

**[J-264-1998]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

MARS EMERGENCY MEDICAL SERVICES, INC.,	:	No. 59 W.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the Order of the Commonwealth Court entered on January 7, 1998, at No. 1218 C.D. 1997, affirming the Order of the Court of Common Pleas of Butler County, Euity Division, entered on April 11, 1997, at EQ 94-50058
v.	:	
	:	
TOWNSHIP OF ADAMS AND BOROUGH OF CALLERY,	:	
	:	
Appellees	:	SUBMITTED: December 15, 1998
	:	

**DISSENTING OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: OCTOBER 28, 1999**

I agree with the majority that the EMS Act does not preempt local legislation concerning the provision of emergency medical services. I also agree that Adams Township and Callery Borough have authority under the Second Class Township Code and the Borough Code respectively to designate a primary provider. To my mind this is all that is necessary to dispose of this appeal. Accordingly, I would simply affirm the order of the Commonwealth Court.

I dissent from the majority's decision to remand to the common pleas court for findings of fact on the issue of "whether the designation of Quality by appellees is consistent with the EMS Act," Slip Opinion at 6, because I do not believe that is a proper issue for the court to decide. The forum for that issue, if any, is the Department of Health, the agency charged with implementation and oversight of the EMS Act.