hearing to receive and consider evidence from Marco Island in support of its petition, as well as evidence from Collier County senior staff, fire district representatives and members of the public. The hearing, which lasted approximately 6 hours, was electronically recorded including by means of redundancy devices.
- e. At the conclusion of the Hearing, which finished with final statements from all interested parties including members of the public, the EMA deliberated carefully and publicly over the issues presented. Following that deliberation, the Authority voted 3-2 to recommend approval of Marco's COPCN request, subject, however, to several express conditions (stated and explained below) to be included in the certificate, in order to codify certain representations and assertions of the applicant and in order to protect the interests of the County as a whole, and all the taxpayers, residents and patients of Collier County, whether on or off-island.

- f. Also, at the conclusion of the Hearing, the EMA voted unanimously to direct its Chairman to offer to meet with County and City representatives for the purpose of attempting to reach a consensus on conditions to which a County COPCN could be subject.
- g. Pursuant to that direction, the EMA Chairman met with various representatives of Collier County, including its EMS Chief, Bureau of Emergency Services Director and the Medical Director of Collier County. The general subject of the City's application was discussed and, in particular, there were discussions of what would be the proper conditions necessary to be affixed to the COPCN in order to protect the interests of the County as a whole and assure fulfillment of the statements and representations made by the City in its application, written answers and at the Hearing .
- h. The EMA Chairman offered at the Hearing, and thereafter in writing, to meet with any and all officials of the City to discuss the same general subjects and the specific subject of proper conditions. At the writing of this document, no response from the City to those offers has been received.

The COPCN Ordinance

Section 50-57 of the Code of County Ordinances specifies the criteria for BCC approval of COPCNs. Pursuant to that ordinance,

“The Board of County Commissioners shall not grant a certificate unless it shall find, after public hearing and based on competent evidence, that each of the following standards has been satisfied:

(1) That there is a public necessity for the service. In making such determination, the Board of County Commissioners shall consider, as a minimum, the following factors:

- a. The extent to which the proposed service is needed to improve the overall emergency medical services (EMS) capabilities of the County.
- b. The effect of the proposed service on existing services with respect to quality of service and cost of service.
- c. The effect of the proposed service on the overall cost of EMS service in the county.
- d. The effect of the proposed service on existing hospitals and other health care facilities.
- e. The effect of the proposed service on personnel of existing services and the availability of sufficient qualified personnel in the local area to adequately staff all existing services.

(2) That the applicant has sufficient knowledge and experience to properly operate the proposed service.

(3) That, if applicable, there is an adequate revenue base for the proposed service.

(4) That the proposed service will have sufficient personnel and equipment to adequately cover the proposed service area.”

We assume it is our charge to vet the Marco Island application in the same manner as the BCC will do after us. Therefore, we must first gain a working understanding of Ordinance 50-57, and the eight evaluation criteria spelled out in its Sections (1)-(4). These are collectively referred to herein as the “Ordinance Criteria.” Within Section (1) are five separate sub-criteria that all concern the concept of “public necessity.” We refer to them collectively herein as the “Public Necessity Criteria.”

Section (1) states that there needs to be a public necessity for the service. Merriam Webster defines necessity to mean “the quality or state of being necessary.” It defines necessary as meaning “absolutely needed” or “logically unavoidable.” Using this definition, we have been unable to identify any evidence offered by Marco Island proving that there is a public necessity for the proposed service, in either the County as a whole, or even in the City of Marco Island itself. Indeed, the City’s representatives have repeatedly complimented CCEMS for the quality of its EMS service (notably, for its consistently excellent response times), although at present there are some disagreements involving, among other things, drug formulary and scope of paramedic practice. Instead, what we hear and read of the evidence is that Marco, at least its political leadership, **wants not needs** its own EMS transport service.

Maybe the dictionary definition of necessity does not apply here. Could it be that the language chosen by the drafters of Ordinance 50-57 was intended to redefine necessity? As written, that appears to us to be the case. Under Section (1), the finding of public necessity is arrived at through a process of viewing the evidence presented, and other facts known, through the prism of, “as a minimum”, the five Public Necessity Criteria. First, let’s recount the recent history of this application.

#### Marco Island County Application

Marco Island submitted its application to the County on December 20, 2017 for a COPCN to operate one or more ALS ambulances with transport authority. The application package consisted of a cover letter, the application itself and nine numbered exhibits.

County Staff and the EMA promptly began parallel tracks of evaluation. On February 6, Emergency Services Director Dan Summers sent a list of questions to Marco Island, and informed the City that its application would not be deemed complete until those questions had been answered. On April 12, the EMA sent its list of questions to Marco Island, subject to the same stipulation. The EMA requested Marco Island’s responses to both lists of questions on or before April 26, 2018 and invited the City to attend a special EMA meeting May 1, 2018 beginning at 9:00 AM, for a full hearing of the City’s application in which, among other things, Marco Island’s representatives would be afforded a full opportunity to present the case for the requested COPCN, to answer questions from EMA members and to ask questions of County Staff.

#### Marco Island’s State Application

Concurrent with its pursuit of a Collier County COPCN, Marco Island sought and obtained legislation from the State of Florida for an EMS patient transfer license directly issued by the State. The substantive terms of that legislation are as follows:

“Section 1. Notwithstanding s. 401.25(2)(d), Florida Statutes, the City of Marco Island is exempt from the requirement to obtain a certificate of public convenience and necessity from Collier County if all the following

prerequisites are met:

(1) The City of Marco Island applies to the Collier County Board of County Commissioners for a certificate of public convenience and necessity and the application is unapproved;

(2) A third party financial analysis is prepared of the city's assumption of full emergency medical service transport services at the paramedic level; and

(3) A majority of those qualified electors residing within the City of Marco Island who participate by voting in the referendum described in section 3 vote to approve for the city to assume these additional services.

If all criteria set forth herein and in s. 401.25(2)(a), (b), and (c), Florida Statutes, are met, the Department of Health may issue a license to the City of Marco Island to enable the city's Fire Rescue Department to provide prehospital or interfacility advanced life support services or basic life support transportation services.

Section 2. This act does not prevent the Department of Health from enforcing any other provision of chapter 401, Florida Statutes, in connection with the application or grant of a license to the City of Marco Island to provide emergency medical transportation services as described in section 1.

Section 3. This act shall take effect upon its approval by a majority vote of those qualified electors residing within the City of Marco Island voting in a referendum to be held in conjunction with a primary election to be held in the City of Marco Island on August 28, 2018, except that this section shall take effect upon becoming a law.”

#### Evaluation of the Marco Island Application against the Criteria in County Ordinance 50-57

First, it must be noted that Marco Island bears the burden of proving its entitlement to the COCN by competent evidence. Marco endeavored to carry this burden largely by means of the Fitch & Associates analysis of County Ordinance 50-57. Here is a summary of Marco's main assertions (found principally in Fitch's analysis of the Public Necessity Criteria) along with other evidence received, and unanswered questions, pertinent to those assertions:

1. Marco asserts that approval of the City's COPCN will improve the overall capabilities of EMS for the entire County by freeing up two of the County's front line medic units and several County paramedics for service elsewhere. This assertion is misleading. During the preceding four months alone, CCEMS's mainland-based EMS resources were summoned 623 times to answer Marco calls, because the Island-based ambulances were already out on other calls.
2. Marco asserts that since the cost of the new service will be borne by Marco taxpayers, the rest of the County will benefit financially from granting the COPCN, which will not adversely impact County taxpayers. This assertion will be one of the Majority's recommended conditions, as noted later.
3. Marco claims that EMS transport services it seeks to provide will meet or exceed the County's standards of performance. Of course, this remains to be seen. What we do know, however, is that, historically, Marco's "firefighter first responder" time to

patient” has frequently failed to achieve the County’s four-minute standard. Actual statistics for Marco’s fire apparatus EMS response times to patient for 2017 are as follows (statistics from Collier County Sheriff’s Office Fire Dispatch Center):

| Month | Count | AvgResponse<br>TimeSeconds |
|-------|-------|----------------------------|
| Jan   | 211   | 382 - 6.3min               |
| Feb   | 199   | 400 - 6.6min               |
| Mar   | 219   | 361 - 6.0min               |
| Apr   | 164   | 361 - 6.0min               |
| May   | 167   | 337 - 5.6min               |
| Jun   | 108   | 382 - 6.4min               |
| Jul   | 141   | 357 - 5.9min               |
| Aug   | 118   | 294 - 4.9min               |
| Sep   | 57    | 327 - 5.5min               |
| Oct   | 137   | 314 - 5.2min               |
| Nov   | 165   | 400 - 6.6min               |
| Dec   | 168   | 351 - 5.9min               |

4. It is universally recognized that BLS, or basic life support, which is provided by first responders (most often firefighters) immediately upon making patient contact, saves more lives than ALS, or advanced life support. For instance, essential to the survival of cardiac arrest patients is the beginning of BLS as soon as possible. BLS in such cases would include the initiation of CPR, defibrillation when indicated, and delivery of 100% oxygen. The County’s standard is four minutes. As shown above, Marco’s Fire Department average response time last year was longer than the County’s standard for 12 out of 12 months. This is hardly a ringing endorsement for the City to take over EMS, and certainly must be addressed and remedied immediately.
5. Marco concedes that with new competition from the City for qualified paramedic employees, there may be a negative effect upon Collier County EMS, and the ALS fire districts and departments, which seek to retain their current employees and hire new ones from the available pool of qualified paramedic applicants. The likelihood of attempted cherry-picking of CCEMS paramedics is, itself, a compliment of the very service Marco now criticizes.
6. The EMA has been informed that Marco representatives have already made several solicitations of CCEMS Paramedics to jump ship when Marco gets its transport license.
7. The EMA is also aware of the current hiring conditions in Collier County. There is a serious shortage of trained paramedics in the job applicant pool. Even if the supply of applicants were plentiful, it would likely take CCEMS two years to train and release for duty 12 replacement paramedics. This is a serious problem for the entire 2100 square miles of Collier County, for which there cannot help but be adverse consequences to its residents, particularly for those in the more remote areas of Eastern and Northern Collier County.

8. Marco believes it should be granted more latitude in the medications it may carry on its pumpers and rescue squads. Two such medicines have been brought to our attention: The benzodiazepine Versed, which is used, among other purposes, to stop active seizures. Although it is not available on all its nontransport apparatuses in Marco, it is available on Marco's MR 50 and Tower 50. We were informed at the hearing that a six-month review of the Valium request is underway. Principal concerns on the part of the medical director had been the infrequency with which Valium has been needed for use in the past versus the high frequency of needing to discard unused expired medicine. The second medicine in question is Adenosine Triphosphate, or ATP. ATP is indicated in prehospital settings only in the relatively infrequent cases of certain unstable forms of narrow complex tachycardia exceeding 150 beats per minute that have been refractory to vagal maneuvers and other less severe interventions. When administered *properly*, ATP temporarily stops the heart. The patient is in momentary asystole. When used *improperly*, such as to treat a wide complex tachycardia, the medicine can kill the patient. The Medical Director has not yet certified the Marco-employed paramedics to use ATP when they are by themselves, although the patients on Marco Island can receive the medicine pre-hospital from MR 50, Medic 803, Medic 90 and Medic 23, which frequently respond to the Island, as well as any other CCEMS ambulance dispatched to Marco.
9. No claim was made in Marco's application, and no evidence was presented to the EMA at its May 1 Hearing, that there is a "public necessity" either under the aforementioned dictionary definition of "necessity" or under the eight Ordinance Criteria. Specifically, beyond the mere existence of two medic units on Island owned and staffed exclusively by Marco employees, there has been no sufficiently detailed evidence presented that these new resources alone will satisfy the first three Public Necessity Criteria: (a) improve the overall emergency medical services capabilities of the County, (b) have a positive effect on existing services with respect to quality of service and cost of service, and (c) have a positive effect on the overall cost of EMS service in the County. Instead of solid evidence, Marco Island simply "kicks the can down the road" by offering later to "work all these things out" in negotiations over an interlocal agreement. This is little more than "cold comfort" to the County right now, and insufficient to meet Marco's burden of proof.
10. With respect to Public Necessity Criteria 1(d), no evidence was introduced as to the effect of the proposed service on existing hospitals and other health care facilities. It is fair to presume that a Marco COPCN would have no materially negative impact on existing hospitals.
11. Regarding Public Necessity Criteria 1(e), Marco essentially concedes the negative effect of the proposed service on personnel of existing services due to the lesser availability of sufficient qualified personnel in the local area adequately to staff all existing services.
12. There was much discussion at the Hearing about whether, as a general rule, regionalized EMS service delivery is preferable to fragmentation of service. In its publicly available reports rendered to other clients in prior engagements, and in a published scholarly writing, Marco's consultant Fitch & Associates has consistently embraced the general rule that regionalized EMS service delivery is preferable to

fragmentation of service. Here are some excerpts from Fitch's other published reports to demonstrate that point:

a) The Pinellas County Engagement

In 2013 the Fitch consultancy was hired by the Pinellas County Commissioners to examine proposals from municipal fire departments to fragment EMS service. EMS was then being provided by the County in a partnership with Sunstar. The current system was largely unitary, regional and fully-integrated. In rejecting the fire department's proposals, Fitch stated, at page 82 of its report, "**Fragmentation on any level incurs inefficiencies and resulting higher cost.**"

On page 117 of its Pinellas report, Fitch went on to state "**[A] shift from system administration and management by Pinellas County Department of Public Safety Services (single agency) to a multi-agency structure coordinated under a single interlocal provider agreement introduces several systems management challenges. These challenges affect three critical functions – Governance and Policy, Operational Accountability [and] Logistical Support**"

On page 119, Fitch brought forth its conclusion to the Pinellas County Commission, rejecting the fragmentation proposals, and stating: "**Fitch concludes that the assumptions and generalized conclusions [advanced by the advocates of fragmentation] lack the analysis needed to clearly substantiate the conclusions and assumptions, especially as they are related to cost. The budget exhibits attached to the [fragmentation] proposal assumes that these functions can be added/maintained either at a [sic] reduced or at current funding levels**"

b) Contra Costa County California EMS Modernization Project Report (2012)

On page 60 of its report to Contra Costa County, Fitch states approvingly "**The Institute of Medicine (IOM) of the National Academy of Science has concluded that the fragmentation of the delivery of healthcare services frequently results in suboptimal treatment, safety concerns, and inefficient use of healthcare resources.**"

c) The Article in InFocus

In November 2015, Mr. Fitch authored a scholarly article in the publication "InFocus," entitled "**The New EMS Imperative: Demonstrating Value.**" Presumably, he was not being paid as an advocate, but instead expressing his professional opinion. On page 10 of that publication, he states: "**Regionalization. Adopting a regional approach has the potential to significantly improve the cost effectiveness of EMS systems. Currently, a high level of fragmentation exists which often results in poor coordination between EMS agencies. . . . Local governments should increase the level of regionalization of EMS delivery wherever possible.**"

d) Minihaha County, South Dakota Engagement

In March of 2017, Fitch's written report to the Minihaha County South Dakota Board of County Commissioners championed unitary service delivery at the county level, emphasizing among other things the importance of having one, county-wide,

medical director. On page 50, in Fitch recommendation #24, it advocated for **“fortifying the county’s role”** in the provision of EMS. Fitch even drafted a proposed county ordinance. Page 7 of that draft ordinance included this provision: **“No person shall operate an EMS or Ambulance transporting or caring for patients from within the County . . . unless the operator of such service shall have first obtained a License from the County.”**

13. At the EMA Hearing May 1, Fitch was given an opportunity to respond to or comment upon the public positions it has previously taken on fragmentation. The Fitch representative affirmed the general rules favoring regionalization over fragmentation but said that each case must be analyzed separately. In response to a question from the Authority, the Fitch representative expressed his opinion that fragmentation has worked well in Broward County. However, the Fitch Report to Broward (Dec 2016) **assessed very approvingly Broward’s unified and fully integrated regional 911 dispatching system.**
14. Despite much expert evidence to the contrary that is publicly available (including its own prior pronouncements), Fitch & Associates is now advancing an EMS system for Collier County that would result in fragmentation of a currently well-functioning, fully integrated regional EMS service delivery system. The chances of failure of a fragmented system, common sense tells us, is even greater for a small city like Marco, that is located remotely and distantly on an island that is frequently the first target of hurricanes and which has no hospital whatsoever on it. No matter whether Marco has one, two or three first line ambulances on-island, they can never achieve any reliable degree of self-sufficiency. Also, their home-based medic units will have to spend many hours off-island transporting patients to distant hospitals.
15. Marco’s representatives have repeatedly acknowledged on the record that if the State issues the requested license, the City would need an interlocal agreement with the County in order to protect Marco citizens whenever immediate demand for EMS services on the Island exceeds local supply of resources. We agree. That need would be a real and substantial one.
16. The EMS services provided by the County to the taxpayers of Marco Island under the current automatic mutual aid, closest unit response, move-up, zone coverage, air-medical and communications system protocols, among other services, provide a real and substantial benefit to the residents, patients and taxpayers of Marco Island. As noted above, Marco’s insular and distant location, lack of any hospital on the island, historically fewer outgoing than incoming mutual aid responses, and other circumstances, make the benefits that Marco’s residents, patients and taxpayers receive from off-island based services greater than what the County’s mainland residents, patients and taxpayers receive from on-island based services, and that difference is, itself, a real and substantial benefit to Marco’s patients, residents and taxpayers. To prove the point: If Marco Island did not exist, the rest of the County could provide for its own EMS needs. By contrast, if the rest of the County did not exist, the Island could not.
17. In conjunction with the City’s use of off-island based EMS resources, the EMA also analyzed Marco’s use of the County Sheriff’s Office resources, as Marco has its own separate police force. Marco Island’s taxpayers do not receive any reduction



of the portion of their County ad valorem taxes that support the County Sheriff on account of their decision to localize law enforcement. It is submitted that the City's need for County law enforcement backup is occasional at best, and considerably less often than its need for off-island EMS backup.

18. On page five of the Fitch Report, which as previously noted is the main analytical part of Marco's application, the consultant states that Marco Island may wish to seek reduction or possibly elimination of the portion of County ad valorem taxes collected for provision of EMS services, citing the case of Alsdorf v. Broward County, 373 So. 2d 695 (1979), decided by a district court of appeals having jurisdiction over another part of the State. At the EMA hearing, the Marco City Council Chairman stated there has been no discussion of that possibility at the Council level, and none is planned or contemplated at present.
19. If the City is successful in securing a favorable vote from its citizens on August 28, and if the Collier County BCC flatly denies Marco's application as the Minority Report advocates, presumably the State will issue the requested license, quite possibly without adequately protecting the taxpayers, residents and patients of Collier County as a whole. In such event, the County's only way of protecting its interests and those of its people would be to insist upon inclusion of conditions like the ones listed below in an interlocal agreement with Marco. In the event those negotiations were to break down, costly and delaying litigation, with an uncertain result, could likely follow.

#### Majority and Minority Reports

The EMA Minority Report presumably concurs in the above findings, and will doubtless add a detailed evaluation of the extent to which Marco Island also has failed to meet its burden of proving satisfaction of Criteria (2), (3) and (4). We expect to be supportive of those parts of that Report.

So where do the EMA Majority and Minority Reports disagree? I believe it is fair to say the Minority will be recommending flat denial of Marco's application. The Majority on the other hand is recommending BCC approval, subject to very important conditions.

The City's case comprises bald assertions of greater benefit, lower cost, more resources and higher quality for not only Marco Island but, indeed, for the entire County. In most cases, the City representatives have expressed their willingness to bring about these goals. The Majority's report offers several essential and concrete conditions to the granting of a COPCN, in order to assure those wishful expressions of willingness are actually given full force and effect.

The Majority believes Collier County is far better served by its granting a COPCN subject to conditions of its own determination than by denying the COPCN, whereupon if the voters approve in August, the State could very well issue Marco an unconditional license, leaving the County having to protect itself as well as it can in negotiations over the interlocal agreement, and the greater possibility of litigation with Marco down the road.

#### The Conditions

The Majority of the Members of the Collier County Emergency Medical Authority offer, and earnestly recommend to the BCC, the following conditions for inclusion in a County-issued COPCN:

- a. A majority of those qualified electors residing within the City of Marco Island who participate by voting in the referendum on August 28, 2018 shall have voted to approve that the City assume these additional services. (Note: This is the same condition that the State has imposed on Marco.)
- b. Going forward, the City must deliver EMS services that are in all respects at least of equal quality to those services its patients now receive. In addition, when Marco's medical responders are providing EMS service off-Island, the same quality standards must be consistently equaled or exceeded.
- c. Marco Island may engage the services of a licensed and qualified physician to participate in medical direction. Such person may be designated an "Assistant Medical Director of Collier County" by the Medical Director of Collier County, but in any event shall in all professional, medical and training matters be subject to the oversight and supervision of the Collier County Medical Director.
- d. Marco Island shall remain a full participant in the Collier County dispatch and automatic mutual aid system, including without limitation remaining subject to countywide closest unit dispatch, whether on or off island, coverage for Goodland, and countywide move-up and zone-coverage.
- e. The City's assumption of authority for the additional services authorized by this COPCN shall result in no financial detriment to the rest of Collier County, including, without limitation, that City taxpayers shall continue to pay County ad valorem taxes associated with CCEMS services, as they do with respect to law enforcement services the City receives from the County Sheriff's office.

Respectfully Submitted,



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For the Majority