

June 11, 1999

**Testimony of Richard J. McAllan Before the Fire  
And Criminal Justice Services Committee of the  
New York City Council**

I appreciate the opportunity to testify here today before the Fire and Criminal Justice Services Committee. To those of you who don't know me I am a senior New York City EMS Paramedic with 25 years experience. I am also a vocal critic of the hostile takeover of the New York City Emergency Medical Service by the New York City Fire Department. At the outset, allow me to make it clear that the opinions expressed in this testimony are strictly those of its writer. Also, I wish to make it clear that the opinions expressed in this testimony are in no way meant to reflect on the individual professionalism and bravery of either the Emergency Medical Professionals or Firefighters who unselfishly risk their lives on a daily basis to serve New Yorkers.

Rather, this testimony is a broadside against the medically incompetent NYC Fire Department Administration and the corrupt District Council 37 that allowed this illegal merger to go through in 1996. In my opinion, this hostile takeover has been a trip through hell for the dedicated professionals of the New York City Emergency Medical Service. And, for the reasons that will be outlined herein, this merger has also compromised equal access to proper emergency pre-hospital patient care in New York City. Hopefully, this illegal merger will be over soon for the NYC EMS professionals and for the Emergency Medical Service that FDNY has so willingly destroyed.

## McAllan v Marcos EMS/FDNY Merger Lawsuit:

On March 17, 1996 the FDNY Administration was illegally placed in charge of NYC EMS by an *ultra vires* HHC Board of Directors Resolution and a Local Law passed by this City Council. This EMS/Fire merger was not approved by the New York State Legislature even though HHC is a creature of the New York State Legislature. A similar HHC Board of Directors Resolution that sought to transfer Coney Island Hospital to private hands without permission of the Legislature has just been voided by the New York State Court of Appeals. The Court of Appeals ruled that this HHC Resolution was an *ultra vires* action that was beyond the powers granted to the HHC Board of Directors in the HHC Act. In fact, the Court of Appeals ruled that HHC, as a public benefit corporation, could only leave the hospital business the same way it entered the hospital business—through an Act of the New York State Legislature. Of course, in 1970 the predecessor of NYC EMS was placed in HHC by the New York State Legislature following a home rule message of the New York City Council. This HHC Act dissolved the former NYC Department of Hospitals that had operated the City's municipal ambulances before HHC's creation.

When this illegal merger was first proposed in 1995, DC 37 testified before the City Council that such a merger would require an Act of the New York State Legislature. As we know now, the corrupt DC 37 was obviously bought off quickly by the City Administration. When the City Council illegally approved the merger by local law District Council 37 refused to bring a lawsuit to block this illegal merger. Even though DC 37 was suing to protect the jobs of other DC 37 members at Coney Island Hospital and blocked the CIH privatization plan by injunction while they litigated the CIH proposal, the NYC EMS jobs were not important enough for DC 37 to sue over. Instead of trying to save the NYC EMS jobs, the corrupt District Council 37 in essence "triaged out" the jobs of the 3,000 emergency medical professionals who then proudly worked for the NYC EMS prior to the illegal merger.

DC 37, our corrupt parent union, did get to keep what they wanted—sole control of the bargaining certificate for the EMS workers while our jobs were illegally transferred under FDNY's command and control. DC 37's corrupt refusal to enforce the New York State Constitution and the HHC Act on behalf of the EMS

professionals set the stage for the destruction of this EMS system by the medically incompetent Fire Department. The wholesale violations of the EMS contracts FDNY promised to honor and the illegal diversion of millions of dollars of 911 patient reimbursements to the so called voluntary hospitals will be discussed below.

Faced with this corrupt DC 37 refusal to enforce the law for the benefit of the members it represented, your writer and fellow EMS Paramedic Miriam Arnold filed an individual lawsuit against the illegal EMS/Fire merger in March 1996. This lawsuit alleged what the New York State Court of Appeals has just ruled in the Coney Island case—HHC is a creature of the Legislature and as such needs an Act of the State Legislature to be relieved of its life-saving mission. Because we were suing as individuals and not on behalf of the union, we could not get an injunction placing the merger on hold while the EMS/Fire merger lawsuit went through the Courts. Although we lost the first round in New York State Supreme Court, the appeal of the merger decision has been perfected. This appeal was submitted to a panel of the Appellate Division, First Department, for decision two weeks ago.

While it would be inappropriate to predict victory, I am certain that whatever the Appellate Division rules, the losing side will seek review in the New York State Court of Appeals. It is possible that FDNY will be back to the City Council in the coming year seeking to legalize this illegal EMS/Fire merger through the New York State Legislature. However, given the wholesale destruction of NYC EMS by FDNY, it is your writer's view that the sooner this illegal merger is permanently broken up, the better it will be for the citizens of New York City who depend on NYC EMS for their emergency medical needs.

### FDNY Destroys NYC EMS With The Help of DC 37:

What I said at the time of the merger is even truer today—the FDNY Administration is medically incompetent and should have **never** been placed in charge of the NYC Emergency Medical Service. After three years of EMS system destruction and contractual torture at the hands of the arrogant FDNY Administration, NYC EMS workers are thoroughly demoralized and are

resigning from NYC EMS in ever-larger numbers. Of course, these contractual tortures, such as FDNY's wholesale violations of the EMS overtime procedures, were made possible by the corruption at DC 37. DC 37 "sold" this illegal merger to the EMS Local 2507 members based on FDNY's commitments "to honor" the existing EMS/HHC agreements.

Of course, these solemn FDNY merger commitments were soon proven to be less than worthless. Our corrupt parent union had the means to enforce these FDNY contractual commitments through the collective bargaining laws. Needless to say, the corrupt District Council 37 would **not** file the necessary Improper Practice Petitions. Instead, DC 37 corruption enabled FDNY to unilaterally destroy the EMS employee-friendly EMS/HHC Overtime procedures that had been successfully in place for almost ten year's time.

But why would OT problems bother the incompetents at the FDNY Administration? To the know-it-all Fire Administration there was *no need* to cooperate with the single parents at NYC EMS. Forget the fact that EMS had successfully operated with a more cooperative approach to OT problems for over ten year's time. Instead, FDNY just ordered the EMS workers to abandon their kids on a street corner after school because FDNY couldn't be bothered to honor the EMS/HHC Overtime Caps and Procedures. After all, FDNY did promise to honor these procedures as part of this illegal merger, but why should FDNY honor their commitments when they have the corrupt collective bargaining representative in their pocket?

The biggest problem here is that it simply never occurred to this incompetent Fire Administration that NYC EMS did things a certain way because it was good for the EMS system as a whole. So many quality EMS professionals have already resigned at NYC EMS because of the arrogant FDNY attitude that if that's the way we do it at Fire, that's the way it should be done at NYC EMS.

This statement applies to so many things that the Fire Department has damaged or destroyed in the past three years. Foremost among the things that FDNY has destroyed is the perception that there is a future for a NYC EMS professional in the Fire Department. The key issue here is the widespread view that FDNY could care less about the needs of the NYC EMS workers as illustrated by the

OT issue above. There is also a widespread view that an EMS worker will suffer a far greater punishment for the same offense than a Firefighter will. In other words, there is only one class of citizens in FDNY—EMS workers have already been forced to move to the back of the bus.

Time prohibits a thorough examination of the aspects of the institution known as NYC EMS that has been destroyed by FDNY. Briefly, FDNY has destroyed the medical career ladder that HHC provided to its NYC EMS workers. FDNY has eliminated EMS worker input in the EMS Ambulance and User Committees. For example, as soon as FDNY took over EMS, they purchased several off-the shelf ambulances that are simply unsuitable for use in the grueling New York City environment.

#### FDNY Institutes "Gag Order" For NYC EMS Employees:

FDNY has destroyed the First Amendment as well. In a desperate attempt to keep the lid on FDNY's mismanagement of NYC EMS, FDNY has recently issued a "gag order" that states in part: "[EMS Employees may not] ...Discuss with representatives of the press, or other media, matters concerning the Department." A similar "gag order" was issued by EMS/HHC in the 1980's. After your writer instituted a federal civil rights lawsuit against EMS/HHC alleging First Amendment retaliation, this EMS/HHC "gag order" was withdrawn and replaced with a NYC EMS Public Affairs procedure approved by the Federal Court. This EMS procedure balanced the appropriate need for patient confidentiality against an EMS employee's constitutional right to comment on matters of public concern such as poor EMS system response times. Given FDNY's successful struggle against the routine disclosure of NYC EMS system response times, it is certainly safe to say that FDNY management doesn't want to be embarrassed by their employees utilizing that troublesome First Amendment to report the true situation in NYC EMS.

## FDNY Sets NYC EMS Dispatching Back Twenty Years:

But by far the most horrific damage that FDNY has inflicted on NYC EMS has to be in the area of emergency medical dispatch. Two years ago FDNY instituted what was known as the FDNY Battalion Based Dispatch System. This Battalion Based Dispatch System (BBDS) was supposed to be the centerpiece of improving NYC EMS response time. Simply put, this FDNY Battalion Based System was the worst dispatch system installed at NYC EMS in twenty years. Due to the rigidity of the BBDS system, this system resulted in substantial increases in NYC EMS response times. The NYC EMS response time got so bad that the BBDS system was quietly abandoned after a few months of operation.

One would have hoped that FDNY efforts to set NYC EMS dispatch back twenty years would have ended with the Battalion Based Dispatching fiasco. Unfortunately, this was not to be. A few months ago a portion of the original EMS Headquarters building was damaged by a water main leak. This building contains the NYC EMS Dispatch Center. There's no question that this building damage was a genuine emergency that required prompt response and emergency construction. A number of city agencies and teams of engineers and construction workers responded to this emergency and stabilized the cracked floor of the building in short order. While this emergency construction was underway the NYC EMS Dispatch Center remained on line twenty-four hours a day with the EMS Communications personnel manning their stations throughout the emergency.

However, no sooner had this necessary emergency construction work been completed that FDNY went back to business as usual. Oh sure, FDNY was supposedly grateful that the NYC EMS employees manned their stations during the building emergency. However, what FDNY did not tell the NYC EMS workers is that they had decided to use the building damage as an excuse to close the NYC EMS Communications Center. Your writer would only learn some weeks later that FDNY had secretly sent a letter to Comptroller Hevesi that sought to expand this appropriate \$3 million dollar emergency repair to maybe \$40,000,000 of "no bid" contracts. FDNY was declaring "emergencies" that would have removed the besieged Starfire Dispatch Computer project from the mandatory competitive bid procedures entirely and would have stretched

other alleged "emergency" reconstruction projects, such as renovation of the Fire Communications Offices, to the year 2003. I was provided with these Hevesi letters when I unsuccessfully attempted to obtain an injunction against the movement of this EMS/HHC owned Dispatch Center during the pendency of the McAllan appeal.

In the meantime, FDNY constructed an illegal trailer park down the block from the original NYC EMS Communications Center. This \$10,000,000 beer can is a highly vulnerable set of trailers that currently houses the NYC EMS Communications personnel. This cash cow trailer park, which has **no permits or Certificate of Occupancy**, violates every building code in the book—including the New York State Sanitary Code because the building trailers lack a proper source of potable water and proper sewerage facilities. The trailers' sewerage tanks have overflowed on more than one occasion and the NYC EMS personnel are encouraged to utilize the facilities in the allegedly unsafe main building for this reason. FDNY was apparently planning to use the broken water main damage as an excuse to close the original EMS Communications Center just like the City did with the Neponsit Nursing Home. FDNY wants to steal the many millions of dollars of EMS/HHC owned dispatching equipment inside the HHC owned building and install this equipment in a FDNY owned location before the merger appeal is decided. For the record, DC 37 refused Local 2507's request to obtain an injunction in aid of arbitration against the forced occupation of this illegal FDNY trailer park last month.

Instead of relocating the EMS Dispatchers to other undamaged areas of the Maspeth building while repairs were completed in the original EMS Communications Center, FDNY is pouring tens of million dollars of taxpayer dollars into a set of illegal dispatch trailers that NYC EMS didn't need. As part of this pork barrel project, FDNY wanted to duplicate the NYC EMS 911 system in an illegal trailer park structure while they **demolished** the original NYC EMS Dispatch Center within the still occupied and fully functional EMS Building.

FDNY intends to sign an emergency contract with their buddies at Metrotech and then spend many months trying to rebuild the extremely complicated EMS 911 system components on the Metrotech site. However, there is **no emergency** that justifies the incredible breadth of this FDNY scandal. According to the

follow-up letter sent by Deputy Commissioner Feehan to Comptroller Hevesi, the Maspeth EMS Building was stabilized almost two months ago. In the interim, the EMS Local had the former chief Architect of the Fire Department, Mr. Emanuel Mesagna, consult on the safety of the EMS Building. Mr. Mesagna has stated that the EMS building is safe and easily repairable. In fact, he estimates that repairs could be completed in the existing EMS building for a mere two million dollars. Contrast that appropriate building repair to the ten million plus dollars wasted by FDNY on this EMS Dispatch Center scandal and you can see the true nature of FDNY mismanagement of NYC EMS. These precious taxpayer dollars could have been utilized by FDNY to place more NYC EMS Paramedic Units in service and improve the dismal EMS Paramedic Response statistics.

Worse, as this testimony was being prepared, New York City experienced the first heat wave of the summer. The air conditioners attached to these illegal dispatch trailers, which are crammed with Dispatchers and computer equipment, simply could not keep up with the ninety plus degree heat and overheated. Things were so bad inside the trailers that the air temperature was close to ninety degrees. Such high temperatures threaten both the EMS Dispatchers and the critical computer equipment contained in the trailers. So far, FDNY has refused to move our dispatchers back into the fully functional original EMS Communications Center with its fully operational building air conditioning. Instead, FDNY has been hosing these overheated trailers down with a fire hose and other water streams. I hope you don't need an ambulance in a heat wave this summer.

Your writer is working to close these illegal trailers at the earliest possible date. FDNY, meanwhile, is not completing repairs to the original EMS Communications Center because of the scandal reported herein. Repairs and computer upgrades in the EMS Maspeth Building must be completed forthwith and our EMS Dispatchers returned to the legal structure without delay. The year two thousand is fast approaching—the current fully functional NYC EMS Dispatch Center can be upgraded in short order to meet that critical deadline. The trailers can then become a spare Dispatch Center for use in emergencies as they were originally supposed to be.



I respectfully request that the New York City Council to immediately investigate this Fire Department Communications scandal and to hold "sunshine" hearings on this matter at the earliest possible date.

### FDNY Is Strangling The Municipal Hospital System By Contracting Out NYC EMS:

If we remember back three long years to the beginning of this so-called merger, you'll recall that FDNY promised the City Council that they would operate a municipal general ambulance service. But these were just the false promises made to obtain illegal control of NYC EMS. In the time since this illegal merger, the FDNY Administration has faithfully executed the Mayor's public policy of strangling the City's Municipal Hospital system. This strangulation has been accomplished by siphoning HHC's patients away from the HHC's Emergency Rooms by adding more and more contract 911 ambulances to the NYC EMS system.

This strangulation policy has been effective because this strategy has largely escaped public notice. When HHC was formed, many community hospitals operated one or two "911" ambulances to serve their surrounding communities. These "voluntary hospital" units were incorporated into the then fledgling NYC EMS in the early 1970's. The EMS personnel on the contract 911 ambulances remained employees of their respective hospitals and still work for the individual hospitals today. At the same time, HHC entered into a contract with these hospital units that called for these hospitals to pay any profits made from 911 ambulance operations to HHC. Since no hospital was aggressively billing for ambulance transportation until the mid 1980's, HHC would routinely pay a partial annual subsidy to those hospitals operating these "911" contract ambulances.

This "911" ambulance contract situation started to change in the late eighties. Many voluntary hospitals started to aggressively bill for 911 ambulance transport often at rates above HHC's posted ambulance rates. Even though many of the voluntary hospitals were now making money and gaining new patients from their

911 ambulance operations, HHC was still giving an annual subsidy to these "911" units. Under increasing political pressure, HHC stopped these ambulance subsidies in the early 1990's based on the voluntary hospitals new ambulance revenue streams. The sweeping hospital mergers of the 1990's have made patient destinations all the more important to those hospitals participating in the "911" system.

In the three years since the illegal merger, FDNY has doubled the number of "911" contract hospitals units. These units are no longer covering just the areas surrounding their home hospitals but have been assigned wide areas of each borough with NYC EMS units being relegated to the neighborhoods that do not produce the right kind of patients for these contract 911 hospitals.

In many instances, these 911 contract units have become increasingly predatory in nature. Even in 1995 these contract 911 units were already taking **eighty per cent** of their 911 patients back to the hospital written on the side of the unit. Now the pressure is really on these hospital employees to take the 911 patients back to the Emergency Room of the hospital they work for. There is simply no excuse for these 911 contract units to be pressuring vulnerable 911 patients to go to a particular hospital ER when that destination may not even be in that patient's best medical interests.

In the meantime, as these predatory 911 units have been increased by FDNY, the patient arrivals at some HHC ER's have been cut almost in half in the last two years. These predatory units are now even diverting HHC's "bread and butter" Medicaid patients away from HHC ER's as this HHC strangulation policy is becoming more effective and the hospital conglomerates look for new patients.

### Suppressed HHC Audits And The Illegal EMS/Fire Merger:

On December 4, 1995, while the City was pushing the ill-fated EMS/Fire merger plan before this City Council, HHC Auditors quietly released a report on the contract 911 ambulances. This Audit report looked at the participation of five contract 911 voluntary hospitals and analyzed the costs and benefits of their

participation in the NYC EMS 911 system. This report confirmed the fact that the 911 contract ambulances were already taking over **eighty per cent** of their patients back to their respective employing facilities. HHC ER's were already receiving a declining share of the 911 patients the contract 911 hospital ambulances responded to under the NYC EMS 911 system. The number of times a contract hospital ambulance took a 911 patient to an HHC Emergency Room had already dipped to as low as 12 per cent in the early 1990's audit period.

The Audit Report stated:

"Accordingly, for varying reasons, transport patterns over the four year fiscal period [FY 1991-1994] clearly demonstrate a **marked increase** in patient flow to voluntary rather than municipal hospitals disproportionately...when the voluntary ambulances transport the patient." [Emphasis Supplied.]

The report estimated that the five contract 911 institutions audited spent approximately \$5 million dollars annually on the operation of 13 contract 911 ambulances in the NYC EMS system. HHC then calculated the Benefits to the voluntary hospitals and concluded that the benefits far outweigh costs.

The Audit Report concluded:

"We sought to estimate **the potential benefits** derived by the five sampled facilities from participating in the 911 System through EMS. Our review disclosed that the estimated net inpatient revenue derived from participation **exceeded \$25.4 million per year**. It should be noted that our estimate excludes other important inpatient and ancillary charges and/or outpatient ambulance charges, and therefore is **extremely conservative**." [Emphasis Supplied.]

Your writer will readily concede that the benefits to these contract 911 hospitals can be controversial. Many of these 911 hospital contracts have not been properly recorded or enforced in years. But whatever the actual voluntary hospital numbers are, *it is clear that these contract 911 hospitals are realizing substantial 911 participation benefits at HHC's expense*. It is also beyond question that the City and HHC Administrations went out of their way to

conceal the results of this audit while the EMS/Fire Department merger efforts were underway. Worse, there is simply no question that FDNY, once it realized illegal control of NYC EMS, deliberately took steps to significantly expand the contract 911 hospital participation in the NYC EMS system.

FDNY has also illegally negotiated a new "give away" contract with the North Shore Hospital Conglomerate that allows their predatory 911 ambulance operation to keep any profits made from their 911 ambulance operations. FDNY has then turned around and has cancelled and/or relocated several NYC EMS ambulances operating in the eastern Queens area so that North Shore and other contract voluntary hospital can have whatever areas they want to cover. As a result, emergency ambulance arrivals at the Queens General Hospital Emergency Room has been cut almost in half as the contract 911 hospitals have surrounded the QGH ER with non-NYC EMS units in the last two years.

Although the contract 911 players differ somewhat, the same ambulance patient diversion methods have been used to strangle North Central Hospital in the Bronx. These same methods have also been used to cut into the ambulance arrivals at virtually every other HHC Hospital as well. NYC EMS, the municipal ambulance system created by the New York State Legislature, has simply been compromised in those areas of the City where these hospital conglomerates have moved in to siphon 911 patients for their Emergency Rooms.

I respectfully request that the New York City Council forthwith investigate these 911 contract ambulance operations and conduct a hearing on the negative impact these 911 ambulance contracts are having on the operations of the NYC Health and Hospitals Corporation.

## New York City Needs An Independent, Third Service Emergency Medical Service:

As you can see from this testimony, the EMS/Fire merger has been a disaster for NYC EMS and the many hundreds of thousands of emergency medical patients it serves on an annual basis. The intention of the HHC Act was to remove the operations of the municipal hospitals and NYC EMS from the politics of direct City control. Obviously, illegally placing NYC EMS under direct City control has once again brought the minuses of the City politics to the fore once again. The Mayor has obviously wasted no time in using NYC EMS as a tool to accomplish his objective—destroying the NYC Health & Hospitals Corporation.

For many years there has been tension between the NYC EMS/HHC ambulance operations and the hospitals operating the contract 911 EMS units. But in the past neither side was able to potentially influence the very survival of various hospitals in the City through their respective 911 EMS operations.

As this testimony has shown, ambulance turf wars now threaten the very survival of the NYC HHC and perhaps some voluntary hospitals that do not operate ambulances in the NYC EMS 911 system.

I propose that the New York City Council immediately begin to develop NYC EMS legislation that would re-create EMS as a separate public benefit corporation that **equally** serves the emergency medical needs of all New Yorkers. To that end, a NYC EMS public benefit corporation (PBC) should be directed to absorb the various NYC 911 contract ambulance operations along with their ambulance employees and to in turn operate a **neutral** Emergency Medical Service for the benefit of **all** emergency medical patients in New York City. The NYC EMS PBC Board of Directors should be constructed in such a way that all emergency agencies and hospital sectors have an equal voice in enabling the NYC EMS to accomplish its pre-hospital emergency medical care mission. This is what NYC EMS is supposed to be doing—providing the best pre-hospital patient care to all New Yorkers without the economic considerations of hospital conglomerates or other city agencies getting in the way of good patient care.

Both NYC EMS and the NYC HHC Corporation have come a long way since I started driving a converted bread truck ambulance for NYC EMS in 1973. It is now time for NYC EMS to be converted into a separate public safety agency that will help to insure the emergency medical safety of all New Yorkers without consideration to their ability to pay. NYC EMS should be an equal partner to the New York City Police and Fire Department in providing for the public safety of our City.

But in view of what is contained in my testimony, NYC EMS needs the greater political insulation of a public benefit corporation as well as a separate funding source in order to better accomplish its pre-hospital life-saving mission in the years to come.

I respectfully urge every member of the New York City Council to make my NYC EMS dream a reality for the millennium. You would be doing a great service for all New Yorkers in the new century ahead of us.

Thank you again for the opportunity to testify. Please do not hesitate to contact me if I can be of service the City Council in any way.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard J. McAllan", written in a cursive style.

Richard J. McAllan

Senior Paramedic

P. O. Box 478

Bronx, New York 10463

Pager: 1-800-225-0256 Pager ID: 80816

Fax: 1-718-562-6738

Enclosures