The Regional Emergency Medical Services Council of New York City meeting was held at the Offices of the Greater NY Hospital Association on Tuesday, June 28, 2016 at 6:00 pm.

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<thead>
<tr>
<th>Organizational Members</th>
<th>Present</th>
<th>Absent</th>
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<tbody>
<tr>
<td>Chevra Hatzalah Volunteer Ambulance Corp</td>
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<tr>
<td>1. Dov Jacob</td>
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<tr>
<td>Alternate, Ari Weisz</td>
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<td>Fire Department, City of New York Emergency Medical Services</td>
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<tr>
<td>2. Chief Janice Olszewski, EMTP</td>
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<td>Alternate, Chief James Booth</td>
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<td>3. Chief Christine Mazzola, EMTP</td>
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<td>Alternate, Bradley Kaufman, MD</td>
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<td>Greater New York Hospital Association</td>
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<td>4. Patrick Meyers</td>
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<td>Alternate, Alison Burke</td>
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<td>5. Dominick Battinelli, EMTP</td>
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<td>Alternate, William Goffin, EMT</td>
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<td>New York City Health &amp; Hospital Corporation</td>
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<td>6. Joseph Marcellino, MPH, EMTP</td>
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<td>New York City Office of Emergency Management</td>
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<td>7. Mordechai Goldfeder, EMTP</td>
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<tr>
<td>Alternate, Johanna Miele/Peter Bojmal</td>
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<td>New York City Police Department</td>
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<td>8. PO Daniel Rodriguez</td>
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<td>Alternate, PO John Johnstone</td>
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<td>NYS Volunteer Ambulance &amp; Rescue Association, Inc. Dist 4</td>
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<td>9. Ryan Gunning, EMT</td>
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<td>Alternate, James Downey, MBA, EMT</td>
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<tr>
<td>NYS Volunteer Ambulance &amp; Rescue Association, Inc. District 18</td>
<td>10. Christopher Legaz, EMT, 1st Vice Chair</td>
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<td>Alternate, vacant</td>
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<td>REMAC NYC</td>
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<td>11. David Ben-Eli, MD</td>
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<td>Organizational Members (continued)</td>
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<td>United New York Ambulance Network</td>
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<td>12. Michael Raiola, EMT</td>
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<td>Alternate, Scott Orlandi, EMTP</td>
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<td>13. Joshua Hans, EMTP</td>
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<td>Alternate, Maryanne Sawyer, EMT</td>
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<tr>
<th>At-Large Members</th>
<th>Present</th>
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<tr>
<td>14. Vincent Barranco, EMTP</td>
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<td>15. Scott Chiang, EMTP</td>
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<td>16. Arthur Cooper, MD</td>
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<td>17. Robert Crupi, MD</td>
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<td>18. Joseph A. DeMorato, EMTP</td>
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<td>X</td>
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<td>19. Rachel E. Freier, Esq., EMT</td>
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<td>20. Jerrold Gelbard, EMTP</td>
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<td>21. Martin Grillo, EMTP</td>
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<td>22. Yedidyah Langsam, PhD, EMTP</td>
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<td>23. Mordechaj Lax, EMTP</td>
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<td>24. Brenda Morrissey, EMTP</td>
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<td>25. Mitchell S. Powell. EMTP</td>
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<tr>
<td>26. Michael Vatch, EMTP</td>
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**Staff**

Nancy Benedetto, Executive Director Administration  
Marie Diglio, EMTP, Executive Director Operations  
Joseph Raneri, Disaster Preparedness Coordinator

**Guests**

Jennifer Adkins, Rockaway VAC  
Mark Ayuyao, Mount Sinai Health System  
Brad Beckstrom, MSHS  
Alison Burke, GNYHA
Kevin Chassen, Mount Sinai Health System
Dan Cohen, Empress EMS
Joseph Davis, Mount Sinai Health System
Kevin Earnest, Rockaway VAC
Niyom Gandi, Mount Sinai Health System
William Goffin, Northwell Health
Warren Golden, Citywide Mobile Response
Jordan Greene, Rockaway VAC
Carleigh Gustafson, Mount Sinai Health System
Henry Halpert, Citywide Mobile Response
Timothy Hannigan
Ephram Lahasky
Mordechai Lax, REMSCO At-Large
Dan Leibowitz
Michael Linehan, NYS DOH EMS
Leonard E. Marquez, SeniorCare EMS
Peter Millock, Nixon Peabody
Janus P. Monte
Kevin Munjal, Mount Sinai Health System
Marc Napp
Carl Ramsay, Mount Sinai Health System
Al Rapisarda
Michael Redlener, Mount Sinai
Francine Rivera, Rockaway VAC
Julia Rivera, Rockaway VAC
Ben Schapiro
Alan Schwalberg, Northwell Health
Maximo A. Sierra, Mount Sinai Health System
Nechemia Slater, Rockaway VAC
Craig Smith, Northwell Health EMS
Sally Strauss, Mount Sinai Health System
Karen Taddeo, Esq, DNYAA
Susan Waltman, GNYHA
Abe Warshaw
John Warwick, Bed-Stuy VAC
Prior to beginning of meeting, Dr. Langsam asked for a moment of silence in memory of Heshey Jacobs, a former member of the Regional EMS Council and one of the founders of Chevra Hatzalah.

The meeting was called to order at 6:30 PM by Yedidyah Langsam, PhD, EMTP, Chair. Meetings of the Regional EMS Council are recorded to comply with the Governor’s Executive Order #3 to web cast meetings. A roll call attendance was conducted; a quorum was present.

Voting rules. A quorum is based on the number of voting seats – whether those seats are filled or vacant. Currently, REMSCO has 26 voting seats, so when voting, a majority of members must vote in the affirmative to pass any motion. That means, 14 votes in the affirmative are needed to pass any motion.

Committee members present were asked if they had comments, questions or corrections regarding the Minutes of the April 26, 2016 meeting. Hearing none, the Minutes were unanimously approved as written.

**CORRESPONDENCE REPORT**

*The Offices of the Council received the following correspondence:*

**Membership:**
The following members requested to be excused: Martin Grillo and Michael Vatch.

- **Nominations/Appointments:**
  - Ralph Cefalo, Chairman, District 4, NYSVA&RA, nominates Brenda Morrissey to the primary organizational seat, Chris Legaz will serve as alternate.
  - On behalf of NYC HHC, Mei Kong, CEO, CIH, re-appoints Joseph Marcellino to the organizational seat.

**NYS DOH:**
- Notice of no barriers to fitness and competency regarding the CON application submitted by Rockaway Volunteer Ambulance.
- Public Notice from New York State Department of Health, Bureau of EMS, Operations Unit, to be read into the REMAC Minutes of the following enforcement actions:
  - Approval of Metro-North Fire Brigade as a BLS First Response. Agency code 0305.
  - Letter from Daniel Clayton identifying areas of discussion regarding the Council’s CON process.
    - The NYS DOH concerns were answered in email form. Copies of the NYS DOH letter and response were shared with Ambulance and REMSCO members, and others who requested copies.

**FDNY EMS:**
- PCR inventory and non-compliance reports.

**COURSE SPONSOR RENEWALS FROM:**
- Emergency Care Programs (08-070)
- NYC REMSCO (08-014)
- Modern Health
- Gerrittsen Beach
  - Staff requests that the REMSCO allow review of course sponsor agreements received after this date. Complete renewals will be signed by the Chair.

**OTHER:**

- Territory maps and description from Rockaway Point Fire Department regarding application from Rockaway VAC. Rockaway Point FD is concerned that the proposed new service not be allowed to infringe on their territory. They have been in operation since 1906.
- St. Luke’s Roosevelt Hospital Center (ID # 1225) Public Notice mailed May 18th, 2016. Also published in NY Times public notice section.
- Letter from Robert Dinnerstein voicing concerns about the Council’s findings of Public Need regarding the NYU Hospital Center application.
- Received letter in opposition to application from Robert Jay Dinerstein, PC, representing Integrity CONS Limited (ICONS), May 25, 2016.
- Letter of Opposition from Brookdale University Hospital & Medical Director, May 26, 2016.
- Received letter in opposition to application from Karen Taddeo (Taddeo & Shahan, LLP), representing Downstate New York Ambulance Association, Inc. (DNYAA), May 26, 2016.
- Received request to testify (and testimony summary) in opposition to application from Karen Taddeo (Taddeo & Shahan, LLP), representing Downstate New York Ambulance Association, Inc. (DNYAA), May 31, 2016.
- Received request to testify (and testimony summary) in support of application from Peter Millock (Nixon Peabody) representing MSW. The following will also testify: Brad Beckstrom, Kevin Chason, Joseph Davis, Niyum Gandhi, Carleigh Gustafson, Kevin Munjal, Christine Preblick, Carl Ramsay, Michael Redlener, Abraham Warshaw, June 1, 2016.
- Received request to testify (and testimony summary) in support of application from Susan Waltman representing the Greater NY Hospital Association, June 1, 2016.
  
  | Email from Scott Orlanski voicing concerns on REMSCO’s statutory responsibilities for CONs. He asked that Ambulance & REMSCO members be reminded of the definition of Public Need, as stated in NYS DOH Policy 06-06. |  
  | --- | --- |
  | **This should be discussed prior to consideration of CON applications.** |  

- Letter to Anthony Turfaro, North Shore Ambulance & Oxygen Service, thanking him for his offered assistance, but stating that his request for an emergency expansion is not approved.

*The Office of the Council sent the following correspondence:*

- Agendas, Minutes and associated attachments for the meeting.
- Rockaway VAC and St. Luke’s Roosevelt CON applications posted on REMSCO website, and link emailed to all REMSCO and Ambulance members.
  - Link was also provided to all who requested it.
Public Notices for Rockaway VAC and St. Luke’s Roosevelt application: Published in NY Times, mailed via certified/return receipt mail.

**NOMINATING COMMITTEE REPORT**

At this point, the Chair asked to take the agenda out of order so that the Nominating Committee report and Elections could be conducted.

The Nominating Committee of the Regional EMS Council of New York City, Inc. met on Wednesday, June 7, 2016 at 5:30 PM. Nominating Committee members are: Scott Orlanski, Joseph Marcellino, Robert Crupi, Yedidyah Langsam, Michael Jones and Marvin Raidman.

The primary function of the Nominating Committee, which is comprised of three (3) members of the Board of Directors and three (3) members of Regional Council, is to review the nominees for appropriate provider representation and balance, as well as the expertise of the individuals in the areas most appropriate for the particular period of time the Regional Council will elect At-Large members.

After additional discussion and vote (June 22 & 23), the Nominating Committee recommends the following REMSCO member for appointment as Secretary beginning July 1, 2016:

Joshua Hans

Officers’ terms are for two (2) years, ending June 30, 2018.

The following At Large members were recommended for re-appointment beginning July 1, 2016:

Jerry Gombo
Sean Graves

Member’s terms are for four (4) years, ending June 30, 2020.

After discussion, REMSCO members voted unanimously to approve the recommendations of the Nominating Committee.

Marie Diglio thanked outgoing members, Arthur Cooper and Brenda Morrissey. Special thanks to Christopher Legaz who also served as an Officer.

**STAFF REPORT**

Nancy Benedetto began discussion regarding the REMSCO Program Agency contract and deliverables. The Regional Council must approve program agencies and associated regional deliverables. FDNY must also submit its deliverables for approval. That should be happening shortly. Deliverables are in place to support REMAC. REMSCO and regional EMS Agencies. Also, there is support for medical control, paramedic credentialing and electronic PCR system. There are many subcategories, which we will submit with the Minutes of this meeting. There is no real change in our deliverables, which we have been providing for more than two decades. Dr. Langsam asked for discussion and questions. Hearing none, he asked for a motion to approve. Scott Orlanski motioned that the REMSCO NYC Program Agency Deliverables be approved. The motion was seconded by Jerry Gelbard and passed unanimously.
Dr. Langsam reported that the Ambulance Committee of the Regional Emergency Medical Services Council of New York City met immediately prior to the REMSCO meeting.

Applications for Determination of Need

**Application for NEW Ambulance Agency – Rockaway Volunteer Ambulance Corps:**

James Downey motioned: The Ambulance Committee / REMSCO NYC, which has conducted a Public Hearing and has carefully reviewed the information, materials and record in this matter, recommends that the Hearing Officer’s Report in the matter of the application submitted by Rockaway Volunteer Ambulance Corps, for a new ambulance service proposed territory as follows: 149 Street to Nassau county border, in New York City, be approved. The motion was seconded by Vincent Barranco.

Before beginning discussion, the Chair asked if there was any member who had a conflict of interest as defined by the State, and wishes to recuse themselves from voting? Hearing none, he stated that a roll call vote would be conducted. Before beginning discussion, the Chair stated rules that would be applied to both this discussion and the next application. He stated that discussion is limited to the hearing officer’s report and interpretation of it. No new information could be added. No one will be allowed to speak for more than 5 minutes, and there will be no debating.

Dr. Langsam stated he spoke to NYS DOH staff and had a conference call which resulted in the receipt of a letter from DOH. (The NYS DOH letter and REMSCO response are attached to the Minutes of this meeting.) Dr. Langsam reminded members that REMSCO has 26 members, so the quorum is 14. The means we need 14 votes in the affirmative to pass any motion. He also went over the definition of need as stated in NYS DOH Policy 06-06.

At this point he asked if there was any discussion on the motion. There was discussion opposing and supporting the application (specific language is available in the transcripts of this meeting.) Once discussion was closed, a roll-call vote was taken, as follows: 10 in favor, 1 opposed, 9 abstentions. The motion failed.

**Application for EXPANSION of Existing Ambulance Agency Territory – St. Luke’s-Roosevelt Hospital Center d/b/a Mount Sinai West:**

Jerrold Gelbard made the following motion: The Ambulance Committee / REMSCO NYC, which has conducted a Public Hearing and has carefully reviewed the information, materials and record in this matter, recommends that the Hearing Officer’s Report in the matter of the application submitted by St. Luke’s-Roosevelt Hospital Center d/b/a Mount Sinai West (NYS DOH ID: 1225) for expansion of existing ambulance service from New York County (limited to Midtown Manhattan) to the Five Counties of New York City, be approved. The motion was seconded by Mitchell Powell.

Dr. Langsam asked if there were members with conflicts. No conflicts were identified.

At this point he asked if there was any discussion on the motion. There was discussion opposing and supporting the application (specific language is available in the transcripts of this meeting.) Once discussion was closed, a roll-call vote was taken, as follows: 10 in favor, 2 opposed, 8 abstentions. The motion failed.

The next meeting of the Ambulance Committee is scheduled for Tuesday, September 20, 2016.
At this point, the Chair asked that remaining agenda items be held and the meeting adjourned. This was approved unanimously.

No further business remaining, the meeting of the Regional EMS Council was adjourned. The next meeting will be held September 20, 2016.
June 24, 2016

Yedidyah Langsam, Ph.D.
Council Chair
Regional EMS Council of NYC
475 Riverside Drive, Suite 1929
New York, NY 10115

Re: NYCREMSCO CON Process

Dear Dr. Langsam:

The Department of Health, Bureau of Emergency Medical Services & Trauma Systems, has determined that it is appropriate to communicate specific concerns relating to your council’s current and recent handling of applications for the Determination of Need (CON). While it is recognized that the recent abrupt closure of Transcare, with its multi-borough licenses, has created significant disruption to the NYC region’s delivery of ambulance service, your council remains responsible to ensure that CON applications and determinations follow both public health law and established processes provided in policy issued by the Department.

The following points summarize the Bureau’s specific concerns:

The principal guidance document issued by the Department, and endorsed by the SEMSCO, is DOH Policy Statement #06-06. Until such time as this policy is revised, this remains your council’s principal guidance resource. Your council’s current reliance on, and references to, outdated Policy Statement #93-10 in both procedural documents and during council discussions should not continue.

Although a policy statement lacks the full force and effect of statute, an administrative agency is bound to abide by its own internal rules, procedures, and precedents. The Accardi Doctrine provides that when an agency fails to follow its own procedures that agency’s actions are generally invalid, and may result in the nullification or invalidation of the ultimate administrative determination [United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (U.S. 1954)].

While the expediency of having a single program agency person screen applications to determine completeness may seem effective, it has proven problematic with your council and has led to applicants receiving requests for information multiple times prior to your CON committee even receiving the application. Your council should return incomplete applications in their entirety, along with a list of deficiencies as established by your CON committee, in accordance with Policy Statement 06-06.
Related to the preceding, the Department has gone on record with all councils, requesting that copies of applications be submitted promptly to the Bureau, upon the council's receipt. The Department's goal is to not only assist with determining whether or not an application is complete, but also to ensure that F&C reviews are appropriately conducted, and the CON process timeline is adhered to; most importantly the council's statutory obligation to make a determination of public need within sixty (60) days of receipt of the application [NYS Public Health Law, Article 30, §3008(4)].

Public Hearings are the opportunity for the committee to receive comment from the public, or any party having interest in the application before the council, after the application is deemed complete. The purpose of the hearing is to provide a technical review and objective evaluation of the applicant's statement of need as well as any other testimony presented. The committee may hear witnesses, receive written statements, ask questions and accept testimony in any form that will lend credibility to the hearing and the ultimate determination.

The hearing officer's role is to moderate and insure the hearing process follows generally accepted procedures. He or she should not opine on the merits of statute, regulation, or policy. The scope of a hearing officer should be limited to granting all parties the opportunity to speak or present, either in support or opposition to the application.

The hearing officer is also charged with preparing a written summary of the hearing that shall include a finding of fact and a recommendation to support or deny the motion to approve the application, as well as a detailed justification for the recommendation made. Your CON committee needs to consider this report, the application, and the record of the public hearing, in totality, in developing the motion that it brings forth to the council.

The council is not permitted to extend the process timeline, nor allow additional documents or analyses to be submitted, either in favor or in opposition to the application. The complete application is the basis for the demonstration of need. In the public hearing the applicant may be restricted to corroborating and/or explaining the data therein. The applicant bears the burden of proof for the demonstration of public need.

At the council meeting at which the application is brought forward it is appropriate to verbally summarize for the record the purpose of the application, as well as the discussion, findings, and seconded motion from your CON committee. Then, following public discussion by your council and determinations if any, regarding conflicts of interest, the determination vote must be conducted as a verbal roll call vote. In this manner those persons in attendance, or viewing the public webcast of the proceedings, may be afforded the full disclosure and transparency intended by law, rather than viewing the secretive signing of a voting record; a practice that essentially obfuscates the intended transparency of the process.
In order for the seconded motion from your subcommittee to be passed, it must be approved by not less than a majority of the whole number of members authorized to vote; and not merely a majority of those in attendance [NYS General Construction Law, Article 2-A, §41]. If your council has thirty (30) members authorized to vote, a minimum of sixteen affirmative votes is required to pass any motion. I bring this to your attention because of your bylaws which read, "Approval of ambulance applications shall be made on a majority vote of those present of the 30 member Council" (emphasis added), are not in compliance with the statute.

In closing, the Department is ready, able and willing to assist your council in the revision of your CON processes and public documents. It is also our hope to deter potential appeals based principally on procedural deficiencies or a failure to evaluate all statements of support or opposition. Please feel free to contact this office regarding these or related concerns.

Respectfully,

Daniel J. Clayton, BS, EMT-P
Deputy Director for Operations
NYS DOH Bureau of EMS & Trauma Services
875 Central Avenue
Albany, NY 12206
Hello Dan:

I will forward your letter to the REMSCO. I have some clarifying information:

1) Staff does not ever deem any application complete. Staff does a preliminary review, which is forwarded to the Ambulance Committee, along with the application and any other information received. It is the Ambulance Committee which deems applications complete. Our timeline does not begin until the application is deemed complete.

2) Our current CON Policy (attached) does have a typo on page 1 referring to policy 93-10, but the last page does correctly identify the policy as 06-06, along with a link to that policy. Furthermore, after checking the NYS DOH website, 93-10 is no longer even available.

3) Two years ago, REMSCO changed its membership from 30 to 26, so according to Article 30, a simple majority is 14. As an oversight, we did not update this section of our Bylaws. However, our Bylaws also state, “Nothing in this section of these bylaws shall be construed as inhibiting the Council’s direct responsibility to the State EMS Council and its autonomy in discharging the mandates of Article 30A of the Public Health Law.” Additionally, on page 51, lines 6 through 16, of the April 26, 2016 REMSCO meeting transcript, membership and quorum requirements for a statutory vote were read into the record prior to any vote being taken. We have always taken a written vote for record keeping purposes; we can now also read the vote into the record and on webcast if deemed necessary by your office.

I hope this information helps clarify at least these two issues.

Marie
EMS is more than big trucks with shiny lights – Keep MEDICINE in EMS!

Confidentiality Notice: This e-mail communication and any attachments may contain confidential and privileged information for the use of the designated recipients named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please notify me immediately by replying to this message and deleting it from your computer. Thank you.

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From: Clayton, Daniel J (HEALTH) [mailto:daniel.clayton@health.ny.gov]
Sent: Friday, June 24, 2016 11:07 AM
To: langsam@sci.brooklyn.cuny.edu
Cc: Marie Diglio <MDiglio@nycremsco.org>; Nancy Benedetto <NBenedetto@nycremsco.org>; Burns, Lee S. (HEALTH) <lee.burns@health.ny.gov>; Brandt, Richard R. (HEALTH) <Richard.Brandt@health.ny.gov>; Jonas, Dana L. (HEALTH) <dana.jonas@health.ny.gov>; Robinson, Richard E (HEALTH) <richard.robinson@health.ny.gov>; Linehan, Michael A (HEALTH) <Michael.Linehan@health.ny.gov>
Subject: REMSCO CON Process

Dr. Langsam et al,

Attached please find a letter from the Department relating to the NYC REMSCO CON Process. Thank you and have a safe and pleasant weekend.

*****************************************************************************
Daniel J. Clayton, BS, EMT-P
Deputy Director for Operations
and Emergency Preparedness
New York State Department of Health
Bureau of EMS and Trauma Systems
875 Central Avenue
Albany NY 12206
Mark Your Calendars!
Vital Signs 2016
October 13 - 16
Syracuse, NY

vitalsignsconference.com